

UNITED STATES
PATENT AND TRADEMARK OFFICE



iH Patent Trial and Appeal Board **Inventor Hour**

Episode 24

Cynthia Hardman, Administrative Patent Judge

Ryan Flax, Lead Administrative Patent Judge

John Schneider, Administrative Patent Judge

Special guest:

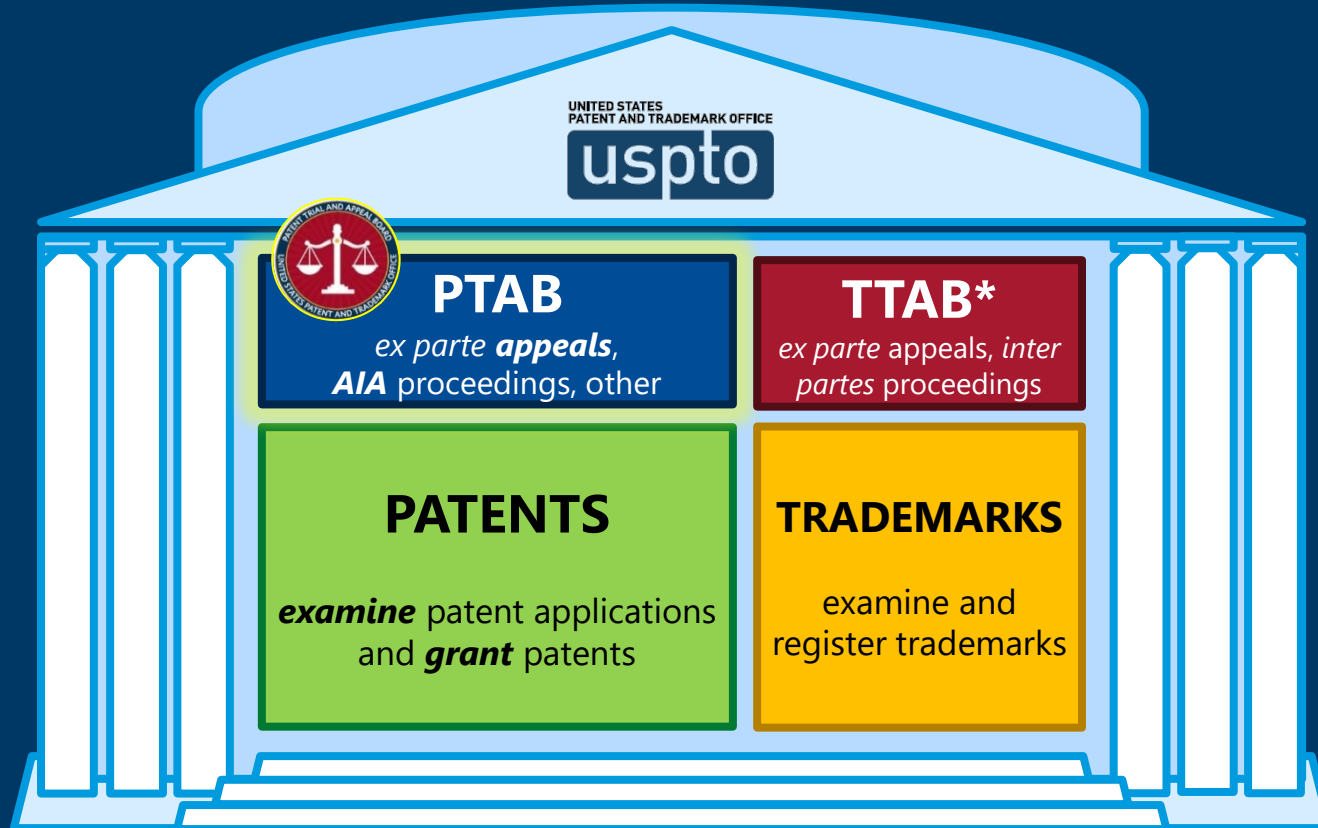
NaThanya Ferguson, Office of Innovation Outreach

January 25, 2024



UNITED STATES
PATENT AND TRADEMARK OFFICE ®

What is the Patent Trial and Appeal Board?



*Trademark Trial and Appeal Board (TTAB)

Today's agenda

1

**Interview with
NaThanya
Ferguson**

2

**PTAB
case file**

3

**Inventor
cards**

4

Q&A

*Information not intended as legal advice

Question/comment submission

To send in questions or comments about the presentation, please email:

– PTABInventorHour@uspto.gov



Cynthia Hardman, Administrative Patent Judge



An interview with NaThanya Ferguson, Office of Innovation Outreach



NaThanya Ferguson
Office of Innovation Outreach

Empowering Women's Entrepreneurship (WE)



<https://www.uspto.gov/initiatives/we>



Question/comment submission

To send in questions or comments about the presentation, please email:

– PTABInventorHour@uspto.gov



Appeal brief tool

- Need help in preparing an appeal brief? Check out the appeal brief tool
 - www.uspto.gov/patents/patent-trial-and-appeal-board/resources/preparing-ex-parte-appeal-brief
- Tool walks through the required sections of an appeal brief, gives instructions on what information should be presented in each section, and provides examples
- Instructional video also available
- Free!



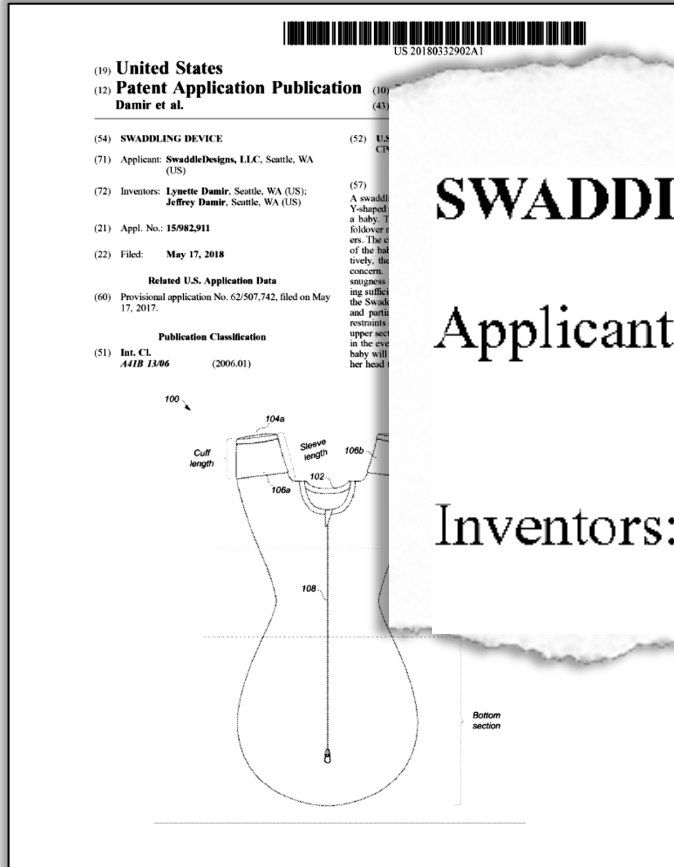
Ryan H. Flax, Lead Administrative Patent Judge



