

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TED F. HOGANSON

Appeal No. 2000-1963
Application No. 09/272,989

ON BRIEF

Before ABRAMS, STAAB and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Ted F. Hoganson appeals from the final rejection of claim 1, the only claim pending in the application.

THE INVENTION

The invention relates to "an adjustable anti-glare device for use on devices having subjective lenses, i.e., a variety of telescopes[,] spotting scopes, binoculars, cameras, and

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video cameras" (specification, page 1). Claim 1 reads as follows:

1. An anti-glare device for use with objective lenses mounted in a housing, said device comprising:

an elongated strip of flexible, soft material having a length between ends to wrap around a housing containing objective lenses and to overlap on itself, a width to project from said housing and sufficient rigidity to maintain an encircling formation projecting from said housing;

connector means fixed to one face of one of said ends of said elongate strip of flexible soft material; and

co-operating connector means fixed to at least an opposite end of said elongate strip of flexible, soft material, said connector means interlocking when one of said ends overlaps the other of said ends when said elongate strip is wrapped around and projects from an end of said housing.

THE PRIOR ART

The references relied on by the examiner as evidence of obviousness are:

Villarreal 1978	4,089,117	May 16,
Bock 21, 1988	4,751,950	June

THE REJECTIONS

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly

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claim the subject matter the appellant regards as the invention.

Claim 1 also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Villarreal in view of Bock.

Attention is directed to the appellant's brief (Paper No. 7) and to the examiner's answer (Paper No. 8) for the respective positions of the appellant and the examiner with regard to these rejections.

DISCUSSION

I. The 35 U.S.C. § 112, second paragraph, rejection

The appellant's assertion that "[t]here is no rejection under 35 U.S.C. [sic] 112, second paragraph" (brief, page 2) is technically correct as neither the final rejection (Paper No. 5) nor the examiner's answer contains a formal statement of such a rejection. The remarks in these papers clearly show, however, that the examiner considers claim 1 to be indefinite and that the failure to formally state a corresponding rejection was inadvertent. In order to expedite the proceedings in this appeal, we have assumed that such a rejection was properly entered and shall review the merits of the examiner's position. As should be apparent from the

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following comments, our decision to do so does not prejudice the appellant in any way. The examiner's determination that claim 1 is indefinite rests on an alleged lack of antecedent basis in the claim for the term "the other" (see page 3 in the answer). As indicated above, this term appears within the recitation defining the connector means as "interlocking when one of said ends overlaps the other of said ends when said elongate strip is wrapped around and projects from an end of said housing." Because claim 1 earlier sets forth the elongate strip as having "a length between ends," the reference to one and "the other" of the ends does have a proper and clear antecedent basis.

Accordingly, we shall not sustain the 35 U.S.C. § 112, second paragraph, rejection of claim 1.

II. The 35 U.S.C. § 103(a) rejection

Villarreal, the examiner's primary reference, discloses a sunshade constructed to be rotatably mounted on a rifle scope to reduce the deleterious effects of glare and reflected light. The sunshade 10, made of a flexible and resilient material, comprises an elongated body 13 having a scope-grasping collar 14 at one end 17 and a viewing slot 19

extending from the collar to a leading arc 20 at the other end 18. As shown in Figures 2 and 4, the collar 14 can be deformed to fit over and resiliently grasp the scope.

As conceded by the examiner (see page 4 in the answer), Villarreal does not respond to the limitations in claim 1 requiring (1) the elongated strip of material to have "a length between ends to wrap around a housing containing objective lenses and to overlap on itself," and (2) "connector means" fixed to one of the ends of the strip and "co-operating connector means" fixed to the opposite end of the strip, with these "connector means interlocking when one of said ends overlaps the other of said ends." The examiner's reliance on Bock to overcome these deficiencies is unsound.

Bock discloses a cover for protecting camera equipment from inclement weather during use. The cover 12, made of a flexible, moisture-resistant, specially configured sheet 28, includes a rear wall 30, a top wall 32, a pair of sidewalls 34, 36, a connection strip 42 depending from the rear wall 30, and an underflap 38 extending from the lower edge of sidewall 34. The cover also includes a Velcro strip 40 on the forward inner surfaces of walls 32, 34, 36 for engaging a

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complementary Velcro strip 56 on the forward end of the camera lens, a Velcro strip 46 on one face of the connection strip 42 for engaging a complementary Velcro strip on the underside of the camera, and complementary Velcro strips 44 and 52 on the other face of the connection strip 42 and on the underflap 38, respectively, to secure these elements around the rear of the camera.

In proposing to combine Villarreal and Bock to reject claim 1, the examiner concludes that

it would have been obvious to one of ordinary skill in the art at the time the invention was made to use connector means 52 and co-operating connector means 44 on said elongate strip of flexible material 28 to overlap and interlock the device as disclosed by Bock . . . in the anti-glare device of Villarreal . . . to achieve an anti-glare device as claimed, because the use of such connector means and co-operating connector means would provide easier and better attachment of the elongate strip [answer, page 5].

Villarreal and Bock, however, provide no factual support for the examiner's contention that the proposed modification of the Villarreal sunshade in view of Bock would result in easier and better attachment of the sunshade. Indeed, given the resiliently grasping nature of Villarreal's mounting collar 14, this modification would not appear to improve the

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attachment and arguably would make it more difficult. In this light, and given the markedly disparate natures of the devices respectively disclosed by Villarreal and Bock, it is evident that the only suggestion for combining these references in the manner advanced by the examiner stems from hindsight knowledge impermissibly derived from the appellant's own disclosure.

Consequently, we shall not sustain the 35 U.S.C. § 103(a) rejection of claim 1 as being unpatentable over Villarreal in view of Bock.

SUMMARY

The decision of the examiner to reject claim 1 is reversed.

REVERSED

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NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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REVERSED

November 18, 2002