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Date : 04/04/2014

To,
Anand & Anand,
Advocates,
B-41, Nizamuddin East, New Delhi-110013, India.

SUB : Examination Report

APPLICATION NUMBER : 4668/DELNP/2007
DATE OF FILING : 18/06/2007
DATE OF REQUEST FOR EXAMINATION : 12/12/2008
DATE OF PUBLICATION : 17/08/2007

- a. With reference to the RQ No. 12145/RQ-DEL/2008 Dated 12/12/2008 in the above mentioned application for Grant of Patent , Examination has been conducted under Section 12 and 13 of the Patents Act 1970 , The following objections are hereby communicated
- b. Observations:
1. The subject matter claimed in the instant application relates to "sexual stimulating vibrator" and its intended use or commercial exploitation could be contrary to "public order" or "morality" and falls under section 3(b) of the Patents Act (as amended) and is not allowable.
 2. Claims 1 and 17 have been drafted as separate independent claims although they belong to the same category of claims. Said claims therefore lack clarity and conciseness under section 10(5) of the Act.
This is not the case in the present application, however, since the independent claims relate to the same apparatus and only define different details thereof and could be presented in a claim being dependent on claim 1.
The subject-matter of the independent claims 1 and 17 is related, respectively, to the same apparatus which are neither inter-related, nor do they disclose different uses of said apparatus or alternative solutions to a particular problem.
Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

No justification for more than one independent claim is apparent.

Hence claims should be amended in such a manner that amended claims will consist of preferably one independent claim including all essential features of the invention followed by the dependent claims covering various embodiments as appropriate.

See Manual of Patent Office Practice and Procedure, Version 01.11, as modified on March 22, 2011, chapter 5, sec 05.03.16 (t), Page 43 at <http://www.ipindia.nic.in>.

"While there is no restriction as to the number of claims, including independent claims, it is advisable to limit the number of claims, as well as the number of independent claims in a single application so that the claims are all of cognate character and are linked so as to form a single inventive concept."

3. Claims lack Novelty and/or Inventive step u/s 2(1)(j) of the Act as follows:

D1: EP 1477149 A1

D2: US 2004/186344 A1

D3: US 6183426 B1

D4: US 5690603 A

D5: Anonymous: "Natural contours (Ultime, Superbe, Magnifique)", URL:

<https://web.archive.org/web/20020328181216/http://www.natural-contours.com/>

D6: US4574791 A

Lack of Novelty

The subject matter of claims 1-3, 5, 7-11 and 17-18 lack Novelty u/s 2(1)(j) of the Act.

D1 discloses a device for female sexual stimulation comprising an inner arm for insertion into a vagina (2), near the G-spot (col. 3, lines 24-26, [0032]), an outer arm (1) to contact the clitoris (col. 3, lines 10-16, [0031]) and a resilient U-shaped member (6, col. 3, lines 55-58, [0016,0037]) connecting the inner and outer arms.

On the inner arm (2) is a teardrop shaped pad including a rounded inwardly directed protuberance (5). The outer arm widens from the U-shaped member (6) to its teardrop shaped end and has a smooth inner surface to contact the clitoris (figure 1). The inner and outer arms may be provided with a vibratory motor (col. 3, lines 27-30), powered by various means (col. 3, lines 35-39).

Therefore independent claims 1 and 17 are not novel.

Further document D4 discloses a sexual stimulation device dimensioned to be worn by a female, said device comprising:

an inner arm (124) dimensioned for insertion into a vagina;

an outer arm (112) dimensioned to contact the clitoral area when said inner arm is inserted in the vagina (col. 4, L. 65-col. 5, L. 22); and

a flexible connecting portion (128) connecting the inner and outer arms, wherein said connecting portion (128) is slender enough to permit sexual intercourse when said inner arm is inserted in the vagina.