PTAB case file

Ex parte Damir, Appeal No. 2022-004469

U.S. application 15/982,911 (Appeal No. 2022-004469)



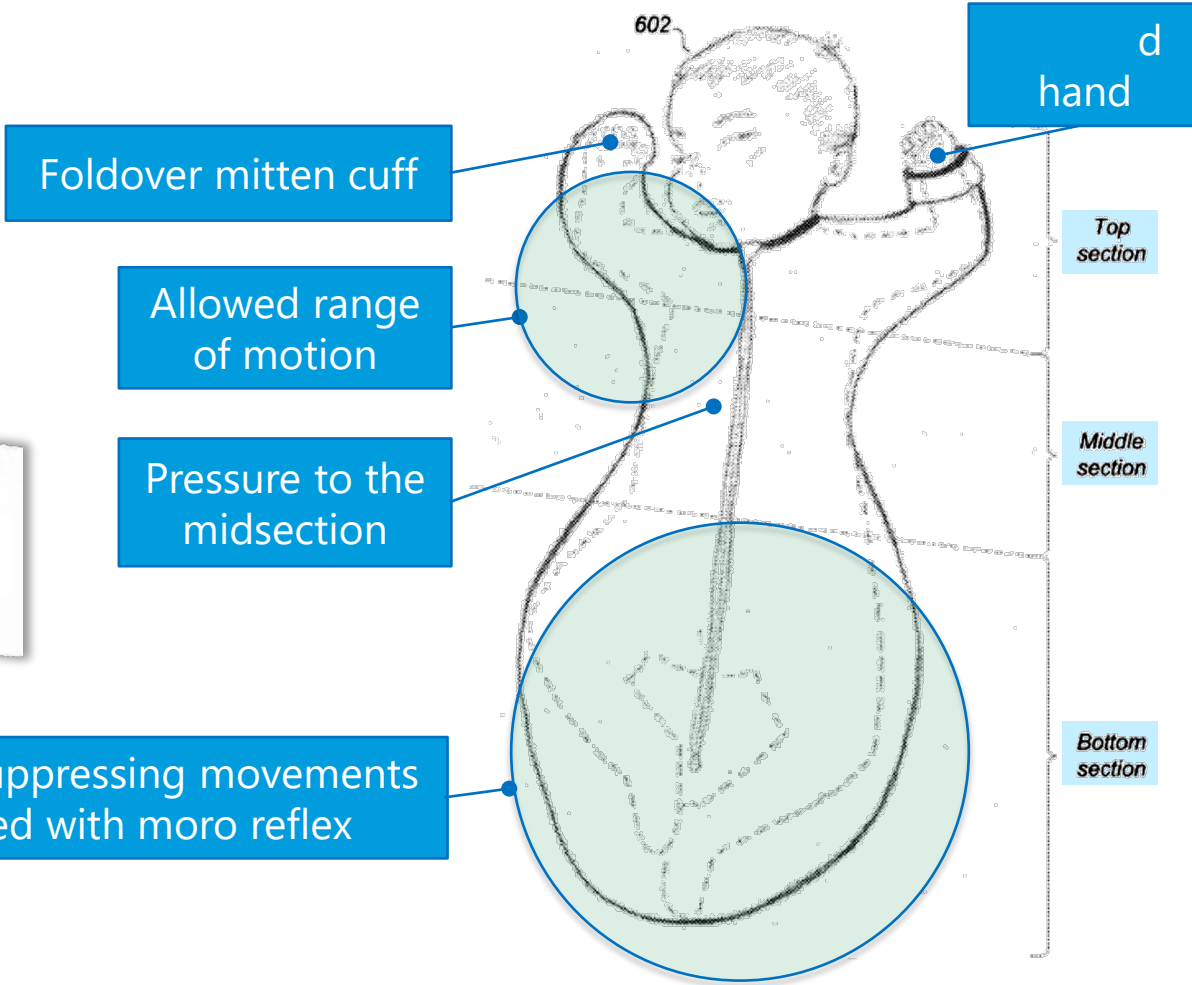
SWADDLING DEVICE

Applicant: **SwaddleDesigns, LLC, Seattle, WA (US)**

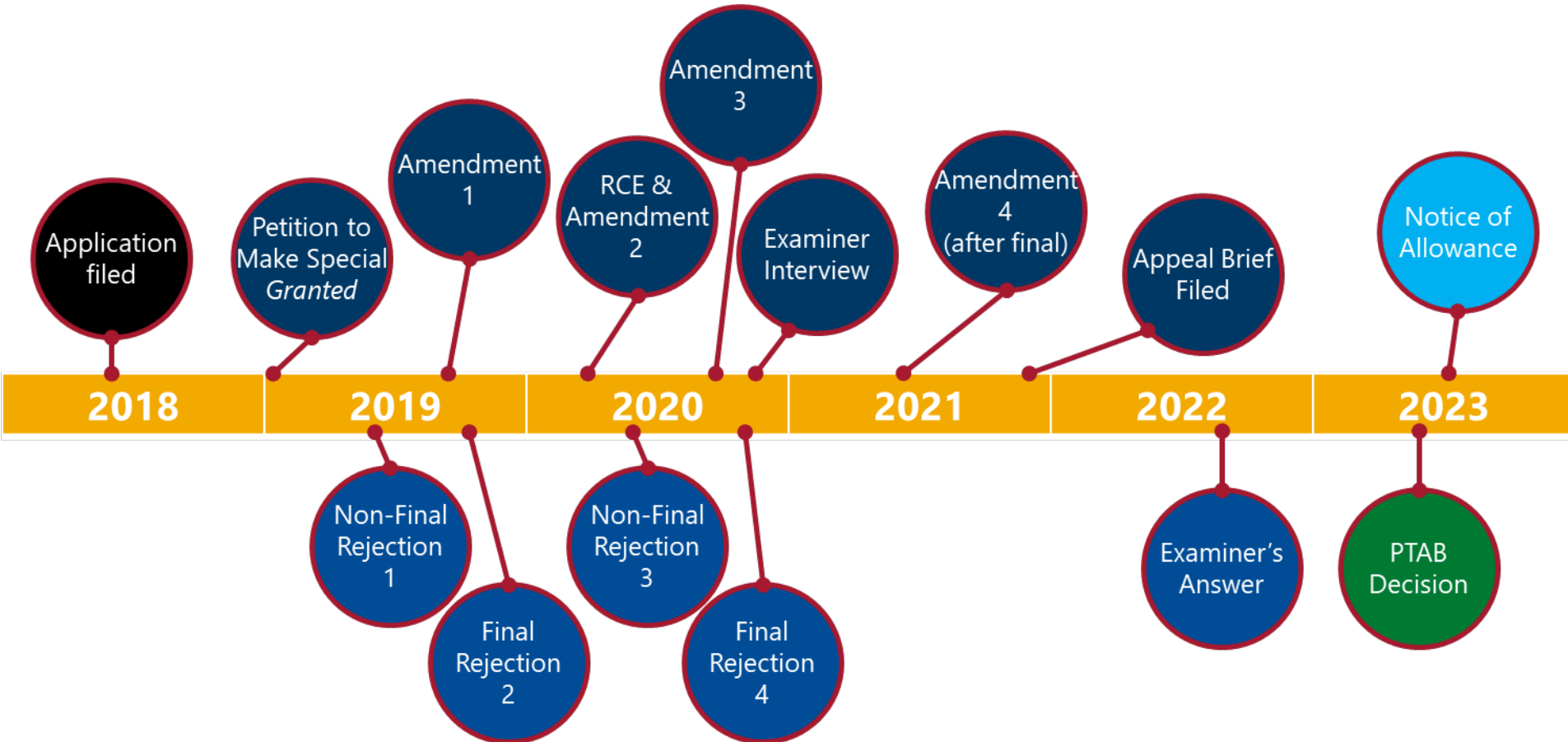
Inventors: **Lynette Damir, Seattle, WA (US); Jeffrey Damir, Seattle, WA (US)**

