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KIMBERLY-CLARK WORLDWIDE, INC.
Tara Pohlkotte
2300 Winchester Rd.
NEENAH, WI 54956

EXAMINER

KIDWELL, MICHELE M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHIRLEE A. WEBER, ANDREW M. LONG,
and ANSLEY C. ALLEN

Appeal 2012-012398
Application 11/414,031
Technology Center 1700

Before RICHARD TORCZON, SALLY GARDNER LANE, and
DEBORAH KATZ, *Administrative Patent Judges*.

KATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek our review, under 35 U.S.C. § 134(a), of the Examiner's decision to reject claims 1-18. (App. Br. 1.) We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

Previously, the Board reversed a rejection of claims 1-18 as being anticipated over different prior art. (*See* Decision on Appeal, December 4, 2009.)

Appellants claim an absorbent product, such as a diaper, that has a wetness sensing system including a signaling device to indicate to the wearer when body fluid is present in the absorbent article. (*See* Spec. at 2.)

Appellants present two independent claims: claims 1 and 18. Claim 1 is representative for most of Appellants' arguments. Claim 1 recites:

An absorbent product having a wetness sensing system, the product comprising:
a disposable absorbent article including a wetness sensing component and an article theme; and
a signaling device adapted to be removably fastened to the absorbent article, the signaling device having a signaling device theme, wherein the signaling device theme coordinates with the article theme.

(App. Br. 1, Claims App'x.)

Rejections under 35 U.S.C. § 102(b) over Nissim

Nissim teaches an absorbent product, as depicted in Figure 2, which is reproduced below.

¹ The real party in interest is Kimberly-Clark Worldwide, Inc. (App. Br. 2.)

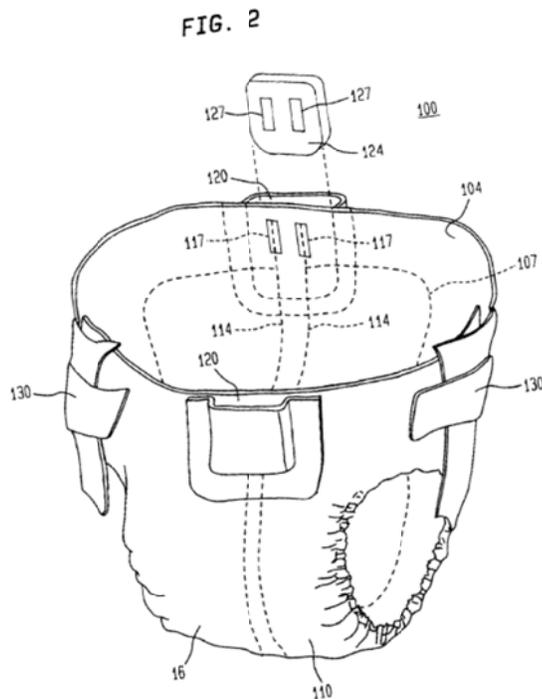


Figure 2 depicts a diaper (100) with a wetness sensing system including electrodes (114) and electrically conductive pads (117) positioned opposite a pouch (120). (Nissim at 2:28-40; Ans. 4-5.) The pouch holds a removable sensor (124) having members (127). (*Id.*)

Appellants' main argument is that Nissim does not teach an absorbent article with an "article theme" and a "signaling device theme," as claimed. (App. Br. 4-5.) Appellants argue that the Examiner mistakenly regarded the "themes" of the article and signaling device to be the shape of the article and device, when, according to Appellants, shape is only one aspect of a "theme" and is not dispositive of it. (App. Br. 5.)

While the claims are not expressly limited to the embodiments of the Specification, and Appellants have not pointed us to an express definition of the contested language, the broad disclosure in the Specification nevertheless sheds a useful light on Appellants' arguments. Appellants'

Specification provides that an “article theme refers primarily to the design of the absorbent article **20**, including its shape, its coloring, and the graphics associated with it.” (Spec., p. 18, ll. 6-9.) Appellants’ Specification provides a similar definition of the signaling device theme, wherein “[t]he signaling device theme refers primarily to the design of the signaling device **110**, including its shape, its coloring, the sound or sounds it produces, the other signals it produces, and the graphics associated with it.” (*Id.*, ll. 19-22.) Appellants’ Specification also provides that article themes and signaling device themes may be associated with a fictional or non-fictional character, a story, an action, or an event such as toilet training or entering school. (Spec., p. 18, ll. 9-16 and 22-33.)

