PATENTS EXAMINATION BOARD

PRACTICAL LEGAL PROBLEMS

SUPPLEMENTARY EXAMINATION PAPER: JANUARY 2021

EXAMINERS: D DOHMEN

J WHITTAKER

MODERATOR: H MOUBRAY

DURATION: READING TIME: 1 HOUR

EXAMINATION TIME: 4 HOURS

TOTAL: 5 HOURS

NOTES TO CANDIDATES:

1. Attached to the paper are copies of the following documents:

   (i) A copy of the Patents Act No. 57 of 1978;

   (ii) A copy of the Patent Regulations 1978; and

   (iii) A copy of the Uniform Rules of the High Court under the Superior Courts Act 10 of 2013 (Rules 6, 14, 17, 18, 19, 21, 22, 23, 24, 25, 30, 35, 36 and 37).

2. Each candidate is also allowed access to one dictionary during the Exam.

3. This paper consists of 21 pages in total and includes the following documents:

(i) Questions 1 and 2 (70 marks) - (Pages 3 to 6);

(ii) Question 3 (30 marks) – (Pages 7 to 9);

(iii) Document A – (Page 10);

(iv) Document B – (Pages 11 to 15);

(v) Document C – (Pages 16 to 20); and

(vi) Document D – (Page 21).

4. Prior to the hand out of the answer papers, candidates will have an opportunity to read the above documents and make notes for 60 minutes.

5. Where appropriate, reference should be made to case law, and conclusions should be supported by reasons and arguments.

QUESTIONS 1 AND 2

A new client writes to you as follows:

"*Dear Sirs,*

I have come up with a new product for cyclists. As an avid cyclist myself, I have from time to time been caught in the rain on my bike and been drenched with rain water.

About a year ago, I bought myself a light-weight rain jacket for use when cycling in the rain. Although the jacket works well in keeping my torso dry in the rain, it discharges rain water directly onto my cycling shorts, which draw this water onto my legs and cause an unpleasant, cold and clammy sensation.

I therefore decided to modify my rain jacket by adding a "gutter" at the lower edge of the jacket to collect rain water running down the jacket and channel it to spill to the ground away from my legs. At first, I designed the gutter as a separate unit that I could attach to my rain jacket, but later I also designed a rain jacket incorporating the gutter.

*Attached marked "**Document A**" are drawings of my rain jacket with gutter, in which:*

FIG. 1 is a perspective view of my rain jacket;

FIG. 2 is an enlarged fragmentary view of a bottom portion of the jacket of FIG. 1, detailing a gutter formed integrally with the jacket in accordance with a first version of my design; and

FIG. 3 is a fragmentary view of a gutter according to a second version of my design, which is formed as a separate unit and subsequently attached to a rain jacket.

Broadly speaking, a rain jacket according to my design includes an enclosed gutter or duct

at the bottom of the jacket, and a number of openings for allowing rain drops running down the jacket to enter the enclosed gutter for subsequent drainage through a downwardly and outwardly facing drain port at each of the lateral sides of the jacket.

With reference to FIGS. 1 and 2 of the drawings, the rain jacket is designated by the reference numeral 100, with a folded extension of the jacket 100 forming an enclosed gutter 110. The gutter includes an outer section 120, a bottom section 130, and an inner section 140, with the upper portion of the inner section 140 connected to the inner surface of the jacket 100 by an upper seam 150. A number of openings 160 are provided in the outer section 120 for allowing rain drops 170 running down the jacket to enter the gutter 110, from where this rain water 180 is discharged to the ground through a pair of drain ports 210 (only one of which is shown in FIG. 1). Each drain port 210 is positioned on a lateral side of the rain jacket.

The openings 160 are arranged in two rows, with the openings in the first row offset relative to the openings in the second row, as illustrated in FIG. 2. This ensures that each rain drop 170 running down the jacket enters the gutter 110 through one of the openings 160, thereby preventing rain drops from running off the bottom of the jacket onto the cyclist's legs. The openings 160 are typically circular in shape and have a diameter of between 12mm and 25mm. To maintain the shape of the gutter 110, the bottom section 130 is folded back on itself twice to form a three ply portion at 190, which is held together by a bottom seam 200.