It is clear from the description of D3 that the known device is not intended for use during intercourse in the sense of the claim and the description. However, the connecting portion is relatively slender and furthermore due to the variations in size of device and anatomy it is conceivable that the device of D3 could be used for the same purpose. Consequently, the subject-matter of independent claims 1 and 17 does not appear to be novel.

D6 teaches an inner arm 12 ("vaginal insert member") that is dimensioned for placement inside a vagina, see col.3, lines 1-17. D6 teaches an outer arm ("external body member") that is dimensioned for placement against a clitoral area such as within the vulva between the outer folds of tissue referred to as labia majora when the inner arm is inserted within the vagina, see

col.3, line26-34. D6 further discloses that the external body member (outer arm) includes a stimulation pad 40 having protuberances50 for stimulating the general area of the vulva. Col.4, lines25-30. D6 teaches a connecting portion 20, which can be an"elastic band or cable." Col.3, line 19. The connecting portion 20 is thus flexible. This connecting portion 20 is "narrow" to permit sexual intercourse when the inner arm is inserted in the vagina and the inner and outer arms taper toward the narrow connecting portion such that the device is dimensioned to be worn by a female during intercourse. The D6 device therefore is capable of being worn by a female during intercourse (i.e. is thus "dimensioned"), even if D6 does not teach this intended use. For these reasons, the claimed subject-matter lacks novelty over the disclosure of D6.

Lack of Inventive step:

The subject matter of claims 4, and 12-15 lack an Inventive step u/s 2(1)(j) of the Act. D1 does not disclose a device with a resilient skeleton, a means for recharging a battery with a recharging circuit and switch means. D2 discloses a device comprising a resilient (figure 2) plastic housing (11) with a silicone over mold (13), and switch means (22a-d). D2 does not expressly state that the device has means for recharging the batteries with a recharging circuit, however, devices that incorporate these features are well known. The skilled person skilled in the art would be familiar with such recharging means and circuits (see D3, col. 5, L. 51 col. 6, L.8, figs.2), and add them to the devices of D1 or D2 as required.

Further, Document D5, p.1 ("Ultime") discloses a sexual stimulation device comprising:
an inner arm (top) dimensioned for insertion into a vagina;
an outer arm (bottom) dimensioned to contact the clitoral area when said inner arm is inserted in the vagina; and
a connecting portion (in-between) connecting the inner and outer arms,
wherein said connecting portion is narrow (in comparison to the arms, see figure) to permit sexual intercourse when said inner arm is inserted in the vagina and said inner and outer arms taper toward said narrow connecting portion such that said device is dimensioned to be worn by a female during intercourse.

D5 does not disclose that the connection portion is flexible. The problem to be solved can be seen in making the apparatus more accommodating to the anatomy.

Apart from the fact that it is generally known to make such device from flexible material, D1 [0038] explicitly discloses this for a device of a similar shape (i.e. with inner and outer arms). It is obvious for the skilled person to apply the teaching of D1 to D5 and to make the device including the connection portion flexible. A flexible connection portion is also known from D4 (fig. 11-18).

Consequently, the subject-matter of claims does not involve an inventive step in respect of D5 and D1.

Due to the great variety in and the elasticity of the anatomy involved the dimensions of the device can vary widely while still fulfilling the subject matter claimed. Consequently, the feature relating to the apparatus being used during intercourse interpreted as the device being suitable for a certain use, but not especially limiting as far as the dimensions are concerned. It is also possible to argue the other way around:

D1 discloses a sexual stimulation device comprising:
an inner arm (2) dimensioned for insertion into a vagina;
an outer arm (1) dimensioned to contact the clitoral area when said inner arm (2) is inserted in the vagina; and
a flexible [0038] connecting portion (6) connecting the inner and outer arms, wherein said connecting portion is narrow (see fig. 1 at "6", connection portion considerably narrower than

either arm) to permit sexual intercourse when said inner arm (1) is inserted in the vagina said inner tapers toward said narrow connecting portion (see fig. 1).

