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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN W. INZER

Appeal 2019-003747
Application 14/657,293
Technology Center 3700

Before JENNIFER D. BAHR, MICHAEL J. FITZPATRICK, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–4 and 6–12.² We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42.

² Claim 5, which is the only other pending claim, has been withdrawn from consideration. Final Act. 1 (Office Action Summary); *see also* Appeal Br. 2 n.1.

CLAIMED SUBJECT MATTER

Appellant’s invention is directed to “a shirt or garment which covers the upper torso of a wearer” and, more specifically, “to a support shirt providing support along the chest and shoulder regions of the wearer.” Spec. ¶ 1. Claims 1 and 10–12 are independent. Appeal Br. 12–13 (Claims App.). Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A support shirt comprising a shirt body and a pair of shirt body sleeves positioned adjacent to an upper portion of said support shirt body, said sleeves attached to said shirt body at round sleeve body holes located on the front of said shirt body, each of said sleeves having a first end adapted to be attached to a respective sleeve body hole, an opposite end, a first side edge and a second side edge, said first end of each of said sleeves including a notch portion located between opposing edges of said first end of each of said sleeves, and said first and second edges of each of said sleeves being joined together by a coupling seam.

EVIDENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Terry	US 3,066,418	Dec. 4, 1962
Knecht	US 4,473,908	Oct. 2, 1984
Peters	US 5,383,235	Jan. 24, 1995
Alaniz	US 2007/0000015 A1	Jan. 4, 2007

REJECTIONS

Claims 1–4, 8, and 10–12 stand rejected under 35 U.S.C. § 103 as unpatentable over Terry and Alaniz.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103 as unpatentable over Terry, Alaniz, and Peters.

Claim 9 stands rejected under 35 U.S.C. § 103 as unpatentable over Terry, Alaniz, and Knecht.

OPINION

Each of Appellant's independent claims 1 and 10–12 recites a support shirt comprising, in pertinent part, sleeves attached at first ends to a shirt body at round sleeve holes located on the front of the shirt body, and the first end of each sleeve includes a notch portion located between opposing edges of the first end. Appeal Br. 12–13 (Claims App.). The Examiner finds that Terry discloses a shirt substantially as recited in claims 1 and 10–12, except that Terry's round sleeve holes are located partially on the front and partially on the back of the shirt body, rather than on the front of the shirt body. Final Act. 2–3, 5–8. Each of the Examiner's rejections rests, in relevant part, on the Examiner's determination that it would have been obvious to modify Terry's shirt by locating the round sleeve holes “on a front side,” as taught by Alaniz, because “doing so would allow for storing energy in the shirt, thus making it a more efficient garment configuration.” *Id.* at 3, 6, 7, 8.

In rejecting claims under 35 U.S.C. § 103, examiners must establish a factual basis and must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).

Appellant argues, persuasively, that the Examiner's articulated reason for modifying Terry is flawed. *See* Appeal Br. 10–11. In particular, Appellant contends that “while Alaniz is directed to an athletic shirt for lifting weights, Terry is not.” *Id.* at 10. Thus, according to Appellant, “[a] skilled person looking at Terry would not be motivated to modify the shirt as

proposed because Terry is not interested in making an athletic shirt that ‘stores energy.’” *Id.*

Terry’s invention is directed to “outer shirts or blouses, and particularly to men’s outer shirts.” Terry 1:9–10. More specifically, Terry’s “invention relates to the type of outer shirt known as a sport shirt which is usually constructed of material provided with design figures which reoccur symmetrically throughout the material. Such figures may be plaid figures or figures of other design.” *Id.* 1:13–17. The types of shirts or blouses described by Terry are collared and have sleeve openings located so that the sleeves extend from the sides of the shirt body. *See id.*, Fig. 1; 2:36–37. Terry’s shirt or blouse is a casual garment (i.e., sport shirt) and is not designed with weight lifting in mind.

Alaniz, on the other hand, “relates to an athletic garment . . . designed for weight lifters to store energy in the garment so the stored energy may be applied to lifting weights.” Alaniz ¶ 1. In order to improve the energy storage capability of the weight lifter’s garment, Alaniz teaches providing seams curved to promote twisting of the fabric by running “in a corkscrew fashion down the sleeves” and providing arm holes 54 in the torso front of the garment for attachment of sleeves. *Id.* ¶¶ 5, 30, 33, 36. According to Alaniz, because of the orientation of the sleeves, when the lifter lowers the weight, the fabric of the shirt front is stretched, thereby absorbing energy, which is expended when the lifter raises the weight. *Id.* ¶ 36.

A person having ordinary skill in the art would not have been prompted to orient the sleeves of Terry’s shirt in a manner to absorb or store energy, as taught by Alaniz, because Terry’s shirt is not designed or intended to be worn by weight lifters while lifting weights, and allowing for storing energy would not make Terry’s garment more efficient, as the

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Examiner states. Thus, we agree with Appellant that the Examiner’s stated reason for the proposed modification (i.e., “for storing energy in the shirt, thus making it a more efficient garment configuration”) lacks rational underpinnings and fails to support the conclusion of obviousness of the subject matter of independent claims 1 and 10–12, or claims 2–4 and 8, which depend from claim 1. Further, the Examiner’s application of Peters and Knecht in rejecting claims 6, 7, and 9 does not remedy the deficiency in the combination of Terry and Alaniz. *See* Final Act. 9–10.

Accordingly, we do not sustain the Examiner’s rejections of claims 1–4 and 6–12 under 35 U.S.C. § 103.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 8, 10–12	103	Terry, Alaniz		1–4, 8, 10–12
6, 7	103	Terry, Alaniz, Peters		6, 7
9	103	Terry, Alaniz, Knecht		9
Overall Outcome				1–4, 6–12

REVERSED