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Control No. 90/008,869
Art Unit 3993

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re *ex parte* Reexamination Application of:

U.S. Patent No. 6,886,553
Issued May 3, 2005

Confirmation No.: 1108

Group Art Unit: 3993

Control No.: 90/008,869

Examiner: Williams, Catherine Serke

Filed: October 5, 2007

TKHR Ref: 010887-1052

For: **SELF-CONTAINED PERSONAL WARMING APPARATUS AND METHOD OF WARMING**

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Reply Brief is timely submitted in response to the Examiner's Answer mailed March 25, 2011.

I. STATUS OF THE CLAIMS

Claims 1-4, 8-16, 18, and 19 remain pending in the present application. The Examiner's Answer maintains the rejections of the claims and generally repeats the arguments advanced during prosecution in addition to providing comments (in the "Response to Argument" Section, pages 13-19 of the Examiner's Answer) to the Appeal Brief, filed on February 15, 2011. With regard to the substantive remarks of the Examiner's Answer, Appellant respectfully disagrees and maintains the positions and arguments set forth in the Appeal Brief.

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As discussed in the Appeal Brief, the "agreeable feeling" described by *Tsuji* relates to application of the rayon non-woven fabric to a user. Even assuming, for the sake of argument, that the agreeable feeling is described in the context of the warming apparatus being used as a pocket warmer, this feature taught by *Tsuji* does not correspond to providing an air impermeable surface area that comprises a low coefficient of friction. Specifically, the inference that a surface (*i.e.*, a rayon non-woven fabric) provides an agreeable feeling due to a low coefficient of friction surface is not supported by the *Tsuji* reference. FIGS. 1 and 2 from the *Tsuji* reference are sectional views of embodiments of the warming apparatus taught by *Tsuji*. Various components of the warming apparatus are shown, including the heat generating agent, an air impermeable bag, and an air permeable film. The figures do not disclose or suggest an air impermeable surface area that comprises a low coefficient of friction.

Merely exhibiting a smooth surface or texture as the Examiner alleges in *Tsuji* does not ensure that the surface exhibits a low coefficient of friction such as to allow an object to easily slide into a pocket. The coefficient of friction depends on the materials used and results from the contact between two surfaces. The specification of U.S.

Patent No. 6,886,553 describes an air impermeable surface area that exhibits a low coefficient of friction, such as to allow the heat generating pack to easily slide into a pocket formed in a glove, sock, or belt for holding heat generating packs in position. The Examiner maintains that the feature relating to a low coefficient of friction in various claims is exceedingly broad. However, merely asserting that the warming apparatus of *Tsuji* is smooth does not support a conclusion that the surface of the warming apparatus has a low coefficient of friction.

Similarly, *Ohbiki* fails to disclose or suggest an air impermeable surface area that comprises a low coefficient of friction. *Ohbiki* describes a disposable pocket warmer "which makes it possible to be bent to fit along the curved surfaces or the bending parts of a human body ... and gives a warm feeling to a wearer." (*Ohbiki*, page 4, lines 26-29). However, there is no mention or suggestion that the air impermeable surface of *Ohbiki* comprises a low coefficient of friction. The Office Action contends that FIGS. 1-5 of *Ohbiki* show the surfaces as being smooth and that can easily slide into a pocket of a user. Such an inference is not supported by the figures or any place in the disclosure of *Ohbiki*. FIG. 1 of *Ohbiki* is a sectional view showing a containment bag for a heat generating agent. The Examiner acknowledges that the surface area materials of *Ohbiki* are not disclosed, but instead, relies on the figures to allegedly depict a smooth surface area and thus discloses a low coefficient of friction. Such an inference is not supported.

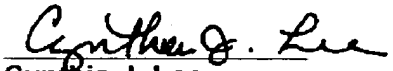
In rejecting various claims based on the *Koiso* reference, the Examiner asserts that "*[t]he polyethylene and polypropylene disclosed are considered to be low coefficient of friction materials since they are used in the construction of the film for the pack and*

figures 1 and 2 show that these films make a smooth surface area that can easily be slid into a pocket of a user." (Final Office Action mailed October 15, 2010, page 8). Appellant respectfully disagrees. In the Examiner's Answer, the Examiner contends that the Ramachandran Declaration is "*demanding that further limitations be read into the claim limitations that are not supported by the broad disclosure of the '553 patent specification.*" (Examiner's Answer mailed March 25, 2011, page 17). However, the rejection by the Examiner is apparently premised on the alleged inherency of one or more undisclosed elements. The Examiner's position is contrary to the Rule 1.132 Declaration by Uma Ramachandran filed May 19, 2008. The test is whether one of skill in art would have recognized the missing element is "necessarily present." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). One of ordinary skill in the art will appreciate that the use of such polymers as polyethylene and polypropylene does not automatically correspond with providing a low coefficient of friction material as the coefficient of friction of these polymers depends on many various parameters such as, for example, the selected film density and concentration of surface lubricant associated with these polymers. Even in view of the broad interpretation taken by the Examiner with regards to "low coefficient of friction," *Koiso* fails to disclose or suggest the features relating to this feature in various claims.

CONCLUSION

For at least the reasons discussed in this Reply Brief and in the previously submitted Appeal Brief, Appellant respectfully requests that the Examiner's rejection of the claims on appeal be overturned by the Board.

Respectfully submitted,



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May 25, 2011

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RE: Reply Brief

To Whom It May Concern:

Please find attached a Reply Brief and Certificate of Service for Application Control No. 90/008,869

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CERTIFICATE OF FACSIMILE TRANSMISSION
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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted on the date indicated below via facsimile to the United States Patent and Trademark Office, facsimile number (571)-273-8300.

Date: May 25, 2011 Maddie M. Weller
Maddie M. Weller

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Pursuant to 37 C.F.R. §§ 1.530(c) and 1.248, I hereby certify that in connection with the above-referenced application, a copy of the following documents were filed with the U.S. Patent and Trademark Office on May 25, 2011:

Reply Brief

is being deposited with the United States Postal Service (via First Class mail service) on May 25, 2011 with first class postage addressed to:

William L. Brooks
EDWARDS, ANGELL, PALMER & DODGE LLP
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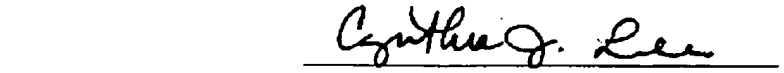
Respectfully submitted,



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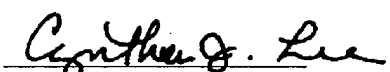

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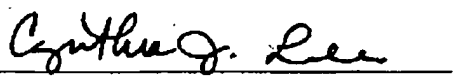

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