UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/815,117	07/31/2015	David K. Morrow	086624.165148	4051

24335 7590 11/12/2019

WARNER NORCROSS + JUDD LLP
INTELLECTUAL PROPERTY GROUP
1500 WARNER BUILDING
150 OTTAWA AVE NW
GRAND RAPIDS, MI 49503-2487

EXAMINER	
VANDERVEEN, JEFFREY S	

ART UNIT	PAPER NUMBER
3711	

NOTIFICATION DATE	DELIVERY MODE
11/12/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@wnj.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID K. MORROW, BRUCE HUFFA, THOMAS H. BURNS, RICHARD J. JANISSE, SEAN J. SLATER, DALE W. KOHLER, and CRAIG M. HERMAN[1]

Appeal 2018-005851
Application 14/815,117
Technology Center 3700

Before BRETT C. MARTIN, MICHELLE R. OSINSKI, and BRANDON J. WARNER, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 10, 13, 14, 16, 17, and 20–29.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

---

[1] Warrior Sports, Inc. ("Appellant") is the Applicant as provided in 37 C.F.R. § 1.46 and is identified as the real party in interest. Appeal Br. 2.

[2] Claims 1–9, 11, 12, 15, 18, and 19 are cancelled. Appeal Br. 34–36 (Claims App.).

THE CLAIMED SUBJECT MATTER

Claims 10, 20, and 28 are independent. Claim 10, reproduced below, is illustrative of the claimed subject matter.

> 10. A lacrosse head pocket comprising:
>
> a unitary textile lacrosse pocket body constructed from a plurality of strands that are knitted with one another, the unitary textile lacrosse pocket body comprising:
>
> an upper edge corresponding to a portion of the pocket adapted to attach to a scoop of a lacrosse head;
>
> first and second sidewall edges, each corresponding to a portion of the pocket adapted to attach to respective sidewalls of the lacrosse head;
>
> a lower edge corresponding to a portion of the pocket adapted to attach to a base of a lacrosse head;
>
> a longitudinal axis extending between the upper edge and the lower edge;
>
> a shooting ramp region; and
>
> a middle pocket region integrally formed in the unitary textile lacrosse pocket body, the middle pocket region transitioning to the shooting ramp region, the shooting ramp region being closer to the upper edge than the middle pocket region,
>
> wherein the unitary textile lacrosse pocket body includes a plurality of knitted patterns, the middle pocket region of the lacrosse pocket body comprising a first knitted pattern, the shooting ramp region of the lacrosse pocket body comprising a second knitted pattern different from the first knitted pattern, the first and second knitted patterns being seamlessly joined with one another,
>
> wherein the first knitted pattern in the middle pocket region includes a plurality of knitted vertical elements intermittently secured directly to one another with a first plurality of joins, each join being at least one of an Intarsia join and a join formed via an overlap of adjacent ones of the plurality of knitted vertical elements,
>
> wherein each of the plurality of knitted vertical elements extends substantially parallel to the longitudinal axis,

wherein the plurality of knitted vertical elements are disposed across a majority of a width of the pocket body,

wherein each of the first plurality of joins extends laterally from each of the plurality of knitted vertical elements in the middle pocket region,

wherein the second knitted pattern in the shooting ramp region includes a second plurality of joins, each of the second plurality of joins spaced differently from one another than each of the first plurality of joins are spaced from one another.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Crawford	US 6,520,875 B1	Feb. 18, 2003
Gait	US 2007/0054760 A1	Mar. 8, 2007
Bound	US 2012/0165140 A1	June 28, 2012
Janisse	US 2014/0103566 A1	Apr. 17, 2014

THE REJECTIONS

I. Claims 10, 13, 16, 17, and 20–29 stand rejected under 35 U.S.C. § 103 as unpatentable over Crawford, Gait, and Bound. Final Act. 4–15.

II. Claim 14 stands rejected under 35 U.S.C. § 103 as unpatentable over Crawford, Gait, Bound, and Janisse. *Id.* at 15–17.

OPINION

Rejection I

Independent Claim 10

The Examiner finds that Crawford teaches most of the limitations of independent claim 10, including, among other things, "a unitary textile

lacrosse pocket body . . . [that] includes a plurality of knitted patterns." Final Act. 4. More particularly, with respect to Crawford teaching a unitary textile having a plurality of different knitted patterns (*id.* at 7), the Examiner takes the position that "Crawford . . . states that the openings 72 can have varying shapes and sizes" and "[i]f a knitted pattern . . . contains varying sizes of openings in the mesh[,] then the [E]xaminer views such change as a change in the pattern of the mesh." Ans. 17; *see also id.* at 19 ("[T]he [E]xaminer considers the different regions of the pocket including the different sized openings to be considered different knitted patterns."). The Examiner also takes the position that "Figure 2 of Crawford clearly shows how the sizes of the openings change throughout the pocket." *Id.* at 17.

The Examiner finds that "Crawford may not explicitly teach" upper and lower edges, first and second sidewall edges, a longitudinal axis, and the orientation of the middle pocket region and shooting ramp region relative to the upper edge. Final Act. 5. The Examiner finds these elements to be taught by Gait and concludes that it would have been obvious to modify Crawford to include them. *Id.* at 5–7 (citing Gait ¶ 3).

