REMARKS

I. Status of the Claim

Claim 1 was originally presented for examination and has been rejected. It is not amended. Claim 1 is now pending.

II. Replacement Sheet

A replacement sheet for FIG. 10 is enclosed with this response. It removes some of the hidden lines from the previous version of FIG. 10. Applicant requests that it be entered to replace the FIG. 10 currently of record.

III. Claim Rejections Under 35 U.S.C. § 102

Claim 1 has been rejected in light of U.S. Patent No. D728,900 ("White"). Applicant submits that the inventive Enlarged Over-Garment of the present application is different in substantial and significant ways from the White hoodie. While the two garments may be similar, they are not substantially the same, and ordinary consumers would notice the differences. For these reasons, Applicant requests the withdrawal of the § 102 rejection of claim 1.

Briefly, Applicant notes that the drawings shown in White illustrate the White hoodie in different arrangements from those in which the Enlarged Over-Garment is shown, and so any comparison between the two must be carefully considered, and, unfortunately, requires some interpolation.

The Enlarged Over-Garment and the White hoodie are unquestionably similar. And, but for the two different holes formed through the White hood (which Applicant suspects are ports for headphone wires, perhaps?), the White hoodie is exemplary of a conventional hoodie-style sweatshirt. As such, and but for those two different hood holes, Applicant submits that the White hoodie is representative of the art. The inventive Enlarged Over-Garment shares a number of features in common with such hoodies; it has a torso, a hood, opposed sleeves, and a marsupial pocket. All of these are features shown similarly in conventional sweatshirts.

Similarity alone, however, is not a sufficient basis for a § 102 rejection. Rather, for a reference to anticipate the invention, it must be substantially the same. Under the ordinary observer test, "if, in the eye of the ordinary observer, giving such attention as a purchaser usually gives, two designs are

substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other," there is anticipation. *Gorham Mfg. Co. v. White,* 81 U.S. 511, 528 (1871). Moreover, the novelty determination must also be made in the context of the prior art; where the claimed design is close to the prior art designs, small differences are likely to be important to the eye of the ordinary observer. *Int'l Seaway Trading Corp. v. Walgreens Corp.,* 589 F.3d 1233, 1239-40, 93 USPQ2d 1001, 1005 (Fed. Cir. 2009).

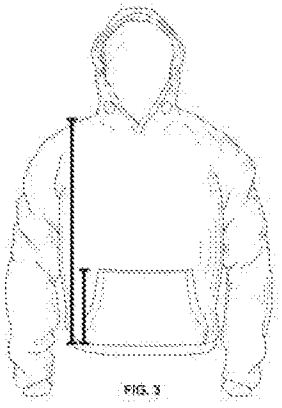
The White design and the inventive design are not substantially the same. The inventive garment is an Enlarged Over-Garment, and its grossly exaggerated size provides differences from the White design and other conventional, well-known sweatshirt designs. These include, most clearly, the size and location of the marsupial pocket, the size of the sleeves, and the shape of the bottom of the design.

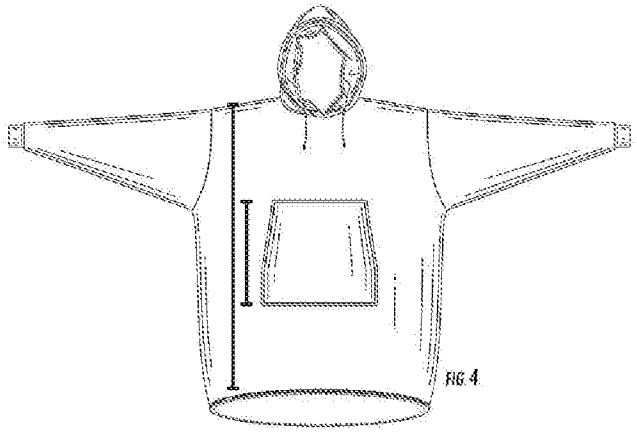
A. Marsupial Pocket is Different

The marsupial pocket – the pocket located on the front of the torso – is substantially different in the claimed design and the White design. For this alone, the claimed design is allowable. The claimed marsupial pocket has different proportions, is much higher, and has a prominent space below it.