The subject-matter claimed differs from the known device in that the connecting portion is narrow to permit sexual intercourse when said inner arm (1) is inserted in the vagina and said inner and outer arms taper toward said narrow connecting portion such that said device is dimensioned to be worn by a female during intercourse.

The problem to be solved can be seen in enhancing the use of the apparatus by adjusting its dimensions for use during intercourse.

Ignoring the features relating to relative dimension (see discussion of D5) the remaining difference is the fact that the inner arm tapers toward the connection portion.

However, shape is both functional and aesthetic. The shape as defined in claim 1 is clearly shown in D5, p.1. It would be obvious for the skilled person to apply the teaching of D5 to D1 to provide a smoother more aesthetically pleasing device.

Consequently, the subject-matter of claim 1 does not involve an inventive step in respect of D1 and D5.

4. Reference numerals should be inserted in the parentheses of features of claims for intelligibility of claims.
5. Abstract should be filed in accordance with the instructions contained in the Rule 13{7(d)} of the Patent Rules, 2003(as amended in 2006).
6. With reference to your letter filed on 01/11/2010, Power of attorney and assignment documents were filed on behalf of "Standard Innovation Corporation, Canada". However no **Form 6** in the prescribed manner is filed for change of applicant and the said documents are not taken into consideration.

Section 142, Rule 7(3):

In case an application processed by a natural person is fully or partially transferred to a person other than a natural person, the difference, if any, in the scale of fee(s) between the fee(s) charged from a natural person and the fee(s) chargeable from the person other than the natural person in the same matter shall be paid by the new applicant with the request for transfer.

7. Original copy of the drawing sheets should be submitted. The drawing sheets submitted appears to contain either only scanned print of signature of the agent or a duplicate copy. The Drawings referred to in the specification should be prepared in accordance with the instructions contained in the Rule 15 of the Patent Rules, 2003(as amended in 2006).
8. Form 3 dated 15/02/2013 and their corresponding later Form 3"swere not filed within the prescribed time limits and are not taken into consideration.
9. Irrelevant text (WIPO publication number, PCT application number on top of each of the specification page as well as drawing sheets)appearing in the specification sheets should be deleted and retyped pages of the same should be submitted in duplicate.
10. At S.No./Para 9 (iii) in Form-1, Declaration need to be attended by applicant by putting relevant Check or Cross (scored out) for each of the statements appearing therein. Accordingly, retyped pages of Form 1 should be submitted.
11. The applicant is requested to clearly identify/mark the amendments carried out (if any) in a separate copy (from the original filed set); irrespective of either they concern amendments by addition, correction, replacement or deletion in the specification.
12. Retyped pages of the specification sheets should be submitted in duplicate wherever correction/amendment is carried out. While amending the specification, no new matter should be added beyond the scope of protection originally disclosed.

13. Details regarding the search and/or examination report including claims of the application allowed, as referred to in Rule 12(3) of the Patent Rule, 2003, in respect of same or substantially the same invention filed in all the major Patent offices along with appropriate translation where applicable, should be submitted within a period of Six months from the date of receipt of this communication as provided under section 8(2) of the Indian Patents Act.
 14. Details regarding application for Patents which may be filed outside India from time to time for the same or substantially the same invention should be furnished within Six months from the date of filing of the said application under clause(b) of sub section(1) of section 8 and rule 12(1) of Indian Patent Act.
- c. You are requested to comply with the objections by filing your reply by way of explanation and/or amendments within 12 months from the date of issue of FER failing which your application will be treated as "Deemed to have been abandoned" under section 21(1) of the Act. The last Date is 06/04/2015.
 - d. You are advised to file your reply at the earliest so that the office can further proceed with application and complete the process within the prescribed period.

(Mamidi Buchi Babu)

Asst. Controller of Patents & Designs

NOTE : All Communications to be sent to the Controller of Patents at INTELLECTUAL PROPERTY BUILDING Plot No. 32, Sector-14,Dwarka New Delhi - 110 078.
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