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EXAMINER

TREYGER, ILYA Y

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JENNIFER JOAN NANDREA and MASAHARU NISHIKAWA

Appeal 2015-000661
Application 13/033,014
Technology Center 3700

Before DONALD E. ADAMS, JEFFREY N. FREDMAN, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

PER CURIAM

DECISION ON APPEAL¹

This is an appeal under 35 U.S.C. § 134 involving claims 1–5² and 11–18 (Br. 2–4, 6–7). Examiner entered rejections under 35 U.S.C. §103(a). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

STATEMENT OF THE CASE

Appellants' invention "relates generally to absorbent articles, and more specifically to absorbent articles including a sensation aspect that

¹ Appellants identify the Real Party in Interest as The Procter & Gamble Company of Cincinnati, Ohio (Br. 1).

² The rejection of claims 6–10 has been withdrawn (*see* Ans. 8).

conveys a signal when wet” (Spec. 1:7–8). Independent claim 1 is representative and reproduced in the Claims Appendix of Appellants’ Brief.

Claims 1–5 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Olson ’173³ and Seger.⁴

Claims 11–18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Olson ’173, Seger, and Olson ’797.⁵

ISSUE

Does the preponderance of evidence relied upon by Examiner support a conclusion of obviousness?

FACTUAL FINDINGS (FF)

FF 1. Figure 6 of Olson ’173 is reproduced below:

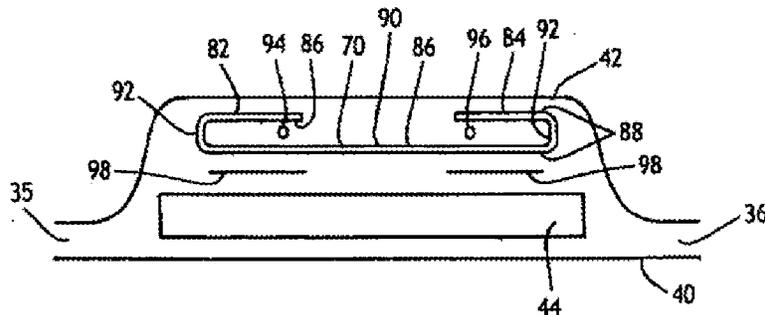


FIG. 6

Figure 6 shows “a section view of a particular aspect of the training pants” (Olson ’173 ¶ 15) having “a temperature change member 70” (*id.* at ¶ 40) and “an absorbent body 44” (*id.* at ¶ 48; *see also* Ans. 3–4).

³ Olson, US 2007/0083173 A1, published Apr. 12, 2007.

⁴ Seger et al., US 5,800,416, issued Sept. 1, 1998.

⁵ Olson et al., US 6,635,797 B2, issued Oct. 21, 2003.

FF 2. Seger suggests that “the size and absorbent capacity of the absorbent core may be varied to accommodate different uses such as incontinence pads, pantliners, regular sanitary napkins, or overnight sanitary napkins” (Seger 13:46–50; *see also* Ans. 4–5).

FF 3. Seger suggests that “depending upon the particular application it may be desirable to establish gradients in any given direction or directions within the member and/or provide identifiable strata within such a member so as to provide regions of differing density, basis weight, composition, hydrophilicity, or other properties to suit a particular application” (Seger 20:42–48; *see also* Ans. 3, 5).

ANALYSIS

The combination of Olson ’173 and Seger:

Appellants’ independent claim 1 requires, *inter alia*, “the temperature sensation aspect is positioned on the targeted zone of reduced absorbent capacity on the core that correlates to a sensation aspect position of the core” (*see* Br. 9).

Examiner finds that Olson ’173 suggests “an absorbent body 44 disposed between the backsheet and the topsheet (page 4, [0047], lines 8–10)” and “a temperature change member disposed with the absorbent body (Page 1, [0005], lines 7, 8)” (Ans. 3). Examiner recognizes, however, that “Olson does not expressly disclose [an] article, wherein the absorbent body forms a targeted zone of reduced absorbent capacity” that absorbs less urine than surrounding areas of the core (*id.*). To make up for the foregoing deficiency in Olson, Examiner relies on Seger to “teach[] an absorbent

article, wherein the absorbent core if desired may deviate from a homogeneous profile establishing gradients in any desired direction (col. 20, lines 40–48) which reads on forms a targeted zone of reduced absorbent capacity and an acquisition layer (col. 4, lines 31–67)” (*id.*). Based on the foregoing, Examiner concludes that it would have been prima facie obvious, at the time of Appellants’ claimed invention, to “supply the absorbent article of Olson with the absorbent core forming a targeted zone of reduced absorbent capacity, as taught by Seger, in order to accommodate different uses such as incontinence pads, party-liners, regular sanitary napkins, or overnight sanitary napkins, as motivated by Seger (col. 13, lines 47–50)” (*id.* at 4; *see also id.* at 8). While this may be true, Examiner fails to account for the location of the “temperature sensation aspect” as set forth in Appellants’ claimed invention (*see Br. 9; see also id.* at 3 (“Olson ’173 is not understood to disclose an absorbent body with a zone of reduced absorbent capacity . . . and Seger fail to disclose a temperature sensation aspect positioned on a targeted zone of reduced absorbent capacity of a core”); *cf.* Ans. 3–4 and 7–9).

As Appellants explain, “the Examiner fails to describe what would have prompted a person of ordinary skill to modify the cited combination of Olson ’173 and Seger to position a temperature sensation aspect on a targeted zone of reduced absorbent capacity of a core” (Br. 3). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The preponderance of evidence on this record fails to support Examiner's conclusion that it would have been obvious to modify the part of Olson '173 such that "the temperature sensation aspect is positioned on the targeted zone of reduced absorbent capacity on the core that correlates to a sensation aspect position of the core" as claimed.

The combination of Olson '173, Seger, and Olson '797:

Appellants' independent claim 11 requires, *inter alia*, "the targeted zone of reduced absorbent capacity of the absorbent core is adjacent the temperature sensation aspect" (*see* Br. 11).

Examiner determines that "[t]he rationale of obviousness rejection discussed above in claim 1 is incorporated herein in its entirety" (Ans. 5; *see also id.* at 8). Based on the combination of Olson '173, Seger, and Olson '797, Examiner concludes that it would have been obvious to "employ the active graphic of Olson '797 to the article of Olson '173 / Seger in order to provide the article with the training features" (*id.* at 5). Examiner, however, failed to establish that Olson '797 makes up for the deficiency in the combination of Olson '173 and Seger as discussed above.

CONCLUSION OF LAW

The preponderance of the evidence relied upon by Examiner fails to support a conclusion of obviousness.

The rejection of claims 1–5 under 35 U.S.C. § 103(a) as unpatentable over the combination of Olson '173 and Seger is reversed.

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The rejection of claims 11–18 under 35 U.S.C. § 103(a) as unpatentable over the combination of Olson '173, Seger, and Olson '797 is reversed.

REVERSED