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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/180,345	06/13/2016	JOSHUA MAKOWER	BRST-001PCTCON3	8516
125939	7590	01/23/2020	EXAMINER	
ExploraMed NC7, Inc. 1975 W. El Camino Real Suite 306 Mountain View, CA 94040			FREHE, WILLIAM R	
			ART UNIT	PAPER NUMBER
			3783	
			NOTIFICATION DATE	DELIVERY MODE
			01/23/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSHUA MAKOWER, JOHN Y. CHANG,
BRENDAN M. DONOHOE, SHARON LAM WANG,
MICHELE TOROSIS, and EARL BRIGHT II

Appeal 2019-004587
Application 15/180,345
Technology Center 3700

Before NINA L. MEDLOCK, PHILIP J. HOFFMANN, and
BRUCE T. WIEDER, *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 decision to reject claims 1–10. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

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 ExploraMed NC7, Inc. Appeal Br. 2.

According to Appellant, the “disclosure generally relates to a portable, hands-free, discrete, self-powered[,] and energy efficient breast pump system and method for collecting milk from a breast of a nursing mother.”

Spec. ¶ 1. Claim 1 is the sole independent claim on appeal. Below, we reproduce claim 1 as representative of the appealed claims:

1. A wearable, portable self-powered breast pump system for pumping milk from a breast, comprising:

a main body;

a breast adapter;

a milk collection container; and

a pump mechanism configured to pump milk from a breast to the milk collection container;

wherein the breast adapter, the pump mechanism and the milk collection container are collectively sized and shaped to fit within a user’s bra, and the pump mechanism and milk collection container are contained within the main body.

REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

- I. Claims 1, 2, 5, 6, and 10 under 35 U.S.C. § 102(a)(1) as anticipated by Khalil et al. (US 2013/0023821 A1, pub. Jan. 24, 2013) (“Khalil”);
- II. Claims 3 and 4 under 35 U.S.C. § 103 as unpatentable over Khalil and Weber et al. (US 2012/0277728 A1, pub. Nov. 1, 2012) (“Weber”);
- III. Claims 7 and 9 under 35 U.S.C. § 103 as unpatentable over Khalil and Greter et al. (US 2004/0024351 A1, pub. Feb. 5, 2004) (“Greter”); and

- IV. Claim 8 under 35 U.S.C. § 103 as unpatentable over Khalil and Prentiss (US 2003/0191433 A1, pub. Oct. 9, 2003).

ANALYSIS

Rejection I—Anticipation rejection of independent claim 1, and dependent claims 2, 5, 6, and 10

Independent claim 1, and its dependent claims 2, 5, and 10

Independent claim 1 recites the following:

1. A wearable, portable self-powered breast pump system for pumping milk from a breast, comprising:

a main body;

a breast adapter;

a milk collection container; and

a pump mechanism configured to pump milk from a breast to the milk collection container;

wherein the breast adapter, the pump mechanism and the milk collection container are collectively sized and shaped to fit within a user's bra, and the pump mechanism and *milk collection container* are *contained within the main body*.

Appeal Br., Claims App. (emphases added). Appellant and the Examiner disagree as to whether (using the claims nomenclature) Khalil's milk collection container is contained within its main body. For the reasons set forth below, the Examiner adequately supports such a finding, and Appellant does not persuade us that the Examiner errs. Thus, we sustain the Examiner's anticipation rejection of independent claim 1, and of claims 2, 5, and 10 that depend from claim 1.

Initially, we note that claim 1 does not recite, for example, that the entire milk collection container is contained within the main body. Thus, Khalil discloses the above-emphasized claim recitations if Khalil teaches a

milk collection container that includes a portion contained within a main body.

The Examiner finds that Khalil's milk collection container 7' discloses the claimed milk collection container. Final Action 3. The Examiner further finds that Khalil's shell ring 6' and cover 6'' disclose the claimed main body. *Id.* According to the Examiner, Khalil's container 7' is contained within shell ring 6' and cover 6'', as claimed. *Id.* More specifically, in the Answer, the Examiner explains that "[cover] 6'' of main body 6' and 6'' closes over and has contained within coupling part 72 of milk collection container [7']." Answer 5 (citation to Khalil's paragraph 69 omitted). The Examiner's explanation is indicative of what Khalil discloses—i.e., Khalil's paragraph 69 states that "milk collection container 7' additionally has . . . coupling part 72." Khalil ¶ 69 (bold omitted).

