

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ERIC T. HENGSTENBERG

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Appeal No. 2006-2529  
Application No. 10/428,792

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ON BRIEF

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Before PATE, CRAWFORD and HORNER, Administrative Patent Judges.  
PATE, Administrative Patent Judge.

DECISION ON APPEAL  
STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-12. These are the only claims in the application.

The claimed invention is directed to a breech plug for use with firearms such as a muzzleloading rifle. Appellant's breech plug has a generally cylindrical body with a first end having a nipple to which a percussive cap is applied. The second end of the breech plug has a stem of smaller diameter than the barrel. This forms a cavity between the diameter of the stem and the barrel.

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The reference of record relied upon by the examiner as evidence of anticipation is:

Laney                            5,907,920                            Jun. 1, 1999

According to appellant, claims 1-12 stand as one group. Accordingly we will confine our decision to the independent claim 1.

### ISSUE

The sole issue for our consideration is whether Laney anticipates claim 1.

### PRINCIPLES OF LAW

The prior art may anticipate a claimed invention, and thereby render it non novel, either expressly or inherently. See In re Cruciferous Sprout Litigation, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002), cert. denied, 538 US 907 (2003). Express anticipation occurs when the prior art expressly discloses each limitation “i.e., each element” of a claim. Id.

### FINDINGS OF FACT

We find that Laney discloses a breech plug or percussion nipple 14 for use in a muzzleloading firearm with a barrel. Laney is comprised of a generally cylindrical body 22 (provided with two wrench flats) with a first end 16 and a second end 20. The first end 16 is a percussion nipple where cap 18 is placed. The

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second end is a stem 26 which extends into the barrel on the breech end. The diameter of the stem is described in the following way:

The outer diameter of the free end portion 26 is substantially less than the inner diameter of the nipple bore 54 so that the outer surface 28 of the nipple is spaced from the inner surface 56 of the nipple bore to form an annular auxiliary fire channel 72 extending from the side fire channels 42 to the powder well 50. (Col. 3, lines 54-59).

Therefore, as readily can be seen, the stem of Laney is of uniform diameter and forms a cavity between the diameter of the stem and the barrel. Lastly, Laney has a bore that extends longitudinally through the entire breech plug.

### ANALYSIS

Appellant argues that Laney fails to disclose a cavity formed between the outer diameter of the stem and the inner diameter of the bore. We must emphasize that Laney does disclose such a cavity. It might be argued that the cavity of Laney is not between the stem and the barrel but between the stem and Laney's breech plug 68. However, the claim does not preclude the presence of another member (the breech plug) between the barrel and the stem. Therefore, the cavity 72 is physically located between the stem and the barrel.

In the reply, appellant argues that Laney fails to show a stem of uniform diameter extending outwardly from the second end of the body as required by the claim. Here again, we must note that the stem extends out of the body 22 with a threaded portion 27 juxtaposed between the stem and the body. As noted above, the claim, in "comprising" language, does not preclude the addition of the threaded portion 27, inasmuch as Laney discloses a nipple, a body, and a stem. In other words, the threaded portion 27 is not precluded by the claim language of claim 1.

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CONCLUSION

For the foregoing reasons, it is our finding of fact that claim 1 is anticipated by Laney.

ORDER

Since all claims on appeal fall with claim 1, we affirm the rejections of claims 1-12 under 35 U.S.C. § 102.

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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).

AFFIMED

WILLIAM F. PATE, III	)
Administrative Patent Judge	)
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MURRIEL E. CRAWFORD	) BOARD OF PATENT
Administrative Patent Judge	) APPEALS
	) AND
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LINDA E. HORNER	)
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