

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN J. GARSKE

Appeal No. 2005-1815
Application No. 10/057,719

ON BRIEF

Before FRANKFORT, PATE and McQUADE, Administrative Patent Judges.
Per curiam

DECISION ON APPEAL

Stephen J. Garske appeals from the examiner's rejection of claims 1, 3, 8, 9, 11 through 13, 20 and 22 through 30. Claims 2 and 14, the only other claims pending in the application, stand withdrawn from consideration.

THE INVENTION

The invention relates to a sleeve for a golf hole cup.

Representative claims 1, 22, 25 and 29 read as follows:

1. A golf cup apparatus comprising:

a golf cup comprising a cylinder extending from a top surface to a bottom surface, the golf cup including a wall extending between the top surface and the bottom surface, the cup wall defined by an interior surface and an exterior surface; and

a cup sleeve disposed within the golf cup, the sleeve comprising a one-piece, seamless cylinder having an open circular top end and an open circular bottom end and the cup sleeve abutting the interior surface of the golf cup without interfering with a golf ball dropping within the golf cup.

22. A golf cup sleeve comprising:

a cylindrical sleeve having an outer diameter dimensioned to fit against an inner surface of a golf cup and an inner diameter dimensioned so as not to interfere with a golf ball dropping within the golf cup, the cylindrical sleeve having a one-piece, seamless form wherein the cylindrical sleeve presents a substantially smooth inner surface when the cylindrical sleeve is mounted within the golf cup.

25. A golf cup apparatus comprising:

a golf cup having an inner surface defining a golf cup sleeve mounting area; and

a golf cup sleeve adapted to fit within the golf cup sleeve mounting area without interfering with a golf ball dropping within the golf cup, wherein the golf cup sleeve includes an unbroken cylindrical sleeve having an outer diameter dimensioned to fit against the inner surface of the golf cup.

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29. A method of inserting a golf cup sleeve into a golf cup, the method comprising:

placing a one-piece, seamless cylindrical golf cup sleeve into a golf cup; and

releasing the golf cup sleeve so that an outer surface of the golf cup sleeve is forced against an inner surface of the golf cup and an inner surface of the golf cup sleeve does not interfere with a golf ball dropping within the golf cup.

THE EVIDENCE

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

Hageman	5,362,044	Nov. 08, 1994
Browne	5,382,018	Jan. 17, 1995
Crocker et al. (Crocker) (British Patent Document)	355,171	Aug. 20, 1931
Boyd (British Patent Document)	2,206,804	Jan. 18, 1989

The item relied upon by the appellant as evidence of non-obviousness is:

The 37 C.F.R. § 1.132 declaration of Stephen J. Garske filed December 16, 2002.

THE REJECTIONS

Claims 1, 9, 11, 12, 22, 25, 27 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boyd in view of Browne.

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Claims 3, 13, 20, 23, 26 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boyd in view of Browne and Hageman.

Claims 8, 24 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Crocker in view of Browne.

Attention is directed to the main brief filed October 14, 2003 and reply brief filed February 27, 2004 and to the Office action mailed March 5, 2003 and answer mailed December 23, 2003 for the respective positions of the appellant and examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 103(a) rejection of claims 1, 9, 11, 12, 22, 25, 27 and 29 as being unpatentable over Boyd in view of Browne

Boyd discloses a liner for a golf hole cup. The liner (see Figures 1 and 2) comprises a strip of flexible plastic that is rolled into a cylinder with overlapping ends and placed into a golf hole cup. Once in the cup, the strip opens out under its natural resilience to tightly engage the wall of the cup. Boyd teaches that the liner is reversible and may be cleaned and re-used multiple times (see page 2, lines 31 through 35).

The examiner concedes that Boyd does not respond to the limitations in independent claims 1, 22 and 29 requiring a cup sleeve which is a one-piece, seamless cylinder or the limitation in independent claim 25 requiring the sleeve to be an unbroken cylindrical sleeve.

Browne discloses a cylindrical collar 10 designed to be placed in a golf hole above the cup 14 (see Figures 1 and 3). The collar serves to enhance the visibility of the hole and to maintain the shape and sharpness of the hole (see column 3, lines 18 through 25). The collar has a one-piece, seamless design (see Figure 4) that is "sufficiently flexible to permit temporary collapse of the diameter for insertion and removal from the hole" (column 3, lines 35 through 37). According to Browne, this construction makes the collar "easy to install" (column 4, line 47).

