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STEPHEN G. KIMMET 118 GROSS STREET TIFFIN, OH 44883			SUTTON, ANDREW W	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL G. KIMMET

Appeal 2019-006768
Application 15/057,149
Technology Center 3700

Before EDWARD A. BROWN, MICHAEL L. HOELTER, and
WILLIAM A. CAPP, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the non-final rejection of claims 1–12, and 19.² 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(a).

² Claims 13–18 have been cancelled by Appellant. Claims App.

THE INVENTION

Appellant's invention is a golf jersey. Spec. 1. Claim 19, reproduced below, is illustrative of the subject matter on appeal.

19. A golf jersey, comprising a shirt having a collar with at least one digit on a back of the shirt, wherein the shirt is configured to be provided to an individual professional golfer.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Vinson	US 4,296,498	Oct. 27, 1981
Anderson	US D648,925 S	Nov. 22, 2011
Goldberg	US 2012/0185996 A1	July 26, 2012
DuChene	US 2013/0276206 A1	Oct. 24, 2013

The following rejections are before us for review:

1. Claim 1, 2, and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Anderson and Vinson.
2. Claims 3–10, and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Anderson, Vinson, and Goldberg.
3. Claim 6 is rejected under 35 U.S.C. § 103 as being unpatentable over Anderson, Vinson, and DuChene.
4. Claim 11 is rejected under 35 U.S.C. § 103 as being unpatentable over Anderson, Vinson, Goldberg, and DuChene.

OPINION

*Unpatentability of Claims 1, 2, and 19
over Anderson and Vinson*

Appellant argues claims 1, 2, and 19 as a group. Appeal Br. 4–8. We select claim 19 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Anderson discloses the invention except for indicia on the jersey being a digit for which the Examiner relies on Vinson. Final Act. 2. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of the invention to place a digit on the golf jersey of Anderson, as a matter of common knowledge. *Id.* at 3.

Appellant first argues that Anderson is not prior art, because it is a design patent that disclaims alphabetic characters as part of the design. Appeal Br. 5. This argument is without merit as a drawing teaches all that it reasonably suggests to a person of ordinary skill in the art. *See In re Aslanian*, 590 F.2d 911, 914 (CCPA 1979). The fact that Anderson disclaims alphabetic characters goes to the subject matter of what is claimed in the design patent. MPEP § 1503.02. Such disclaimer is immaterial to what the drawing suggests to a person of ordinary skill in the art.

Appellant next argues that Vinson’s digits are displayed on “flaps.” Appeal Br. 6. Appellant further argues that Vinson does not disclose that it is associated with the game of golf. *Id.* at 7. Further still, Appellant argues that Vinson’s garment is reversible and a person of ordinary skill in the art would not make a golf jersey reversible because the collar would then rest on the front of the golfer’s neck. *Id.*

Vinson discloses an athletic jersey where the front and back are different colors. Vincent, Abstract; col. 1, ll. 63–67. A flap that features different colors on opposing sides is attached along the shoulder seams. *Id.*

col. 1, l. 67 – col. 2, l. 1. The flap is swung over the wearer’s head to change the jersey from one color to the other. *Id.* col. 2, ll. 5–8. The same technique is employed using different numbers. *Id.* col. 2, ll. 8–10. Vinson’s configuration allows an athletic participant to quickly change uniforms during an athletic contest. *See Id.* col. 1, l. 5 – col. 2, l. 10.

Appellant’s argument that Vinson only places digits on “flaps” distorts the record before us. As shown in Figures 1–4, Vinson features numerals on the front and back of the torso portion of the jersey in addition to the front and back of the flap. *Id.* Figs. 1–4. Furthermore, Vinson is not “reversible” in the manner alleged by Appellant. Vinson’s jersey has a front and a back. *Id.* A person of ordinary skill in the art would also understand that it has an interior side that faces toward the body and an exterior side that faces away from the body. *Id.* No reasonable practitioner would think that Vinson’s garment is worn backwards or inside out.

The Examiner relies on Vinson to show that it was known in the prior art to place digits on athletic jerseys. Final Act. 2. Vinson’s “flap” feature is extraneous to the issues before us. Even if the flap were eliminated, Vinson discloses an athletic jersey that displays digits. It is well settled that omitting an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *See In re Karlson*, 311 F.2d 581, 584 (CCPA 1963).

As any lay person who has ever watched an organized sporting event can readily attest, it is commonplace for participants in an athletic contest to wear numbered jerseys. Appellant presents neither evidence nor persuasive technical reasoning that shows that placing digits on a golf jersey, in a manner that reasonably resembles placing numbers on football jerseys,

baseball uniforms, basketball uniforms, soccer uniforms, and rugby uniforms, etc. requires more than ordinary skill or produces unexpected results. Furthermore, Appellant offers no persuasive argument or explanation as to why, if it is already known to place letters on a golf jersey (Anderson), it is somehow patentably non-obvious to place a digit on a golf jersey.

We sustain the Examiner's unpatentability rejection of claims 1, 2, and 19 over Anderson and Vinson.

*Unpatentability of Claims 3–11, and 12
over Combinations Based on Anderson and Vinson*

These claim depend, directly or indirectly, from claim 19 and are not separately argued apart from arguments that we have previously considered and found unpersuasive as to claim 19. Appeal Br. 8–9. We sustain the Examiner's rejection of claims 3–11, and 12. *See* 37 C.F.R. § 41.37(c)(1)(iv) (waiver of arguments for separate patentability).

CONCLUSION

Claims Rejected	§	References	Aff'd	Rev'd
1, 2, 19	103	Anderson, Vinson	1, 2, 19	
3-10, 12	103	Anderson, Vinson, Goldberg	3-10, 12	
6	103	Anderson, Vinson, DuChene	6	
11	103	Anderson, Vinson, Goldberg, DuChene	11	
Overall Outcome			1-12, 19	

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

AFFIRMED