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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SEAN PETER CLARKE, ASHOK BAKUL PATEL, and  
MATTHEW ROBERT STONE

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Appeal 2017-009652  
Application 12/968,433  
Technology Center 3700

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Before JOHN C. KERINS, DANIEL S. SONG, and  
ANNETTE R. REIMERS, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1–4 and 6–23.<sup>1</sup> Claim 5 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as The Gillette Company, LLC. Appeal Brief (“Appeal Br.”) 1, filed Feb. 8, 2017.

### CLAIMED SUBJECT MATTER

The claimed subject matter “relates to razor blades, and more particularly to a razor cartridge having at least one non-cutting element.”

Spec. 1:9–10, Figs. 1, 2. Claims 1, 15, 16, and 23 are independent.

Claim 1 is illustrative of the claimed subject matter and recites:

1. A razor cartridge comprising:
  - one or more razor blades, each of said razor blades having a cutting edge;
  - at least one non-cutting element;
  - a frame having a plurality of blade positions wherein each of said one or more razor blades and each of said at least one noncutting element is disposed in a separate one of said plurality of blade positions such that every razor blade is spaced apart from each said at least one non-cutting element,
  - wherein each said cutting edge of said one or more razor blades is directed toward a front of said cartridge and
  - wherein a rinse-through gap is provided immediately before and immediately after said at least one non-cutting element.

### REJECTIONS

- I. Claims 1–4, 6–11, 13, 15–19, and 23 stand rejected under 35 U.S.C. § 102(b) as anticipated by Wain (US 5,802,721, issued Sept. 8, 1998).
- II. Claims 15–19 and 23 stand rejected under 35 U.S.C. § 102(b) as anticipated by Andrews (US 6,161,288, issued Dec. 19, 2000).
- III. Claims 12 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wain.
- IV. Claim 20 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Wain or Andrews.

- V. Claim 21 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Wain and Clark (US 6,397,473 B1, issued June 4, 2002).
- VI. Claim 22 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Wain and Coffin (US 2006/0112564 A1, published June 1, 2006).

## ANALYSIS

### *Rejection I – Anticipation by Wain*

#### *Claims 1–4, 6–11, 13, 15–19, and 23*

Claim 1 is directed to a razor cartridge including “a rinse-through gap [being] provided immediately before and immediately after said at least one non-cutting element.” Appeal Br. 22 (Claims App.). Independent claims 15, 16, and 23 recite the same limitation. *See id.* at 25, 27 (Claims App.). Citing to the Examiner’s annotated version of Figure 1 of Wain (*see* Final Act 10), the Examiner finds that Wain “shows [a] portion of the element 7 extending to [a] side portion of the element 3 to be attached wherein the attachment location is spaced apart from the front portion of the element 3.” Final Act 10; *see also* Ans. 9.<sup>2</sup> Therefore, according to the Examiner, “element 8 does not appear to be directly attached or in contact with the front portion of the element 3 and there is a gap both before and after the skin contact element” and “[s]uch arrangement can also provide space required to accommodate the modified element 8 that extends at an acute angle and/or offset rearwardly from the front edge of the skin engaging surface.” Final Act 10 (citing Wain 4:37–43); *see also* Ans. 9.

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<sup>2</sup> Final Office Action (“Final Act.”), dated Feb. 8, 2016; Examiner’s Answer (“Ans.”), dated May 4, 2017

In this case, Appellant correctly notes that Wain “clearly states that guard member front wall 8 is attached to the support bar 7 which thereby clearly discloses to the reader of ordinary skill in the art that the bar 7, the frame 3 and the guard member [front wall] 8 are all fixed together.” Appeal Br. 8; *see also* Wain 3:41–45 (“The guard member [6] is supported by a longitudinal bar 7 *integral with or otherwise fixed to* the frame 3. The guard member [6] has the form of an integral comb with a spine defining a front wall 8 *attached to* the support bar 7.”) (emphases added). In addition, we agree with Appellant that, even if for the sake of argument, there is an alternate orientation of front wall 8, “this does not in turn also teach that there is a rinse-through gap between the guard member [6] and the frame [3], nor does it teach that [front wall] 8 is no longer attached to both the frame 3 and the bar 7.” Appeal Br. 9; *see also* Final Act. 10; Ans. 9.