The Examiner also finds that "Crawford may not explicitly teach . . . a first knitted pattern [of] the shooting ramp region . . . comprising a second knitted pattern different from the first knitted pattern, the first and second knitted patterns being seamlessly joined with one another." *Id.* at 5. The Examiner finds that Bound teaches these elements and concludes that it would have been obvious to "modify the apparatus as taught by Crawford to include . . . the first and second knitted patter[n] as taught by Bound to perfect the stiffness required for accurate control, high velocity throwing and shooting." *Id.* at 6–7 (citing Bound ¶ 13).

Appellant argues that "[t]here is nothing in the [S]pecification or drawings to indicate that Crawford teaches or even contemplates different knit patterns." Appeal Br. 10. More specifically, Appellant argues:

> Appellant disagrees with the Examiner's apparent position that a change in the size of the openings in the mesh, due to expanding the mesh, is the same as different knit patterns. Appellant asserts that Crawford utilizes one single knit pattern throughout the entire mesh web, and the only variation in opening sizes is due to the mesh being stretched differently at different areas to open up certain mesh openings that otherwise are identical when integrally knit as a continuous strip. A knit pattern is formed by the mechanical manipulation of the strands forming the mesh, which Crawford does not teach.

Reply Br. 3–4.

Crawford discloses expandable mesh web 70 with openings 72, in which openings 72 at one end of the head of a lacrosse stick remain unexpanded and the openings at the opposite end are widely expanded. Crawford, 3:48–51, 3:67–4:8. Crawford also discloses that "[a]s shown in FIG. **2**, the plurality of openings **72** provided in mesh web **70** are diamond shaped and have a length in the longitudinal direction of about between ½ and 1 ½" and "[o]penings **72**, however, *may have varying shapes and sizes*." *Id.* at 4:31–34 (emphasis added).

Even if we were to agree with Appellant both that (i) changes in the size of opening 72 (as illustrated in the drawings of Crawford) are due to changes in the amount of expansion of web 70 and are not indicative of first and second knitted patterns and (ii) the Examiner does not adequately explain how the limited disclosure in Crawford of varying shapes and sizes constitutes a disclosure of a plurality of knitted patterns in a unitary lacrosse pocket body, rather than merely a disclosure that all of the openings in the

expandable mesh web may be a different shape or a different size in other embodiments, we are not persuaded of reversible error when considering the Examiner's additional findings and conclusions with respect to Bound. *See* Final Act. 6–7 (citing Bound ¶ 13) (the Examiner finding that Bound teaches first and second knitted patterns and concluding that it would have been obvious to "modify the apparatus as taught by Crawford to include . . . the first and second knitted patter[n] as taught by Bound to perfect the stiffness required for accurate control, high velocity throwing and shooting").

The Examiner also finds, among other things, that Crawford teaches "a plurality of knitted vertical elements intermittently secured directly to one another with a first plurality of joins." Final Act. 4 (citing Crawford Fig. 2). Appellant argues that the Examiner erred in "correlat[ing] the shooting ramps or ball channel walls 74 of Crawford to the claimed vertical elements" because "the ball channel walls 74 of Crawford are separated and sit across from one another relative to the center of the Crawford pocket to provide the intended ball guiding function" and "are not intermittently secured directly to one another because they are too far apart." Appeal Br. 10–11. Appellant further argues that "the vertical elements and joins are knit as part of the unitary textile material, and the knitted vertical elements are intermittently secured directly to one another with a plurality of joins." Reply Br. 6. Further, according to Appellant, "[t]he mesh disposed between the ball channel walls 74 is simply not equivalent to the claimed joins." *Id.*

The Examiner responds that "two vertical elements are clearly disclosed in the Crawford reference." Ans. 17 (citing Crawford Fig. 2). The Examiner further responds that "[a] review of [Appellant's] [S]pecification did not find a special definition for the term vertical elements" that would

preclude elements 74 of Crawford from being considered knitted vertical elements. *Id.* at 17–18. We agree with the Examiner. Crawford describes "a mesh lacrosse pocket which incorporates a built-in tracking channel for the lacrosse ball that is a part of the completed one-piece mesh pocket unit and therefore, does not require the addition of separate materials." Crawford 2:4–9. Ball channel walls 74 of Crawford are made from the same material as mesh web 70 and transverse the length of mesh web 70, although they "are generally thicker and more dense than the rest of the expandable mesh web." *Id.* at 3:23–27, 4:35–39. Appellant does not adequately explain why the Examiner's characterization of ball channel walls 74 as the knitted vertical elements is in error. In particular, Appellant does not adequately explain why the distance between the ball channel walls 74 in Crawford has any bearing on whether they can reasonably be considered "knitted vertical elements" in accordance with the claims. Further, Appellant does not adequately explain why the Examiner's characterization of web 70 as the joins (*see* Exhibit A on page 16 of the Answer) is in error.

