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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY ASHTON and MASAHARU NISHIKAWA

Appeal 2014-009223
Application 12/476,271
Technology Center 3700

Before LINDA E. HORNER, THOMAS F. SMEGAL, and LISA M. GUIJT,
Administrative Patent Judges.

HORNER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Gregory Ashton and Masaharu Nishikawa (Appellants)¹ seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1–17, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants identify the real party in interest as The Procter & Gamble Company. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Appellant's claimed subject matter relates to "an absorbent article."
Spec. 1, l. 5. Claims 1 and 17 are independent. Claim 1 is reproduced below.

1. A disposable absorbent article comprising:

an absorbent core having a garment surface and an opposed body surface, which surfaces meet along a pair of longitudinal edges and a pair of end edges;

a liquid permeable topsheet positioned adjacent the body surface of the absorbent core and having a pair of opposed longitudinal edges;

a liquid impermeable backsheet positioned adjacent the garment surface of the absorbent core; and

a pair of elastically contractible cuffs, each of which is constructed of a continuous cuff material and has a standing cuff portion which comprises one or more elastic members,

wherein each elastically contractible cuff is secured about one of said longitudinal edges of the topsheet by an assembly bond, with the standing cuff portion having a free edge and being laterally offset away from the longitudinal edge of the absorbent core;

wherein the assembly bond is located outboard of the absorbent core and inboard of all of the elastic members of the standing cuff portion; wherein each cuff includes one or more cuff folds, a cuff fold bond, and a cuff end bond.

REJECTIONS

The following rejections are before us on appeal:

1. Claims 1–7 and 10–17 under 35 U.S.C. § 102(b) as anticipated by St. Louis (US 5,993,433, issued November 30, 1999).

2. Claims 8, 9, and 17 under 35 U.S.C. § 103(a) as unpatentable over St. Louis.²

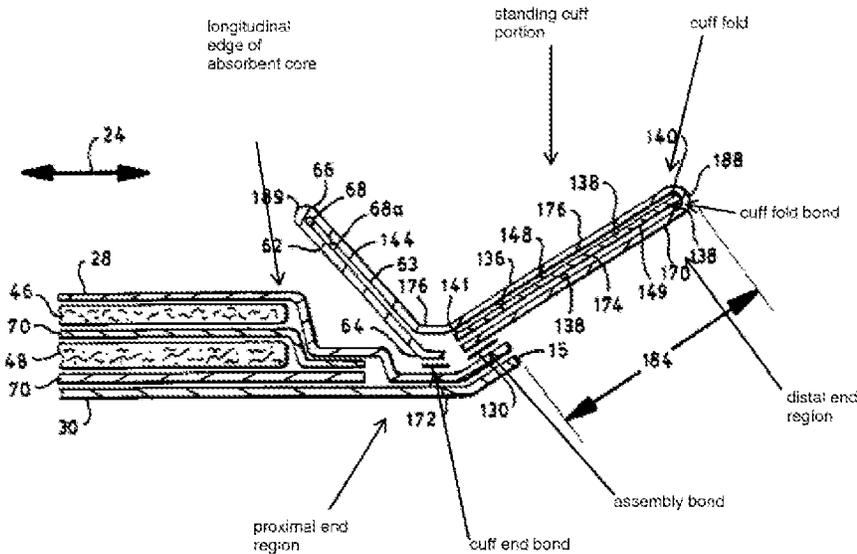
ANALYSIS

First Ground of Rejection: Claims 1–7 and 10–17 under 35 U.S.C. § 102(b) as anticipated by St. Louis

The new ground of rejection of independent claims 1 and 17, as set forth in the Examiner’s Answer, is based on Figure 4 of St. Louis as anticipating the claimed subject matter.³ Ans. 4–6. In support of the new ground, the Examiner provided the following annotated version of Figure 4 of St. Louis:

² The Final Action, dated November 15, 2013 (“Final Act.”), from which this appeal is taken, rejected claims 1–8 and 10–16 under 35 U.S.C. § 102(b) as anticipated by St. Louis and claims 9 and 17 under 35 U.S.C. § 103(a) as unpatentable over St. Louis. In the Answer, the Examiner maintained the rejections of claims 2–7 and 10–16 under 35 U.S.C. § 102(b) and of claims 9 and 17 under 35 U.S.C. § 103(a). Ans. 2–4. The Examiner also included new grounds of rejection of claims 1 and 17 under 35 U.S.C. § 102(b) as anticipated by St. Louis and claim 8 under 35 U.S.C. § 103(a) as unpatentable over St. Louis. *Id.* at 4–7. Although not explicitly stated in the Answer, we understand that the Examiner withdrew the ground of rejection of claim 8 under 35 U.S.C. § 102(b) as anticipated by St. Louis. *See id.* at 7 (Examiner explaining that the rejection in the Final Action was based upon a misunderstanding of the claim scope).

