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EXAMINER

QUINN, RICHALE LEE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KELLEY TERRELL

Appeal 2018-003055
Application 14/095,267
Technology Center 3700

Before: STEFAN STAICOVICI, LEE L. STEPINA, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Kelley Terrell (“Appellant”) appeals under 35 U.S.C. § 134(a) from the Examiner’s decision in the Final Office Action (dated Nov. 18, 2016, hereinafter “Final Act.”) rejecting claims 1–11 under 35 U.S.C. § 103 as being unpatentable over Anderson et al. (US 2009/0228083 A1, pub. Sept. 10, 2009, hereinafter “Anderson”) and Curro et al. (US 7,682,686 B2, iss. Mar. 23, 2010, hereinafter “Curro”).

We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We REVERSE.

INVENTION

Appellant's invention relates to medical gowns that provide access to a patient in conjunction with other medical equipment. Spec. 1, ll. 7–9.

Claims 1, 4, and 7 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A medical gown comprising:
 - a front side;
 - a back side, and
 - a releasable seam joining at least a portion of said front side to a portion of said back side, said releasable seam including a first fastener portion coupled to one said side, said first fastener portion including two high strength loop type fasteners spaced apart from each other and a low strength loop type fastener positioned between said two high strength loop type fasteners, said releasable seam also including a second fastener portion coupled to the other said side, said second fasteners portion including hook type fasteners configured to releasable¹ mate with said high strength loop type fasteners and said low strength loop type fastener.

ANALYSIS²

Each of independent claims 1 and 4 recites, in relevant part, the limitations of “high strength loop type fasteners” and “a low strength loop type fastener.” Appeal Br. 19, 20 (filed Apr. 20, 2017, hereinafter “Br”) (Claims App.). Independent claim 7 recites, in relevant part, “a first fastener portion having a first bonding strength and a second fastener portion having a second bonding strength less than said first bonding strength.” *Id.* at 20.

¹ In this instance, we interpret the term “releasable” as “releasably” and consider this to be a typographical error.

² As the Examiner's objection to the Drawings (*see* Final Act. 2–3) is a petitionable matter, the objection is not within the jurisdiction of the Board. *See In re Mindick*, 371 F.2d 892, 894 (CCPA 1967).

The Examiner finds that Anderson discloses most of the limitations of the independent claims including, *inter alia*, high strength loop type fasteners 57 separated by garment material, but does not explicitly disclose that the garment material includes a low strength loop type fastener. Final Act. 3–5 (citing Anderson, para. 61, Fig. 3a). Nonetheless, the Examiner finds that Curro teaches a medical gown made from a garment material that forms a low strength loop type fastener. *Id.* at 5 (citing Curro, col. 24, ll. 21–22, Fig. 12). The Examiner concludes that it would have been obvious to a person having ordinary skill in the art to “utilize the material as taught by Curro . . . in order to provide a soft, comfortable, disposable medical gown.” *Id.* (citing Curro, col. 1, ll. 44–45, col. 24, ll. 21–22).

Appellant argues that the Examiner’s rejection is not supported by evidence because the Examiner has not shown where the references disclose loop type fasteners having different strengths. Br. 7. Appellant asserts that the Examiner appears to be relying on a theory of inherency, but fails to “identify some basis in fact or articulate some reasoning at least tending to show that allegedly inherent subject matter necessarily (i.e., inevitably) flows from cited art.” *Id.*

The Examiner responds that “the prior art shows two distinct structures; a hook fastener portion that connects with a loop fastener portion and said hook fastener portion that connects with an exposed loop fabric surface fastener.” Ans. 5. According to the Examiner, “evidence that a ‘high’ strength fastener and a ‘low’ strength fastener is achieved by a traditional hook and loop fasteners and garment material is found in the background of the appellants own specification.” *Id.*; *see also id.* at 3–4 (citing Spec. 4, ll. 8–10).

Appellant's arguments are persuasive because the Examiner does not establish adequately that the applied prior art discloses loop type fasteners with different strengths. More specifically, the Examiner does not sufficiently explain why Curro's exposed loop fabric surface fastener constitutes a low strength loop type fastener as compared to Anderson's loop type fastener that constitutes a high strength loop fastener.

At the outset we agree with the Examiner's finding that because Anderson discloses a hook fastener portion that connects with a loop fastener portion 57 so that "seam 56 may be held closed" (*see* Anderson, para. 61), such a connection constitutes a high strength loop type fastener. *See* Final Act. 3. However, although Curro discloses a fastener structure that is different than that of Anderson's, namely, a hook fastener portion that connects with an exposed loop fabric surface fastener (*see* Curro, col. 21, ll. 56–59), the Examiner does not explain adequately why Curro's exposed loop fabric surface fastener constitutes a low strength loop type fastener as compared to Anderson's high strength loop type fastener discussed above.

For example, Curro discloses that for absorbent articles having mechanical fasteners, such as a diaper, material web 1 "can be one of the components of a hook and loop fastener." Curro, col. 21, ll. 54–57. Thus, although Curro discloses using a diaper's web material as a portion of a fastener, this does not necessarily mean that Curro's web material constitutes a low strength loop type fastener, as called for by independent claims 1 and 4, or a fastener having a lower bonding strength, as called for by claim 7. Rather, as an artisan must be presumed to know something about the art apart from what the references disclose, one of ordinary skill in the fastener art would readily understand that a fastener on a diaper, or other article that

uses the web as the *main* source of attachment, would form a high strength connection, that is, a “stable joining” of the fastener portions in order to secure the two portions together “to prevent the unwanted separation therebetween should the [user (baby)] turn, walk, sit-up, or otherwise move in a normal fashion.” *See* Spec. 5, ll. 12–15. Moreover, although we appreciate the Examiner’s reliance on Appellant’s Specification to show that a traditional hook and loop fastener provides a stronger connection than the connection with a garment material, we note that there is no evidence of record that Curro’s web material 1 is the same as Appellant’s garment material, and thus, necessarily provides the same lower (bonding) strength. *See* Ans. 3–4 (citing Spec. 4, ll. 8–10).

As such, for the foregoing reasons, the Examiner has not established by a preponderance of the evidence that Curro’s web 1 constitutes a low strength loop type fastener, as called for by independent claims 1 and 4, or a fastener having a lower bonding strength, as called for by claim 7. Thus, the Examiner has not provided a basis in fact and/or technical reasoning to support reasonably that Curro’s web necessarily constitutes a “low strength loop type fastener” as compared to Anderson’s “high strength loop type fastener.”

Accordingly, we do not sustain the rejection of claims 1–11 under 35 U.S.C. § 103 as unpatentable over Anderson and Curro.

DECISION

The Examiner’s decision to reject claims 1–11 is reversed.

Appeal 2018-003055
Application 14/095,267

REVERSED