

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte LONNIE L. LAWRENCE

Appeal 2008-4976
Application 10/908,250
Technology Center 3700

Decided: September 18, 2008

Before DEMETRA J. MILLS, LORA M. GREEN, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-17, 20, and 21. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

The claims are directed to a visor guard and brace. Claim 1 and 20 are representative of the claims on appeal, and read as follows:

1. A visor guard and brace, adapted to attach to and remain on a visor of a cap while worn by the wearer, the visor having a top surface, a bottom surface, a left edge, a right edge, and a front edge, the guard and brace comprising:

a substantially rigid plate of predetermined area adapted to conform to a surface of a cap visor and to cover the front edge of the visor, the plate having a top planar member conforming to a substantial portion of the top surface of the visor and a bottom planar member conforming to a substantial portion of the bottom surface of the visor; and

a fastening mechanism adapted to releasably attach the plate to the visor.

20. A visor guard and brace, adapted to attach to and remain on a visor of a cap while worn by a wearer, the visor having a top surface, a bottom surface, a left edge, a right edge, and a front edge, the guard and brace comprising:

a substantially rigid plate of predetermined area adapted to conform to a surface of a cap visor and to cover the front edge of the visor, the plate having

a top planar member conforming to a substantial portion of the top surface of the visor and having a front edge and a back edge;

a bottom planar member conforming to a substantial portion of the bottom surface of the visor and having a front edge and a back edge; and

a single joining member connecting the front edge of the top planar member and the front edge of the bottom planar member, leaving the back edge of the top planar member and the back edge of the bottom planar member in a spaced apart relation.

The Examiner relies on the following references:

Byers	US 2,699,553	Jan 18, 1955
Scharrenberg	US 5,634,575	Jun, 03, 1997
Barbaccia	US 5,991,927	Nov. 30, 1999

We reverse.

ISSUE (New Matter)

The Examiner contends that a single joining member as required by claim 20 is not supported by the disclosure as originally filed.

Appellant contends that limitation is supported by the disclosure as originally filed.

Therefore, the issue on appeal is: Whether the disclosure as originally filed supports the limitation of “a single joining member connecting the front edge of the top planar member and the front edge of the bottom planar member”?

FINDINGS OF FACT

FF1 The Examiner rejects claims 20 and 21 under 35 U.S.C. § 112, first paragraph, on the grounds that they contain “subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” (Ans. 3.)

FF2 The Examiner finds that a “single joining member was not disclosed in applicant’s original specification.” (*Id.*)

FF3 The Examiner further finds that claims 20 and 21 “appear to contradict one another, since claim 20 recites a joining member as a separate element and claim 21 recites that the top planar member, bottom planar member, and joining member comprise an article formed of a single continuous material.” (*Id.*)

PRINCIPLES OF LAW

The disclosure as originally filed need not provide “*in haec verba* support for the claimed subject matter at issue,” rather, the disclosure should convey to one skilled in the art that the inventor was had possession of the invention at the time of filing. *Purdue Pharma L.P. v. Faulding Pharmaceutical Co.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000) (citations omitted).

ANALYSIS

Appellant argues that the objected to feature was shown in Figures 4 and 5, and was described in ¶39 of the Specification. We agree.

As to the Examiner’s assertion that claims 20 and 21 appear to contradict each other, while that may be an appropriate reason to reject claims under 35 U.S.C. § 112, second paragraph; it is not a basis for a rejection for lack of adequate written description under 35 U.S.C. § 112, first paragraph.

CONCLUSION

We therefore find that the disclosure as originally filed supports the limitation of “a single joining member connecting the front edge of the top planar member and the front edge of the bottom planar member” as required by claim 20, and the rejection is reversed.

ISSUE (Anticipation)

The Examiner contends that Barbaccia teaches a visor guard and brace that meets all of the limitations of independent claims 1 and 20.

Appellant contends that the Examiner has misinterpreted the teachings of Barbaccia.

Thus, the issue on appeal is: Whether the Examiner has correctly interpreted the teachings of Barbaccia in finding that Barbaccia teaches a visor guard and brace that meets all of the limitations of independent claims 1 and 20?

FINDINGS OF FACT

FF4 “The present invention relates . . . to a device providing a wearable protective cover for the visor of such a ball cap while maintaining the desired shape of the visor.” (Spec. 1.)

FF5 Figures 1 and 4 of the instant disclosure are reproduced below.

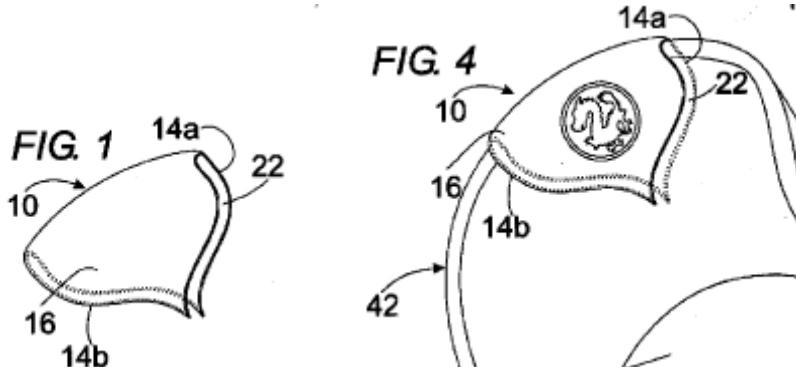


Figure 1 shows “a perspective view . . . showing a baseball cap type brace of rigid material adapted to be placed onto a visor.” (Spec. 6). Figure 4 shows the brace with a cap type visor slid into it (*id.*).