From the portions of the Specification that Appellants direct us to, the broadest reasonable construction of the claim term “theme” encompasses the design of the absorbent article and signaling device of Nissim. The Specification identifies design as the primary component of a “theme.” (Ans. 8.) Though the “themes” described in Appellants’ Specification can include shapes and colors, as well as graphics, the Specification does not limit a “theme” to any of these features. The absorbent article and signaling device of Nissim have a design, such as its shape, coloring and other features, and, thus, have a “theme,” according to the broadest reasonable construction of the term.

Despite Appellants’ argument to the contrary (*see* App. Br. 5), we find that the signaling device theme of Nissim “coordinates” with its absorbent article theme because the sides of the signaling device are tapered to fit into the pouch of the absorbent article. (Nissim, 2:60-62; *see* ans. 8.) The Specification provides that “[t]o be coordinated, the article theme and the

signaling device theme can be seen as related.” (Spec., p. 19, ll. 3-4).

Because the design of the signaling device is related to the design of the absorbent article through their complementary shapes, they are coordinated as provided for in Appellants’ Specification. (Ans. 5.)

Appellants also argue that the absorbent product of Nissim does not have a signaling device “adapted to be removably fastened to the absorbent article,” as required in their claimed product because the sensor resides in a pocket. (App. Br. 4.) Appellants do not direct us, and we do not find, that that term “fastened” is defined in the Specification by any particular means of fastening or any particular strength of attachment. Because the sensor is removably constrained by the pouch so that the members (127) of the sensor are positioned in relation to pads (117) to allow them to form adjacent capacitors (*see* Nissim, 2:51-59; Ans. 7-8), the signaling device of Nissim is “removably fastened” to the absorbent article under the broadest reasonable construction of the claim term.

Appellants argue for the separate patentability of claim 2, which recites: “The product of claim 1, wherein the signaling device theme includes a sound associated with the article theme.” (App. Br. 10, Claims App’x.) Though Appellants agree with the Examiner that Nissim teaches a signaling device that produces a sound (*see* Nissim, 3:40-42), they argue that this sound cannot be “associated” with the article theme because the theme, as construed by the Examiner, is the shape of the absorbent article. (App. Br. 5.)

Similarly, Appellants argue separately for the patentability of claim 13, which recites: “The product of claim 1, wherein the signaling device has a shape, and wherein the shape coordinates with the signaling device

theme.” (App. Br. 11, Claims App’x.) Appellants argue that because the “signaling device theme” is claimed as a separate element from the shape of the signaling device, the Examiner erred by finding the theme to be the shape and, thus to be coordinated. (App. Br. 6.)

The claim terms “associated” and “coordinated” in regard to themes in the claimed products are given their broadest reasonable construction. Appellants’ Specification provides that an article theme and a signaling device theme are “coordinated” if they “can be seen as related.” (Spec., p. 19, ll. 3-4.) The Specification provides examples of “coordinated” such as when the article theme is “associated” with a cartoon character, including cartoon character graphics, shapes, or sounds, and the signaling device theme is also “associated” with the cartoon character. (Spec., p. 19, ll. 5-11.) Appellants do not point to, and we do not find, a discussion of the term “associated” in the Specification.

The Specification does not expressly limit the terms “associated” and “coordinated” to any particular relationship between themes. We agree with the Examiner that a relationship such as complementary positioning on the product to trigger a sound indicates that the sound made by the signaling device in Nissim is “associated” with the article theme. Similarly, the complementary shape of the signaling device in Nissim “coordinates” with its theme.² (Ans. 9.)