U.S. application 15/982,911 (Appeal No. 2022-004469)


SWADDLING DEVICE



Prosecution timeline



Examiner's final rejection

 UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Attn: COMMISSIONER FOR PATENTS
P.O. Box 1462

APPLICATION NO.	FILING DATE
15/682,911	05/17/2018

2315 7900 1104/020
LOWE GRAHAM JONES, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

Please find below and/or attached an O


The time period for reply, if any, is set in

Notice of the Office communication w
following e-mail address(es):
docketing-patent@lowegrahamjones.com
patentdocketing@lowegrahamjones.com

PTOL-90A (Rev. 04/07)

Claim(s) 8 is/are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor or a joint inventor, or for pre-AIA the inventor(s), at the time the application was filed, had possession of the claimed invention.

Examiner's final rejection

 UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1400

APPLICATION NO.	FILING DATE
15/982,911	05/17/2018

2315 7900 11/24/2020
LOWE GRAHAM JONES, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

Please find below and/or attached an O

The time period for reply, if any, is set in


Notice of the Office communication w
following e-mail address(es):
docketing-patent@lowegrahamjones.com
patentdocketing@lowegrahamjones.com

PTOL-90A (Rev. 04/07)

Claim(s) 8 is/are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art, the inventor or a joint inventor, or for pre-AIA the inventor(s), at the time the application was filed, had possession of the claimed invention.

**WITHDRAWN
BY EXAMINER**

Examiner's final rejection

 UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS

APPLICATION NO.	FILING DATE
15/682,911	05/17/2018

2515 7500 1104/020
LOWE GRAHAM JONES, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

Please find below and/or attached an Office


The time period for reply, if any, is set in the

Notice of the Office communication was sent to the following e-mail address(es):
docketing-patent@lowegrahamjones.com
patentdocketing@lowegrahamjones.com

PTOL-90A (Rev. 04/07)

Claims 16-22 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Examiner's final rejection

 UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
ARLINGTON, VIRGINIA 22202-4302
Arlington, Virginia 22202-4302

APPLICATION NO.	FILING DATE
15/982,911	05/17/2018

2315 7900
LOWE GRAHAM JONES, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

Please find below and/or attached an Office Action in response to your communication dated 05/17/2018.

The time period for reply, if any, is set in the attached notice.


Notice of the Office communication was sent to the following e-mail address(es):
docketing-patent@lowegrahamjones.com
patentdocketing@lowegrahamjones.com

PTOL-90A (Rev. 04/07)

Claims 16-22 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which is the invention. For pre-AIA the applicant regards as the invention.

**WITHDRAWN
BY EXAMINER**

Examiner's final rejection

 UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	CLASSIFICATION
15/682,911	05/17/2018	

2315 7900 1104/020
LOWE GRAHAM JONES, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

Please find below and/or attached an Office communication in response to your communication(s) dated 05/17/2018.
The time period for reply, if any, is set in the attached communication(s).
Notice of the Office communication was sent to you by e-mail on 05/17/2018.
following e-mail address(es):
docketing-patent@lowegrahamjones.com
patentdocketing@lowegrahamjones.com

PTOL-90A (Rev. 04/07)

Claims 1,4,6,8-11, 15- 22 is/are rejected under 35 U.S.C. 103 as being unpatentable over Krawchuk (U.S. 20110180079) in view of Wollschlaeger (U.S. 20170311663).

Claims 12 and 13 is/are rejected under 35 U.S.C. 103 as being unpatentable over Krawchuk (U.S. 20110180079) in view of Wollschlaeger (U.S. 20170311663) and further in view of Krawchuk (U.S. 20150000036).

Claim 14 is/are rejected under 35 U.S.C. 103 as being unpatentable over Krawchuk (U.S. 20110180079) in view of Wollschlaeger (U.S. 20170311663) and further in view of Blacker (U.S. 20160113331).

Examiner's asserted prior art

Krawchuk (1)

US 2010/007941

(10) United States
(12) Patent Application Publication (16) Pub. No.: US 2011/0180079 A1
Krawchuk (4) Pub. Date: Jul. 28, 2011

(54) SWADDLING-BEST (30) Foreign Application Priority Data
(76) Inventor: Hana-Ek Krawchuk, Marathi Jan. 30, 2009 (US) 2009/03034
(51) Int. Cl. H01M 1/00 (2006.01) Publication Classification
(52) U.S. Cl. 606.01 (2006.01) 120873
(57) ABSTRACT
A new or otherwise swaddling pad that provides infants by self-wrapping arrangement of the limbs to express the body fluids, use allowing movement of limbs to stretch limbs, including, non-elastic necking and allowing the infant to self-wraps by making the bands.

(86) PCT No.: PCT/US2009/008
8/19 (2010), Aug. 27, 2009
8/14 (2009)

Krawchuk (2)

US 2015/000036A1

(10) United States
(12) Patent Application Publication (16) Pub. No.: US 2015/0000036 A1
Krawchuk (4) Pub. Date: Jan. 1, 2015

(54) SLEEPING BAG FOR INFANTS AND CHILDREN (30) Foreign Application Priority Data
(71) Applicant: Hana-Ek Krawchuk, Marathi (US) 2009/03034
(72) Inventor: Hana-Ek Krawchuk, Marathi (US) 2009/03034
(51) Int. Cl. H01M 1/00 (2006.01) Publication Classification
(52) U.S. Cl. 606.01 (2006.01) 120873
(57) ABSTRACT
A new or improved ventilation system for an infant sleeping bag that expresses the problem of inadequate ventilation while wholly containing the legs within the sleeping bag and including the risk of providing pressure points. This invention also provides a new or otherwise sleeping bag for infants and young children with an improved air ventilation system, a new or otherwise sleep garment to reduce heat retention, and a new or improved ventilation system for sleeping bags generally.