- *Marsupial Pocket is Much Higher on the Torso*

The marsupial pocket in the claimed design is much higher on the torso of the inventive garment than it is on the White hoodie. As shown below in the annotated drawings, the pocket in the claimed design occupies approximately the middle third of the torso (in the vertical dimension), while the White pocket is located in the bottom third of the torso. This presents a visual distinction: in the inventive garment, the marsupial pocket breaks up the long vertical height of the torso, while in the White hoodie, the pocket is integrated into the bottom and leaves the upper torso intact, free, and clear.





- *Marsupial Pocket is Above the Bottom of the Torso*

Because the marsupial pocket is located in the middle third of the torso in the claimed design, there is a gap or space above the bottom of the torso. In other words, a significant portion of the front of the torso is clearly visible between the bottom of the marsupial pocket and the bottom of the torso. In the White design, there is no such gap. The pocket is located at the bottom of the torso, anchoring the pocket to the bottom. This is another significant difference that catches the consumer's eye.

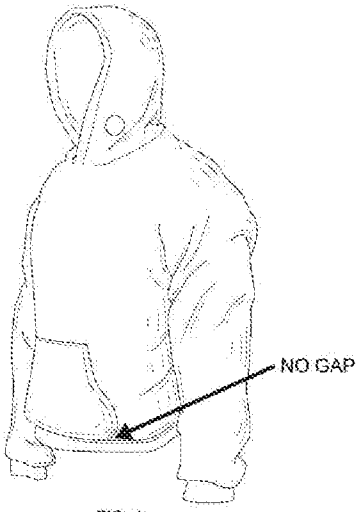


FIG. 1

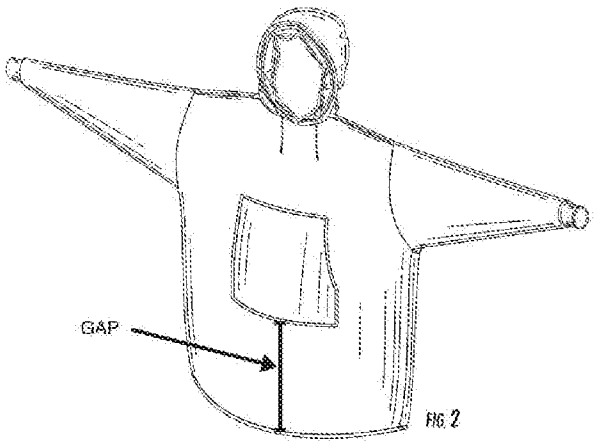


FIG. 2

- *Marsupial Pocket is Narrow*

The pockets are proportioned different with respect to the torsos. As shown below, in the White hoodie, the width of the marsupial pocket nearly corresponds to the width; it is occupies roughly 90% of the torso's width. In contrast, the width of the pocket in the claimed design is proportionally much smaller. The pocket in the inventive design is approximately one-third of the width of the torso.