FIG. 3 illustrates a gutter 110' which is formed as a separate unit and subsequently attached to a rain jacket. In this version, an outer section 120' and an inner section 140' of the separately formed gutter 110' are subsequently connected to a lower portion of a rain jacket by an upper seam 150'. To maintain a cross-sectional ballooned shape of the gutter 110', extra material 220' is provided to stiffen a bottom portion of the gutter. FIG. 3 shows how rain water 180', which has entered the gutter via the openings 160', is channelled to one of the two drain ports 210' positioned on the sides of the rain jacket. Each of the drain ports 210' is shaped to encourage water to discharge outwardly, away from the cyclist.

For the last three months, I have been selling relatively large quantities of my rain jacket to cycling shops in Gauteng. Over this period, the demand for these jackets has increased to

such an extent that I have started making plans to sell my jacket in most of the major centres across South Africa.

However, on Friday last week, I received a lawyers' letter alleging that the manufacture and sale of my rain jacket amounts to infringement of their client's South African patent 2014/01234. The lawyers also state in the letter that, to avoid legal action, I must: (i) immediately stop manufacturing and selling my rain jacket; (ii) provide a written undertaking not to infringe the patent again in the future; (iii) deliver up for destruction all infringing jackets in my possession or under my control; (iv) pay all damages suffered by their client; and (v) pay their client's legal costs.

*A copy of South African patent 2014/01234 is attached marked "**Document B**".*

I do not want to stop selling my jacket, if possible. There is a relatively large market for this product and I have invested a considerable amount of money and time in developing the jacket and in creating a business for manufacturing and selling the jacket in South Africa.

In the circumstances, please let me know if, in your opinion, South African patent 2014/01234 has been infringed, and whether or not this patent is valid.

I look forward to hearing from you.

Yours sincerely

Mr D Shorts."

You conduct some background checks and establish that:

(a) ZA 2014/01234 [Document B] was filed on 10 March 2014 claiming priority from an earlier South African patent application which was filed on 11 March 2013;

(b) All formalities in respect of ZA 2014/01234 were correctly complied with; and

(c) ZA 2014/01234 is currently in force.

You also conduct a prior art search which locates the following documents:

(i) ZA 2013/07642 [Document C]; and

(ii) An extract from a magazine published in the United Kingdom in September 1996 [Document D].

QUESTION 1 **(35 marks)**

Please provide your client with detailed advice on whether or not the manufacture and sale of your client's rain jacket amounts to infringement of the claims of South African patent 2014/01234.

QUESTION 2 **(35 marks)**

Please provide your client with detailed advice on the validity of South African patent 2014/01234 in light of ZA 2013/07642 [Document C] and the UK publication [Document D].

QUESTION 3 **(30 marks)**

You receive the below correspondence from your client.

"Dear Patent Attorney

I refer to my pending South African complete patent application no ZA2019/5678 entitled "Laundry Detergent" which is a national phase entry based on a PCT patent application (international patent application).

As you know the patent application claims priority from South African provisional patent application no. ZA2017/6123 dated 14 November 2017. As per your previous advice all formalities for the patent application have correctly been complied with and acceptance has been formally delayed to 31 May 2021.

The specification of the patent application describes each of a cleaning agent A, surfactant B, foaming regulator C, optical brightener D, dye transfer inhibitor E as well as their individual interactions in different combinations to provide optimal washing results for both white and coloured laundry. Examples are also given of different combinations of the constitutes and the resulting washing results.

The current claims of the patent application are as follows:

1. *A laundry detergent comprising a cleaning agent A and a surfactant B.*

2. *A laundry detergent according to claim 1 which includes a foaming regulator C.*

3. *A laundry detergent according to claim 2 which includes an optical brightener D.*

4. *A laundry detergent according to claim 1, 2 or 3 which includes a dye transfer inhibitor E.*

As you reported the international search found some relevant prior art and the written opinion from the international examination authority expressed some concerns regarding the novelty and/or inventiveness of the current claims.

The relevant prior art documents mentioned in the international search report and written opinion are:

a. *PCT/US2016/03859 entitled "Advances Detergents" which has an international filing date of 12 December 2016, claims priority from US60/721,213 of 14 December 2015 and which was published on 24 June 2017; and*

b. *PCT/EP2017/03859 entitled "New Laundry Detergents" which has an international filing date of 5 May 2017, claims priority from JP2016-0500015 of 6 May 2016 and which was published on 22 November 2018.*

PCT/US2016/03859 discloses a detergent made from the cleaning agent A mixed with either the surfactant B or the foaming regulator C.