(86) PCT No.: PCT/US2013/00676
8/17 (2013), Aug. 26, 2014
(57) Pub. No.: 2013/0200777

Blacker

US 2016/0113331A1

(10) United States
(12) Patent Application Publication (16) Pub. No.: US 2016/0113331 A1
Blacker (4) Pub. Date: Apr. 28, 2016

(54) PANTS SWADDLING SYSTEM AND ANKLE TIED-BELT (30) Foreign Application Priority Data
(71) Applicant: Rachel Kathryn Blacker, Las Vegas, NV (US) 2015/0113331
(72) Inventor: Rachel Kathryn Blacker, Las Vegas, NV (US) 2015/0113331
(51) Int. Cl. H01M 1/00 (2006.01) Publication Classification
(52) U.S. Cl. 606.01 (2006.01) 120873
(57) ABSTRACT
A method and apparatus for securing swaddling an infant, including a pants component having a back and long legging component provided in a one-piece suit, and a swaddle component having a corresponding back and long legging component and the pants component adhere to one another via the back and long legging component. The swaddle then may be used to secure the pants component and adhere to itself to secure the infant in the infant sleep providing a secure and comfortable available to the infant.

Wollschlaeger

US 2017/0311663A1

(10) United States
(12) Patent Application Publication (16) Pub. No.: US 2017/0311663 A1
Wollschlaeger et al. (4) Pub. Date: Nov. 2, 2017

(54) CONVERTIBLE WEARING APPAREL (30) Foreign Application Priority Data
(71) Applicant: Gumbak LLC, Beaverton, OR (US) 2006/0222222
(72) Inventor: Ju Wollschlaeger, Portland, OR (US); Liang Zhang, Portland, OR (US); Sam Nicholas, Portland, OR (US) 2006/0222222
(51) Int. Cl. H01M 1/00 (2006.01) Publication Classification
(52) U.S. Cl. 606.01 (2006.01) 120873
(57) ABSTRACT
A garment comprises a body having a first side and a back side and a second side and a back side. The garment further comprises a front flap extending across the back side of the body, the front flap comprising between a first portion and a second portion. The first portion may extend across the back side and a back side, a first flap extending across the back side of each sleeve and a second portion. The back side of each sleeve may be longer than the first side of each sleeve. The flap may be attached to each sleeve near each sleeve's first and a second side, the first and the second side each formed from fabric having a different pattern, color, texture, or other perceivable distinction than a fabric used to form the rest of the garment.

Appellant's appeal arguments

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : SwaddleDesigns, LLC
Application No. : 15/982,911
Filed : May 17, 2018
For : SWADDLING DEVICE

Examiner
Art Unit
Docket No.
Date

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF

Commissioner for Patents:

This brief is in furtherance of the Notice of Appeal filed on 05/17/2018. The fees required under Section 1.17(b), and any other fees, if any, for filing this brief and fees therefore, are addressed in the accompanying fee statement.

I. REAL PARTY IN INTEREST

SwaddleDesigns, LLC is the real party in interest.

II. SUMMARY OF CLAIMED SUBJECT MATTER

The present U.S. Application Serial Number 15/982,911, which includes 2 sets of claims: i) independent claim 1 and 21-22; (ii) independent claim 16 and its dependent claims 17-20.

According to 37 CFR 41.37(c)(1)(ii), Applicant's brief shall refer to the specification in the Record by paragraph number, and to the drawing, if any, by reference character designator.

III. ARGUMENT

A. *Claims 1, 4, 6, and 8-22 Are Not Obvious Over Krawchuk in view of Wollschlaeger under 35 U.S.C. § 103(a).*

order to arrive at this combination, the Examiner makes several assumptions that are not borne out by a proper reading of the references, including that the sleeve length (essentially doesn't matter) – that “the sleeve portions would not operate differently having a length with the claimed range.” (Final Office Action, p. 10-11.) This conclusion is necessitated by the position taken by the Examiner, because she must (and does) first admit that the combination “is silent to the sleeve portions each having a sleeve length of between 3 and 4 inches.” Therefore, in order to find the

Appellant's appeal arguments

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : SwaddleDesigns, LLC
Application No. : 15/982,911
Filed : May 17, 2018
For : SWADDLING P

Exam
Art U
Doc
Date

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL

Commissioner for Patents:

This brief is in furtherance of 37 CFR 41.37(c)(1)(ii). The fees required under Section 1.17 of the Manual of Patent Examining Procedure, effective as to filing this brief and fees therefore, are addressed in the fee schedule.

I. REAL PARTY IN INTEREST

SwaddleDesigns, LLC is the real party in interest.

II. SUMMARY OF CLAIMED SUBJECT MATTER

The present U.S. Application includes 2 sets of claims: (i) in claims 1-15 and 21-22; (ii) independent claim 16 and its dependent claims 17-20.

According to 37 CFR 41.37(c)(1)(ii), Appellant must provide an explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. For each rejected independent claim,

As discussed further below, Appellant through its Supplemental Declaration of Lynette Damir, who is one skilled in the art, a co-inventor, and intimately familiar with the issues being addressed at the time of Krawchuk's filing, disagrees in whole with the Examiner's naked assertions which are not supported by a skilled person's review of the text and figures of the references. Accordingly, when Ms. Damir's presented evidence and opinions are properly considered as they should be against any supposed evidence presented by the Examiner, the Examiner's ultimate conclusion of obviousness should be overturned.



Appellant's appeal evidence

Applic
Applic
Filed
For

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : SwaddleDesigns, LLC
Application No. : 15/982,911
Filed : May 2017
Title : SWADDLE

Mail St
Comm
P.O. Bo
Alexan

SUPPLEMENTAL

I, Lynette Damir, residing

Comm

2021.
filing t

I.

II.

applica
and 21

nation
which
number

1. I am the founder of SwaddleDesigns, LLC, the assignee and applicant of U.S. Patent Application No. 15/982,911 (“Subject Application”).

2. Prior to founding SwaddleDesigns, LLC, I worked at a hospital and I was the mother of three children. For several years, I have been focused on designing baby products, specifically sleeping sacks and have conducted research on baby products for babies. In addition, I have shared my research with the American Academy of Pediatrics (AAP) and the American Society of Pediatric Nurses (ASPN) related to safe sleep.

3. As the CEO of a baby product company, I study and strive to understand what new parents struggle with, what new parents use, and what new parents do when trying to get their baby to sleep, and I analyze other available products and their relative merits and shortcomings. My experience, my education, and my position as a baby product company CEO, provided me with the context, opportunity, and insight to design an innovative solution to address a long-standing problem of supporting babies during a transitional phase between full swaddling and no swaddling. This transitional phrase presents competing needs of needing to be swaddled to partially suppress reflexes that startle sleeping babies to awaken yet allow sufficient movement to prevent suffocation.

SUPPLEMENTAL DECLARATION OF LYNETTE DAMIR

UNDER 37 CFR 1.132

I, Lynette Damir, residing at 6247 38th Ave NE, Seattle, WA 98115 declare as follows.

