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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THEODORE KASTEN

Appeal 2019-004908
Application 15/862,357
Technology Center 1700

Before MICHAEL P. COLAIANNI, JULIA HEANEY, and
JANE E. INGLESE, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner’s decision to reject claims 1–11. 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. Appellant identifies the real party in interest as Theodore Kasten. Appeal Br. 3.

Appellant's invention is directed to a towel that may be removably attached to exercise equipment while being readily accessible to the user (Spec. ¶ 6; Claim 1).

Claim 1 is representative of the subject matter on appeal:

1. A towel system for use with exercise and fitness equipment, comprising:
 - a handle bar assembly including a first handle bar, a second handle bar, a cross bar connecting the first hand bar and the second handle bar, and aero bars connected to the cross bar;
 - a towel having a series of pockets formed by folding a portion of the towel onto itself, including a first pocket configured to receive the first handle bar; a second pocket configured for receiving the second handle bar, and a third pocket located between the first pocket and the second pocket;
 - wherein the first pocket and the second pocket are underneath the towel when in use, and the towel covers all of the top surface of the handle bar assembly when the first pocket is placed over the first handle bar and the second pocket has been placed over the second handle bar.

Appellant appeals the following rejections:

1. Claims 1–8 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kinder (US 2015/0041603 A1, published Feb. 12, 2015) in view of Montgomery (US 2005/0194502 A1, published Sept. 8, 2005).
2. Claims 9 and 10 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kinder in view of Montgomery and Connaughton (US 2014/0342118 A1, published Nov. 20, 2014).
3. Claim 11 is rejected under 35 U.S.C. § 103(a) as unpatentable over Kinder in view of Montgomery and Beckman (US 2014/0205554 A1, published July 24, 2014).

FINDINGS OF FACT & ANALYSIS

The Examiner's findings and conclusions regarding Kinder and Montgomery are located on pages 3 and 4 of the Final Action. The Examiner finds that Kinder teaches a towel device useful during spin biking wherein the towel includes two loops that are formed by a seam and fit over the handlebars of a bicycle (Final Act. 3). The Examiner finds that Kinder teaches that additional pockets may be added to the towel device (Final Act. 3). The Examiner finds that Kinder does not teach a third pocket between the first and second pockets (Final Act. 3). The Examiner finds that Montgomery teaches a storage unit positioned on the handlebars of a bike that includes two loops for mounting on the handle bars and a third pocket formed between the two loops for holding a cell phone or other item (Final Act. 3). The Examiner concludes that it would have been obvious to form a towel as taught by Kinder such that there is an additional pocket between the first and second loops to store personal items as taught by Montgomery (Final Act. 3).

Appellant argues that Kinder teaches forming loops not pockets that slide over handlebars (Appeal Br. 7). Appellant contends that Kinder's loops are not the same as the claimed pockets (Appeal Br. 13). Appellant argues that a loop is "a length of line, thread, ribbon, or other thin material that is curved or doubled over making an opening." (Appeal Br. 13). Appellant contends that a pocket is "a small baglike attachment forming part of the garment and used to carry small articles, as a flat pouch sewn inside a pair of pants or a piece of material sewn on its sides and bottom to the outside of a shirt." (Appeal Br. 13). Appellant contends that Kinder differentiates between loops and pockets (Appeal Br. 14). Appellant argues

that the Examiner's claim construction which equates Kinder's loops and pockets is an unreasonable interpretation of the term "pocket" (Appeal Br. 15). We agree.

The Examiner concedes that "loop" and "pocket" have different meanings (Ans. 9). The Examiner finds, however, that Kinder's loops are formed by folding a portion of the towel onto itself and therefore meet the claimed limitations (Ans. 9). The Examiner equates Kinder's loops with the pockets of Appellant's claimed invention such that the loops and pockets are each configured to receive the handlebars of a piece of exercise equipment (Ans. 9). In other words, the Examiner determines that Kinder's tunnel-like structures (i.e., loops) are the same as the claimed pockets based on the similarity in how the loops are formed by folding the material over itself (Ans. 9).

We find that Kinder plainly differentiates between the "tunnel-like regions" that overlay the handlebars and pockets (Kinder ¶¶ 8, 14). Appellant recognizes this difference in the Specification (Spec. ¶ 5). In other words, the tunnel-like regions in Kinder are not considered to be pockets. Rather, Kinder shows that pockets are open on only one side with three sides secured (Kinder ¶ 14, Fig. 1). Montgomery's teaching to form a pocket 12 by sewing three sides closed comports with that understanding of what constitutes a pocket (Montgomery ¶ 55, Fig. 18). The Specification further describes that the upside down pockets in Appellant's Specification are depicted in Figure 14. As shown in Figures 13 and 14, the pockets are folded over and sewn or fastened so that the pockets are secured on three sides leaving one opening for sliding over a handlebar (Spec. ¶¶ 34, 36, 40).

In contrast, Kinder’s tunnel-like or tube-like structures have two open sides and form loops or tunnels (Kinder Fig. 2, ¶¶ 8, 14). The Examiner has not established that Kinder’s tunnel-like structures equate to pockets as that term is understood in light of Appellant’s Specification. The Examiner provides no analysis regarding whether it would have been obvious to close one side of Kinder’s tunnel-like structures to form a pocket. On this record, we are constrained to reverse the Examiner’s § 103 rejection of claims 1–8 over Kinder and Montgomery. The § 103 rejections over claims 9 and 10 over Kinder, Montgomery, and Connaughton, and claim 11 over Kinder, Montgomery and Beckman are reversed for the same reason discussed above.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1–8	103	Kinder, Montgomery		1–8
9, 10	103	Kinder, Montgomery, Connaughton		9, 10
11	103	Kinder, Montgomery, Beckman		11
Overall Outcome				1–11

REVERSED