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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AIDANO NASCIMENTO, DAVID W. WHITEHEAD, and
JEFFREY T. RODGERS

Appeal 2019-004454
Application 14/807,969
Technology Center 3600

Before MICHAEL L. HOELTER, ERIC C. JESCHKE, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

HOELTER, *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 1–13, which constitute all the claims pending in this application. 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. Appellant identifies the real party in interest as “Inteva Products, LLC.” Appeal Br. 2.

CLAIMED SUBJECT MATTER

The disclosed subject matter relates to vehicular armrests. *See Spec.* ¶¶ 2–4. Apparatus claims 1 and 10, and method claim 12, are independent. Claim 1 is illustrative of the claims on appeal and is reproduced below.

1. A deployable armrest system for a vehicle, comprising:

a pair of side walls configured to be located in a facing spaced relationship with respect to each other to define an operator area therebetween; and

a pair of deployable armrests movably secured to the pair of side walls and configured for movement between a stowed position and a deployed position, wherein each of the pair of deployable armrests have a support member comprising a support surface that is flush with a surface of the pair of side walls when the pair of deployable armrests are in the stowed position and wherein the support surface of the support member of each of the pair of deployable armrests extends outwardly and laterally away from the surface of the pair of side walls when the pair of deployable armrests are in the deployed position, wherein each support member is received within a cavity located in each one of the pair of sidewalls when the pair of armrests are in the stowed position and wherein the support surface of each one of the pair of armrests is located behind an elastic material that completely covers each support member and the cavity as well as a significant portion of the respective one of the pair of side walls, wherein the elastic material expands from a first configuration when the pair of armrests are in the deployed position and contracts back to the first configuration when the pair of armrests are in the stowed position.

EVIDENCE

Name	Reference	Date
Grimes	US 5,921,610	July 13, 1999
Shabana et al. ("Shabana")	US 2004/0164577 A1	Aug. 26, 2004

REJECTION²

Claims 1–13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Shabana and Grimes.

ANALYSIS

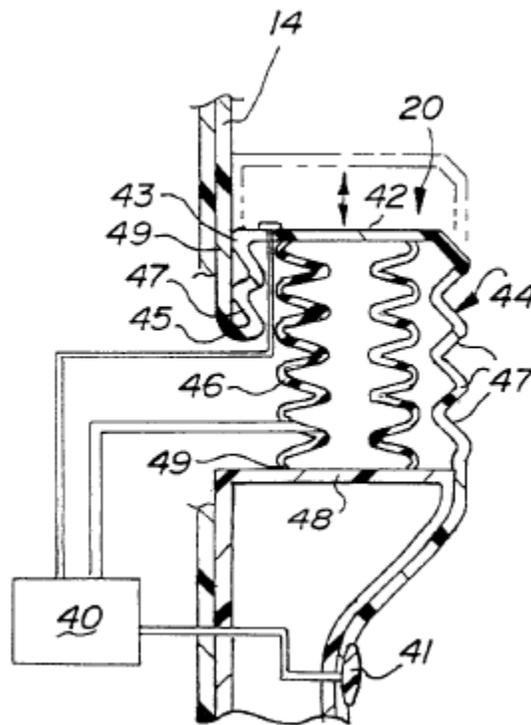
Appellant separately argues independent claims 1, 10, and 12. *See* Appeal Br. 6–18. However, the arguments presented by Appellant for each claim are redundant. Further, Appellant does not present a separate argument for any dependent claim, stating only that each such claim is “believed to be allowable for at least the same reasons as” their respective parent claim. Appeal Br. 10, 14, 18. Accordingly, we select claim 1 for review, with the remaining claims (i.e., claims 2–13) standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 recites “an elastic material . . . wherein the elastic material expands from a first configuration . . . and contracts back to the first configuration.” Appellant’s Specification provides guidance as to the scope of the claim term “elastic material.” Paragraph 19 thereof provides the following description of “material 38”:

² The Examiner also provisionally rejected claims 1–13 based on nonstatutory double patenting in view of Application No. 13/895,187. *See* Final Act. 6. A Notice of Abandonment of Application No. 13/895,187 was mailed July 20, 2017, thereby rendering this provisional rejection moot.