² We note that Appellants define a “signaling device theme” as including sounds it produces (Spec., p. 18, ll. 19-22) and provides that an article’s theme includes its shape (*id.*, p. 18, ll. 7-8 and 19-21). Thus, as construed from Appellants’ Specification, the signaling device theme of

Appellants also argue for the separate patentability of claim 4, which the Examiner nominally included with the claims recited as being anticipated by Nissim. (App. Br. 6.) Though the Examiner provided a citation to Nissim in regard to claim 4, no other discussion was included. (Ans. 4.) The Examiner did discuss claim 4 in regard to the rejection under 35 U.S.C. § 103(a) over Nissim and Long, along with claims 11 and 12. (See Ans. 6.) Appellants acknowledge that “[i]n this rejection of claims 11 and 12, the Examiner inexplicably formulates a rejection of claim 4” (App. Br. 7.) Because it is apparent from that record (*see id.*) and Appellants appear to have understood that the Examiner intended to reject claim 4 as being obvious over Nissim and Long, we discuss the rejection of claim 4 below.

Rejections under 35 U.S.C. § 103(a) over Nissim

The Examiner rejected claim 9 as being rendered obvious by Nissim. Claim 9 recites: “The product of claim 1, further comprising a receiver including a receiver theme, wherein the receiver theme coordinates with the article theme.” (App. Br. 11, Claims App’x.)

Appellants argue that the receiver of Nissim does not coordinate with the shape of the diaper, which the Examiner finds to be the “article theme” of the absorbent article in Nissim. (App. Br. 7.) As explained above, the Examiner did not err by considering the design of the article to be its “theme” and so did not err in finding the design of the receiver in Nissim to

Nissim is inherently associated with the sounds it produces and the article theme is inherently coordinated with its shape.

coordinate with the design of the article because both are part of one system (*see* Nissim, 4:36-39).

Rejections under 35 U.S.C. § 103(a) over Nissim in view of Long

As explained above, we include claim 4 in our review of the Examiner's rejections over Nissim in view of Long.

Claim 4 recites:

The product of claim 1, wherein the signaling device theme includes a sound and a graphic.

(App. Br. 10, Claims App'x.)

Claim 11 recites:

The product of claim 1, wherein the article theme and the signaling device theme are associated with a fictional character.

(App. Br. 11, Claims App'x.)

Claim 12 recites:

The product of claim 1, wherein the article theme and the signaling device theme are associated with an animated character.

(*Id.*)

Long teaches diapers with graphics depicting scenes, characters, animals, objects, etc. (Long, ¶ [0067].)

Despite Appellants' arguments that neither Nissim nor Long teach article themes associated with characters (App. Br. 7), we agree with the Examiner that it would have been within the skill of one in the art to incorporate the graphics, including characters, taught in Long into the design of the absorbent articles and signaling devices of Nissim (Ans. 9) because Long teaches such graphics on the same types of absorbent articles.

Accordingly, we are persuaded that the subject matter of Appellants' claims 4, 11, and 13 would have been obvious over Nissim in view of Long.

Rejections under 35 U.S.C. § 103(a) over Nissim in view of Kuske

Claims 5-8 and 18 each include packaging and a "packaging theme" or instructions and an "instruction theme." Kuske teaches packaging for products such as absorbent articles, wherein the packaging design has colors that are matched to training pants for different genders of children. (Kuske, 6:15-50.)

Appellants argue in regard to claim 7 that Kuske does not teach an article graphic and a packaging graphic that are the same. (App. Br. 8.) We are not persuaded by Appellants' argument that because the packaging of Kuske has a window, Kuske obviates or teaches away from including the same graphic on the article. (*Id.*) Kuske teaches articles with graphics (Kuske, 6:3-5) and packages with illustrations (*id.*, 6:15-20). Because Kuske teaches matching packaging colors and article graphics, we agree that those of skill in the art would have considered it obvious to match the article graphic and the packaging graphic.

Conclusion

Upon consideration of the record and for the reasons given, Appellants' claimed absorbent products would have been obvious over the cited prior art.

Therefore, we affirm the decision of the Examiner.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

Appeal 2012-012398
Application 11/414,031

AFFIRMED

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