Conversely, none of Appellant's arguments (*see* Appeal Br. 4–5; *see also* Reply Br. 3–5) persuades us that the Examiner errs. More specifically, neither Appellant's argument in the Appeal Brief nor Appellant's argument in the Reply Brief addresses the Examiner's findings regarding coupling part 72 of milk collection container 7'. Thus, Appellant does not persuade us that the Examiner errs in finding that a portion of milk collection container 7' is contained within shell ring 6' and cover 6''. Further, Appellant does not establish that claim 1 requires that the entire milk collection container is contained within the main body.

Based on the foregoing, we sustain the Examiner's anticipation rejection of independent claim 1. We also sustain the anticipation rejection

of claims 2, 5, and 10, which depend from claim 1, and which Appellant does not argue separately.

Dependent claim 6

Regarding dependent claim 6, in the Appeal Brief, Appellant argues that the Examiner's rejection is in error because Khalil does not disclose that a latch suction is maintained throughout a pumping session. Appeal Br. 5. Specifically, Appellant argues that, contrary to the Examiner's determination (Final Action 3), Khalil's paragraph 22 does not disclose maintaining latch suction during pumping (Appeal Br. 5).

In response, the Examiner states that Appellant is "incorrect . . . [because] all breast pumps maintain a latch suction throughout pumping." Answer 6. The Examiner does not adequately support this statement, however, and thus the statement is insufficient to support claim 6's anticipation rejection.

The Examiner further states that the "continuous pump chamber" described in Khalil's paragraph 22 "*would allow* for a latch suction to be maintained throughout a pumping session." *Id.* (emphasis added). Even assuming arguendo that the Examiner is correct, this statement by the Examiner also is insufficient to support claim 6's anticipation rejection. Specifically, it is not enough that Khalil's continuous pump chamber *would allow* for latch suction to be maintained—instead it would be sufficient if Khalil discloses (either expressly or inherently) that the pump chamber does, in fact, maintain latch suction through a pumping session. Consequently, we do not sustain the Examiner's anticipation rejection of dependent claim 6.

Rejection II—Obviousness rejection of dependent claims 3 and 4

Dependent claim 3 recites the following:

3. The wearable, portable self-powered breast pump system of claim 1, further comprising a conduit, wherein as the pump mechanism operates and the conduit becomes mostly filled with milk, the breast pump system thereby approaches a fully hydraulic system.

Appeal Br., Claims App. Appellant argues that the Examiner's obviousness rejection is in error because "the final Office Action does not demonstrate how . . . Khalil['s] . . . pump could operate as a system that approaches being fully hydraulic." *Id.* at 7. Based on our review of the record, we agree with Appellant. Specifically, it is not clear to us how the Examiner proposes to modify Khalil, which "relies on a rigid underpressure chamber 40 that includes a dead volume to create a vacuum to accomplish pumping," to provide a system that approaches being a fully hydraulic system—i.e., a system that uses a fluid to perform work. *Id.*

Based on the foregoing, we do not sustain the Examiner's obviousness rejection of dependent claim 3. For similar reasons, we also do not sustain the obviousness rejection of claim 4 that depends from claim 3.

Rejection III and IV—Obviousness rejections of dependent claims 7–9

According to Appellant, dependent "claims 7–9. . . are allowable by virtue of their dependence [from] allowable claim 1." Appeal Br. 7. Inasmuch as we sustain claim 1's rejection, we also sustain the Examiner's obviousness rejections of claims 7–9.

CONCLUSION

We **AFFIRM** the Examiner’s §§ 102 and 103 rejections of claims 1, 2, 5, and 7–10.

We **REVERSE** the Examiner’s §§ 102 and 103 rejections of claims 3, 4, and 6.

In summary:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1, 2, 5, 6, 10	102(a)(1)	Khalil	1, 2, 5, 10	6
3, 4	103	Khalil, Weber		3, 4
7, 9	103	Khalil, Greter	7, 9	
8	103	Khalil, Prentiss	8	
Overall Outcome:			1, 2, 5, 7–10	3, 4, 6

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