

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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*Ex parte* BRADLEY JACOB HOKIN

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Appeal 2008-4973  
Application 10/870,825  
Technology Center 3700

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Decided: December 10, 2008

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Before TONI R. SCHEINER, ERIC GRIMES, and LORA M. GREEN,  
*Administrative Patent Judges.*

GRIMES, *Administrative Patent Judge.*

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 involving claims to a bandanna, which the Examiner has rejected as anticipated or obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

**STATEMENT OF THE CASE**

Claims 1-3 and 6-17 are pending and on appeal. Claims 1, 3, 6, and 10 are representative and read as follows:

1. A bandanna comprising:  
a generally square piece of material having one or more graphics located thereupon that can be folded and tied into a bandanna by an individual, the location of said one or more graphics selected so that said one or more graphics are properly oriented when said generally square piece of material is folded by an individual and tied into a bandanna and worn.
3. The bandanna as recited in claim 2, wherein said piece of material is made from paper.
6. The bandanna as recited in claim 1, wherein said one or more graphics are sports related.
10. A method for forming a bandanna comprising the steps of:
  - (a) providing a generally square piece of material that can be folded and tied into a bandanna by an individual; and
  - (b) locating one or more graphics on said generally square piece of material such that said one or more graphics are properly oriented when said generally-square piece of material is folded into a bandanna by an individual and tied into a bandanna and worn on the head of a wearer.

The claims stand rejected as follows:

- Claims 1, 2, 8-11, 13, 14, 16, and 17 under 35 U.S.C. § 102(b) as anticipated by Doty;<sup>1</sup>
- Claims 3 and 12 under 35 U.S.C. § 103(a) as obvious in view of Doty; and
- Claims 6, 7, and 15 as obvious in view of Doty and Flannery.<sup>2</sup>

The claims rejected as anticipated have been argued in two groups: the product claims stand or fall with claim 1 and the method claims stand or fall with claim 10. The claims rejected for obviousness have not been

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<sup>1</sup> Doty, U.S. Patent 4,993,080, issued Feb. 19, 1991.

<sup>2</sup> Flannery, U.S. Patent 4,468,818, issued Sept. 4, 1984.

argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii).

*Issue*

The Examiner's position is that Doty discloses a bandanna that meets all the limitations of claim 1 and that, alone or in combination with Flannery, would have made obvious the additional limitations of claims 3 and 6.

Appellant contends that neither Doty nor Flannery discloses a bandanna and therefore the references do not anticipate or make obvious the claimed bandanna.

The issue to be decided is: Did the Examiner err in finding that Doty discloses a product that meets the limitations of claim 1 and a process that meets the limitations of claim 10?

*Findings of Fact*

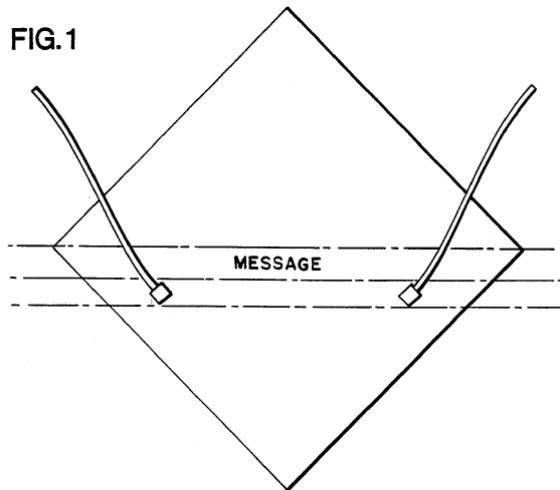
1. The Specification states that "bandannas normally consist of a generally square piece of fabric, for example, cotton, silk, rayon, or other fabric folded in half forming a triangle" that can be tied around the head. (Spec. ¶0002.)

2. The Specification states that

[t]he principles of the invention are also applicable to other types of headwear, such as a generally square or rectangular piece of material folded, for example, into a square or rectangular shape, which, in turn, is tied on the head of the wearer. . . . As used herein, such headwear is also considered to be a bandanna.

(Spec. ¶0018.)

3. The Specification does not define the phrase “properly oriented.”
4. Doty discloses a headband with a message printed on it (Doty, col. 1, ll. 29-36).
5. The headband is made from a piece of “flexible, foldable cloth, preferably such as used for handkerchiefs or bandannas. It can be used for general purposes when not used as a headband.” (*id.* at col. 1, l. 67 to col. 2, l. 2.)
6. Doty’s headband optionally includes one or a pair of tassels (*id.* at col. 1, ll. 40-43).
7. Doty’s Figure 1 is reproduced below:



The figure shows “a headband . . . in its unfolded, flat condition” (*id.* at col. 1, ll. 66-67).

8. The message strip on Doty’s headband is visible when the headband is worn (*id.* at col. 2, ll. 17-18).

#### *Principles of Law*

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in

the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

*In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

"[W]here a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation." *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997).

### *Analysis*

Claim 1 is directed to a "generally square piece of material having one or more graphics located thereupon" in such a way that the "graphics are properly oriented" when the piece of material is worn as a bandanna (see claim 1). The recitation that the claimed product is a "bandanna" represents its intended use; the claim language does not limit the claimed product to one having the configuration of a bandanna (e.g., folded into a triangle and having two of its corners tied together).

Doty discloses a generally square piece of material with a graphic on it. The material reasonably appears to be capable of being folded and tied into a bandanna. Doty discloses that the graphic on the material is located in such a way that it is visible when the piece of material is worn as a headband. Based on its location, the graphic would also be visible (i.e., "properly oriented") if Doty's product was worn as a bandanna. The Examiner's finding that Doty's product meets all the limitations of claim 1 is supported by the evidence.

Doty also discloses all the limitations of claim 10. The only manipulative steps of claim 10 are "providing a generally square piece of

material” and “locating one or more graphics” on it such that they are “properly oriented” when the piece of material is worn as a bandanna (claim 10). As with claim 1, the references in claim 10 to a “bandanna” are merely the intended use of the product produced by the claimed method.

Appellant also argues that the Examiner erred in concluding that claims 3 and 12 would have been obvious based on Doty, and that claims 6, 7, and 15 would have been obvious based on Doty and Flannery (Appeal Br. 4-6).

The only error asserted by Appellant, however, is based on his assertion that Doty does not disclose a bandanna (*id.*). For the reasons discussed above, we conclude that the intended use of the claimed product as a bandanna does not distinguish the claimed product or method from that disclosed by Doty. Appellant has not asserted that Doty, alone or combined with Flannery, would not have made obvious any of the actual limitations of claims 3, 6, 7, 12, and 15.

#### CONCLUSIONS OF LAW

The Examiner correctly found that Doty discloses a product meeting all the limitations of claims 1 and a process that meets the limitations of claim 10.

#### SUMMARY

We affirm the rejection of claims 1, 2, 8-11, 13, 14, 16, and 17 under 35 U.S.C. § 102(b) as anticipated by Doty, the rejection of claims 3 and 12 under 35 U.S.C. § 103(a) as obvious in view of Doty, and the rejection of claims 6, 7, and 15 under 35 U.S.C. § 103(a) as obvious in view of Doty and Flannery.

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

AFFIRMED

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