PCT/EP2017/03859 discloses two different detergents. The first detergent is made up from the cleaning agent A mixed with the surfactant B and the second detergent is made up from the cleaning agent A mixed with the surfactant B and the optical brightener D.

In light of the above we have ***three questions****.*

I. *We are concerned about the validity of the current claims of the patent application in light of the above two PCT publications.*

   Please let us know what the impact of these publications are on the validity of the current claims of the patent application and what, if anything, should be done to improve the validity of the claims of the patent application.

   (10 marks)

II. *We have finalised our product development and we now intend to launch two different detergents.*

   The first detergent is for use with white fabrics and this detergent is made from a combination of the cleaning agent A, surfactant B, foaming regulator C and optical brightener D.

The second detergent is for use with coloured fabrics and is made from a combination of the cleaning agent A, surfactant B, foaming regulator C, optical brightener D and the dye transfer inhibitor E.

Both these products are equally important for us and we want the best possible protection for both.

Please advise on the best course of action under the circumstances as well as any new claim formats which you would recommend.

(10 marks)

III. *We have been advertising the launch of our two new detergents and during the last week we had received a non-threating letter from one of our competitors, SA Detergents, explaining that they hold a South African patent for a detergent made from a combination of the cleaning agent A, surfactant B and the dye transfer inhibitor E.*

Please advise what options are available to us to ensure that we can continued with the launch of our detergents and what the best course of action would be in the circumstances.

(10 marks)

Kind regards
Ms EN Trepreneur (Managing Director)
New Wave detergents (Pty) Ltd"

You can assume that all claims to priority of the current claims are valid and that the current claims are fairly based on the disclosures in the patent specification.

Advise your client accordingly on each of the above questions I, II and III.