The Examiner appears to take an alternate position in the Answer. Here, the Examiner finds that “if [a] portion of the element 9 is considered to be the claimed non-cutting element, the device of Wain provides rinse-through gaps [at 11] immediately before and immediately after the element 9.” Ans. 10, 11 (The Examiner’s annotated version of Figure 1 of Wain).

In this case, we agree with Appellant that notches 11 of Wain “cannot be deemed to be ‘before’ the at least one non[-]cutting element [9] *as they are part of and disposed precisely at the location of* the noncutting element [9] of Wain.” *See* Reply Br. 2<sup>3,4</sup>; *see also* Wain, Figs. 1, 2. As such, we

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<sup>3</sup> Reply Brief (“Reply Br.”), filed July 5, 2017.

<sup>4</sup> Appellant cites to Figure 3 of Wain. *See* Reply Br. 2. We note that the embodiment shown in Figure 3 of Wain “is basically the same as” that of Figures 1 and 2 of Wain, “except that the teeth defining the skin engagement surface are shorter in length, and the sides of the slots have a constant taper.”

agree with Appellant that Wain fails to disclose a rinse-through gap that is both “immediately before” and “immediately after” the non-cutting element, as required by the claims.

For these reasons, we do not sustain the Examiner’s rejection of claims 1–4, 6–11, 13, 15–19, and 23 as anticipated by Wain.

*Rejection II – Anticipation by Andrews*

*Claims 15–19 and 23*

Claim 15 is directed to a razor cartridge including “each [of] said cutting edge of said one or more razor blades [being] directed toward a front of said cartridge.” Appeal Br. 25 (Claims App.). Independent claims 16 and 23 recite the same limitation. *See id.* at 26, 27 (Claims App.). Noting “the front of the cartridge is not defined in the claims” (*see* Final Act. 11), the Examiner finds that “each said cutting edge of said one or more razor blades [of Andrews] is directed toward a front of said cartridge (e.g., all cutting edges are directed toward [the] top portion of the cartridge (i.e., a front of the cartridge)).” Final Act. 5 (citing Andrews, Figs. 70, 72), 11 (The Examiner’s annotated versions of Figures 70 and 72 of Andrews.); *see also* Ans. 12–13 (The Examiner’s annotated versions of Figures 70 and 72 of Andrews.).

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Wain 4:27–30, Figs. 1–3. We also note that the Examiner cites to Figures 1 and 3 for this limitation for claims 1, 15, and 23. *See* Final Act. 2 (“Wherein a rinse-through gap (e.g., Figures 1, 3) is provided immediately before and immediately after the at least one non-cutting element.”), 3–4. We further note that the Examiner cites to Figure 4 for this limitation for claim 16. *See* Final Act. 3 (“[W]herein a rinse-through gap is provided immediately before and immediately after the at least one non-cutting element (e.g., Figure 4).”). Figure 4 of Wain has “essentially the same form as the guard of the shaving unit shown in [Figure 3]” of Wain. *See* Wain 4:48–52, Figs. 3, 4.

In this case, although Appellant's Specification does not explicitly define the "front" of the cartridge, it does describe that "the guard 16 (and/or guard bar 16a) of a razor cartridge 10 disposed at the *front of the cartridge*" and "the cap 17 is generally known to be a low friction element located at the *back of the cartridge*." Spec. 9:15–16 (emphasis added), 18–19 (emphasis added), Figs. 1, 2; *see also* Appeal Br. 12–13. Further, in the description of the "two-stage" cartridge recited in claim 16, the Specification describes that "the guard area 16 of a razor cartridge 10 is known to produce higher friction at the *front of the cartridge*," "[t]he *front of the cartridge* unit 10a," and "[c]artridge unit 10a, located towards the *front of the cartridge* 10." Spec. 17:14–15, 17–18 (emphasis added), 21 (emphasis added), 28 (emphasis added), Fig. 4B; *see also* Appeal Br. 25–26 (Claims App.).

Based on this disclosure from Appellant's Specification, we agree with Appellant that "it is unambiguous what the meaning of the front of the cartridge [would be] to one of skill in the art guided by Appellant's definitions in their [S]pecification" and illustrations in their drawings. *See* Appeal Br. 13. Further, based on this understanding, we also agree with Appellant that "the 'top' of the cartridge [of Andrews cannot] reasonably be considered as the 'front' of the cartridge." Reply Br. 3; *see In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999) ("Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach.").

