

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BINO S. TANAKA and ALICE Y. AMONDO

Appeal No. 2001-1801
Application 09/136,659

ON BRIEF

Before ABRAMS, FRANKFORT, and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to appellants' request for rehearing of our decision mailed April 24, 2002, wherein we affirmed the

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§ 102(b) as being anticipated by Baum, and reversed the examiner's rejection of claims 6, 7, 10, 11, 18 and 19 under 35 U.S.C. § 103 based on Baum and Cummings.

We have carefully considered each of the points of argument raised by appellants in their request for rehearing, however, those arguments do not persuade us that our decision was in error in any respect.

Appellants main point of argument centers on this panel's determination that the adjustable waist belt (31) of Baum and the camera bag associated therewith constitute a "portable seat belt assembly" as broadly set forth in claims 1, 2, 14 and 15 on appeal. More particularly, appellants urge that we have incorrectly determined that the adjustable waist belt (31) of Baum is capable of performing the intended use of a seat belt for attachment to a seat of a school bus. In that regard, appellants urge (request, page 2-3) that if the belt of Baum were attempted

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the teachings of Baum. In construing the term "seat belt" appellants contend that we should have applied the Federal Motor Vehicle Safety Standards, 49 CFR § 571 et sec., which set forth the mandatory Federal standards for seat belts.

With regard to appellants' change in length argument, we pointed out on pages 6-7 of our earlier decision that the adjustable length belt (31) of Baum need not be of a length to encircle the seat back of a school bus as shown in Figure 1 of the application drawings, since the claims on appeal do not specify any such length requirement. In further discussing this point, we noted that the adjustable length belt (31) of Baum is capable of being secured to a portion of a seat of a school bus such as a center post extending between a bench part of the bus seat and the back thereof, or to a post wherein there are posts at each end of the bus seat with a gap between the bench portion and the back of the seat. Appellants have not argued or demonstrated that the belt (31) of Baum is not capable of such a

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As for appellants' attempt to read the Federal regulations into the broadly recited "seat belt" of the claims on appeal, we see no basis to do so. Appellants are certainly free to amend the claims on appeal to better define the structural requirements of the belt therein, but, as currently set forth, the "seat belt" merely defines a belt that is capable of attachment to a seat of a school bus and of providing some degree of restraint for a child, a standard we have already noted above that the adjustable belt (31) of Baum meets.

Contrary to appellants' assertions (request, page 6), we have not disregarded the terms "seat belt assembly" in the preamble and "seat belt" in the body of the claims under appeal, we have merely determined that such recitations are entitled to a broad construction, which the adjustable belt (31) of Baum fully meets. Similarly, we have broadly construed the requirement in claim 14 on appeal regarding the "strap means for securing said belly pack around the waist of an individual." Again, appellants

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on appeal, we nonetheless find that they are fully capable of such uses and structurally respond to the requirements of the claims on appeal. Note, in this regard, our reliance on page 7 of the earlier decision on In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997), which case appellants have not commented on in their request for rehearing.

In light of the foregoing, appellants' request is granted to the extent of reconsidering our decision, but is denied with respect to making any changes therein.

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

DENIED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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