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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STACEY D. CROSBY

Appeal 2015-001494
Application 13/766,047
Technology Center 3700

Before JENNIFER D. BAHR, LINDA E. HORNER, and
BRANDON J. WARNER, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Stacey D. Crosby (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 11–22, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

Appellant's claimed subject matter relates to "a water sock." Spec., para. 2. Claim 11 is the sole independent claim on appeal and is reproduced below.

11. A water sock, comprising:

an elongate sewn tubular body formed from a first resiliently stretchable fabric material having a top, a bottom, a foot engaging portion and a heel engaging portion, each of said foot engaging portion and said heel engaging portion defining an open end, said open end of said heel engaging portion being formed in said first material and including a heel band, said heel band dimensioned and permanently shaped to lie beneath the ankle joint of a user and, in use, to securingly engage a user's foot beneath the ankle joint of a user whereby the user's ankle joint is exposed;

the top and bottom of the first material at said open end of said foot engaging portion being sewn together to thereby form a toe strap extending between opposing sides thereof thereby creating two discrete openings adapted to separate the big toe from the remaining toes of a wearer, said bottom of said body having a ball region and a heel region;

said first material adapted to cling to a wearer's foot;

a circumferential toe band on said open end of said foot engaging portion surrounding said two discrete openings and joined at said toe strap and being formed in said first material and dimensioned and permanently shaped to be angled about said toe strap both in use and in non-use of the water sock and, in use, to securingly engage a user's foot about respective locations at which the user's toes are joined to the user's foot;

said heel band and said toe band providing an increased thickness of elastic material, relative to said first material, about a user's heel and toes to facilitate retention of the water sock on the user's foot;

said first material including at least one seam connecting cut portions of the first material to one another, said seam formed with a flatlock stitch, said seam separate from said open ends of said foot and heel engaging portions and extending along a significant portion of a length of said first material;

a plurality of discrete slip resistant regions formed from a second material, said plurality of slip resistant regions positioned on said bottom of said body such that said first material underlies said plurality of slip resistant regions;

wherein said first material and said second material are different, said first material being formed from a combination of spandex and at least one of polyester or nylon and said second material being formed at least partially from a polymer, said plurality of discrete slip resistant regions being separated from each other along the bottom of the sock body by areas of said resiliently stretchable first material thereby enabling the bottom of the sock to stretch longitudinally and laterally; and

said water sock being resistant to the accumulation of significant amounts of water.

EVIDENCE

The Examiner relied upon the following evidence:

Tasbas	US 6,247,182 B1	June 19, 2001
Alley	US 2005/0091729 A1	May 5, 2005
Mazor	US 2007/0197112 A1	Aug. 23, 2007
Stuart	US 2008/0060118 A1	Mar. 13, 2008

REJECTIONS

Appellant appeals from the Final Action, dated March 14, 2014 (“Final Act.”), which includes the following rejections:

1. Claims 11–13 and 18–22 under 35 U.S.C. § 103(a) as unpatentable over Stuart.¹
2. Claims 14–16 under 35 U.S.C. § 103(a) as unpatentable over Stuart and Tasbas.
3. Claim 17 under 35 U.S.C. § 103(a) as unpatentable over Stuart, Alley, and Mazor.

ANALYSIS

First Ground of Rejection: Obviousness based on Stuart

Independent claim 11 recites, in relevant part, “said first material including at least one seam connecting cut portions of the first material to one another.” Appeal Br. 19 (Claims App.).

The Examiner found that Stuart discloses a water sock, substantially as claimed, including:

[A] pocket (Fig. 3 identifier 50) being sewn directly into the body of the stocking/first material (Para. 0035, lines 1–5); therefore it is obvious that there will be a seam attaching the pocket to the sock, the pocket seam is separate from said open ends of said foot and heel engaging portions because it is located on the leg portion of the sock and extending along a significant portion of a length of said first material. *The seam is connecting the pocket*

¹ Although the Examiner’s statement of this ground of rejection on page 2 of the Final Action omits claims 19–22, the Examiner’s detailed explanation of the rejection includes analysis of claims 19–22. Final Act. 11–12. As such, we understand claims 19–22 to be included in this ground of rejection.

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to the sock which are considered as cut portions of the first material being connected to one another by the seam.

Final Act. 7 (emphasis added).

Appellant argues that “*Stuart* does not teach a seam that connects cut portions of the material of the sock to one another.” Appeal Br. 15. In particular, Appellant asserts that one of ordinary skill in the art would recognize that the body of Stuart’s stocking is “made by knitting whereby the tubular stocking itself is formed as a continuously knit tube,” and “due to its knitted construction, the *Stuart* stocking would not include a seam *connecting cut portions of the knitted material to one another.*” *Id.* Further, with regard to the attachment of Stuart’s pocket 50 to the stocking body, Appellant asserts that “[a]ny seams by which the pocket flap are connected to the body of the stocking are not seams *connecting cut portions of the material of the stocking to one another*, as claimed.” *Id.* at 16.

Stuart discloses, with reference to Figure 3, that “pocket **50** may be provided on the outer surface of . . . leg engaging portion **20** of . . . stocking **10.**” Stuart, para. 35. According to Stuart, “pocket **50** can be sewn directly into the body of . . . stocking **10** or otherwise integrally formed with . . . stocking **10.**” *Id.* To the extent that Stuart’s pocket 50 may represent a cut portion of a first material connected by a seam to stocking 10, we find insufficient evidence to support the Examiner’s finding that this cut portion of the edge of pocket 50 is connected to a cut portion of the stocking 10. Thus, the Examiner’s finding that Stuart discloses “at least one seam connecting cut portions of the first material to one another” is not supported by a preponderance of the evidence.

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For these reasons, we do not sustain the Examiner's rejection of independent claim 11, and of claims 12, 13, and 18–22 depending therefrom, under 35 U.S.C. § 103(a) as unpatentable over Stuart.

Second and Third Grounds of Rejection: Obviousness based on Stuart and one or more of Tasbas, Alley, and Mazor

The rejections of dependent claims 14–17 rely on the same unsupported findings as to the disclosure of Stuart relied upon in the first ground of rejection. *See* Final Act. 12–15. The Examiner did not make any findings as to the scope and content of Tasbas, Alley, or Mazor that would cure the deficiency in Stuart discussed *supra*. Accordingly, we do not sustain the Examiner's rejections under 35 U.S.C. § 103(a) of claims 14–17.

DECISION

The decision of the Examiner to reject claims 11–22 is REVERSED.

REVERSED