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R. REAMS GOODLOE, JR. R. REAMS GOODLOE, P.S. 24722 104TH. AVENUE S.E. SUITE 102 KENT, WA 98030-5322			HAWTHORNE, OPHELIA ALTHEA	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WENDY ANN YOUNG and LISA NANETTE ALEXANDER

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Appeal 2011-006281  
Application 12/252,676  
Technology Center 3700

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Before DONALD E. ADAMS, ERICA A. FRANKLIN, and  
SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a protective shield. The Examiner has rejected the claims as anticipated and obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Claims 1-26 are on appeal. Independent claims 1 and 17 are representative and read as follows (emphasis added):

1. A disposable shield, comprising:

a generally cupped structure sized to accommodate and shaped with sufficient volume to receive therein adult human female genitalia, comprising an outer lip, *said outer lip generally configured in the shape of an arcuate section made through an ovoid shape substantially along the longitudinal axis thereof;*

outer sloping sidewalls, said outer sloping sidewalls extending generally inwardly and downwardly from said outer lip;

a longitudinally extending handle portion;

inner sloping sidewalls, said inner sloping sidewalls extending from said outer sloping sidewalls to said longitudinally running handle portion.

17. A protective shield, comprising:

a generally cupped structure sized to accommodate and shaped with sufficient volume to receive therein adult human female genitalia, comprising an outer lip, *said outer lip generally configured in the shape of an arcuate section made through an ovoid shape substantially along the longitudinal axis thereof;*

outer sidewalls, said outer sidewalls extending generally inwardly and downwardly from said outer lip;

a handle portion;

inner sidewalls, said inner sidewalls extending from said outer sidewalls to said handle portion.

The claims stand rejected as follows:

- I. Claims 1-5, 8-11, 14, 15, 17-20, 22 - 23 and 26 under 35 U.S.C. § 102(b) as being anticipated by Tihon (US 5,895,349, issued Apr.

20, 1999) as evidence by Anderson (US 4,194,508, issued Mar. 25, 1980).

- II. Claims 6 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Tihon and Van Den Bogart et al. (US 2009/0036858 A1, published Feb. 5, 2009).
- III. Claims 7, 12 - 13, 21, 24 - 25 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Tihon and Clodius-Talmadge (US 2009/0065008 A1, published Mar. 12, 2009).
- IV. Claim 16 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Tihon and Fedyk et al. (US 2003/0236485 A1, published Dec. 25, 2003).

The same issue is dispositive of all of the rejections.

*Issue*

The Examiner finds that “[a]n arcuate section as claimed by Appellant has been given its plain meaning. In view of figure 2 Tihon discloses an outer lip comprising an arcuate or curved portion shown as (element 12).” (Ans. 11.)

Appellants contend as follows:

FIGS. 1 and 2 of Tihon show a device is provided by way of a linear cross-section, or “straight cut” via cross section of line 1-1 of FIG. 2. This result is depicted in FIG. 1 of Tihon, which shows a straight cut - i.e. a vertical cross sectional cut to reveal FIG. 1 . It is unambiguously not a section cut along an arched path - and thus, is NOT an arcuate section cut.

...  
[A] “straight section” or “flat, planar section” of line 1-1 through FIG. 2 of Tihon - to produce a flat surface with arched edges, is not the same as an “arcuate section” through an “ovoid shape”.

(Reply Br. 12 and 14.)

The issue presented is:

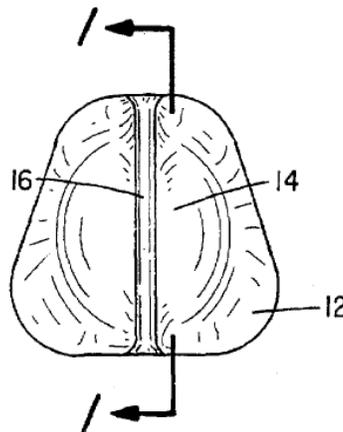
Does the evidence of record support the Examiner's finding that Tihon discloses a device having an outer lip generally configured in the shape of an arcuate section made through an ovoid shape substantially along the longitudinal axis thereof?

*Findings of Fact*

The following findings of fact ("FF") are supported by a preponderance of the evidence of record.

FF1. The Specification discloses that "a disposable shield may be provided as a generally concave cupped structure, with an engaging lip shaped as the outer edge of an arcuate section (i.e., slightly varying height H dimension) cut generally longitudinally through an ovoid, or egg like shaped structure" (Specification 2, ¶ [0011]; *see also, id.* at 6, ¶ [0028]).

FF2. Figure 2 of Tihon is reproduced below.



**FIG. 2**

Figure 2 is a top plan view of the disclosed female urinary incontinence device (Tihon, Abstract and col. 2, l. 7). “To assist in inserting and removing the device **10**, it is provided with a handle portion **16** in the form of a narrow wing that spans the dome portion **14** and projects outwardly from the annular base portion **12**” (*id.* at col. 2, ll. 34-37).

### *Principles of Law*

Anticipation requires that every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001).

The Board “determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). “Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.* at 1313. *See also, Hockerson-Halberstadt, Inc. v. Converse Inc.*, 183 F.3d 1369, 1374 (Fed. Cir. 1999) (“[p]roper claim construction . . . demands interpretation of the entire claim in context, not a single element in isolation.”); *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003) (“While certain terms may be at the center of the claim construction debate, the context of the surrounding words of the claim also must be considered....”).

*Analysis*

We agree with Appellants. The Examiner's has not adequately explained how any feature of the Tihon device (for example, element 12 shown in Figure 2 of Tihon) can be reasonably interpreted as an arcuate section made through the longitudinal axis of an ovoid shape (*see*, FF2).

The Specification uses the term arcuate to refer to a "slightly varying height H dimension" (FF1). The Examiner, however, fails to point to any structure in Tihon that varies along the height dimension through an ovoid structure. Rather, it appears that the Examiner's interpretation focuses on the interpretation of the term "arcuate" in isolation and not within the context of the entirety of claim 1, which requires a device having an "outer lip generally configured in the shape of an arcuate section made *through an ovoid shape* substantially along the longitudinal axis thereof" (App. Br. 22; emphasis added).

The preponderance of evidence on this record does not support the Examiner's findings that Tihon discloses a device having an outer lip generally configured in the shape of an arcuate section made through an ovoid shape substantially along the longitudinal axis thereof. Accordingly, we find that Tihon fails to anticipate claims 1-5, 8-11, 14, 15-20, 22-23 and 26.

The rejections for obviousness rely on the Examiner's finding that Tihon identically discloses the products of claim 1 and 17, and therefore suffer from the same deficiency.

Appeal 2011-006281  
Application 12/252,676

**SUMMARY**

We reverse all rejections on appeal.

**REVERSED**

cdc