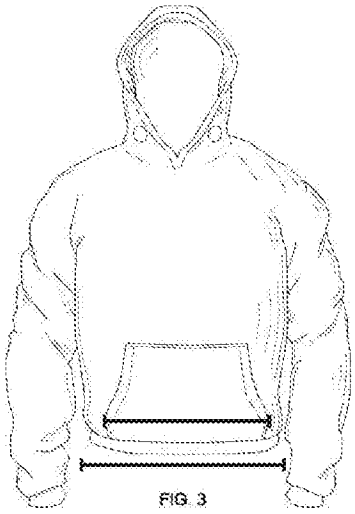


FIG. 3

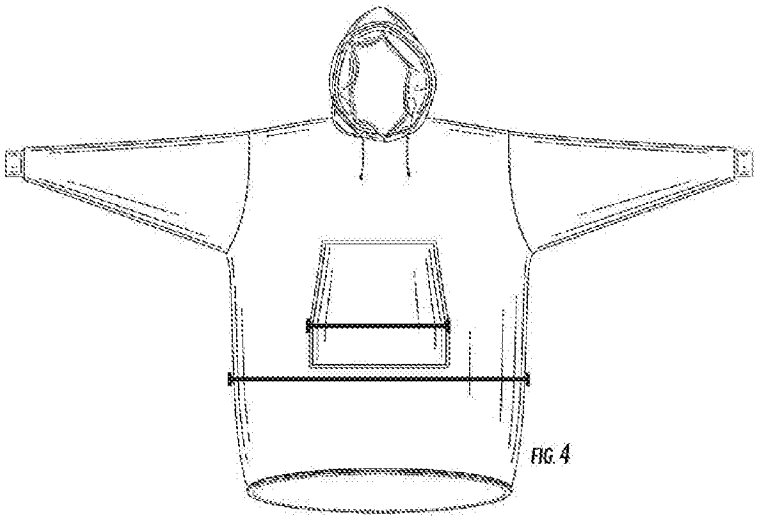


FIG. 4

- *Collective Differences*

There are other differences between the pockets of the two designs, such as the dimensions of the lower portion of the pocket and the upper or open portion of the pocket, and the orientation of the entrances along the upper or option portion. These differences, combined with those outlined above, collectively create a different and distinct impression from that of the White hoodie. Small differences are enough to distinguish one design from another in the consumer's eye, *see Int'l Seaway,* 589 F.3d at 1239-40, and these differences are more than small: they are numerous, they are significant, and they are disposed right on the front of the design where a consumer is immediately confronted by them. For these reasons, Applicant submits that the White hoodie does not anticipate the claimed design and requests that the application proceed to allowance.

B. Sleeves are Larger

The sleeves of the inventive design are quite large, much larger than conventional sweatshirt garments. This difference is most easily seen in the armscye, otherwise known as the sleeve opening or arm hole. FIG. 4 of the application's drawings clearly shows the location and dimensions of the armscye. FIG. 3 in White perhaps best shows the possible location and dimensions of the armscye. As shown below), it appears that the bottom of the armscye can be no higher than point A and no lower than point B. Each of these points is well above the top of the marsupial pocket. In the Enlarged Over-Garment, by contrast, the bottom of the armscye is actually below the top of the marsupial pocket. The inventive garment thus has different relative proportions and locations of the armscyes and the marsupial pocket. This is another not insignificant difference discernable by an ordinary consumer.