The Examiner also finds that each of the plurality of joins securing the knitted vertical elements is "at least one of an Intarsia join and a join formed via an overlap of adjacent ones of the plurality of knitted vertical elements." Final Act. 4 (citing Crawford Fig. 2). Appellant argues that "Crawford does not teach the claimed Intarsia or overlap join constructions, which can for example, help the claimed knitted pocket body maintain its suppleness and elasticity or other mechanical properties." Appeal Br. 11. The Examiner responds that Appellant did not provide a lexicographical definition for Intarsia joins and Appellant's Specification merely "lists the utilization of Intarsia knitting process along with a multitude of other knitting

process[es]." Ans. 21 (citing Spec. ¶ 307 (describing that "[t]he knitting process can be any of a variety of different knitting processes, for example circular knitting, tubular knitting, flat knitting, Jacquard knitting, Intarsia knitting, weft knitting, warp knitting and other types of knitting")). The Examiner takes the position that "the lacrosse pockets cited herein could utilize mesh patterns which are knitted wherein such knitting could be considered Intarsia." *Id.* The Examiner also takes the position that, because there are "multiple alternative processes that can also be used in place of Intarsia knitting" as set forth in the Specification (*id.* at 22), the knitting of the prior art results in a product that is the same as or renders obvious the claimed Intarsia knitting, however the prior art knitting is achieved. *Id.* at 21–22 (citing *In re Thorpe*, 777 F.2d 695, 698 (Fed. Cir. 1985) (citations omitted) ("The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.").

Appellant responds that "there is a structural difference to Intarsia knitting" and that "[i]n Intarsia knitting, each area of color is worked from an individual ball, bobbin, or length of yarn[, and] [w]hen a color is not in use, it is dropped to the wrong side of the work until it is needed again on the next row for its designated stitches." Reply Br. 10. Appellant, however, has not adequately explained what specific structure is achieved as a result of Intarsia knitting, let alone that whatever knitting process that is used in the prior art of Crawford and Bound cannot achieve that specific structure. The Examiner has made a determination that the knitting of Crawford/Bound renders obvious Intarsia knitting, and Appellant has not

adequately explained how such knitting of Crawford/Bound lacks a specific structure that is achieved by Intarsia knitting. *See In re Marosi*, 710 F.2d 799, 803 (Fed. Cir. 1983) ("Where a product-by-process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product."). Appellant has not persuaded us that there is an unobvious difference between the claimed Intarsia joins and the joins identified in Crawford/Bound.

The Examiner also finds, among other things, that Crawford teaches "a plurality of knitted vertical elements intermittently secured directly to one another with a first plurality of joins . . . wherein the plurality of knitted vertical elements are disposed across a majority of a width of the pocket body." Final Act. 4 (citing Crawford Fig. 2). Appellant argues that "the ball channel walls [74] in Crawford must be particularly spaced and positioned to guide the ball to a center and out of the pocket in Crawford" and "[t]his contrasts the claimed vertical elements spaced across a majority of the width of the pocket body." Appeal Br. 11–12.

The Examiner responds that "one can clearly see a plurality of vertical elements which are disposed across a width of the pocket body." Ans. 19 (citing Exhibit A (the Examiner-annotated version of Crawford's Fig. 2 appearing on page 16 of the Answer) and Exhibit B (the Examiner-annotated version of Crawford's Fig. 1A appearing on page 18 of the Answer)). More particularly, the Examiner first responds that "Exhibit B . . . clearly shows these elements across a majority of a width of the pocket body." *Id.* The Examiner secondly responds that "Exhibit A . . . shows vertical elements

which could be argued to be disposed across a majority of the width of the pocket body," and additionally references Crawford's teachings of "a variety of distances for the spacing of the vertical elements" and "that multiple or more than 2 vertical elements can be used which can help to take up the majority of the width of the pocket body." *Id.* (citing Crawford 4:60–65). Appellant replies that "[t]he two alleged ball channel walls 74 of Crawford occupy a small percentage of the width of the pocket body, unlike the different and claimed vertical elements, which occupy a majority of the width of the pocket body." Reply Br. 7.

Although we appreciate Appellant's point that Crawford's ball channel walls 74 *occupy* less than a majority of the width of the pocket body, as illustrated in the Appellant-annotated Figure on page 8 of the Reply Brief, we note that the claim requires the plurality of knitted vertical element to be "*disposed across*" a majority of a width of the pocket body, rather than to *occupy* a majority of a width of the pocket body. Appeal Br. 35 (Claims App.) (emphasis added). In other words, the broadest reasonable interpretation of the claim merely requires that the knitted vertical elements be present in a majority of the width of the pocket body, regardless of how much of the width of the pocket body the knitted vertical elements ultimately occupy. The Examiner has adequately explained how Crawford teaches or suggests that the extent of the width in which the knitted vertical elements are disposed is a majority of the width, and Appellant does not adequately explain why this finding is in error when considering the language of the claim.

The Examiner also finds, among other things, that "each of the second plurality of joins [in the second knitted pattern is] spaced differently from

one another than each of the first plurality of joins [in the first knitted pattern] are spaced from one another." Final Act. 5 (citing Crawford Fig. 2). More particularly, the Examiner finds that "the joins as shown in Exhibit A . . . vary in length (distance between the vertical elements or also the size of the openings) when viewed from the top to the bottom." Ans. 19. Appellant argues that "as can be seen in Figure 2, all of the mesh lengthwise pieces, which are zig zagged to form the diamond openings, are connected to one another at equal intervals" and "there is no different spacing in different regions, nor would there be as this would likely throw off the function of the ball channel walls 74." Appeal Br. 12. Even if we were to agree with Appellant that the size of the openings do not vary in length when viewed from top to bottom in Crawford unless mesh 70 is stretched differently in the top and bottom of the lacrosse pocket, the Examiner has modified Crawford so as to have "the first and second knitted patter[n] as taught by Bound." Final Act. 7. Appellant has not adequately explained how, once Crawford is modified to have the first and second knitted pattern as taught by Bound, the combination of Crawford and Bound would fail to teach differently spaced joins in the first and second knitted patterns.