1. I am the founder for SwaddleDesigns, LLC, the assignee and applicant of U.S.

Patent Application No. 15/982,911 (“Subject Application”).

Appellant's appeal evidence

Applic
Applic
Filed
For

Mail S
Comm
P.O. B
Alexan

Comm

2021.
filing t

I.

II.

applica
and 21

nation
which
number

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Swa
Application No. : 15/9
Filed : May
Title : SWA

SUPPLEMENTAL STATEMENT

I, Lynette Damir, residing at

1. I am the founder of Patent Application No. 15/982,5

2. Prior to founding

hospital and I was the mother of
years, I have been focused on

sleeping sacks and have conducted
babies. In addition, I have shared

Academy of Pediatrics (AAP) information

related to safe sleep.

3. As the CEO of a company where

parents struggle with, what new products
to sleep, and I analyze other available

experience, my education, and in the
the context, opportunity, and in the

problem of supporting babies during
This transitional phrase presents

reflexes that startle sleeping babies
suffocation.

22. Further, the third embodiment described in Figures 5A and 5B of Krawchuk and

paragraphs [0097]-[0100] also doesn't allow the baby to reposition its head to access air by using

the baby's arms to lift its torso, as claimed in the Subject Application (or to "push off the mattress"

as stated in para [0082] of Krawchuk). The Office Action states that the wings of this embodiment

"allow the wearer to move their arms from the position of fig. 5A to a position in front of the

wearer's face, thereby providing enough mobility to enable use of the baby's arms to lift its torso."

* * *

position relative to the face and accessible to the mouth" in paragraph [0100]. In addition, Figures

5A and 5B still show that the wings are much shorter than the 3-4 inches of my claimed swaddling

device. I can tell this because the ends of the wings 140 would end up at the mouth level of the

baby's face given their positions relative to the neck. The tension pouches would then hold the

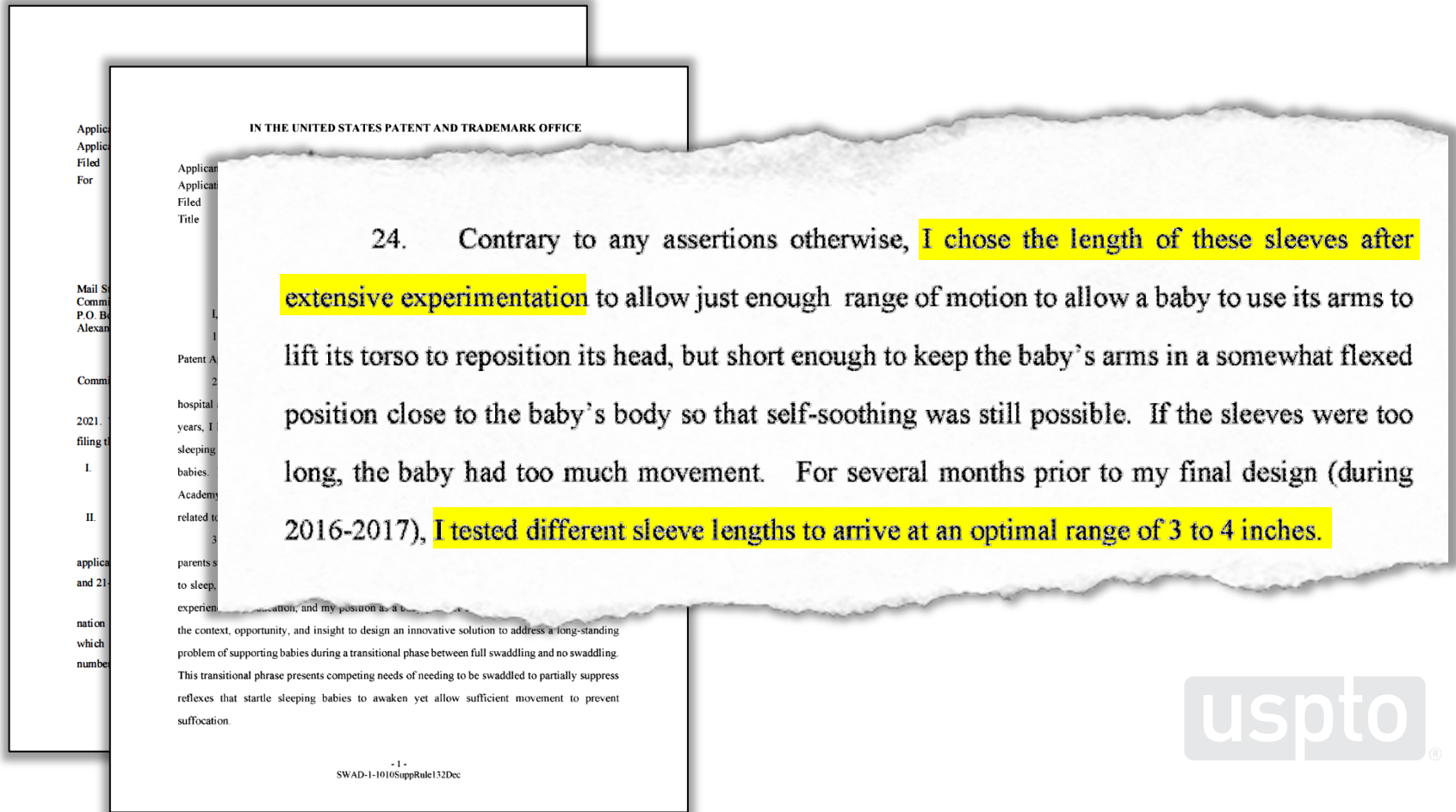
baby's arms so that the baby could not extend its arms to lift its torso and upper body to reposition

its head to access air when prone. Also, even if the baby's elbows were further away from the

baby's sides, then tension on the hands would not allow the baby to get sufficient range of motion

and leverage to lift its torso.

Appellant's appeal evidence



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant
Applicant
Filed
For

Mail St
Comm
P.O. B
Alexan

Comm

2021
filing t

I.

II.

applica
and 21

nation
which
number

Applicant
Applicant
Filed
Title

I.
Patent A
2
hospital
years, I
sleeping
babies.
Academy
related to
3
parents s
to sleep.
experien

ation, and my position as a
the context, opportunity, and insight to design an innovative solution to address a long-standing problem of supporting babies during a transitional phase between full swaddling and no swaddling. This transitional phrase presents competing needs of needing to be swaddled to partially suppress reflexes that startle sleeping babies to awaken yet allow sufficient movement to prevent suffocation.

24. Contrary to any assertions otherwise, I chose the length of these sleeves after extensive experimentation to allow just enough range of motion to allow a baby to use its arms to lift its torso to reposition its head, but short enough to keep the baby's arms in a somewhat flexed position close to the baby's body so that self-soothing was still possible. If the sleeves were too long, the baby had too much movement. For several months prior to my final design (during 2016-2017), I tested different sleeve lengths to arrive at an optimal range of 3 to 4 inches.