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TOTAL: 100 marks

DRAWINGS OF MY RAIN JACKET WITH GUTTER

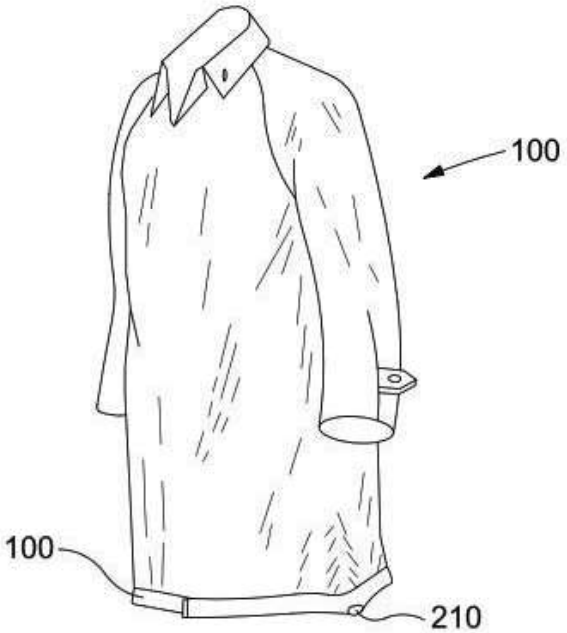

FIG. 1

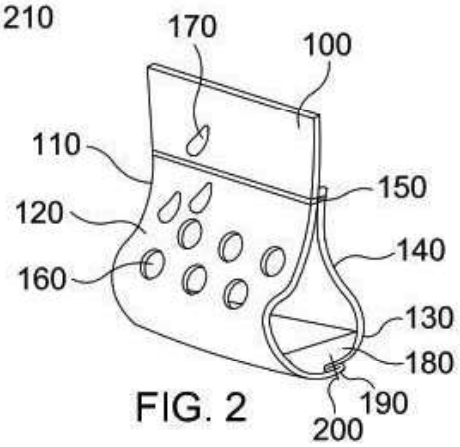

FIG. 2

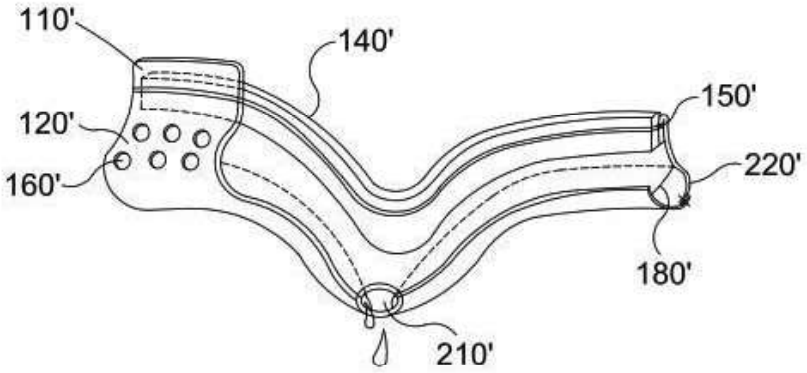

FIG. 3

AN ITEM OF CLOTHING

THIS invention relates to an item of clothing, and more specifically to a clothing item which protects the wearer from water.

Waterproof aprons are known. Such aprons may be worn, for example when washing dishes, so as to keep the wearer's clothing under the apron dry. Generally, known waterproof aprons are designed to extend to the wearer's knees, or thereabout, to allow for comfort and ease of movement. With these designs, water splashed onto the apron during dishwashing often runs down the apron and spills onto the wearer's feet and lower legs, or the wearer's shoes and clothing covering the lower legs.

According to the invention, there is provided an item of clothing which includes a waterproof covering for covering at least a portion of a wearer's body, a water collector extending along a lower portion of the waterproof covering for collecting water contacting the covering, and at least one discharge opening for discharging water from the water collector, wherein the discharge opening is located on the water collector so that, in use, water is discharge outwardly from, and to a lateral side of, the wearer.

A closure may be provided for selectively closing the discharge opening. In this way, a wearer may selectively store water in the water collector while washing dishes in a first location, such as in a kitchen, and thereafter discharged the water from the water collector in a second location, such as in a garden.

The invention will be described in more detail below with reference to the accompanying drawings, in which:

Figure 1 is a side view of an item of clothing according to the invention as worn by a wearer while washing dishes;

Figure 2 is a plan view of the item of clothing illustrated in Figure 1 when spread out flat on the ground.

Figure 3 is a sectional view taken along the line 3-3 of Figure 2; and

Figure 4 is a sectional view taken along the line 4-4 of Figure 2.

The drawings illustrate an item of clothing in the form of a waterproof apron 10 in accordance with the present invention. The apron 10 may be used while washing dishes in a sink, as shown in Figure 1. As can be seen, the Apron 10 includes a waterproof covering having an upper portion 10A for covering the wearer's chest and stomach, and a lower portion 10B for covering upper portions of the wearer's legs. With reference also to Figure 2 of the drawings, tie strings 10C and a head aperture 10D are provided for securing the apron 10 to a wearer.

The apron is formed in one piece and, when worn, forms a split 13 at the rear. A lower portion of the apron 10 is folded back to form a water collection channel 11 above a lower edge 12 of the apron. The folded back portion is held in place by separable fasteners 15 and 16, as best seen in Figure 3 of the drawings. In the illustrated embodiment, the separable fasteners comprise cooperating male fasteners 15 and female fasteners 16. If water splashes out of the sink onto the wearer's apron 10, this water runs down the apron, enters the channel 11 through an open top 17 (see, for example, Figure 4), and collects in the channel as water RU (see, for example, Figure 1). In this way, water is prevented from spilling off the bottom of the apron onto the wearer's legs and shoes.

As shown best in Figures 2 and 3 of the drawings, two discharge openings along the channel 11 allow water to discharge from the channel. A closure in the form of a flap 14 is provided to selectively close each discharge opening. The closure flaps 14 are held in a closed condition by separable fasteners 18 and 19, as best seen in Figure 4 of the drawings.

In use, the wearer of the apron 10 may secure the separable fasteners 15 and 16 to form the channel 11, and may also fasten the separable fasteners 18 and 19 to close the discharge openings. In this condition, water splashing onto the apron while washing dishes will collect in the channel 11. If the wearer wishes to discharge the water from the channel 11,

for example, after washing the dishes, he or she may simply separate the fasteners 18 and 19 and release the flaps 14, thereby allowing the water in the channel 11 to discharge via the discharge openings. Since the discharge openings are located at the sides of the apron, the water in the channel 11 will be discharged away from the wearer's shoes. It will be appreciated by those skilled in the art that the item of clothing need not necessarily be an apron for washing dishes, and could also have other forms, such as, for example, a jacket.