(e.g., fabric, elastic fabric, elastic material or any other suitable material having elastic characteristics and/or resilient characteristics such that the material is capable of expanding and contracting or in other words, expanding from a first configuration upon deployment of the armrests and/or placement of the operator's arms thereon and returning to the first configuration upon stowing of the armrests and/or movement of the operator's arms therefrom).

The Examiner acknowledges that the primary reference to Shabana does “not disclose an elastic material” as recited, and relies on “Grimes [for teaching] an elastic material (14, 42, 44).” Final Act. 4; *see also* Ans. 4. In particular, the Examiner references Figure 5 (replicated below) of Grimes as disclosing the recited “elastic material.” Final Act. 4; *see also* Ans. 4.



The above Figure 5 of Grimes depicts door panel 14, padded surface 42, side surfaces 44, and convolutions 47.

Grimes describes “arm rest **20** [as] integrally formed as part of interior panel **14**.” Grimes 3:55–56. This “arm rest **20** includes top padded surface **42** and side surfaces **44** with spring acting convolutions **47**.” Grimes 3:56–58. Grimes states that “[t]he upper few convolutions **47** extend about the arm rest such that . . . the padded upper surface **42** is free to vertically move.” Grimes 3:58–61. Hence, the Examiner finds that Grimes’ door panel “is inherently elastic because the convolutions (47) act as springs,” which permit expansion and contraction. Final Act. 4; *see also* Ans. 3.

Appellant disagrees with this assessment stating, “the door panel of Grimes is not an elastic material.” Appeal Br. 6. However, in individually discussing each of items 14, 42, 44, and 47, Appellant simply addresses the item and concludes that it “cannot meet the limitations . . . when combined with the teachings of Shabana.” Appeal Br. 6–7. Appellant is silent as to how or why Grimes’ convolutions 47 in side surface 44, which allow padded surface 42 to rise and fall, is not encompassed by Appellant’s description of elastic material above.³

Additionally, Appellant’s arguments amount to little more than simply reciting the claim language and concluding that the limitations of claim 1 are not met. *See* Appeal Br. 6–7. As noted by our reviewing court, “it has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.” *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011). Further, it has held “that the Board reasonably interpreted Rule 41.37

³ To reiterate, Paragraph 19 of Appellant’s Specification states that such “material is capable of expanding and contracting or in other words, expanding from a first configuration . . . and returning to the first configuration.”

to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.” *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011). That is nearly the situation here, i.e., a recitation of the claim limitation and a naked assertion that the limitation is not found in the prior art.

Also, and perhaps of greatest importance, Appellant focuses attention on the alleged requirement that the elastic material expands “**outwardly and laterally away**” from a first configuration. Appeal Br. 8, 9; *see also id.* at 6, 7 (not emphasized therein). However, such language is not recited in claim 1 (or 10 or 12). *See* Appeal Br. 20–24 (Claims Appendix). Instead, claim 1 (and 10 and 12) recites “wherein the elastic material expands from a first configuration,” and is (are) silent as to any direction of such expansion (i.e., outwardly and laterally). In fact, when Appellant sought to make such directional amendment to these claims (*see* Amendment mailed September 15, 2016), the following Advisory Action dated October 4, 2016 pertaining to that Amendment stated that the proposed changes “will not be entered.” Hence, Appellant is basing the above arguments on claim language that is not before us for review.

Accordingly, and based on the record presented, we are not persuaded of Examiner error. We sustain the Examiner’s rejection of claims 1–13 as being obvious over Shabana and Grimes.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1-13	103(a)	Shabana, Grimes	1-13	
Overall Outcome			1-13	

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

AFFIRMED