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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN BEERS, MATT MARTIN, and CARL BLAKESLEE

Appeal 2019-004181
Application 13/412,471
Technology Center 3700

Before JENNIFER D. BAHR, RICHARD H. MARSCHALL, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 2–4, 10–14, 18–21, 23, and 29–39. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We refer herein to the Appeal Brief submitted December 18, 2018 (“Appeal Br.”), and the Final Action dated July 3, 2018 (“Final Act.”).

² 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 Omni Trax Technology, Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Appellant's invention is directed to "an interchangeable sole system for an item of footwear . . . including a sole that can be quickly and easily replaced with other soles having different types of traction surfaces" and "that interacts directly with a midsole of the footwear." Spec. 1:10–14. Claims 18, 23, 31, and 32 are independent. Appeal Br. 31–34 (Claims App.). Claim 31, reproduced below, is illustrative of the claimed subject matter.

31. An interchangeable sole system for an item of footwear comprising:

 a midsole having a foot-facing top surface and an opposing, ground-facing bottom surface, and a plurality of spaced-apart receptacles that are fixedly and integrally embedded in and exposed from the ground-facing bottom surface of the midsole and along a lateral and medial periphery of the midsole, and wherein the exposed receptacles each include a cavity that has an opening formed in and parallel to the ground-facing bottom surface of the midsole and which recesses below a general surface of the exposed receptacle, the cavity being adapted to complement and removably hold a corresponding male engageable element on a removeable sole unit;

 a removable sole unit having a plurality of spaced-apart male engageable elements projecting upwardly from a general plane of an upper surface of the sole unit;

 wherein for each receptacle, the cavity is formed and defined in a zone portion of receptacle material that extends horizontally outwardly from the cavity and separates the cavity from the midsole horizontally surrounding the receptacle, the zone portion having a resiliently compressible material, thereby resiliently conforming to the corresponding male engageable element on insertion of the male engageable element into the cavity so that the receptacle contributes to the lodging of the engageable element to the midsole and to its removability;

wherein the midsole surrounding the zone portion has a material property that provides more cushioning than the material of the zone portion, the zone portion providing a separation of the cavity and surrounding midsole so that the receptacle can removably hold the male engageable element during use independently of the material properties of the midsole; and

wherein the sole unit is coextensive with at least a forefoot or rearfoot portion of the midsole.

EVIDENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Goodyear	US 4,317,294	Mar. 2, 1982
Kim	US 2006/0021260 A1	Feb. 2, 2006
Lewis	US 2010/0132223 A1	June 3, 2010

REJECTIONS

- I. Claims 2–4, 10–13, 18–21, 23, and 29–39 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Goodyear and Lewis.
- II. Claim 14 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Goodyear, Lewis, and Kim.

OPINION

Rejection I—Obviousness Based on Goodyear and Lewis

Each of Appellant’s independent claims 18, 23, 31, and 32 recites a midsole having a plurality of receptacles embedded therein, each including a cavity defined in a zone portion of receptacle material that separates the cavity from the midsole surrounding the receptacle, the zone portion having a resiliently compressible material that resiliently conforms to a

corresponding male engageable element on a removable sole unit on insertion of the male engageable element into the cavity so that the receptacle contributes to the lodging and removability/interchangeability of the male engageable element to/from the midsole, the zone portion separating the cavity and the surrounding midsole so the receptacle can removably/interchangeably hold the male engageable element independently of the midsole material properties, and the midsole surrounding the zone portion having a material property that provides more cushioning than the material of the zone portion. Appeal Br. 31–35 (Claims App.).

The Examiner found that Goodyear’s midsole 16 comprises female engageable elements (groove 24) including a cavity for engagement and disengagement of male engageable elements (ridge 26, 54, 56), but that Goodyear lacks receptacles as recited in claims 18, 23, 31, and 32 embedded in the midsole defining the cavity and separating the cavity from the midsole material surrounding the receptacle. Final Act. 3–4, 6–8, 9–10, 14–15. The Examiner relied on Lewis for the receptacles. *See id.* at 4–5, 8–9, 10–11, 15–16.

More specifically, the Examiner found that

Lewis teaches a midsole (100,200) having female elements (210) comprising receptacles (77) in the form of pods fixedly and integrally embedded in the midsole (para.36-37); wherein the receptacles (77) each include a cavity that has an aperture (77 at opening of 210) at a surface of the midsole and which recesses below a general surface of the midsole material (as seen in Fig.6); and wherein a material property of the receptacles (para.37; i.e. thin plastic) differs from a material property of the midsole (para.37; i.e. foam) so that the midsole provides cushioning to the item of footwear, and the receptacles (77) allow for engagement and disengagement of a plurality of male engageable elements (66)(Fig.6).