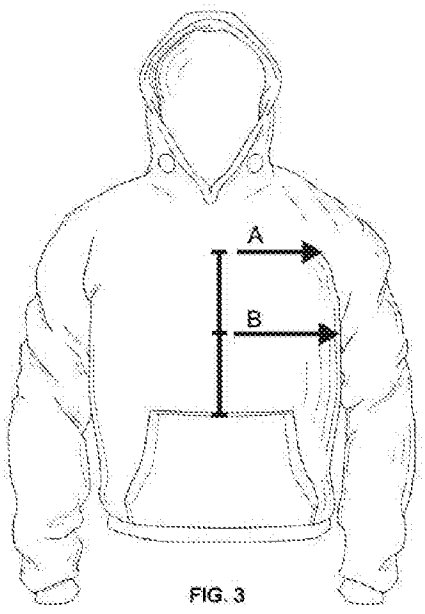


FIG. 3

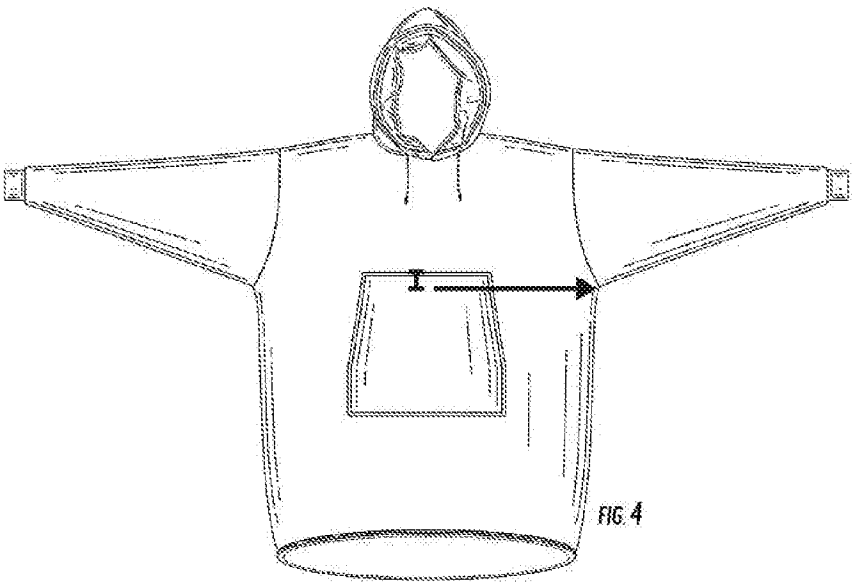


FIG. 4

C. Angle of Bottom Hem is Different

As can be seen in the below illustrations, the bottom hem of each design is different. In the White hoodie, the bottom hem slopes upward from the front to the back. In the inventive design, the bottom hem slopes downward. This difference would be visible to the ordinary observer.

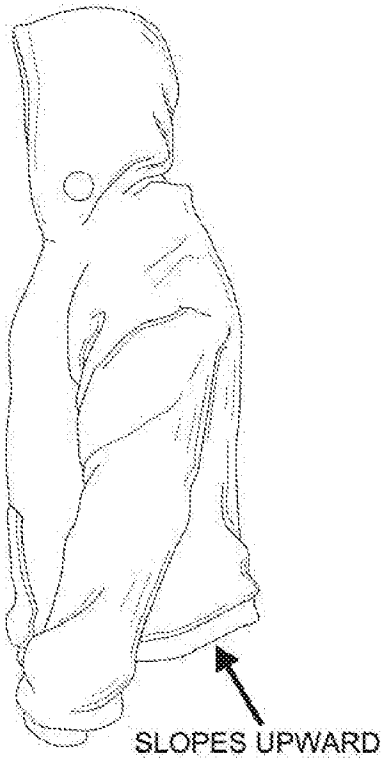
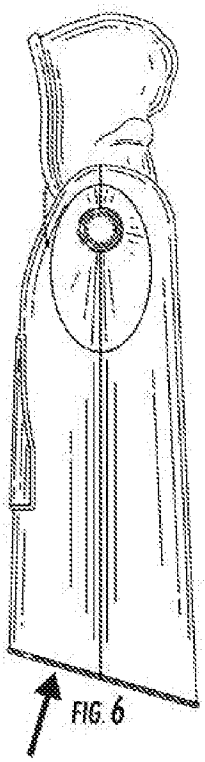


FIG. 5



SLOPES DOWNWARD

For all of the above reasons, Applicant submits that the two designs are not substantially the same, but that there are in fact significant differences that an ordinary observer would see, appreciate, and rely on to distinguish the two designs. These differences are not trivial – the slope of the bottom hem is significant, the proportions of the armscyes to the marsupial pockets are markedly different, and the many differences in the marsupial pockets are prominent because of their frontal location on the torso of each design. Applicant requests that the § 102 rejection of claim 1 be withdrawn.

IV. Summary

Examiner's thorough and thoughtful consideration of this response is sincerely appreciated, and Applicant respectfully requests that claim 1 be allowed. Should there be any further questions or issues regarding this response, Examiner is invited to contact the undersigned attorney to address and resolve those questions or issues.

Respectfully submitted,

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