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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHEW ALEXANDER

Appeal 2020-001784
Application 15/096,210
Technology Center 3700

Before MICHAEL C. ASTORINO, PHILIP J. HOFFMANN, and
AMEE A. SHAH, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject claims 22–27, 29, 30, 33–35, and 39–46. 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. The Appellant identifies the real party in interest as “M & C INNOVATIONS, LLC.” Appeal Br. 3.

STATEMENT OF THE CASE

Claimed Subject Matter

Claims 22, 39, and 44 are the independent claims on appeal.

Claim 39, reproduced below, is illustrative of the claimed subject matter.

39. A method for handling sweating at a cooler, the method comprising:

- (a) disposing a cover about one or more exterior walls of the cooler that extend from a base of the cooler to an upper rim of the cooler; and
- (b) releasably securing the cover to the cooler by fastening the cover to the base of the cooler and to the upper rim of the cooler, with the cover extending therebetween in covering relation to the one or more exterior walls of the cooler;
- (c) wherein the cover comprises a moisture-absorbent material.

Appeal Br. 34, Claims App.

References

The prior art relied upon by the Examiner is:

Name	Reference	Date
Dobbie	US 6,036,047	Mar. 14, 2000
Giondi	US 3,396,885	Aug. 13, 1968
Purvis	US 2002/0029992 A1	Mar. 14, 2002
Connelly	US 2012/0217255 A1	Aug. 30, 2012

Rejections

Claims 22–24, 33, 44, and 45 are rejected under 35 U.S.C. § 102(b) as anticipated by Dobbie.

Claims 25, 29, and 42 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbie.

Claims 26, 27, 30, 43, and 46 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbie in view of Giondi.

Claims 34 and 35 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbie in view of Purvis.

Claim 39 is rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbie in view of Connelly.

Claims 40 and 41 are rejected under 35 U.S.C. § 103(a) as unpatentable over Dobbie in view of Connelly and Purvis.

ANALYSIS

Independent claim 39 recites “[a] method for handling sweating at a cooler” including “releasably securing [a] cover to the cooler by fastening the cover . . . to the upper rim of the cooler.” *Supra*. The foregoing recitation of claim 39 requires some form of fastening, either direct or indirect, between the cover and the cooler at the cooler’s upper rim. *See, e.g.,* Spec. ¶¶ 35, 50, 52, Figs. 1–3 (showing snap connectors 22, 24 that releasably secure wrap-around side cover 20 to upper rim 14 of cooler 10).

The Examiner finds Dobbie teaches a cooler including a cooler body and cover (i.e., improved thermal wrap 10). Final Act. 4; *see* Dobbie col. 3, l. 66 – col. 4, l. 4. Dobbie’s thermal wrap, in the broadest context, consists of base portion 12 that wraps around a forward, rearward, and opposing side walls of a cooler and cover member 30 that wraps for a cooler’s lid. *See* Dobbie col. 4, ll. 9–15, 42–43. The Examiner further finds that Dobbie’s thermal wrap 10 is fastened to the upper rim of the cooler body. *See* Final Act. 7 (annotating Dobbie Fig. 2).

The Appellant argues that the Examiner's finding that Dobbie's thermal wrap 10 is fastened to the upper rim of the cooler body is inadequately supported. *See* Appeal Br. 12–19, 27; Reply Br. 2–16. The Appellant supports this argument by pointing out that “Dobbie is inconsistent and ambiguous, as the specification describes a physical coupling that is inconsistent with the figures, and the figures include illustrated lines that are never described or explained.” Reply Br. 9, 15. The Appellant's argument is persuasive.

As for Dobbie's written description, Dobbie fails to describe a fastener, such as a hook and loop fastener that is fixed to a cooler body or more specifically, at a cooler's upper rim. *See* Appeal Br. 14–15. Although Dobbie describes an invention in which “[a] cover member is provided that is dimensioned for coupling with a removable cover of [a] cooler,” Dobbie is clear that this coupling occurs by securing cover member 30 to base portion 12 by fastening strips of hook and loop material. *See* Dobbie col. 2, ll. 28–38, col. 4, ll. 47–57, col. 5, l. 43 – 6, l. 3, Figs. 3, 4. The result of coupling the cover member and base member is that the cooler is completely contained within the wrap. *See id.* Accordingly, contrary to the Examiner's finding that Dobbie's written disclosure teaches that cover member 30 is directly fastened to the cooler's lid (*see* Ans. 5 (citing Dobbie col. 2, ll. 27–29)), Dobbie's written disclosure teaches using strips of hook and loop material to secure one portion of the wrap to separate portion of the wrap (*see id.*). *See also* Appeal Br. 16; Reply Br. 15–16.

As for the Dobbie's figures by themselves, the Appellant argues that Figures 2–4 “are intended to illustrate the same cover portion of the same thermal wrap,” but the depiction of Dobbie's invention in the figures are

inconsistent at least because of the number and locations of perforated rectangular boxes.² *See* Appeal Br. 12–14. The Appellant’s argument is persuasive.

In response, the Examiner finds that multiple strips of hook and loop material shown in Figure 2 are missing from Figure 4 because they are on the opposite (hidden) side of the wrap’s base portion 12. *See* Ans. 3–4 (annotating Dobbie’s Figures 2 and 4). This finding is unsupported. Dobbie’s Figure 4 shows a single perforated rectangular box at second side portion 20. This perforated rectangular box represents a strip of hook and loop material 26 positioned on the opposite (hidden) side of the wrap’s base portion 12.³ *See* Dobbie col. 4, ll. 34–36. Accordingly, if Dobbie were to include additional strips of hook and loop material on the opposite (hidden) side of the wrap’s base portion as found by the Examiner, they would have been depicted as perforated rectangular boxes. *See* Reply Br. 10–11. Because multiple perforated rectangular boxes are missing from Figure 4, we do not agree with the Examiner’s finding.

An important aspect of the Examiner’s position is the finding that Figure 2 depicts base portion 12 as having multiple strips of hook and loop material that are engaged with the cooler. *See* Final Act. 7, Ans. 4. The Examiner’s position is based on an initial assumption that Figure 2 clearly shows a partial cut-away portion in which a strip of hook and loop material

² Figure 2 shows three perforated rectangular boxes, which lack reference numbers.

³ The strip of hook and loop material 26 attaches to the strip of hook and loop material 24 at the opposite end of the wrap’s base portion 12 to secure the wrap’s base portion 12 around a cooler. Dobbie col. 4, ll. 32–39.

on the surface of the lower portion of base portion 12 engages with the cooler. Final Act. 7. *Contra* Appeal Br. 15, Reply Br. 17–18 (“This illustrative partial cut-away appears to show that dotted lines are used to indicate a strip of hook and loop material, but aside from that it is exceedingly unclear what is being illustrated.”). Additionally, the Examiner’s position includes a further assumption that the perforated rectangular box shown at the upper portion of base portion 12, which lacks a partial cut-away portion, is nonetheless the same as the lower portion of base portion 12, which includes the partial cut-away section. This further assumption is inadequate to support a finding that a strip of hook and loop material positioned on the upper rim of the cooler.

For the purposes of this appeal only, even if we were to agree with the Examiner’s initial assumption, it is significant that Figure 2 does not show a similar partial cut-away at the upper portion of the wrap’s base portion 12. Indeed, Figure 2 fails to show the surface of cooler’s upper rim because it is covered by base portion 12. Figure 2 does show a perforated rectangular box at the upper portion of the wrap’s base portion 12, which appears to represent a strip of hook and loop material on the opposite (hidden) surface of the upper portion of base portion 12. This distinction appears to have been overlooked by the Examiner. Accordingly, the Examiner’s further assumption is not based on what Figure 2 clearly shows or reasonably suggests. *See* Appeal Br. 15; *see, e.g.*, Reply Br. 18 (“th[e] illustrated strip of hook and loop material could be designed for use in folding and storage of the thermal wrap.”). Therefore, we determine that the Examiner fails to explain how Figure 2 clearly shows or reasonably suggests to one of

ordinary skill in the art that a fastener, such as a strip of hook and loop material, is positioned at the upper rim of the cooler.

In view of the foregoing, we determine that the Examiner's finding that Dobbie teaches "releasably securing [a] cover to the cooler by fastening the cover . . . to the upper rim of the cooler," as recited in claim 39, is inadequately supported. Further, we determine the Examiner fails to rely on the teachings of Connelly and/or Purvis in any manner which would remedy the inadequately supported finding. Therefore, we do not sustain the Examiner's rejections of independent claim 39 and dependent claims 40 and 41.

Independent claim 22 calls for a cooler including a cooler body and a cover, "wherein the cover is releasably secured by fasteners directly to both the base of the cooler body and to the upper rim of the cooler body and extends there between in covering relation to the exterior of the one or more cooler walls." Appeal Br. 31, Claims App. Similar to the rejection of claim 39, the Examiner's rejection of claim 22 includes findings that are inadequately supported. *See* Final Act. 2–3. For the reasons discussed above, we do not sustain the Examiner's rejection of claim 22 and dependent claims 23, 24, and 33. Further, the Examiner fails to rely on the additional teachings of Dobbie, Giondi, Purvis, or Connelly in any manner which would remedy the deficiency in the Examiner's rejection of claim 22. Therefore, we do not sustain the Examiner's rejections of dependent claims 25–27, 29, 30, 34, 35, 42, and 43.

Independent claim 44 calls for a cooler including a cooler body and a wrap-around side cover, "wherein the wrap-around side cover is releasably secured by fasteners directly to both the rim and the base around the

periphery of the cooler.” Appeal Br. 35, Claims App. Similar to the rejection of claim 39, the Examiner’s rejection of claim 44 includes findings that are inadequately supported. *See* Final Act. 2–3. For the reasons discussed above, we do not sustain the Examiner’s rejection of claim 44 and dependent claim 45. Further, the Examiner fails to rely on the teachings of Giondi in any manner which would remedy the deficiency in the Examiner’s rejection of claim 44. Therefore, we do not sustain the Examiner’s rejection of dependent claim 46.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
22–24, 33, 44, 45	102(b)	Dobbie		22–24, 33, 44, 45
25, 29, 42	103(a)	Dobbie		25, 29, 42
26, 27, 30, 43, 46	103(a)	Dobbie, Giondi		26, 27, 30, 43, 46
34, 35	103(a)	Dobbie, Purvis		34, 35
39	103(a)	Dobbie, Connelly		39
40, 41	103(a)	Dobbie, Connelly, Purvis		40, 41
Overall Outcome				22–27, 29, 30, 33–35, 39–46

REVERSED