Appellant also presents arguments with respect to the combination of Crawford and Gait. More particularly, Appellant argues that "there is no known benefit to combining Gait with Crawford" because "Crawford already teaches a lacrosse pocket mesh web with sides/edges adapted to attach to the frame of a lacrosse head," as well as "a ball pocket that transitions to a shooting ramp, and the shooting ramp is closer to the scoop than the stop." Appeal Br. 13. Appellant reiterates that "there would be no reason to modify Crawford to include these supposedly missing elements as

taught by Gait because these elements are already disclosed in Crawford." *Id.* at 14. We are not persuaded of reversible error by this argument because if Appellant concedes that Crawford already teaches the elements the Examiner is relying on Gait for, then no modification based on the teachings of Gait is required.

Appellant also presents arguments with respect to the combination of Crawford and Bound. More particularly, Appellant argues that "the two different meshes in Bound must be utilized with the V mesh border to achieve the desired ball control solution," but "the rearward opening V of Bound is incompatible with the forward opening V of the ball channel walls 74 in Crawford." *Id.* That is, Appellant asserts that "the ball channel walls 74 of Crawford are separated and sit across from one another relative to the center of the Crawford pocket to provide the intended ball guiding function" and "[t]he V in Bound connecting the meshes, on the other hand, crosses the center of the Bound pocket to provide the ball guiding function." *Id.* at 14–15. Appellant states that "[a]ccordingly, at least one of these references would have to be modified in a way that changes their principle of operation, which is impermissible under M.P.E.P. [§] 2143.01." *Id.* at 15.

The Examiner responds that Bound is cited merely for "teaching different meshes." Ans. 20. Bound recognizes the desirability of providing "a mesh that is a combination of both large and small holes . . . [with] small holes at the top of the pocket and a plurality of larger holes at the bottom . . . [and] would allow for excellent throwing and shooting because the upper set of holes are smaller and produce less friction on the ball resulting in a smoother release, while the larger holes would provide more friction on the ball when running thus increasing the hold on the ball during game play

making it more difficult to dislodge." Bound ¶ 9. Appellant has not adequately explained why incorporating different meshes in Bound into Crawford would render Crawford unsuitable for its intended purpose of "consistent ball handling results for players" using lacrosse sticks. Crawford 1:7–9; 2:12.

With respect to the teachings of Bound relied on by the Examiner, Appellant argues that "the two meshes [connected via the V mesh border] would be joined, after forming a secondary operation, to create a seam at the V mesh border," whereas the claims require no seams. Appeal Br. 16. Although Appellant acknowledges Bound's disclosure that "[t]he two different mesh sizes are integrally formed into on[e] mesh piece," Appellant argues that the disclosure that this is "accomplished by fusing, sewing, stitching, gluing, or any other appropriate method known to one of ordinary skill in the art" makes it clear "that the mesh of Bound is not truly integral and does not teach knit patterns that are seamlessly joined." Reply Br. 11 (quoting Bound ¶ 30). Appellant continues that "Bound clearly means that the two meshes are separately constructed and then joined to form one piece. If the two Bound meshes were seamlessly joined, as recited in the claims, a seam, or other method of joining, would not be necessary." *Id.*

The Examiner responds that "[t]he [E]xaminer views such integral formation as providing a seamless union between the different patterns." Ans. 22. The Examiner further states that "[t]he utilization of an explicit seam structure in the Bound reference . . . is seen to go against the 'integrally formed into one mesh piece' teaching of the Bound reference." *Id.* at 22–23. The Examiner additionally states that "[i]f one were going to create an integrally formed one mesh piece[,] one would not include seams"

and "[s]uch sewing or stitching would be able to avoid such structure." *Id.* at 23.

Appellant's Specification describes that "[i]n the transition [between different patterns], there is no seam, stitches, or other separately constructed fastener connecting the different regions." Spec. ¶ 135. Appellant's Specification continues that "[i]nstead, the different regions of the unitary textile material . . . simply transition to one another by modifying the knitting and/or weaving patterns or structure from one region to the next, without adding a separately constructed attachment element to the unitary textile material." *Id.* In accordance with this description in the Specification, we view the term "seamlessly joined" to mean that there is no separately constructed fastener connecting the different regions.

Bound states that the "border . . . between the upper and lower mesh [is] formed by the mesh." Bound ¶ 25. Bound also states that references to first/second meshes and/or upper/lower meshes "does not include differences in mesh formed by attaching one sized mesh to another." *Id.* ¶ 11. This description in Bound supports that Bound teaches a border between two meshes that lacks a separately constructed fastener and/or attachment element, and accordingly, supports that Bound lacks seams formed between the first and second meshes. We are not persuaded that Bound teaches only separate construction of two meshes that are then joined to form one piece, as alleged by Appellant. Accordingly, we are not persuaded by Appellant's argument that the combination of Crawford and Bound would fail to arrive at the claimed invention of first and second knitted patterns being seamlessly joined with one another.