1. The Examiner Has Failed to Meet Her Burden to Establish a Prima Facie case of Obviousness of Claims 1, 4, 6, and 8-22 Sufficient to Shift the Burden to Appellant to Present Evidence of Non-Obviousness.

2. Appellant's Supplemental Declaration Provides Sufficient Rebuttal Evidence that Claims 1, 4, 6, and 8-22 Are Not Obvious Over Krawchuk in view of Wollschlaeger.

3. The Alleged Combination of Krawchuk with Wollschlaeger is Based Upon Impermissible Hindsight.

4. Dependent Claims 4, 6, and 8-15 and 17-22 Also Are Not Obvious Over Krawchuk in view of Wollschlaeger.

B. Claim 8 Is Not Obvious Over Krawchuk in view of Wollschlaeger under 35 U.S.C. § 103(a).

C. Claims 12-13 Are Not Obvious Over Krawchuk in view of Wollschlaeger and further in view of Krawchuk '036 under 35 U.S.C. § 103(a).

IN THE UNITED STATES

Applicant : SwaddleDesign
Application No. : 15/982,911
Filed : May 17, 2018
For : SWADDLING

Examiner
Art Unit
Docket
Date

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF

Commissioner for Patents:

This brief is in furtherance of the Notice of Appeal filed on 05/17/2018. The fees required under Section 1.17(b), and any other fees, are addressed in the enclosed fee statement.

I. REAL PARTY IN INTEREST

SwaddleDesigns, LLC is

II. SUMMARY OF CLAIMED SUBJECT MATTER

The present U.S. Application includes 2 sets of claims: (i) independent claim 16 and dependent claim 17; and (ii) independent claim 16 and dependent claim 17.

According to 37 CFR 4.102, the specification shall refer to the specification in the Request for Appeal, and to the drawing, if any, by reference to the subject matter defined in each of the independent claims involved in the appeal.

which shall refer to the specification in the Request for Appeal, and to the drawing, if any, by reference to the subject matter defined in each of the independent claims involved in the appeal.

PTAB's decision

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

Ex parte LYNETTE DAMIR and

Appeal 2022-004
Application 15/981,200
Technology Center

Before BIBHU R. MOHANTY, BRUCE T. VENTURA, and
BRADLEY B. BAYAT, *Administrative Patent Judges*,
BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the
Examiner's decision to reject claims 1, 4, 6, and 8–22, which constitute all
pending claims on appeal. *See* Final Act. 1. We have jurisdiction under
35 U.S.C. § 6(b).

We REVERSE.

¹ "Appellant" refers to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as "SwaddleDesigns, LLC." Appeal Br. 1.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 4, 6, and 8–22, which constitute all pending claims on appeal. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD
Ex parte LYNETTE DAMIR and JEFFREY DAMIR

Appeal 2022-004469
Application 15/982,911
Technology Center 3700

Before BIBHU R. MOHANTY, BRUCE T. WIEDER, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.
BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from
Examiner's decision to reject claims 1, 4, 6, and 8–22, which
pending claims on appeal. *See* Final Act. 1. We have jurisdiction
35 U.S.C. § 6(b).

We REVERSE.

¹ "Appellant" refers to "applicant" as defined in 37 C.F.R. § 1.101, which identifies the real party in interest as "SwaddleDesigns, LLC."

The Examiner's conclusion that it would have been obvious "to have a sleeve length of between 3 and 4 inches" is based solely on the general legal principle espoused in the *Gardner* case, namely, that recitation of a relative dimension does not patentably distinguish over the prior art where the claimed dimension would not perform differently than the prior art device. Final Act. 11 (citing *Gardner, supra*). However, there is no evidence in the record before us by which we can reliably determine that a sleeve length in the claimed range would not result in a performance difference. In contrast with the Examiner's unsupported statement that "[t]he sleeve portions would not operate differently having a length within the claimed range" (Final Act. 11; Ans. 4), the record includes declaratory evidence that the claimed invention yields improved operational properties not present in the cited prior art (Appeal Br. 9–10 (citing Supp. Decl. ¶¶ 22, 24–29)). On this record, we cannot agree that a preponderance of the evidence weighs in favor of the Examiner's conclusion of obviousness.

PTAB's decision

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

Ex parte LYNETTE DAMIR and

Appeal 2022-004
Application 15/982
Technology Center

Before BIBHU R. MOHANTY, BRUCE T. V. BRADLEY B. BAYAT, *Administrative Patent Judge*,
BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE BOARD

Pursuant to 35 U.S.C. § 134(a), Appellant's appeal is hereby affirmed. The Examiner's decision to reject claims 1, 4, 6, and 7 is affirmed. See Final Act. 1. V. 35 U.S.C. § 6(b).

We REVERSE.

¹ "Appellant" refers to "applicant" as defined in 37 C.F.R. 1.101. Appellant identifies the real party in interest as "SwaddleDesigns, LLC." App.

We also are persuaded by Appellant's argument that the Examiner's additional rationale, namely, that "the sleeve portions of the Krawchuk/Wollschlaeger combined reference to each have a sleeve length of between 3 and 4 inches in order to optimize the length to suit the wearer's proportions" (Final Act. 12; Ans. 4) is unfounded because the Examiner has not established that "the length of sleeves (as a claimed variable)" as claimed was recognized in the prior art to be a result effective variable. Appeal Br. 14. Rather, as discussed, the Examiner found that the cited references are silent as to the length of the sleeve portions. See Final Act. 11.

Notice of allowance

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

25315 7980 06/01/2023
LOWE GRAHAM JONES, PLLC
1325 Fourth Avenue
SUITE 1130
SEATTLE, WA 98101

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR
159623911	05/17/2018	Lynette Damer

TITLE OF INVENTION: SWADDLING DEVICE

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE
provisional	SMALL	\$480	\$0.00

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE IS \$480.

FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION, THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B - FEE TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE IS

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as small entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 40% the amount of undiscounted fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and submitted to the USPTO with your ISSUE FEE and PUBLICATION FEE (if required). If you are a small entity, the Part B - Fee(s) Transmittal should be completed. If an equivalent of Part B is clearly made, and delays in processing may occur due to the difficulty in recognizing the equivalent.

III. All communications regarding this application must give the application number. Please direct all communications prior to the mailing date of this notice to the examiner assigned to the application. Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1989. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

Page 1 of 3

PTOL-85 (Rev. 02/11)

3. The allowed claim(s) is/are 1, 4, 6 and 8-22. As a result of the allowed claim(s), you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: the claims are allowed in view of the appeal board decision dated 5/4/2023.