Final Act. 4; *see id.* at 8, 10, 15. The Examiner determined it would have been obvious

to have modified the female elements of Goodyear to include receptacles made of a separate material from the midsole, as taught by Lewis, in order to provide a midsole having female elements which are reinforced by receptacles that allow for a secure attachment to a male element and also yield a durable connection that can withstand long term use of attaching and releasing two fastener halves.

Id. at 5; *see id.* at 8–9, 10–11, 15–16.

Appellant argues, persuasively, that Lewis does not teach that sleeve 77 is made of a resiliently compressible material that resiliently conforms to a corresponding male engageable member to contribute to the lodging of the male engageable member to the midsole (upper sole 100 and lower sole 200). Appeal Br. 17, 19, 21–22, 23–25, 26–27. Thus, according to Appellant, the Examiner’s articulated reason for modifying Goodyear in view of Lewis lacks rational underpinnings, and, even if the proposed modification were made, it would not yield the claimed invention. *Id.*

Lewis discloses a sandal comprising upper sole 100 and lower sole 200 having channels 210, 220 formed therein for receiving male member 63 and female member 44 of buckles 110 for securing and releasing removable straps 140, 50. *See* Lewis, Figs. 6–8; ¶¶ 26, 36, 38. Female member 44 is attached within channel 210 or 220 by means of, for example, elastic member 63 disposed between upper sole 100 and lower sole 200. *Id.* ¶ 36; *see id.*, Fig. 6. In order to release the buckles, the wearer presses inward on one or more sides of upper sole 100, thereby applying sufficient pressure to release button 55 on male member 66 to release members 44 and 66 from each other. *Id.* ¶ 37. Lewis teaches that the material of upper sole 100 has

sufficient flexibility to move inward, when the wearer presses on the sides thereof, and apply enough pressure on release button 55 to disengage members 44 and 66. *Id.* In order to accomplish this, Lewis teaches constructing sole 100 of foam, for example. *Id.* Lewis also teaches that the cavity housing the buckle “can simply be a channel 210 or 220 within the upper sole 100 and can optionally include a thin, flexible sleeve 77 that when pressed by the side of the upper sole 100 will allow the release button 55 to release the buckle.” *Id.* According to Lewis, the cavity preferably “maintains sufficient flexibility to allow the pressure from the user pressing into 1 or more of the sides of the sole . . . to release the buckle 110,” and “[p]referred channels 210 and 220 and sleeves 77 can non-exclusively be constructed with foam or thin plastic, for example.” *Id.*

Based on the disclosure of Lewis discussed above, it is apparent that sleeve 77 is not intended to function, and does not function, to hold either male member 66 or female member 44 of buckle 110 within the sole. Rather, channels 210 and 220 and sleeves 77 permit male member 66 to pass freely into and out of the cavity and engage with and disengage from female member 44, which may be attached to elastic member 63. Sleeve 77 must be sufficiently flexible that it can be flexed locally and pressed into release button 55 when the wearer presses the sides of sole 100 inwardly, but Lewis gives no indication that sleeve 77 is resiliently compressible to resiliently conform to male member 66 to help lodge or hold it within the sole. Thus, the Examiner’s stated reason for modifying Goodyear to include receptacles, as taught by Lewis, namely, “in order to provide a midsole having female elements which are reinforced by receptacles that allow for a secure attachment to a male element and also yield a durable connection that can

withstand long term use of attaching and releasing two fastener halves” (Final Act. 5) lacks rational underpinnings. Moreover, even if Goodyear were modified to add thin, plastic receptacles (such as sleeves 77) as taught by Lewis, as the Examiner proposes (Final Act. 4–5, 8–9, 10–11, 15–16), such thin, plastic receptacles would not satisfy the limitations of independent claims 18, 23, 31, and 32, including being made of resiliently compressible material that resiliently conforms to male engageable elements (ridge 26, 54, 56) on insertion of the male engageable elements into the receptacles to help lodge or hold the male engageable elements in the midsole.

For the above reasons, we do not sustain the rejection of independent claims 18, 23, 31, and 32, or their dependent claims 2–4, 10–13, 19–21, 29, 30, and 33–39, as unpatentable over Goodyear and Lewis.

Rejection II—Obviousness Based on Goodyear, Lewis, and Kim

The deficiency in the combination of Goodyear and Lewis discussed above also pervades the rejection of claim 14. The Examiner’s application of Kim with respect to adding rows of teeth to Goodyear’s midsole and sole unit (*see* Final Act. 17–18) would not cure this deficiency. Accordingly, we do not sustain the rejection of claim 14 as unpatentable over Goodyear, Lewis, and Kim.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
2–4, 10–13, 18–21, 23, 29–39	103(a)	Goodyear, Lewis		2–4, 10–13, 18–21, 23, 29–39
14	103(a)	Goodyear, Lewis, Kim		14

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Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
Overall Outcome				2-4, 10-14, 18-21, 23, 29-39

REVERSED