

MAILED

CLW

JAN 31 1995

Paper No. 26

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RECREATIVE TECHNOLOGIES CORP.

Appeal No. 93-4008
Application 90/002,613¹

ON BRIEF

Before PENDEGRASS, ABRAMS and McQUADE, Administrative Patent Judges.

PENDEGRASS, Administrative Patent Judge.

ON REQUEST FOR RECONSIDERATION

Appellant has requested reconsideration of that portion of our decision of March 29, 1994, rejecting claims 1, 2 and 4 as being anticipated by Ota. Such rejection was a new ground of rejection entered under the authority of 37 CFR §1.196(b).

We have carefully considered the request, but we cannot agree with the argument in the request that the sections of the mitt of Ota are not formed of a water absorbent material.

The front portions 2 and 3 of the mitt of Ota are formed of either velvet or corduroy. The request states that

¹ Request filed January 6, 1992 for the Reexamination of Patent No. 4,912,800, issued April 3, 1990 to Duane Barton, based on Application 07/232,306, filed August 15, 1988.

Appeal No. 93-4008
Reexam Control No. 90/002,613

corduroy is normally formed from cotton and that velvet is normally formed of a hydrophobic synthetic material. However, velvet can also be formed from cotton or wool (Webster's Third New International Dictionary, G.&C. Merriam Co., Springfield, Massachusetts, 1981). In those disclosed embodiments wherein cotton is used as the velvet or corduroy, the material of the mitt would clearly be recognized by those skilled in the art as a water absorbent material. The center section 4 of the Ota mitt is disclosed as being a rubber coated with cloth on one or both sides. In our opinion, the cloth coating is inherently a water absorbing material.

The request argues that there is no teaching in the Ota patent that the cloth material forming the mitt be water absorbing. However, anticipation does not require a teaching, only that the structure be inherently capable of being water absorbent. Note, *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990) and *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

With respect to the argument made in the paragraph labelled B of the request, we point out that the claimed subject matter does not require the mounting means to be attached directly to the towel body.

With respect to the arguments concerning claim 4, we remain of the opinion that the brushes of Ota are contoured and

Appeal No. 93-4008
Reexam Control No. 90/002,613

are inherently capable of being gripped by a hand on the back side of the towel or mitt body.

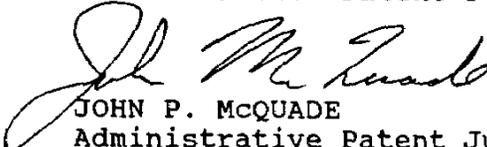
The request is granted to the extent of reconsidering our decision but is denied with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

DENIED


VERLIN R. PENDEGRASS)
Administrative Patent Judge)


NEAL E. ABRAMS)
Administrative Patent Judge)


JOHN P. McQUADE)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Appeal No. 93-4008
Reexam Control No. 90/002,613

Timothy J. Martin
44 Union Blvd. Suite 620
Lake, CO 80228

Law Offices of Duane Barton
1100 Tower Colorado
1720 South Bellaire Street
Denver, CO 80222