Compare: Filed vs issued claims

Claim 1 as-filed

1. A swaddling device, comprising:

a one-piece sack that has a top section, a middle section, and a bottom section, wherein the sack is configured to substantially enclose a baby, wherein the one-piece sack includes:

a neck opening;

a first sleeve portion positioned on a first side of the neck opening; and

a second sleeve portion positioned on a second side of the neck opening, wherein the first and second sleeve portions extend upwards in a Y-shaped configuration with the distal ends above the shoulder line of the swaddling device,

wherein each of the first and the second sleeve portion have a distal end that is selectively openable by a caregiver, such that when the distal end is in an open position, a hand of the baby is exposed, and when the distal end is in a closed position, the hand of the baby is enclosed within the sleeve portion, and

wherein the one-piece sack partially restricts movement of the baby and thereby suppresses the Moro Reflex, while also snugly enveloping the stomach of the baby and thereby providing constant moderate pressure thereto.

Claim 1 as-allowed

1. A swaddling device, comprising:

a one-piece sack that has a top section, a middle section, and a bottom section, wherein the one-piece sack is configured to substantially enclose a baby, wherein the one-piece sack includes:

a neck opening;

a first sleeve portion positioned on a first side of the neck opening; and

a second sleeve portion positioned on a second side of the neck opening,

wherein the first and second sleeve portions each have a proximal end beginning at a shoulder line of the swaddling device and a distal end above the shoulder line of the swaddling device, wherein the distance between the distal ends is greater than the distance between the proximal ends, wherein each of the first and the second sleeve portion have a foldover mitten cuff at the distal end that is selectively openable by a caregiver, wherein each of the foldover mitten cuffs is closed by turning cuff material over an opening at the distal end and blocking use of the distal end opening, wherein each of the foldover mitten cuffs is opened by turning cuff material back on itself to allow access to the exterior of the swaddling device through the distal end of each of the first and second sleeve portions, wherein each foldover mitten cuff is at least 2.5 inches in length, measured along a longitudinal axis of each of the first and second sleeve portions, wherein each sleeve portion is configured to:

expose a hand of the baby outside of the sleeve portion when the foldover mitten cuff is in an open position; and

enclose the hand of the baby within the sleeve portion when the foldover mitten cuff is in a closed position,

wherein the sleeve portions each have a sleeve length of between 3 and 4 inches and are configured to partially restrict motion of arms of the baby when

hands of the baby are inside the sleeve portion with the foldover mitten cuff in the closed position by preventing the cuffs from opening in response to force applied from hands or arms of the baby, wherein the sleeve length is structured to enable a range of motion of the baby's arms upwards beyond the ears of the baby, and wherein the length of the sleeve portions in combination with the length of the foldover mitten cuffs reduce suffocation risk when the baby is in a prone position by still allowing a range of motion of the baby's arms sufficient to enable use of the baby's arms to lift its torso to reposition its head to access air yet allow access to the baby's mouth to self-soothe, and wherein the one-piece sack is configured to: partially restrict movement of the baby and thereby partially suppress the Moro Reflex; and envelop the torso of the baby and thereby provide pressure to the mid-section of the baby, the one-piece sack thereby providing a transitional swaddling device, that enables the baby to wear both sleeves simultaneously in combination with one or both open or closed foldover mitten cuffs to transition a baby out of swaddling yet still provide partial suppression of the Moro Reflex.

Question/comment submission

To send in questions or comments about the presentation, please email:

– PTABInventorHour@uspto.gov



LEAP program



Legal **E**xperience and **A**dvancement **P**rogram provides training and oral advocacy opportunities for less experienced advocates to gain practical experience in proceedings before the Patent Trial and Appeal Board.

www.uspto.gov/patents/ptab/leap

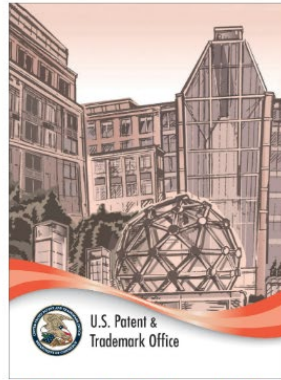


John Schneider, Administrative Patent Judge



Inventor trading cards

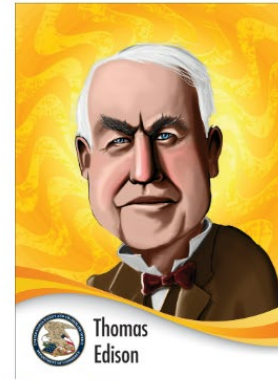
Inventor trading cards



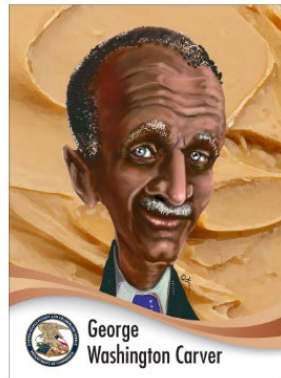
U.S. Patent and Trademark Office



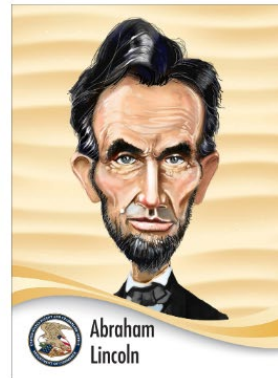
Forrest Bird



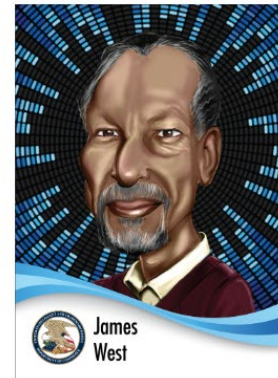
Thomas Edison



George Washington Carver

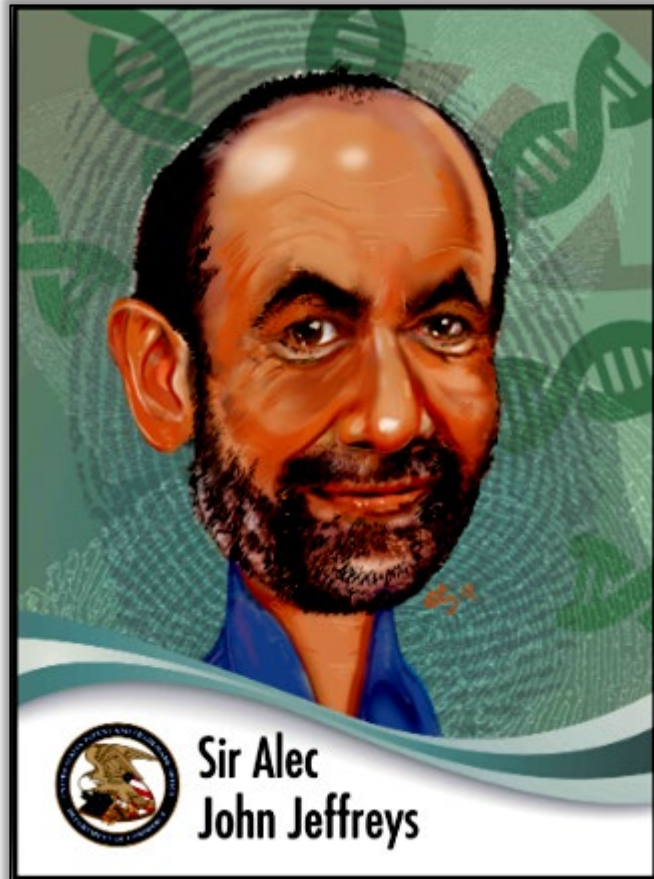



Abraham Lincoln



James West

Spotlight for January




 US05853989A

United States Patent [19] [11] **Patent Number: 5,853,989**
Jeffreys et al. [45] **Date of Patent: Dec. 29, 1998**


