

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY NELSON

Appeal No. 2002-0101
Application No. 09/384,546

ON BRIEF

Before ABRAMS, PATE, and BAHR, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 6 and 9 through 14. Claim 7, 16, and 17 stand allowed. Claims 8 and 15 have been canceled. These are the only claims in the application.

The claimed invention is directed to a sports target formed of a flat, thin, flexible fabric imprinted on one side with a sports goal image. A plurality of first strips of hook-and-loop fastener material are attached to the back side of the fabric

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target. A second plurality of hoop-and-loop fastener material is provided to attach the target to a wall.

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

Schonberg	1,544,430	Oct. 14, 1924
Baker	4,344,621	Aug. 17, 1982
Lapsker et al. (Lapsker)	5,549,302	Aug. 27, 1996

REJECTION

Claims 1 through 6 and 9 through 14 stand rejected under 35 U.S.C. § 103 as unpatentable over Schonberg in view of Lapsker and Baker.

Claims 1 through 6 stand rejected under 35 U.S.C. § 112, second paragraph as indefinite.

GROUPING OF CLAIMS

Appellant has grouped the claims as follows:
For the rejection under 35 U.S.C. § 103, claims 1 through 6 are one group, while claims 9 through 12 are a second group. Claims 13 and 14 stand or fall separately.

In the supplemental examiner's answer, the examiner clarified the status of an amendment after final filed on April 19, 2001, Paper No. 8. According to the examiner, this amendment

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after final was not entered in the prosecution of this application.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have reached the determination that claims 1 through 6 and 9 through 14 are prima facie obvious in view of the applied prior art. Appellant has not rebutted the prima facie case of obviousness with additional evidence. Therefore, we will affirm the rejections of claims 1 through 6 and 9 through 14. However, we do not affirm the 35 U.S.C. § 112, second paragraph rejection of claims 1 through 6. Our reasons follow.

As an initial matter, we will construe claim 1 on appeal as the representative claim of the first group of claims. The claimed subject matter is directed to a target of flat, thin fabric material whereon a sports goal pattern has been imprinted. The panel is merely adapted to transmit energy from an underlying wall when the material is mounted on the wall. The target has a plurality of hook-and-loop fasteners attached to the back side. A second plurality of hook-and-loop fasteners are provided to attach the target to a wall.

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The following are our findings of fact with respect to the scope and content of the prior art and the differences between the prior art and the claimed subject matter. Schonberg discloses a target of flat, thin, flexible material with a sports target imprinted on at least one side. Schonberg can be suspended or supported in a vertical or upright position. Due to the thin, flexible nature of Schonberg's target, Schonberg would inherently transmit energy back to rebound a projectile if Schonberg were mounted on a rigid wall. As per our construction of claim 1, however, the subject matter target is merely adapted to be so mounted, and the claim does not actually require such a mounting, appellant's arguments notwithstanding. Schonberg does not disclose hook-and-loop fastening material.

Lapsker discloses a target 10 constructed of flat, thin fabric of hook-and-loop material. The projectiles 16, 20 of Lapsker have hook-and-loop fastener 14, 22 attached thereto, and they adhere to the fabric of Lapsker when they hit the fabric. Lapsker's fabric is attached to a supporting framework by patches 38 of hook-and-loop material on the frame. We further note that the patches 38 of Lapsker are backed with an adhesive. The differences between Lapsker and the claimed subject matter are that Lapsker does not show strips of hook-and-loop fastener, and

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Lapsker intends his projectiles to stick to the fabric. Baker discloses a foam target for a sports game.

It is our view that it would have been obvious to use strips of hook-and-loop fastener as disclosed by Lapsker to suspend or support the target of Schonberg in a vertical or upright position. It is our further opinion that the exact size and shape of the hook and loop fastening, whether strips, or round patches, or an entire panel backing, is a matter of design choice, obvious to one of ordinary skill in the sports target art.

Turning to appellant's arguments, we agree that Schonberg does not expressly disclose mounting on a vertical surface. Giving the claims their broadest reasonable interpretation, it is our legal conclusion that such is not required by the "adapted to" language of claim 1. We agree that the disclosure of Baker contemplates absorbing energy. We have not relied upon it. While we agree that Lapsker's fabric target is covered with hook-and-loop fastening material, the clear teaching of patches 38 is evidence of a recognition in this art that small areas of hook-and-loop fasteners are sufficient to hold a lightweight fabric target such as disclosed in Schonberg. Furthermore, we are of

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the view, as noted above, that the exact shape of the patches of hook-and-loop fastener is not a patentable distinction.

Appellant in the reply brief argues about the non-damaging aspects of the hook-and-loop fastener of the claims on appeal. Here again, with respect to claim 1, for example, the strips are merely adapted to have the use of being attachable and removable from a wall. Additionally, Lapsker discloses the exact type of hook-and-loop fasteners claimed, at least to the scope of the claims on appeal. Even if it were true that appellant was first to disclose this non-damaging feature of hook-and-loop fasteners, a new use for an old article must be claimed as a method. It does not serve to patentably distinguish one article from another.

We affirm the rejection of claim 1 under 35 U.S.C. § 103, and the rejections of claims 2-6, that fall therewith.

Turning to claim 9, we are in agreement with the examiner that providing an extra supply of second strips of hook-and-loop fastener would have been obvious to one of ordinary skill. Given the nature of the hook-and-loop fasteners and the adhesive placed thereon and the outdoor environment (park, field or parking lot) disclosed by Lapsker, one of ordinary skill would have found it obvious to supply extra hook-and-loop material in the event the

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adhesive became weak or soiled. Accordingly, we affirm the obviousness rejection of claims 9-12.

Claims 13 and 14 combine claim features of both groups. Nonetheless, for the reasons already given, we are of the view that the subject matter as a whole of these claims is unpatentable under section 103. The rejection of these claims is also affirmed.

Turning to the rejection of claims 1-6 under 35 U.S.C. § 112 second paragraph, we do not agree with the examiner that the claims are indefinite. It is clear to us that, although the wall is mentioned in the preamble, appellant is not claiming the combination of a wall and a target. We do not affirm the rejection under 35 U.S.C. § 112.

In summary we have affirmed the obviousness rejections under section 103 of claims 1-6 and 9-14. We have reversed the rejection of claims 1-6 under section 112.

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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).

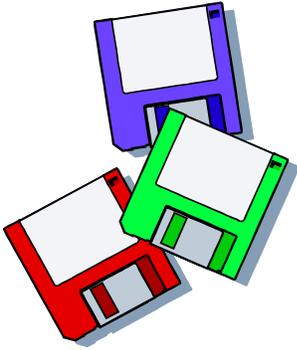
AFFIRMED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE, III)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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WFP/LBG

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APJ PATE

APJ BAHR

APJ ABRAMS

DECISION: AFFIRMED

Prepared: January 30, 2004

Draft Final

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PALM / ACTS 2 / BOOK

DISK (FOIA) / REPORT