CLAIMS

1. An item of clothing including a waterproof covering for covering at least a portion of a wearer's body, a water collector extending along a lower portion of the waterproof covering for collecting water contacting the covering, and at least one discharge opening for discharging water from the water collector, wherein the discharge opening is located on the water collector so that, in use, water is discharged outwardly from, and to a lateral side of, the wearer.

2. An item of clothing according to claim 1, wherein the water collector comprises a channel which extends along a lower portion of the waterproof covering, and which is open at the top to receive water contacting the covering.

3. An item of clothing according to claim 2, wherein the channel is formed from a portion of the waterproof covering that is folded over and held in place with fasteners.

4. An item of clothing according to any one of the preceding claims, wherein a closure is provided for selectively closing the, or each, discharge opening.

5. An item of clothing according to any one of the preceding claims, including two discharge openings.

6. An item of clothing according to any one of the preceding claims, wherein the item of clothing is a waterproof apron.

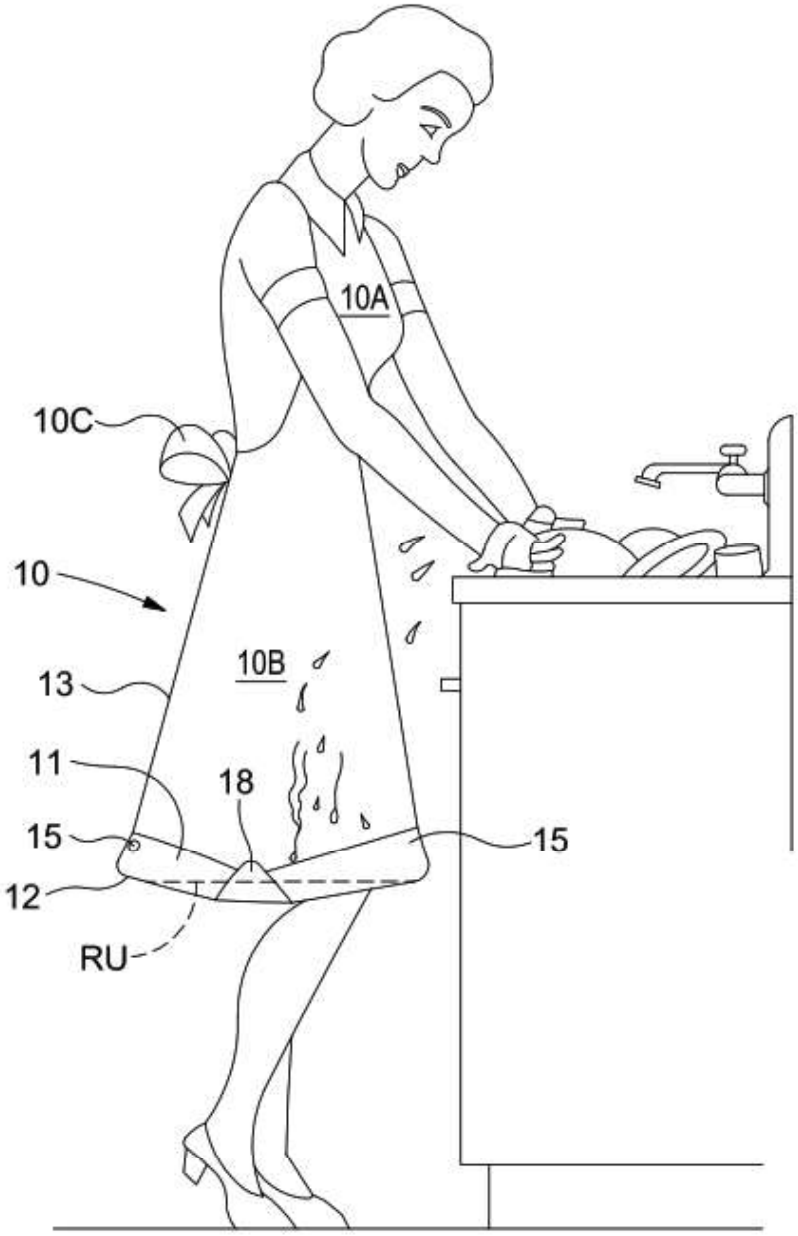

FIGURE 1

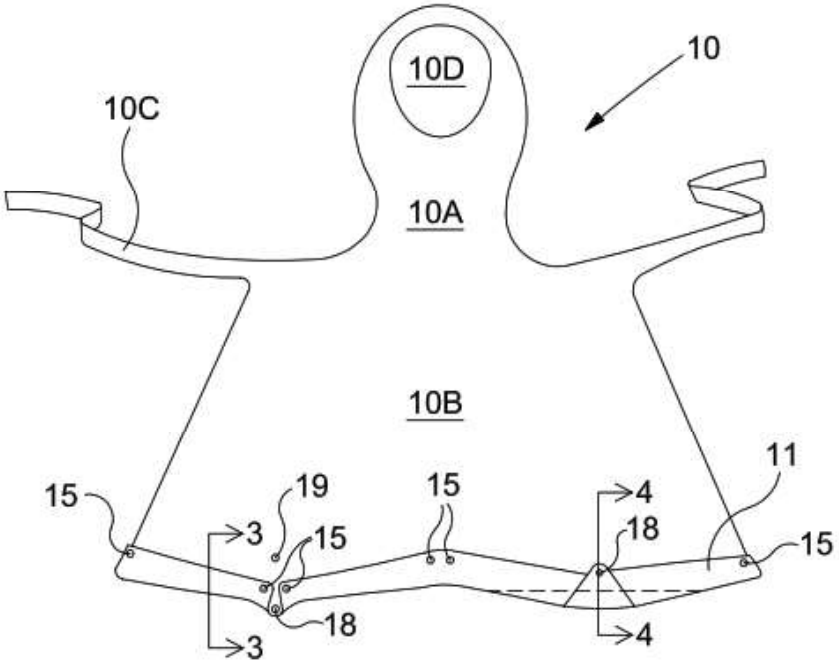

FIGURE 2

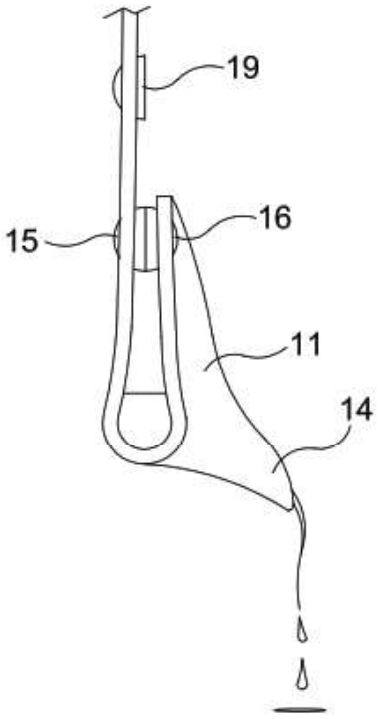