Appellant also argues the rejection is improper because each of Figures 70 and 72 of Andrews (i.e., the Figures cited by the Examiner) indicates "bidirectional blades pointing in two directions in a cartridge, toward a front and a back of the cartridge." Appeal Br. 12; *see also*

Andrews 40:48 (Figure 70 shows “bi-directional razor **950**”), 41:26–27 (Figure 72 shows “bi-directional razor **1000**.”); Final Act. 5, 11; Ans. 12–13. According to Appellant, Andrews discloses “bidirectional blades” pointing toward a front *and a back* of the cartridge, Andrews fails to disclose “each said cutting edge of said one or more razor blades is directed *toward a front* of said cartridge,” as required by the claims. *See* Appeal Br. 25, 26, 27 (Claims App.) (emphasis added). Thus, Appellant’s apparent position is that the claim should be construed so that all the blades present on the razor cartridge are part of the recited blade array, and all must be pointed toward the front of the razor cartridge. We agree that a person of ordinary skill in the art would understand the claims at issue in this manner in view of the Specification. *See* Spec. 8:8–10; Figs. 2–4D. As such, we also agree with Appellant that in view of the presence of bidirectional blades in Andrews, it fails to disclose “each said cutting edge of said one or more razor blades is directed *toward a front* of said cartridge,” as required by the claims. *See* Appeal Br. 25, 26, 27 (Claims App.) (emphasis added).

For these reasons, we do not sustain the Examiner’s rejection of claims 15–19 and 23 as anticipated by Andrews.

### *Rejection III – Obviousness over Wain*

#### *Claims 12 and 14*

Claims 12 and 14 depend indirectly from claim 1. *See* Appeal Br. 24, 25 (Claims App.). The Examiner’s rejection of claims 12 and 14 is based on the same unsupported findings discussed above with respect to claim 1. *See* Final Act. 7. The Examiner does not rely on any proposed modification of Wain to remedy the deficiencies of Wain. Accordingly, for reasons similar

to those discussed above for claim 1, we do not sustain the Examiner's rejection of claims 12 and 14 as unpatentable over Wain.

*Rejection IV – Obviousness over Wain or Andrews*

*Claim 20*

Claim 20 depends directly from claim 16. *See* Appeal Br. 26 (Claims App.). The Examiner's rejection of claim 20 is based on the same unsupported findings discussed above with respect to claim 16. *See* Final Act. 7–8. The Examiner does not rely on any proposed modification of either Wain or Andrews to remedy the deficiencies of Wain or Andrews. Accordingly, for reasons similar to those discussed above for claim 16, we do not sustain the Examiner's rejection of claim 20 as unpatentable over Wain or Andrews.

*Rejections V and VI – Obviousness over Wain and either Clark or Coffin  
Claims 21 and 22*

Claims 21 and 22 depend directly from claim 16. *See* Appeal Br. 27 (Claims App.). The Examiner's rejections of claims 21 and 22 are each based on the same unsupported findings discussed above with respect to claim 16. *See* Final Act. 8–9. The Examiner does not rely on the teachings of either Clark or Coffin to remedy the deficiencies of Wain. Accordingly, for reasons similar to those discussed above for claim 16, we do not sustain the Examiner's rejections of claims 21 and 22 as unpatentable over Wain and Clark or Wain and Coffin.

DECISION

We REVERSE the Examiner's decision to reject claims 1–4, 6–11, 13, 15–19, and 23 as anticipated by Wain.

Appeal 2017-009652  
Application 12/968,433

We REVERSE the Examiner's decision to reject claims 15–19 and 23 as anticipated by Andrews.

We REVERSE the Examiner's decision to reject claims 12 and 14 as unpatentable over Wain.

We REVERSE the Examiner's decision to reject claim 20 as unpatentable over Wain or Andrews.

We REVERSE the Examiner's decision to reject claim 21 as unpatentable over Wain and Clark.

We REVERSE the Examiner's decision to reject claim 22 as unpatentable over Wain and Coffin.

REVERSED