³ We do not address the Examiner’s rejection based on Figure 5 of St. Louis, as articulated in the Final Action, because the Examiner admitted that this analysis was based on a misunderstanding as to the scope of claim 1. Ans. 7.



Ans. 6. The drawing reproduced above shows Figure 4 of St. Louis annotated by the Examiner to identify asserted elements of the claimed subject matter.

Claims 1 and 17 call for each cuff to include an assembly bond located “inboard of all of the elastic members of the standing cuff portion” and “a cuff fold bond, and a cuff end bond.” Appeal Br. 7, 10 (Claims App.). Appellants contest, *inter alia*, the Examiner’s finding that Figure 4 of St. Louis shows the claimed cuff end bond. Reply Br. 3. Appellants argue that the Examiner’s annotated Figure 4 “points to an attachment point between the cuff and the diaper that is positioned in the middle of the cuff, and not a cuff end bond located adjacent the cuff free edge” and that the bond pointed to by the Examiner “appears to be a portion of what the Applicants’ refer to as the assembly bond.” *Id.* at 3–4. Appellants further

argue that the assembly bond identified by the Examiner is not inboard of all of the elastic members of the standing cuff portion, as recited in claims 1 and 17. *Id.* at 4 (Appellants arguing that the asserted assembly bond is outboard of elastic members 68 and 68a).

Appellants' Specification describes "[t]he elastically contractible cuff 14 may include . . . a cuff fold bond 46 and a cuff end bond 40." Spec. 11, ll. 18–20. In one embodiment, the Specification refers to the cuff end bond 40 as a "hem bond." *Id.* at 12, l. 29. With reference to a conventional prior art diaper, the Specification depicts a cuff 14 having cuff end bond 39 and cuff end bond 40 at opposite ends of the cuff. *Id.* at 12, ll. 3–5; Fig. 4. Similarly, another prior art diaper includes a cuff end bond 55. *Id.* at 12, l. 6; Fig. 5. In each embodiment, the cuff end bond is shown as a bond that adheres or fuses one layer of cuff material to another layer of cuff material. This bond is juxtaposed throughout the Specification with the assembly bond 32, 37, which is a bond used to fuse or adhere the cuff material with a layer of the diaper (e.g., the topsheet). *See, e.g.*, Spec. 9, ll. 22–24, *id.* at 11, ll. 16–17; *id.* at 12, ll. 3–8, 26–27, 33–34; Figs. 2–6, 7A, 8A.

The Examiner's annotated Figure 4 points to the area at reference number 172 as the claimed cuff end bond. Ans. 6. St. Louis discloses that "each separate, elasticized and gathered gusset-flap 19 can be connected to at least one of the topsheet and backsheet layers with a gusset attachment 172." St. Louis, col. 6, ll. 7–10; Fig. 4. We agree with Appellants that the leg gusset attachment 172 disclosed in St. Louis is not the same as the claimed "cuff end bond" because attachment 172 attaches the cuff material

to the topsheet of the diaper, and thus is akin to the claimed assembly bond. As such, the Examiner's interpretation of the "cuff end bond" as encompassing an assembly bond is unreasonably broad in light of the Specification. Thus, the Examiner's finding that St. Louis discloses the claimed "cuff end bond" is not supported by a preponderance of the evidence.

Further, we agree with Appellants that the standing cuff portion of St. Louis's cuff member (gusset-flap member 19) includes containment flap section 144 having elastic members 68 and 68a, which lie inboard of the identified assembly bond 130. St. Louis, col. 5, ll. 12–18; Fig. 4. As such, the Examiner's finding that St. Louis discloses the claimed "assembly bond . . . located . . . inboard of all of the elastic members of the standing cuff portion" is not supported by a preponderance of the evidence.

For these reasons, we do not sustain the rejection of independent claims 1 and 17, or dependent claims 2–7 and 10–16, under 35 U.S.C. § 102(b) as anticipated by St. Louis.

Second Ground of Rejection: Claims 8, 9, and 17 under 35 U.S.C. § 103(a) as unpatentable over St. Louis

The rejection of claims 8, 9, and 17 relies on the same problematic findings as to St. Louis's disclosure of the claimed cuff end bond and the location of the assembly bond that formed the basis of the anticipation rejection of claims 1 and 17. Ans. 4, 6–7. For the same reasons provided above, we do not sustain the rejection of claims 8, 9, and 17 under 35 U.S.C. § 103(a) as unpatentable over St. Louis.

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DECISION

The decision of the Examiner to reject claims 1–17 is REVERSED.

REVERSED