[54] METHOD OF CHARACTERISATION OF GENOMIC DNA

[75] Inventors: Alec John Jeffreys, Leicester; Stephen Lisle, Chester; Richard Mark Ferris, Janette Browne, both of Cheshire, all of Great Britain
[73] Assignee: Zeneca Limited, London, United Kingdom
[21] Appl. No.: 643,181
[22] Filed: May 6, 1996
Related U.S. Application Data
[63] Continuation in part of Ser. No. 418,859, Apr. 5, 1995, which is a continuation of Ser. No. 355,107, Aug. 26, 1992, abandoned.
Foreign Application Priority Data
 Aug. 27, 1991 [GB] United Kingdom 910371
 Sep. 6, 1991 [GB] United Kingdom 911909
 Nov. 20, 1991 [GB] United Kingdom 912636
 Apr. 3, 1992 [GB] United Kingdom 920729
 Jun. 15, 1992 [GB] United Kingdom 921267
 Jun. 17, 1992 [GB] United Kingdom 921281
[51] Int. Cl.: C12Q 1/68; C12P 19/34
[52] U.S. Cl.: 435/6; 435/91.2
[58] Field of Search: 435/6, 91.2
References Cited
U.S. PATENT DOCUMENTS
 5,066,584 11/1991 Collierman et al. 435/91.2
 5,104,792 4/1992 Silver et al. 435/6
 5,175,082 12/1992 Jeffreys 435/6
FOREIGN PATENT DOCUMENTS
 0 332 435 9/1989 European Pat. Off.
 A-0 332 435 9/1989 European Pat. Off.
 A-0 342 717 11/1989 European Pat. Off.
 A-0 370 719 5/1990 European Pat. Off.
 0 448 817 3/1991 European Pat. Off.
 A-0 416 817 3/1991 European Pat. Off.
 0 467 323 8/1992 European Pat. Off.
 A-0 519 338 12/1992 European Pat. Off.
 A-2 188 323 9/1987 United Kingdom
 A-2 252 407 8/1987 United Kingdom
 WO 80/04014 11/1989 WIPO
 WO 80/11272 10/1980 WIPO
 WO 80/11369 10/1980 WIPO
 WO 80/11372 10/1980 WIPO
 WO 90/15881 12/1990 WIPO
 WO 92/03846 10/1992 WIPO

OTHER PUBLICATIONS
 Skoldrick et al. *Genomics* 2:273-279 (1988).
 Mullis et al. *Cold Spring Harbor Symp. on Quant. Biol.* pp. 263-273 (1986).
 Database WPI, Section Ch, Week 9119, Derwent [et al.], London, GB, Class (Biol. AN9)-140510, SP0206/671 A-7,654,171 (Silver J.) 15 May 1990—Abstract.
 Mullis et al., "Specific Enzymatic Amplification of DNA In Vitro: The Polymerase Chain Reaction", *Cold Harbor Symposium on Quantitative Biology*, vol. 1.1, pp. 263-273 (1986).
 Erlich et al., "Recent Advances in the Polymerase Chain Reaction", *Science* 252:951-3 (Locke 161) (1991).
 Jeffreys et al., "Minisatellite repeat coding as a digital approach to DNA typing", *Nature* 354:204-29 (1991).
 Jeffreys et al., "Repeat Unit Sequence Variation in Minisatellites: A Novel Source of DNA Polymorphism for Studying Variation and Mutation by Single Molecule Analysis", *Cell* 60:473-485 (1990).
 Monkton et al., "Minisatellite Isoallelic Discrimination in Pseudohomozygotes by Single Molecule PCR and Variant Repeat Mapping", *Genomics* 11:465-467 (1991).
 Gilis, "DNA Amplification by the Polymerase Chain Reaction", *Anal. Chem.* 62:1202-1214 (1990).
 U.S. Patent Application Serial No. 07/504,591—Saltford et al., "RNA Template-Specific Polymerase Chain Reaction".
 Hongbin Li et al., "Amplification and analysis of DNA sequences in single human sperm and diploid cells", *Nature* 335:414-417 (1988).
 Mullis et al., "Specific enzymatic amplification of DNA . . .", *Cold Spring Harbor Symposium Quant. Biol.* 1.1:263-273 (1986).
 Weber and May, "Abundant Class of Human DNA Polymorphisms Which Can Be Typed Using the Polymerase Chain Reaction", *Am. J. Hum. Genet.* 48:388-396 (1991).
 Farr et al., "New Variations on the Theme", *Nature* 354:184 (1991).
Primary Examiner—Egerton A. Campbell
Attorney, Agent, or Firm—Nixon & Vandehey P.C.

[57] ABSTRACT
 The present invention relates generally to a method of characterizing a sample of genomic DNA and to nucleotide sequences employed in the method as well as to kits comprising these. In particular the invention involves the use of primers which selectively prime specific type(s) of internal repeat unit in a tandemly repeated region. The method of the invention is particularly useful in forensic or paternity studies and provides individual sample codes suitable for computerized storage on, and retrieval from, a database.

17 Claims, 46 Drawing Sheets


 Publication number: **0 238 329 B1**

PATENT SPECIFICATION

27.04.94 © Int. Cl. C12Q 1/68

© Proprietor: ZENECA LIMITED
 Imperial Chemical House, 9 Millbank
 London SW1P 3JF (GB)
 © Inventor: Jeffreys, Alec John
 14 Asquith Boulevard
 Leicester LE2 4FA (GB)
 © Representative: Mack, John Richard et al
 ICI Group Patents Services Dept.
 PO Box 6
 Shore Park
 Bessmer Road
 Welwyn Garden City Herts, AL7 1HD (GB)

In the event of the grant of the European patent, any person of opposition to the European patent granted. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid (Art. 99(1) European patent convention).

Rank Xerox (UK) Business Services
 0 103 093 3 3

Question/comment submission

To send in questions or comments about the presentation, please email:

– PTABInventorHour@uspto.gov



PTAB Pro Bono Program



- Financially under-resourced inventors may receive free legal help from volunteer attorneys for *ex parte* appeals before the PTAB
- For more details – watch the recording of the [July 2023 Inventor Hour webinar](#) online or check out the PTAB Pro Bono Program at www.uspto.gov/ptabprobono



Questions?

Future programs

Inventor Hour, Episode 25

Thursday, Feb. 22, 2024, noon (ET)

Inventor Hour, Episode 26

Thursday, Mar. 28, 2024 noon (ET)