For the foregoing reasons, we sustain the Examiner's rejection of independent claim 10.

Independent Claim 20

The Examiner finds that Crawford teaches most of the limitations of independent claim 20, but concludes that it would have been obvious to modify Crawford "to include the unitary textile from a plurality of strands and a middle pocket region as taught by Gait to provide an ideal low point or sweet spot of a lacrosse mesh pocket (See [0003] and the first and second knitted patter[n] as taught by Bound to perfect the stiffness required for accurate control, high velocity throwing and shooting ([0013])." Final Act. 7–8.

Appellant relies on many of the same arguments set forth in connection with independent claim 10. Appeal Br. 17–22. For the same reasons described above in connection with independent claim 10, we do not find these arguments persuasive.

Appellant also presents arguments specific to independent claim 20. Independent claim 20 recites that "an aperture is defined between the first vertical element and the second vertical element, the aperture bounded directly by the first Intarsia join, the second Intarsia join, the first vertical element and the second vertical element." Appeal Br. 37 (Claims App.). Appellant argues that, although "Crawford teaches multiple openings in the mesh between the ball channels," "not a single one of those opening is bounded directly, as recited in the claim, by two Intarsia joins and both of the ball channels." *Id.* at 19. The Examiner responds that "one can look at Exhibit B to clearly see a single aperture which is located between two vertical elements and bounded by joins [which] also can be considered

Intarsia." Ans. 23–24. When the teachings of Fig. 1A of Crawford (as depicted in the Examiner's Exhibit B) is coupled with Crawford's teaching that there can be "a variety of distances for the spacing of the vertical elements" and that multiple or more than 2 vertical elements can be used" (*id.* at 19), the Examiner has explained sufficiently why the claim limitation would have been obvious to one of ordinary skill in the art. Appellant maintains the same argument in the Reply Brief as in the Appeal Brief (Reply Br. 11–12), but has not responded with sufficient particularity to persuade us that the Examiner-identified vertical elements and Intarsia joins in modified Crawford do not bound an aperture.

Independent claim 20 also recites that "each of the first and second vertical elements are less than 15 needles wide so that the first and second vertical elements do not merge with one another in the middle pocket region." Appeal Br. 37 (Claims App.). Appellant argues that "[t]he Examiner erred in finding that Crawford discloses this limitation. Appeal Br. 19. Appellant asserts that "[a]t best, Crawford discloses that the ball channel walls 74 may vary in thickness and width," but "is silent with respect to the knit pattern of the ball channel walls being knit to have a certain needle width." *Id.* at 19–20 (citing Crawford 4:55–56). Appellant points out that "[b]ecause the Crawford pocket is conventional mesh, none would be concerned with a particular needle width related to ensuring the vertical elements do not merge with one another." *Id.* at 20.

The Examiner takes the position that Crawford "discloses some examples of the widths that can be used" and "the Crawford reference does teach that the width of the vertical elements is a result[-]effective variable." Ans. 24 (citing Crawford 4:52–67). The Examiner maintains that, because

the width of the vertical elements is a result-effective variable, it would have been obvious to one of ordinary skill in the art to have obtained the claimed width as a matter of routine experimentation. Final Act. 9 (citing MPEP § 2144.05(II); Ans. 24 (citing *In re Aller*, 220 F.2d 454, 456 (CCPA 1955)). Appellant has not set forth persuasive arguments or evidence to establish nonobviousness of the specific claimed width, such as evidence that a person of ordinary skill in the art would fail to recognize that the width of the vertical elements is a result-effective variable or that the specific width provides unexpectedly good results compared to other widths. *See In re Antonie*, 559 F.2d 618, 620 (CCPA 1977).

For the foregoing reasons, we sustain the Examiner's rejection of independent claim 20.

Independent Claim 28

Independent claim 28 recites that the joins extending between adjacent first and second vertical elements "are of a first length, taken parallel to a longitudinal axis of the pocket body, in a middle pocket region" and "are of a second length, taken parallel to the longitudinal axis of the pocket body, between the middle pocket region and an upper edge of the pocket body, wherein the first length is unequal to the second length." Appeal Br. 40 (Claims App.). The Examiner asserts that "[o]ne can reference Exhibit A . . . to see how the joins between the two vertical elements change from top to bottom" and "[a]s such, these joins can be considered to meet these claim limitations." Ans. 25.

Appellant relies on many of the same arguments set forth in connection with independent claims 10 and 20. Appeal Br. 22–27. For the

same reasons described above in connection with independent claims 10 and 20, we do not find these arguments persuasive.

Appellant also argues that "[t]he Examiner erred in the finding that Crawford discloses joins of a first length in a middle pocket region, and joins of a second length between the middle pocket region and an upper edge of the pocket body, the first length [being] unequal to the second length." Appeal Br. 23 (emphasis omitted). More specifically, Appellant argues that "[t]he Crawford pocket is constructed from conventional mesh having uniform length connections when measured parallel to a longitudinal axis of the pocket body." *Id.* at 24.