Combining Boyd and Browne to reject independent claims 1, 22, 25 and 29, the examiner submits that "[i]n view of Browne the use of a one-piece seamless design in fashioning Boyd's liner would have been obvious to the ordinarily skilled artisan wishing to make Boyd's device easier to insert into the hole" (Office action, page 2).

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While Browne does disclose a one-piece, seamless collar that is easy to install, the combined teachings of Boyd and Browne do not corroborate the examiner's implication that the liner of Boyd is difficult to install or that the collar of Brown is easier to install. Further, these prior art devices serve different purposes: one (Boyd) lines a golf hole cup and provides a highly visible and easily renewable (by cleaning) indication of a golf hole and the other (Browne) lines the portion of the hole above the cup and reinforces the bare earth, provides a moisture barrier and keeps the edge of the hole sharp and well defined, while also enhancing the visibility of the hole. At most, the combined teachings of Boyd and Browne would have suggested pairing the golf hole cup liner of Boyd with the bare hole collar of Browne, which would not result in the subject matter recited in independent claims 1, 22, 25 and 29.

Hence, as applied by the examiner, the combination of Boyd and Browne fails to establish a prima facie case of obviousness with respect to the subject matter recited in claims 1, 22, 25 and 29, and dependent claims 9, 11, 12 and 27.¹ Therefore, we

¹ As a result, it is unnecessary to go into the merits of the appellant's declaration evidence of non-obviousness.

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shall not sustain the standing 35 U.S.C. § 103(a) rejection of these claims.

II. The 35 U.S.C. § 103(a) rejection of claims 3, 13, 20, 23, 26 and 30 as being unpatentable over Boyd in view of Browne and Hageman

Hageman discloses a conventional golf hole cup 5 (see Figure 1) modified to include an interior recess 20 that defines an upper lip 35 which acts to retain an advertisement insert 30 (see Figure 2). The insert 30 is a strip of flexible plastic that is formed into a partial cylinder and inserted into the cup wherein it springs into the recess and is held by the lip.

The examiner's application of Hageman does not cure the above noted shortcomings of Boyd and Browne relative to the subject matter recited in independent claims 1, 22, 25 and 29, or in independent claim 20 which also requires a one-piece, seamless cup sleeve. Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 20, and dependent claims 3, 13, 23, 26 and 30, as being unpatentable over Boyd in view of Browne and Hageman.

III. The 35 U.S.C. § 103(a) rejection of claims 8, 24 and 28 as being unpatentable over Crocker in view of Browne

Claims 8, 24 and 28 depend from claims 1, 22 and 25, respectively.

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Crocker discloses golf hole liner which, depending on its construction, may or may not extend into a golf hole cup. The liner is a cylindrically formed sheet of fibrous material which, according to the examiner, does not respond to the one-piece, seamless cylinder limitations in parent claims 1 and 22 or the unbroken cylindrical sleeve limitation in parent claim 25. In short, the examiner's reliance on Browne to overcome these deficiencies is unsound, essentially for the reasons expressed above with respect to the proposed combination of Boyd and Browne.

Thus, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claims 8, 24 and 28 as being unpatentable over Crocker in view of Browne.

IV. Remand to the examiner

As indicated above, independent claim 25 differs from independent claims 1, 20, 22 and 29 in that it defines the golf cup sleeve as being an unbroken cylindrical sleeve instead of a one-piece, seamless cylinder. Notwithstanding the examiner's apparent finding to the contrary, the golf hole liner disclosed by Crocker appears to meet the unbroken cylindrical sleeve limitation in claim 25 as well as all of the other limitations in this claim and dependent claim 27. On remand, the examiner

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should reconsider the patentability of claims 25 and 27 in view of the Crocker disclosure and enter an appropriate rejection if such is warranted.

SUMMARY

The decision of the examiner to reject claims 1, 3, 8, 9, 11 through 13, 20 and 22 through 30 is reversed, and the application is remanded to the examiner for further consideration.

REVERSED AND REMANDED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
WILLIAM F. PATE, III)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JOHN P. McQUADE)	
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