FIGURE 3

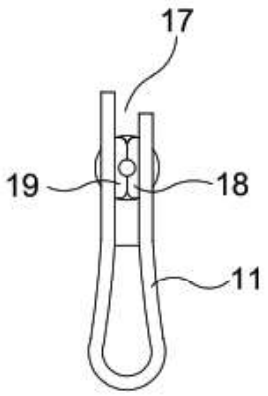

FIGURE 4

Filing date: 20 September 2013
Publication date: 27 October 2014
Priority date: 22 January 2013

PROTECTIVE OUTERWEAR

This invention relates to protective outerwear.

Many people wear protective clothing when going about their day-to-day business. For example, workers wear protective and waterproof clothes to mitigate the effects of weather, such as rain, snow and/or hail. With most waterproof outerwear, clothes worn under the outerwear remain dry in the rain. However, a problem with such outerwear is that rain water tends to run off the outerwear at different angles and directions, often wetting the legs, or clothing on the legs, of the wearer.

It is an object of this invention to address this problem.

The invention will be described by way of example with reference to the accompanying drawings, in which:

Figure 1 is a front view of an item of waterproof outerwear according to the invention;

Figure 2 is a side view of the outerwear illustrated in Figure 1;

Figure 2A is an enlarged cross-section of a portion of the outerwear of Figure 2 in an operative, deployed condition;

Figure 2B is an enlarged cross-section of the portion of the outerwear of Figure 2A in an inoperative, stowed condition; and

Figure 3 shows another embodiment of the invention with a gutter partially secured to waterproof outerwear.

