

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SIGURD SEIDEL

Appeal No. 97-2615
Application No. 08/293,681¹

ON BRIEF

Before McQUADE, CRAWFORD, and GONZALES, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 5, 10 and 17 through 21. Claims 6 through 9 and 11 through 16 have been allowed.

¹ Application for patent filed August 19, 1994.

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The appellant's invention relates to a ski boot. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's brief.

The references

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Marega 1990	4,920,666	May 1,
Walkhoff 1990	4,937,953	July 3,
Kaufman et al. (Kaufman) Sept. 1, 1992	5,142,798	
Bonnaventure 1992	5,152,084	Oct. 6,

The rejections

Claims 1 through 5, 10 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Walkhoff.

Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Walkhoff in view of Bonnaventure.

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Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Walkhoff in view of Kaufman.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Walkhoff in view of Marega.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 10, mailed December 19, 1996) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 9, filed November 25, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 through 5, 10 and 19 under 35 U.S.C. § 102(b) as being

anticipated by Walkhoff. A claim is anticipated only if each and every element as set forth in the claim is found, either

expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987).

Appellant admits that Walkhoff teaches each element of claim 1 except a first tensioning system being released when the shank part is in the relaxed position and a second tensioning system disposed in said outer shell for pulling said inner boot downwardly towards a sole of said outer shell when said shank part is pivoted from the relaxed position and locked in the latching downhill position.²

The examiner has stated that Walkhoff discloses a second tensioning system which includes elements 22, 24, 50 and 50' and that these elements are capable of pulling the inner boot

² We note that claim 1 recites "said first tensioning system being released when said shank part is in the relaxed position." However, the cable 34 of the first tensioning system is not released when said shank part is in the relaxed position. Rather, cable 34 is tightened and loosened by tension disk 36 independent of the position of the shank part. The examiner should consider whether the language of claim 1 regarding the first tensioning system is indefinite under 35 U.S.C. § 112, second paragraph.

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downwardly towards a sole of the outer shell when the shank
part

is pivoted from the relaxed position and locked in the latching downhill position. The examiner reasons:

The elements 22,24 extend over the inner shoe 20 (column 3, lines 3-5 of Walkhoff) and pulling elements 50, 50' are fastened on each support element 22, 24 (column 3, lines 43-44) and when the actuating lever is rotated it provide[s] a tensile force to pull elements 50, 50' causing a displacement of support elements 22,24 in the direction transverse to the longitudinal direction A of the boot (column 4, lines 50-56). The pulling elements 50, 50' with the support elements 22, 24 will naturally pull said inner boot 20 back to the rear of the boot and downwardly towards a sole of said outer shell. [Examiner answer at pages 4 and 5].

We do not agree. Walkhoff does not disclose that the elements 22, 24, 50 and 50' form a tensioning system that pulls the boot downwardly. Rather, Walkhoff discloses that elements 22, 24 are pulled transverse to the longitudinal direction A of the boot (Col. 4, lines 51-56). The examiner's finding that a second tensioning system i.e. elements 33, 24, 50 and 50' of Walkhoff pulls the outer shall downwardly toward the sole is mere speculation.

In addition, claim 1 recites that the second tensioning system pulls the inner boot downwardly towards the sole of the outer shell "when said shank part is pivoted from the relaxed

position and locked in the latching downhill position."

Walkhoff discloses that the pulling elements 50 and 50' are subjected to tensile forces after the shaft part 18 is clamped in the downhill position (Col. 4, lines 51-56). As such, there is no disclosure of any relationship between the position of the shaft part and the pulling elements 50 and 50' that would result in the outer shell being pulled towards the sole when the shaft is in the downhill position.

As we find that Walkhoff does not disclose a second tensioning system that pulls the outer shell toward the sole when the boot is in the downhill position, we will not sustain the examiner's rejection under 35 U.S.C. § 102(b) of claim 1 and claims 2 through 5, 10 and 19 dependant therefrom as anticipated by Walkhoff.

In addition, we will not sustain the remaining rejections i.e. the rejection of claims 20 and 21 under 35 U.S.C. § 103 as being unpatentable over Walkhoff in view of Bonnaventure; the rejection of claim 17 under 35 U.S.C. § 103 as being unpatentable over Walkhoff in view of Kaufman; and the rejection of claim 18 under 35 U.S.C. § 103 as being

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unpatentable over Walkhoff in view of Marega. In each of
these rejections, the examiner has relied

on Walkhoff for disclosing a second tensioning system as recited in claim 1 from which claims 17, 18, 20 and 21 depend. We have reviewed the disclosures of Bonnaventure, Kaufman and Marega and these references do not cure the deficiencies noted above for Walkhoff.

The decision of the examiner is reversed.

REVERSED

JOHN P. McQUADE)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MURRIEL E. CRAWFORD)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOHN F. GONZALES)	
Administrative Patent Judge)	

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