Even if we were to agree with Appellant that Crawford merely describes uniform length connections, the Examiner has modified Crawford so as to have "the first and second knitted patter[n] as taught by Bound" (Final Act. 7), thereby resulting in different sized mesh openings in modified Crawford. Appellant has not adequately explained how once Crawford is modified to have the first and second knitted pattern (i.e., first and second sized mesh openings) as taught by Bound, the combination of Crawford and Bound would fail to teach first and second joins of different lengths that correspond to first and second sized mesh openings, respectively, when measured parallel to a longitudinal axis of the pocket body.

For the foregoing reasons, we sustain the Examiner's rejection of independent claim 28.

Dependent Claims 13 and 22

Claim 13 depends from independent claim 10 and recites:

> the first knit pattern and second knit pattern are configured so that the first knit pattern allows the middle pocket region to stretch laterally in a direction perpendicular to a longitudinal axis

> of the pocket body more than the second knit pattern allows the shooting ramp region to stretch laterally in the direction perpendicular to the longitudinal axis.

Appeal Br. 35 (Claims App.). Claim 22 depends from independent claim 20 and recites that "a first knit pattern . . . exhibits a first mechanical property being a first elasticity in a direction perpendicular to a longitudinal axis of the pocket body" and a "second knit pattern exhibits a second mechanical property being a second elasticity, less than the first elasticity, in the direction perpendicular to a longitudinal axis of the pocket body." *Id.* at 38 (Claims App.).

The Examiner finds that Bound's knitting patterns are so configured, and it would have been obvious to modify Crawford in accordance with the teachings of Bound. Final Act. 11–12 (citing Bound ¶¶ 13, 25; Fig. 1). More particularly, the Examiner finds "the cited prior art as being capable of achieving this function." Ans. 25. The Examiner also finds that Crawford teaches these limitations. Final Act. 14 (citing Crawford Fig. 2); *see also* Ans. 27 ("The elasticity of the pocket regions is dependent on the length of the knitted mesh and the material used for each region. . . . [O]ne can reference Col. 3, Ln 43-65 of Crawford which states that the mesh knitting can be composed of a combination of different materials. As such, the material used in the upper region of the mesh can have a greater elasticity than that used for the middle region when viewed in a direction perpendicular to the longitudinal axis.").

Appellant argues that "[n]either Crawford, Gait, nor Bound contemplate this type of construction, nor the lateral stretching differences." Appeal Br. 28. We do not find Appellant's argument persuasive in that it does not adequately address the Examiner's determination that Bound's

knitting patterns are capable of achieving this function in light of the differently sized mesh openings Final Act. 11–12 (citing Bound ¶¶ 13, 25; Fig. 1); Ans. 25. Moreover, with respect to claim 22, Appellant merely reproduces the language of claim 22, but does not adequately explain how modified Crawford fails to teach the limitation. Appeal Br. 30–31. For the foregoing reasons, we sustain the Examiner's rejection of dependent claims 13 and 22.

Dependent Claim 16

Claim 16 depends from independent claim 10 and recites "wherein each of the first plurality of joins is formed as an Intarsia knit pattern in the middle pocket region, wherein each of the plurality of vertical elements is less than seven needles wide in the middle pocket region." Appeal Br. 36 (Claims App.). Appellant argues that "Crawford, Gait, and Bound do not contemplate Intarsia knit patterns." *Id.* at 28. Appellant also argues that the references also do not contemplate "any needle width because they are directed to conventional mesh." *Id.* For the reasons described in more detail above, we agree with the Examiner that an Intarsia knit pattern would have been obvious, and that the width of the vertical elements is a result-effective variable that would have been obvious pursuant to routine experimentation. For the foregoing reasons, we sustain the Examiner's rejection of dependent claim 16.

Dependent Claims 17 and 23

Claim 17 depends from independent claim 10 and recites "wherein the first and second sidewall edges extend along first and second reference axes disposed on opposite sides of the middle pocket, wherein as the pocket body nears the upper edge, the pocket body flares outward, beyond the first and

second reference axes such that the upper edge has a width greater than a width of the lower edge before the pocket body is installed on a lacrosse head." Appeal Br. 36 (Claims App.). Claim 23 depends from independent claim 20 and recites "the pocket body includes an upper edge configured to join with a scoop of a lacrosse head and a lower edge configured to join with a base of a lacrosse head, the upper edge having a side to side width that is greater than a side to side width of the lower edge before the pocket body is installed on a lacrosse head." Appeal Br. 38 (Claims App.).

The Examiner finds that Gait teaches a pocket body that flares outward so that the upper edge has a width greater than a width of the lower edge before installation on a lacrosse head. Final Act. 12 (citing Gait, Figs. 1, 3, 5). The Examiner also finds that Crawford teaches a pocket body having an upper edge with a side to side width that is greater than a side to side width of the lower edge. *Id.* at 14 (citing Crawford Fig. 2). The Examiner takes the position that "mesh could be expanded before being installed on the lacrosse head manually" and that "[t]he [E]xaminer does not consider a width change before or after [being] installed on a lacrosse head as providing [a] patentable distinction over the prior art." Ans. 27. The Examiner also responds that Crawford states that "mesh web 70 tapers in width from the unexpanded end portion to the expanded portion and this taper is generally in accordance with the divergence of the side walls 54, 56." *Id.* (citing Crawford 4:1–8).