Referring first to Figure 1, there is shown a waterproof coat 1 having a body portion 2, a pair

of arms 3 and a hood 4. The coat 1 has a liner to face the body of a user (not shown), an insulation layer (also not shown) and an outermost waterproof layer 5 to protect the wearer when the coat is subjected to rain. The coat 1 includes a zipper 6 to secure the coat about the wearer.

The coat 1 has a flexible and body conformable hem 7. Along the hem 7 of the body portion 2 is a gutter 8, which may be formed of a waterproof plastics material, such as polyvinyl chloride. In this embodiment, the gutter 8 is U-shaped and depends from the hem 7. The zipper 6 extends through the gutter 8 to facilitate securing and removal of the coat 1.

The gutter 8 has a rearmost drainage port 9 providing a spigot 9A to which is secured a down pipe or hose 10 to allow water collected in the gutter 8 to drain away. The hose 10 is push-fitted onto the spigot 9A.

In use, when the wearer of the waterproof coat 1 is exposed to rain, or another wet environment, the water runs down the waterproof layer 5 to be captured by the gutter 8. In this way, run-off water is prevented from flowing onto the user's legs. The water in the gutter 8 flows out of the gutter via the drainage port 9 and the hose 10 to drain towards the floor. The hose 10, as shown, is positioned towards the rear of the coat 1 (i.e. away from the zipper 6) so that this hose does not (or at least is less likely to) interfere with the actions of the wearer. Typically, the hose 10 is located at a position directly opposite the zipper 6 when the coat 1 is closed to ensure that it is out of the way. The coat 1 may find particular utility when a person is riding a motorcycle or is working outside.

As shown in Figure 2B, the gutter 8 may be foldable about the hem 7 to the inside of the coat 1 to be stowed when not in use. The hose 10 may be folded over and the end of the hose 10 secured to the gutter 8 to ensure that it remains within the coat 1 when the gutter 8 is not deployed. Alternatively, the hose 10 may be removed from the spigot 9A of the gutter 8 and stored separately to be push-fitted onto the spigot 9A when required. The coat 1 may include an inner flap of material 11 to protect the wearer against the folded-in gutter 8. The flap of

material 11 may be provided with a high-friction material 12, to engage the gutter 8 and help to retain it in its folded condition.

Alternatively, and as shown in Figure 3, a gutter 8' may be removably secured to a coat 1'. In this embodiment, the coat may have a number of buttons 13 provided around the hem 7', and the gutter 8' may have a corresponding number of button holes 13'.

When it is desired to deploy the gutter 8' it is simply removed from where it is being stored and is buttoned to the hem 7' using the buttons 13 and button holes 13'. If stored separately, the hose 10 is secured to the spigot 9A.

The provision of the gutter and the location of the hose 10 allow water on the coat 1 to drain from the rear of the coat, and in this way to drain off the coat without interfering with the working practices of the wearer.

[CLAIMS OMITTED]

