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EXAMINER

CHIN-SHUE, ALVIN CONSTANTINE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JACOB HALL and PEATER KARL WILKENING

Appeal 2014-008175
Application 12/784,052
Technology Center 3600

Before JILL D. HILL, THOMAS F. SMEGAL, and
GORDON D. KINDER, *Administrative Patent Judges*.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jacob Hall and Peater Karl Wilkening (Appellants)¹ seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claims 1 and 14 are independent. Claim 1 is reproduced below and illustrates the claimed subject matter, with disputed limitations emphasized.

1. A harness leg loop system comprising:

¹ According to Appellants, the real party in interest is Black Diamond Equipment, Ltd. Appeal Br. 3.

a first leg loop including a first interior region and a first coupling point;

a second leg loop including a second interior region and a second coupling point, wherein the first and second coupling points are intercoupled, and wherein the first and second leg loop include a particular minimum shear strength of the first and second interior regions with respect to the coupling point;

wherein the area of the first and second interior regions are individually selectively adjustable via a first and second slidable member intercoupled with the first and second leg loop respectively, wherein the first and second slidable members are translatable buckle members, wherein the translatable buckle members include a plurality of independent recesses through which independent portions of the first and second leg loop extend respectively, and wherein a plurality of independent portions of the first and second leg loop extend through at least one of the plurality of independent recesses of the translatable buckle members; and

wherein the particular minimum shear strength of the first and second leg loop is independent of the first and second slidable member and the area of the first and second interior region.

REJECTIONS

The following Examiner's rejections are before us for review.²

1. Claims 1–14 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

2. Claims 1–4, 10, and 13 are rejected under 35 USC § 103(a) as unpatentable over Wachtel (US 2,252,998, iss. Aug. 19, 1941) and Soubry (US 4,480,716, iss. Nov. 6, 1984).

² Claims 15–20 are withdrawn. Appeal Br. 5.

3. Claims 5–9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wachtel, Soubry, and Fildan (US 6,056,626, iss. May, 2, 2000).

4. Claims 1–4 and 10–14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Birckhahn (CH 697,423 B1, pub. Oct. 15, 2008), Wachtel, and Soubry.

5. Claims 1–8 and 10–14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Quatrehomme (EP 1,557,198 A1, pub. July 27, 2005), Birckhahn, Wachtel, and Soubry.

6. Claims 5–9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Quatrehomme, Birckhahn, Wachtel, Soubry, and Davis (US 4,768,689, iss. Sept. 6, 1988).

ANALYSIS

First Ground of Rejection: Lack of Written Description

We are not persuaded that the Examiner erred in finding that the Specification fails to provide the required written description support for the claim phrase “a plurality of independent portions of the first and second leg loop extend through at least one of the plurality of independent recesses of the translatable buckle members.” Appeal Br. 12–13, 27 (Claims App.); Final Act. 2.

The purpose of the written description requirement in 35 U.S.C. § 112, first paragraph, is to “clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.” *Ariad Pharms., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc) (quoting *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991)). “[T]he test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had

possession of the claimed subject matter as of the filing date.” *Id.* This test “requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.” *Id.* “Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.” *Id.*

Appellants contend that the claimed plurality of independent portions “is clearly illustrated in the original figures and would be understood by one skilled in the art.” Appeal Br. 12 (citing to annotated Fig. 1 and 2).³ Appellants continue by contending that “portions 134, 125, and 115 [are all part of the leg loop that] extend through a single recess [in the translatable buckle member] in the illustrated Figure 1.” *Id.* Appellants also contend that “[a] ‘portion of the leg loop’ should be reasonably interpreted to include all ‘portions’ including portions 132, 134, and 125 shown in Figure 1 . . . because they all form parts of the general leg loop structure.” Reply Br. 3.⁴

However, the Examiner correctly points out that Figure 1, not Figure 2, is the elected species.⁵ *Id.* at 20; *see also* Final Act. 15. We agree with the Examiner that Appellants’ contention is unsupported by Figure 1 which illustrates that “portion 134 is a portion of the secondary loop 125 that passes through a single recess [along] with a portion 115 of the leg loop,” explaining that “[t]he leg loop consists of [only] two portions 110 and 115

³ However, by also being limited to “wherein the translatable buckle members include a plurality of independent recesses through which independent portions of the first and second leg loop extend respectively,” independent claims 1 and 14 exclude the embodiment illustrated in Figure 2.

⁴ Claim 1 does not recite a second elongate member 134.