Appellant argues that "[n]either of Crawford or Gait contemplate such a flared or different width pocket before the pocket is installed" and "[i]nstead, these references contemplate a single, uniform width, unflared pocket mesh from top to bottom before the pocket is installed." Appeal Br.

29. Appellant also argues that "the meshes of the cited references are conventional, and therefore, are of a single, uniform width until after being installed on a lacrosse head." *Id.* at 31. Appellant has not responded with sufficient particularity to the determinations set forth by the Examiner in the Answer so as to persuade us of error by the Examiner, especially considering that Crawford discusses the taper of the mesh web prior to discussing the binding of the mesh web to the head. *See* Crawford, 4:5–12. For the foregoing reasons, we sustain the Examiner's rejection of dependent claims 17 and 23.

Dependent Claim 21

Claim 21 depends from independent claim 10 and recites "wherein the first and second vertical elements in the middle pocket region extend into the shooting ramp region, with each of the first and second vertical elements disposed on a single side of a longitudinal axis of the pocket body." Appeal Br. 37 (Claims App.). The Examiner finds Crawford teaches this limitation. Final Act. 13 (citing Crawford Fig. 2). The Examiner takes the position that "this claim does not limit the longitudinal axis to be located through a symmetrical center such as one defined by the shaft wherein one could view such axis as being located to the left of the left vertical element shown in Exhibit A." Ans. 26. Appellant argues that "Crawford only discloses its ball channel walls 74 disposed on opposite sides of an axis of that pocket to provide a guide for a ball to shoot out of the center of the pocket." Appeal Br. 30. Appellant does address the Examiner's position set forth in the Answer with sufficient particularity.

Moreover, the Examiner has explained how Crawford teaches that "more than 2 vertical elements can be used which can help to take up the

majority of the width of the pocket body." Ans. 19 (citing Crawford 4:60–65). Crawford mentions "three, four etc." ball channel walls. Crawford 4:62. When modified to include four ball channel walls, Crawford teaches or suggests two ball channel walls that would be disposed on a single side of a longitudinal axis of the pocket body in accordance with dependent claim 21. For the foregoing reasons, we sustain the Examiner's rejection of dependent claim 21.

Dependent Claim 24

Claim 24 depends from independent claim 20 and recites that "the first and second vertical elements each form tubular members." Appeal Br. 38 (Claims App.). The Examiner finds that Crawford teaches these limitations. Final Act. 15 (citing Crawford Fig. 2). Appellant argues that "conventional mesh [as contemplated by the references] does not form such tubular members." Appeal Br. 31. The Examiner responds that Crawford "teaches thread used for the mesh" and "[t]he [E]xaminer considers thread to be tubular in shape." Ans. 27 (citing Crawford 3:57). At best, the Examiner has explained how Crawford's mesh, and likewise Crawford's ball channel walls, are comprised or formed of thread. *See* Crawford 4:38–39 (explaining that "[b]all channel walls 74 may be made from the same material as web 70"). The Examiner, however, has not adequately explained how Crawford's mesh and/or ball channel walls *form* tubular members as recited in the claim. Moreover, the Examiner has not adequately explained how thread is a tubular member when considering that "tubular" implies a hollow structure. For the foregoing reasons, we do not sustain the Examiner's rejection of dependent claim 24.

Dependent Claim 25

Claim 25 depends from independent claim 10 and recites "wherein each join of the second plurality of joins are longer than each join of the first plurality of joins." Appeal Br. 38 (Claims App.). The Examiner finds that "one can reference Col. 4, Ln 30–35 of Crawford to see that such sizes of the joins can change while also viewing the change in the mesh pattern of Crawford shown in Exhibit A." Ans. 26. Appellant argues that "[n]one of the cited references . . . suggest joins of different lengths[,] [n]or would they, as their pockets are constructed from conventional mesh having uniform connections." Appeal Br. 30.

Even if we were to agree with Appellant that Crawford merely describes conventional mesh having uniform connections, the Examiner has modified Crawford so as to have "the first and second knitted patter[n] as taught by Bound" (Final Act. 7), thereby resulting in different sized mesh openings. Appellant has not adequately explained how once Crawford is modified to have the first and second knitted pattern (i.e., first and second sized mesh openings) as taught by Bound, the combination of Crawford and Bound would fail to teach differently sized joins in the first and second knitted patterns because of the differently sized mesh openings. For the foregoing reasons, we sustain the Examiner's rejection of dependent claim 25.

Dependent Claim 26

Claim 26 depends from independent claim 10 and recites:

> wherein the pocket body includes a plurality of apertures above the shooting ramp region, each of the plurality of apertures separated from an adjacent aperture by an [I]ntarsia join, wherein the apertures are spaced so that a shooting string can be threaded

> through the apertures from the first sidewall edge to the second sidewall edge, wherein an Intarsia join of the second plurality of joins above the shooting ramp region is of a longer length than another Intarsia join of the first plurality of joins in the middle pocket region.

Appeal Br. 38–39 (Claims App.). The Examiner finds Crawford teaches or suggests this limitation. Final Act. 13–14 (citing Crawford Fig. 2); Ans. 26. Appellant argues that "[n]one of the cited references contemplate Intarsia joins, let alone different length Intarsia joins in different regions for different performance[,] [n]or would they, as their pockets are constructed from conventional mesh having uniform connections." For the same reasons described above in more detail in connection with at least dependent claim 25, this argument is not persuasive, and we sustain the Examiner's rejection of dependent claim 26.