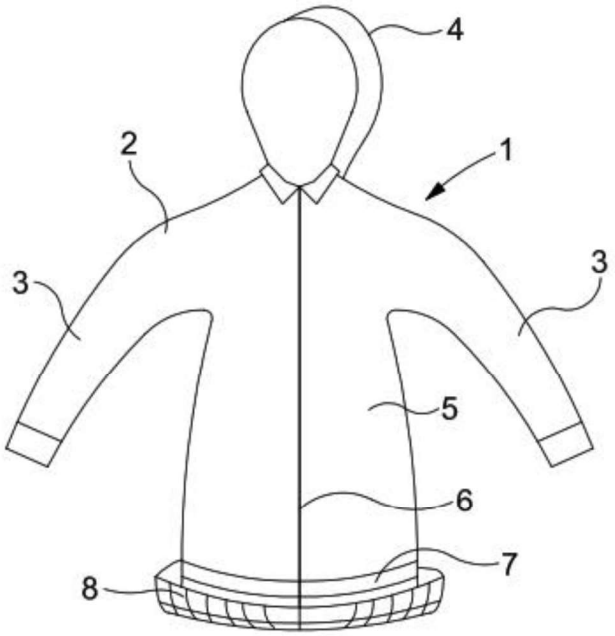

FIG. 1

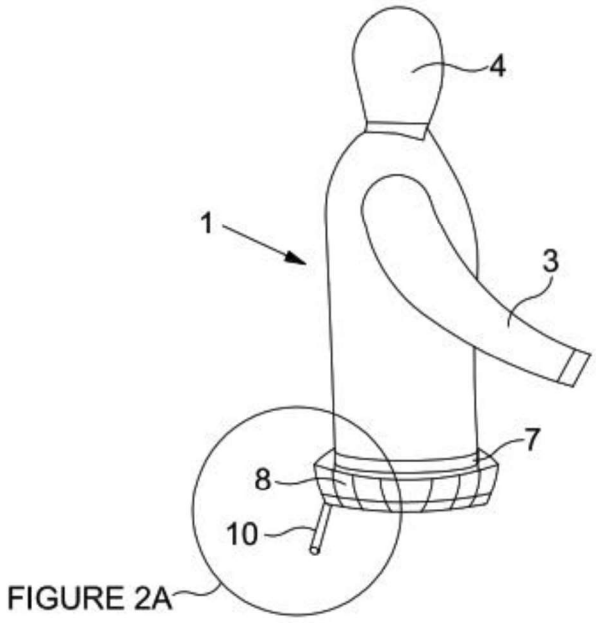

FIG. 2

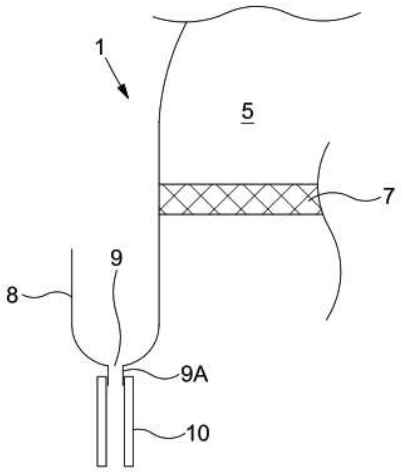

FIG. 2A

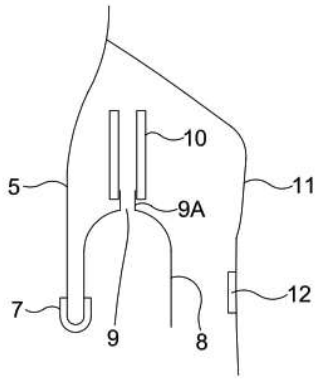

FIG. 2B

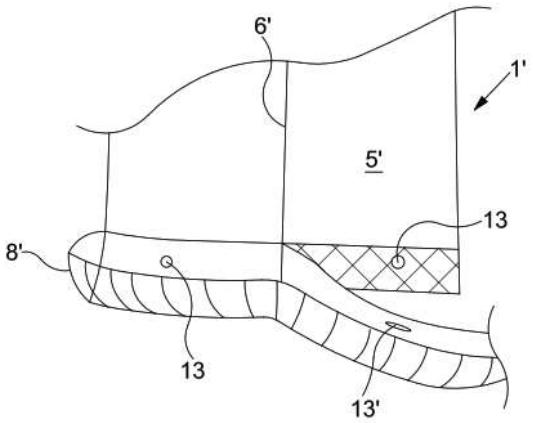

FIG. 3

DrainGate

The DrainGate is an overcoat with an integral gutter which is designed to prevent soaking of the legs of a wearer when working in wet weather. The overcoat has a body portion (BP) for covering the wearer's body, and a pair of arms (A). The body portion (BP) carries a zipper (Z) for fastening the overcoat about the wearer. The overcoat is fabricated from a waterproof material, such as a plastics material which is impenetrable to water but which allows water vapour to pass from the body side to the outer side of the overcoat. The lowermost portion of the body portion (BP) terminates in a gutter (G) that is fabricated from a semi-rigid plastics material, such as PVC, and that is welded to the body portion (BP). The gutter (G), being semi-rigid, forms a hoop around the overcoat which, in use, is spaced outwardly of the wearer's legs, as shown in the drawing below. The semi-rigid hoop slopes downwardly from high points at the front and back of the overcoat to low points at the sides of the overcoat. This configuration allows water collected in the gutter to flow towards the low points at the sides of the overcoat where it flows over the rim of the gutter away from the wearer's legs.