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3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			WAGGENSPACK, ADAM J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BJORN DANIELS, STEFAN ABERG,
JONAS N.A. FREJD, MATS U. SERNFALT, and
MARCUS T.R. WIEDERKEHR

Appeal 2019-003755
Application 15/410,279
Technology Center 3700

Before ANTON W. FETTING, MICHAEL C. ASTORINO, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's rejection of claims 1, 2, 4, and 6–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. According to Appellant, the real party in interest is 3M Innovative Properties Company. Appeal Br. 2.

According to Appellant, the “invention pertains to an appliance mounting device that can be secured to head gear and [which] supports an appliance that can be adjusted in position along an elongated guide.” Spec.

¶ 1. Claims 1 and 15 are the independent claims on appeal. Below, we reproduce independent claim 1 as illustrative of the appealed claims.

1. An appliance mounting device that comprises:

an elongated guide that is adapted for removable securement to head gear such that when secured thereto a lengthwise dimension of the elongated guide is at least generally coincident with a sagittal plane of the head gear, wherein the elongated guide comprises first and second rails;

an appliance; and

an appliance holder that supports the appliance and that can engage the first elongated guide to allow for adjustment of the position of the appliance along the lengthwise dimension of the elongated guide, wherein the appliance holder comprises first and second grooves and a tab connected to the first groove, wherein the first and second rails of the elongated guide are disposed within the first and second grooves of the appliance holder respectively when the appliance holder is engaged with the elongated guide, and further wherein the appliance holder can be disengaged from the elongated guide by pressing the tab away from the first and second rails of the elongated guide such that the first and second grooves of the appliance holder move apart from each other.

REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

- I. Claims 1, 2, 4, and 6–14 under 35 U.S.C. § 103 as unpatentable over Teetzel et al. (US 7,219,370 B1, iss. May 22, 2007) (hereinafter “Teetzel”) and Atkinson (US 2013/0061506 A1, pub. Mar. 14, 2013);

- II. Claims 6, 7, 10–12, and 15–20 under 35 U.S.C. § 103 as unpatentable over Teetzel, Atkinson, and Rogers et al. (US 2009/0307826 A1, pub. Dec. 17, 2009) (hereinafter “Rogers”);
- III. Claims 1, 2, 4, and 6–20 based on nonstatutory obviousness-type double patenting as unpatentable based on claims in US Patent No. 8,701,212, alone or with Teetzel, Atkinson, and/or Rogers;
- IV. Claims 1, 2, 4, and 6–20 based on nonstatutory obviousness-type double patenting as unpatentable based on claims in US Patent No. 9,578,916, alone or with Teetzel, Atkinson, and/or Rogers; and
- V. Claims 1, 2, 4, and 6–20, provisionally, based on nonstatutory obviousness-type double patenting as unpatentable based on claims in copending US Patent Application No. 14/196,941, alone or with Teetzel, Atkinson, and/or Rogers.

ANALYSIS

Rejection I—Obviousness rejection of claims 1, 2, 4, and 6–14

We have carefully reviewed the record, including Appellant’s Appeal Brief and Reply Brief, and the Examiner’s Final Office Action and Answer. Appellant does not persuade us that the Examiner errs in determining that claims 1, 2, 4, and 6–14 are obvious based on Teetzel and Atkinson. As discussed below, we sustain the Examiner’s obviousness rejection.

Appellant argues that the Examiner errs because “[m]odifying the teachings of Teetzel . . . with those of Atkinson as [the Examiner proposes]

would change the principle of operation of Teetzel.” Appeal Br. 9 (bold omitted); *see also id.* at 9–12. We are not persuaded of error, however, because Appellant does not persuade us that it is Teetzel’s principle of operation to provide an arrangement in which: “the channels [are] disposed within the track assembly” rather than “extend[ing] above the surface of the track system” (*id.* at 9); “the clip . . . slides along the rail . . . when disengaged from the rail” (*id.*); “the quick release buttons . . . allow[s] the mount to freely slide along the track” (*id.* at 10–11); and “pins, rails, or the like [are] received within channels . . . of the track assembly” (*id.* at 11). Rather, even assuming *arguendo* that each of the above changes would result when Teetzel is modified as the Examiner proposes, Appellant does not persuade us that any of these changes are contrary to any principle of operation of Teetzel. Instead, we agree with the Examiner that it appears that a principle of operation of Teetzel is to provide an arrangement in which “the clip attaches to a rail structure for locking into a desired location and is then unlocked for movement to another location.” Answer 3.

Further, contrary to Appellant’s argument (*see* Appeal Br. 11–12), the Examiner adequately supports the determination that it would have been obvious to use Atkinson’s rail in place of Teetzel’s, and to “curve[] [Atkinson’s rails] to match the [curvature of] the helmet[,] as taught by Teetzel” (Answer 8; *see also id.* at 7–8).

Appellant argues that “[m]odifying the teachings of Teetzel . . . with those of Atkinson as [the Examiner proposes] would render Teetzel . . . unsuitable for its intended purpose.” Appeal Br. 12 (bold omitted); *see also id.* at 12–13. We are not persuaded by this argument for reasons substantially similar to the reasons discussed above. Specifically, Appellant

does not establish that any expected change resulting from modifying Teetzel based on Atkinson makes Teetzel unsuitable for any purpose Teetzel intends. Instead, we again agree with the Examiner that it appears that an intended purpose of Teetzel is to provide an arrangement in which “the clip attaches to a rail structure for locking into a desired location and is then unlocked for movement to another location.” Answer 3.

Thus, based on the foregoing, we sustain the Examiner’s obviousness rejection of claims 1, 2, 4, and 6–14.

Rejection II—Obviousness rejection of claims 6, 7, 10–12, and 15–20

Appellant argues that the Examiner’s obviousness rejection of claims 6, 7, 10–12, and 15–20 is in error for the same reasons that the rejection of claims 1, 2, 4, and 6–14 is in error. Appeal Br. 13–14. Thus, we sustain this rejection.

Rejections III–V—Double patenting rejections

Appellant does not argue that the Examiner errs in any of the double-patenting rejections. *See generally* Appeal Br. Thus, we summarily sustain each of these rejections.

CONCLUSION

We AFFIRM each of the Examiner’s rejections of claims 1, 2, 4, and 6–20.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 2, 4, 6–14	103	Teetzel, Atkinson	1, 2, 4, 6–14	
6, 7, 10–12, 15–20	103	Teetzel, Atkinson, Rogers	6, 7, 10–15, 15–20	
1, 2, 4, 6–20	Nonstatutory	Obviousness-type double patenting: US Patent No. 8,701,212, alone or with Teetzel, Atkinson, and/or Rogers	1, 2, 4, 6–20	
1, 2, 4, 6–20	Nonstatutory	Obviousness-type double patenting: US Patent No. 9,578,916, alone or with Teetzel, Atkinson, and/or Rogers	1, 2, 4, 6–20	
1, 2, 4, 6–20	Nonstatutory	Provisional obviousness-type double patenting: US Patent Application No. 14/196,941, alone or with Teetzel, Atkinson, and/or Rogers	1, 2, 4, 6–20	
Overall Outcome			1, 2, 4, 6–20	

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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. § 41.50(f).

AFFIRMED