Dependent Claim 27

Claim 27 depends from claim 20 and recites "wherein the aperture [in the first knitted pattern of the middle pocket region] is one of a plurality of apertures, the plurality of apertures varying in length, from a first length adjacent a lower edge of the pocket body, to a second length greater than the first length, to a third length less than the second length closer to an upper edge of the pocket body." Appeal Br. 39 (Claims App.). Appellant acknowledges that Bound "contemplates different meshes," but argues that "[t]he mesh sets of Bound . . . are specifically formed with holes that become progressively smaller 'as you get to the top of the lacrosse head and move away from the bottom of the stick head.'" *Id.* at 31–32 (quoting Bound ¶ 38).

The Examiner responds that "the [E]xaminer does not view such configuration or rearrangements thereof as being more than an obvious

simple matter of choice for one of skill in the art." *Id.* (citing *In re Dailey*, 357 F.2d 669 (CCPA 1966)). Ans. 28. Absent any argument by Appellant explaining why the particular claimed configuration is significant and would perform differently than the prior art, we find the Examiner to be on solid ground in relying on design choice with respect to apertures varying in length in accordance with the claims (i.e., in which a second length is greater than a first length, and a third length is less than the second length). *In re Chu*, 66 F.3d 292, 299 (Fed. Cir. 1995) (citing *In re Gal*, 980 F.2d 717 (Fed. Cir. 1992)). We find this to be especially true where the claim provides no indication of the degree of difference in length for the differently sized apertures and, as such, encompasses even minute changes in the lengths that would appear to have no impact or negligible impact on the function of the apertures. For the foregoing reasons, we sustain the Examiner's rejection of dependent claim 27.

Dependent Claim 29

Dependent claim 29 depends from independent claim 28 and recites "wherein the second length is less than the first length, whereby the middle pocket region is more supple to accommodate and restrain a lacrosse ball disposed in the middle pocket region." Appeal Br. 40 (Claims App.). Appellant argues that "no reference contemplates different length joins, let alone joins in a middle pocket region with lengths to provide suppleness." Appeal Br. 32. For the same reasons described above in more detail, the Examiner has adequately explained how the references describe different length joins because of differently sized apertures and how such differently sized joins result in different functional characteristics, such as flexibility

and/or suppleness. For the foregoing reasons, we sustain the Examiner's rejection of dependent claim 29.

Rejection II

Dependent claim 14 recites:

> wherein the plurality of strands of at least one of the upper edge, the first and second sidewall edge and the lower edge are constructed from a first material, wherein the plurality of strands of at least one of the shooting ramp region and the middle pocket region are constructed from a second material, different from the first material, wherein the first material is at least one of an aromatic polyamide and an ultra-high molecular weight polyethylene, wherein the second material is a thermoplastic polymer, wherein the plurality of strands constructed from the first material are interlooped with the plurality of strands of the second material.

Appeal Br. 36 (Claims App.). The Examiner relies on Crawford to teach the limitations of the claims, except for reliance on Janisse to teach that "the first material is at least one of an aromatic polyamide and an ultra-high molecular weight polyethylene," "the second material is a thermoplastic polymer," and "the plurality of strands constructed from the first material are interloped with the plurality of strands of the second material." Final Act. 15–16 (citing Janisse ¶ 21, Fig. 1). The Examiner concludes that it would have been obvious "to modify the apparatus as taught by Crawford to include the materials described by Janisse to allow the pocket to have inherent flexibility." *Id.* at 16 (citing Janisse ¶ 21).

As to the teachings of Crawford, the Examiner takes the position that the "[E]xaminer considers the change in pattern [in modified Crawford] to be a different material." *Id.* Appellant argues "it is improper to assert that a change in pattern is also a change in material." Appeal Br. 28. We agree with Appellant that a change in pattern cannot be equated with a change in

material. The Examiner then points out in the Answer that Crawford "recites 'combinations of these materials' when discuss[ing] the material used for the web or mesh" and that "Crawford talks of the vertical elements being thicker and denser than the rest of the web." Ans. 25 (quoting Crawford 3:54–58 and citing Crawford 2:40–44). Appellant argues that the Examiner's fact finding regarding the specific language of the claim is not supported by a preponderance of the evidence. Appeal Br. 27.

We agree with Appellant that the Examiner has not adequately supported a finding by a preponderance of the evidence that the references teach or suggest multiple materials being used in the manner of claim 14 in which the material of the pocket body is dependent on the particular location within the pocket body (e.g., edges having a first material and middle pocket region/shooting ramp region having a second material). That is, the Examiner's citations to certain portions of Crawford (Ans. 25) do not adequately explain how the plurality of strands making up a unitary textile lacrosse pocket body are constructed of a first material at the upper, lower, and sidewall edges and are constructed of a second material in the shooting ramp region and middle pocket region. For the foregoing reasons, we do not sustain the Examiner's rejection of dependent claim 14.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
10, 13, 16, 17, 20–29	103	Crawford, Gait, Bound	10, 13, 16, 17, 20–23, 25–29	24
14	103	Crawford, Gait, Bound, Janisse		14
Overall Outcome			10, 13, 16, 17, 20–23, 25–29	14, 24

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART