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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEE LEE GOH AOW

Appeal 2017-005445
Application 11/793,100
Technology Center 3700

Before JOHN C. KERINS, EDWARD A. BROWN, and
LYNNE H. BROWNE, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Lee Lee Goh Aow (Appellant)¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 24–28, 30–32, and 36–44. The remaining pending claims 1–3, 5, 6, 14, 16, 22, and 23 are allowed. Non-Final Act. 1; Appeal Br. 7. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ The real party in interest is identified as Lee Lee Goh Aow. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claims 24 and 36 are independent. Claim 24, reproduced below, illustrates the claimed subject matter:

24. A potty-training device, the device comprising:

a body including a toilet seat, the toilet seat comprising an opening through which a user may urinate or defecate, the opening lying on a first plane;

a leg rest attached to the body and extending approximately from the opening towards a front side of the body, the leg rest comprising a first pair of surfaces and a second pair of surfaces, each of the surfaces of the first pair of surfaces being joined to a respective one of the surfaces of the second pair of surfaces by a bend, the leg rest being sized such that each of the first pair of surfaces is located beneath a respective thigh of the user and each of the second pair of surfaces is located beneath a respective shin of the user when the user is seated on the device with their buttocks located above the opening;

wherein each of the surfaces of the first pair of surfaces lies in a plane that extends at a positive angle with respect to the first plane as measured from where the leg rest is attached to the body to the respective bend;

wherein each of the surfaces of the second pair of surfaces lies in a plane that extends at a negative angle with respect to the first plane as measured from the respective bend to a distal end of the respective surface; and

wherein an intersection of the first and second pairs of surfaces defines a maximum height above the toilet seat opening at, or adjacent to, a front of the toilet seat opening.

Appeal Br. 17 (Claims App.).

REJECTIONS²

I. Claims 24, 26–28, 30, 31, 36–40, and 42–44 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wenkstern (US 2,662,229, issued Dec. 15, 1953).

II. Claim 32 is rejected under 35 U.S.C. § 103(a) as unpatentable over Wenkstern and Wosiek (US 5,893,178, issued Apr. 13, 1999).

III. Claims 25 and 41 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wenkstern and Ward (US 5,063,617, issued Nov. 12, 1991).

ANALYSIS

Rejection I

The Examiner finds that Wenkstern discloses all of the limitations of claim 24. *See* Non-Final Act. 3–4 (citing Figs. 1, 6). In support, the Examiner provides an annotated Figure 6 of Wenkstern with the notations “First Plane” and “Third Plane.” Ans. 6. The Examiner explains that the first pair of surfaces reside on the “First Plane,” and “where dependent on the size of the user, the thigh can be rested on these surfaces and the first plane . . . is angled positively from the opening.” *Id.* at 5. The Examiner further explains that Wenkstern’s device also includes a second pair of surfaces located on the “Third Plane,” “[w]here the shin could be located

² In the Non-Final Office Action dated March 11, 2016 (hereinafter, “Non-Final Action” or “Non-Final Act.”), the drawings are objected to under 37 C.F.R. § 1.83(a). *See* Non-Final Act. 2. The Examiner does not indicate whether this objection is still maintained. However, the objection is not within the jurisdiction of the Board. *See* 37 C.F.R. § 1.181.

above the plane, as the plane is angled as a decline from the seat, when the user sits with their buttocks at the opening.” *Id.* at 7.

Appellant contends that Wenkstern does not disclose a leg rest comprising a first pair of surfaces, as required by claim 24. Appellant contends that the asserted “First Plane” and “Second Plane” shown in the Examiner’s annotated Figure 6 of Wenkstern are actually internal to the potty device, and, therefore, cannot comprise parts that serve a leg support function, regardless of the user’s sitting position. Reply Br. 2. Appellant also contends that, in Wenkstern, it is not possible that the upper portions of a user’s legs would be angled higher than another portion of the user’s legs when resting on the nursery chair in a proper sitting position. Appeal Br. 8. In support, Appellant provides an annotated Figure 6 of Wenkstern, having added lines to indicate where the user’s buttocks and thighs would be located on the nursery chair. *Id.* at 8, 10. Appellant contends that the asserted “first surfaces” of Wenkstern on which a user’s upper legs would rest are “very close to, or perfectly, level,” and “it is not possible that [these surfaces lie] in a plane that extends at a positive angle with respect to the ‘first plane’ thereof, i.e., the plane in which the seat opening 19 is located.” *Id.* at 9.

Appellant further contends that Wenkstern also does not disclose a leg rest comprising a second pair of surfaces, as required by claim 24. In support, Appellant provides an annotated Figure 1 of Wenkstern, to illustrate how, when a user is seated on the nursery chair with their buttocks located above opening 19, their upper legs would be rested on two surfaces located on opposite sides of upstanding portion 22, and their lower legs would dangle in front of the front wall 8. *Id.* at 12. Appellant also provides a

mocked-up view based on annotated Figure 1, with “an approximation of a child-sized user” seated on the nursery chair, to illustrate how both the user’s buttocks and thighs are located on the same substantially horizontal planes and the user’s lower legs dangle in front the front wall. *Id.* at 11.

We are persuaded the Examiner has not established that Wenkstern’s nursery chair comprises a leg rest having first and second surfaces that lie in respective first and second planes that extend in the claimed manner, and wherein the leg rest is sized such that the user’s thighs and shins would be located beneath the respective first and second surfaces “when the user is seated on the device with their buttocks located above the opening,” as claimed. Wenkstern does not disclose which portion of a user’s leg would lie over which surface of its nursery chair. Viewing Figure 1, if portions of a user’s leg were to lie on the surfaces indicated by the Examiner with regard to the Examiner’s annotated Figure 6, it is not apparent how the user would also be seated on the nursery chair with their buttocks located above the opening. And, were the user properly seated on the nursery chair with their buttocks located above the opening, we agree with Appellant that the user’s buttocks and thighs would be located on the substantially horizontal planes shown in Appellant’s mocked-up view based on Figure 1 of Wenkstern. *See* Br. 11.

The Examiner asserts that locating a user on the claimed device so that their thigh is above the first pair of surfaces is merely a matter of intended use. Ans. 5. We disagree. Claim 24 requires that “the leg rest [is] *sized* such that each of the first pair of surfaces is located *beneath a respective thigh* of the user and each of the second pair of surfaces is located *beneath a respective shin* of the user *when the user is seated on the device*

with their buttocks located above the opening.” Appeal Br. 17 (Claims App., emphasis added). To satisfy these limitations, Wenkstern’s nursery chair must comprise a leg rest *capable* of allowing the user to locate the thigh and shin portions of their leg with the respective “first surfaces” and “second surfaces” beneath those portions, when the user is seated on the nursery chair with their buttocks located above the opening, as claimed. As discussed above, however, the Examiner has not established, by a preponderance of the evidence, that this positioning of the user’s thighs and shins would be possible using Wenkstern’s nursery chair.

The Examiner asserts that Appellant’s mocked-up drawings do not accurately represent Wenkstern’s device as compared to the Examiner’s annotated Figure 6 of Wenkstern, and the child shown in Appellant’s mocked-up drawing does not represent the only size of a child that can use the device. Ans. 6; *see* Appeal Br. 11.

As discussed above, the Examiner does not appear to have taken into consideration the space on Wenkstern’s device that is necessary for the child to place their buttocks above the opening. Appellant’s mocked-up drawing takes this into account. The Examiner does not provide any evidence to show that Appellant’s mocked-up drawing inaccurately depicts the approximate size of a child-sized user that would use Wenkstern’s device relative to the size of the device, or to show that a smaller or larger child-sized user sitting in a proper sitting position would meet the claimed limitations regarding placement of the user’s thighs and shins when that child is seated on the device with their buttocks located above the opening.

The Examiner also asserts that Wenkstern’s nursery chair could be scaled to be used with any user as a matter of design choice. Ans. 6.

However, the need for such scaling implicitly acknowledges differences between Wenkstern's nursery chair and the claimed device, thus requiring structural modifications of the nursery chair. This evidences that Wenkstern does not disclose all of the limitations claimed, as arranged or combined in the same way as recited in the claim. *See Net Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008). Such differences between Wenkstern and the claimed invention "invoke the question of obviousness, not anticipation." *Id.*

For these reasons, we do not sustain the rejection of claim 24, or of claims 26–28, 30, and 31 depending therefrom, as anticipated by Wenkstern.

Claim 36 is drawn to a toilet training device comprising a pair of elongate leg supports including features similar to the potty-training device of claim 24 and, additionally, "a knee support region." Appeal Br. 18–19 (Claims App.). The "knee support region" is similar to the "bend" of claim 24. The Examiner's findings for claim 36 are similar to those for claim 24. Non-Final Act. 4–5. The Examiner's annotated Figure 6 of Wenkstern also shows the location of a "Third Plane." Ans. 6. The Examiner states that a "short child" seated on the device could rest their calf on front wall 8 existing on that plane, whereas a "shorter child could use the surfaces on the Second Plane as a calf support region." Non-Final Act. 7.

We disagree with the Examiner's position with regard to claim 36 for the reasons discussed above for claim 24. More specifically, the Examiner's position for claim 36 also does not take into consideration the space on Wenkstern's device that is necessary for the child to place their buttocks above the opening. Thus, for reasons similar to those discussed above, we agree with Appellant that Wenkstern does not disclose the limitations of

each thigh support region being upwardly inclined towards the corresponding knee support region, and each calf support region being downwardly inclined away from the corresponding knee support region and terminating at a front edge spaced above the flat surface, as claimed. *See* Appeal Br. 15.

Accordingly, we do not sustain the rejection of claim 36, or of claims 37–40 and 42–44 depending therefrom, as anticipated by Wenkstern.

Rejection II

The Examiner's application of Wosiek to the rejection of dependent claim 32 (Non-Final Act. 7) does not cure the deficiencies of the rejection of parent claim 24. Thus, we do not sustain the rejection of claim 32 as unpatentable over Wenkstern and Wosiek.

Rejection III

The Examiner's application of Ward to the rejection of dependent claims 25 and 41 (*id.* at 7–8) does not cure the deficiencies of the rejection of parent claim 24 or 36. Thus, we do not sustain the rejection of claims 25 and 41 as unpatentable over Wenkstern and Ward.

DECISION

We reverse the rejections of claims 24–28, 30–32, and 36–44.

REVERSED