⁵ *See* Amendment 8 (filed April 19, 2012).

[each] passing through different [recesses] of the translatable buckle 120.”
Ans. 18 (citing Specification ¶ 28).

Accordingly, we sustain the Examiner’s rejection of claims 1–14 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Second Ground of Rejection: Obviousness of Claims 1–4, 10, and 13 over Wachtel and Soubry

Appellants argue claims 1–4, 10, and 13 together in contesting the rejection of these claims as obvious over Wachtel and Soubry. *See* Appeal Br. 15–17; *see also* Reply Br. 5–7. We select claim 1 as the representative claim for this group, and the remaining claims stand or fall with claim 1. *See* 37 C.F.R. 41.37(c)(1)(iv). We have considered Appellants’ arguments raised in the Appeal Brief and Reply Brief, but do not find them persuasive to demonstrate error in the Examiner’s rejection of claim 1 as being obvious over Wachtel and Soubry.

In rejecting claim 1, the Examiner finds that Wachtel discloses a harness leg loop system comprising, *inter alia*, first and second leg loops each having a translatable buckle member 33, and relies on Soubry for teaching “a closed loop 11 with a translatable buckle member (below and adjacent to element 18) [where] a plurality of the independent portions of the loop 11 extend through at least one of the plurality of independent recesses of the translatable buckle member[] [of Soubry].” Final Act. 3–4 (citing Soubry, Fig. 2).

Based on the foregoing, the Examiner reasons that

[i]t would have been obvious . . . to have combined, provided or substituted each of the translatable buckle members of Wachtel for a translatable buckle member, as taught by Soubry, by the substituted use of one known slide buckle for another, since it would have provided the predictable result of allowing [an] independent portion of his leg loop therethrough in adjusting the loop size.

Id. at 4.

Appellants first misstate the final rejection, contending that the Examiner is “citing the adjustable leg loop buckle element 11 of Wachtel to teach a selective area adjustment for each leg loop since element 33 cannot adjust the area within the leg loops because of the rigid leather material,” (citing Wachtel, 2, col. 1, ll. 21–25) and concluding that “Wachtel fails to teach a ‘first and second slidable member’ consistent with the claims.”

Appeal Br. 16.

However, the Examiner correctly explains that Wachtel’s members 33 slide “to maintain desired loop formation[s] 8 and 9, and the [Examiner] did not use buckle 11 for the slide member as argued by Appellant[s].”⁶ Ans. 22 (citing Wachtel 2:21–22). Appellants’ contention does not address the rejection set forth by the Examiner and is therefore not persuasive.

Appellants also contend that while “the Examiner cites the unlabeled buckle of Figure [2] of Soubry to teach the limitations pertaining to the translatable buckle members of claim 1,” that “substitution of the buckle of Soubry cannot be used to replace both elements 11 and 33 of Wachtel.”

Appeal Br. 16. Appellants again misstate the final rejection, which is based on the substitution of the unlabeled buckle of Soubry for *only* the

⁶ In an appeal under 35 U.S.C. § 134(a), it is the Examiner’s final rejection that we review. *See In re Webb*, 916 F.2d 1553, 1556 (Fed. Cir. 1990).

translatable buckle member 33 of Wachtel. *See* Ans. 24. Furthermore, the presence of additional structure in Wachtel, such as element 11, does not undermine a rejection where the claim uses an open ended transition “comprising.” *See Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1319 (Fed. Cir. 2009) (“The claim uses the term ‘comprising,’ which is well understood in patent law to mean ‘including but not limited to.’” (quoting *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 1360 (Fed. Cir. 2007))).

For these reasons, we sustain the rejection of claims 1–4, 10, and 13 under 35 U.S.C. § 103(a) as unpatentable over Wachtel and Soubry.

Third Ground of Rejection: Obviousness of Claims 5–9 over Wachtel, Soubry, and Fildan

In rejecting claim 5, the Examiner finds that “Fildan shows a slidable friction buckle at 30 to enable enhance[d] adjustment,” and that

[i]t would have been obvious . . . to have combined, provided or substituted the friction buckle member [30] of Fildan for [only] that of Wachtel at 11, by the substitute use of one known equivalent member for another for its known advantages . . . since it would have provided the predictable result of enhancing the adjusting of [Wachtel’s] leg loops.

Final Act. 5–6.

Appellants contend that “[n]either Wachtel nor Soubry teach[es] two intercoupled slidable members providing any form of adjustable functionality for the area within a leg loop,” and that “Fildan merely teaches a type of buckle without any type of intercoupling scheme or area adjustment functionality.” Appeal Br. 21. However, Appellants are simply

attacking Fildan in isolation for lacking support for findings not relied upon by the Examiner, rather than addressing the Examiner's combination of Wachtel, Soubry, and Fildan. Nonobviousness cannot be established by attacking references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). First, Appellants misread Wachtel which teaches two intercoupled slidable members 11 and 33. *See Fig. 1*. Furthermore, the Examiner points out that Appellants agree that "it is the teaching of Fildan which was used as the friction member, in lieu of element 11 of Wachtel, in providing a secondary individually selective adjustment means [in addition to] the adjustment by slidable member 33 of Wachtel." Ans. 27.

Appellants respond by observing that "the Examiner is relying on Wachtel as the primary reference and Fildan as the secondary reference to teach specific limitations," and that "[i]f either of these references fails to teach the respective limitations individually or in combination, the obviousness rejection is improper." Reply Br. 9. However, Appellants fail to point out where either reference fails to teach the disclosure relied upon by the Examiner. *See generally* Reply Br.

For the foregoing reasons, we sustain the rejection of claims 5–9 under 35 U.S.C. § 103(a) as unpatentable over Wachtel, Soubry, and Fildan.

Fourth, Fifth, and Sixth Grounds of Rejection: Obviousness of Claims 1–4 and 10–14 over Birckhahn, Wachtel, and Soubry; of Claims 1–8 and 10–14 over Quatrehomme, Birckhahn, Wachtel, and Soubry; and of Claims 5–9 over Quatrehomme, Birckhahn, Wachtel, Soubry, and Davis

Claims 1–10 and 13

We have affirmed the rejection of claims 1–4, 10, and 13 under 35 U.S.C. § 103(a) as being obvious over Wachtel and Soubry and claims 5–9 under 35 U.S.C. § 103(a) as being obvious over Wachtel, Soubry, and Fildan. These affirmances dispose of these claims before us on appeal. *See* 37 C.F.R. § 41.50(a)(1) (“The affirmation of the rejection of a claim on any of the grounds specified constitutes a general affirmation of the decision of the examiner on that claim, except as to any ground specifically reversed.”).

Claims 11 and 12

We understand Appellants’ appeal of claims 11 and 12 to rest on arguments presented against the proposed combination of Wachtel and Soubry, which we found not demonstrative of error in the Examiner’s rejection of claim 1, as set forth *supra*. *See* Appeal Br. 19. Accordingly, we sustain the rejections of claims 11 and 12 over the cited references, for the same reasons stated above with respect to the rejection of claim 1.

Claim 14

In contesting the rejection of claim 14, Appellants first argue that “[s]ince Quatrehomme and Buckhahn [sic] fail to teach ANY type of slidable member it is assumed the Examiner is again relying on Wachtel to teach the missing elements of claim 14.” Appeal Br. 20. Appellants continue by again misstating the final rejection in contending “elements 11 and 33 of Wachtel fail to teach an element that meets all of the slidable member limitations,” because “[n]either element 33 nor element 11 teach the

limitations of claim 14 pertaining to both 1) the adjustable functionality and 2) the translatable buckle member.” *Id.*

While noting that “[t]he Examiner also cites the unlabeled buckle of Figure [2] of Soubry to teach the limitations pertaining to the translatable buckle members of claim 14,” Appellants repeat the prior contention that “the substitution of the buckle of Soubry cannot be used to replace both elements 11 and 33 of Wachtel and therefore also fails to teach all of the slidable member limitations of claim 14.”⁷ *Id.*; *see also* Reply Br. 8.

In response, the Examiner first explains that “the difference at hand to be resolved between either Quatrehomme or Buckhahn [sic] and the claimed invention is the use of a slidable member for adjusting [the size of] the leg loops,” again pointing out that it is Wachtel that “teaches the use of a slidable member [33] for adjusting the size of his leg loops, . . . deemed proper for one of ordinary skill in the art to appreciate teaching of analogous arts in resolving the difference at hand.” Ans. 32–33. Appellants have not apprised us that the Examiner’s finding or rationale is in error.

In view of the foregoing, we sustain the Examiner’s unpatentability rejection of claim 14 over Quatrehomme, Birckhahn, Wachtel, and Soubry.

⁷ As pointed out previously, the Examiner only relies on element 33 of Wachtel for teaching the buckle member for which the buckle of Soubry is substituted. *See* Final Act. 3–4.

DECISION

We AFFIRM the Examiner's rejections of claims 1–14.

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