FF6 “The brace 10 comprises a plate 16 curved substantially into a ‘U’ shape defining a top planar member 14a of the plate 16 and a bottom planar

member 14b of the plate 16. The planar members 14a and 14b are spaced apart to provide a void 22 with sufficient gap to grip the visor of a ball cap, as shown in Figure[] 4.” (Spec. 6-7.)

FF7 The Examiner rejects claims 1-9, 11-17, 20, and 21 under 35 U.S.C. § 102(b) as being anticipated by Barbaccia.

FF8 Citing Figure 1, the Examiner finds that Barbaccia shows a visor having a top, bottom, and side surfaces, and further shows a visor guard and brace (Ans. 4).

FF9 According to the Examiner, the visor guard and brace have

a top surface (Figure 1, 22), bottom surface (Figure 1, 30), and left (Figure 1, 26) and right sides (Figure 1, 27) comprising a continuous, substantially rigid polymer plate (Column 2, lines 34-35) wherein the top planar member (22) conforms to a substantial portion of the top surface of the visor (Figure 3, 12) and a bottom planar portion conforming to a substantial portion of the bottom surface of the visor and a fastening mechanism or joining member is a singular fold (Figure 1) that joins the top surface to bottom surface in along one entire length comprising a void between top and bottom portions of the visor guard and brace defining a “U” shaped void at areas (26) and (27) to receive and hold the baseball cap type visor. The back edges of the top and bottom surfaces are configured in a spaced apart relationship (Figure 1).

(Ans. 4.)

FF10 The Examiner finds that the “void conforms to the front edge of the visor, in as much that it may be positioned at any location at the top and bottom planar surfaces of the visor.” (Ans. 4.) The Examiner finds further that the “visor is inserted into the void and the front edge is covered by the

device and is capable of being worn in combination with the visor as shown.” (*Id.*)

FF11 Figures 1 and 2 of Barbaccia are shown below.

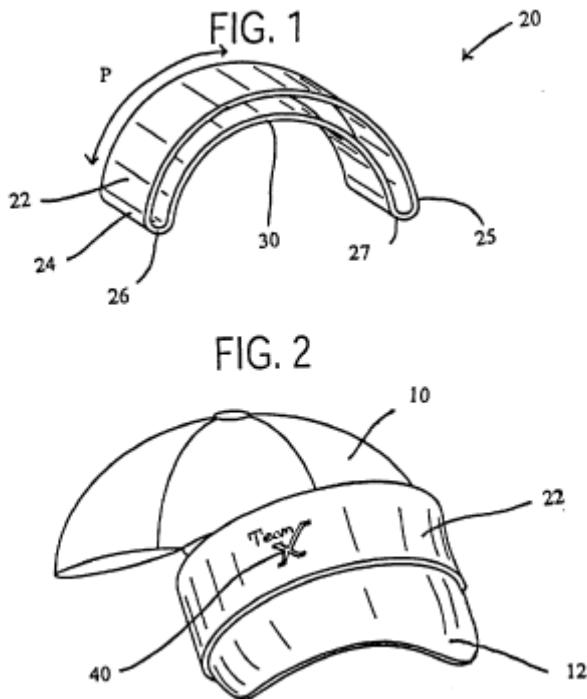


Figure 1 is a perspective view of the cap holding device of Barbaccia, and Figure 2 shows the device removably engaged to a baseball cap (Barbaccia col. 1, ll. 63-67).

FF12 In Figure 1, the bill-shaping wall **22** has a cross-section that is generally C-shaped, and has a bill docking portions **26** and **27** (Barbaccia col. 2, ll. 16-24). The bill docking portions **26** and **27** “are preferably integral with the first and second terminal ends **24** and **25** of the bill-shaping wall, **22**, respectively.” (Col. 2, ll. 23-26.)

FF13 In addition, the bill docking **26** and **27** extend to form a bill-support wall **30**, which is separated from the bill shaping wall by a distance that is

“only slightly greater than the thickness of the bill **12** of the cap **10.**” (Col. 2, ll. 27-33.)

FF14 As can be seen from Figures 1 and 2, when the device of Barbaccia is placed on the visor of a baseball cap, it does not cover the front edge of the visor.

PRINCIPLES OF LAW

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

ANALYSIS

Appellant argues that the Examiner’s position “that Barbaccia teaches a void which conforms to the front edge of the visor, in as much that it may be positioned at any location on the top and bottom planar surfaces of the visor” is incorrect (App. Br. 3-4). We agree.

Claim 1 requires that the visor guard have “a substantially rigid plate of predetermined area adapted to conform to a surface of a cap visor and to cover the front edge of the visor,” and claim 20 similarly requires “a substantially rigid plate of predetermined area adapted to conform to a surface of a cap visor and to cover the front edge of the visor.” As Barbaccia does not teach a visor that has that limitation, and as anticipation is a rejection of strict identity, we are compelled to reverse the rejection.

CONCLUSION

Thus, as the Examiner has incorrectly interpreted the teachings of Barbaccia in finding that Barbaccia teaches a visor guard and brace that meets all of the limitations of independent claims 1 and 20, the anticipation rejection is reversed.

In addition, the Examiner rejects claim 10 under 35 U.S.C. § 103(a) as being obvious over the combination of Barbaccia and Scharrenberg, and claim 19 under 35 U.S.C. § 103(a) as being obvious over the combination of Barbaccia and Byers (Ans. 5). As Barbaccia is relied upon as above, and as neither Scharrenberg nor Byers make up the deficiencies of Barbaccia, we reverse these rejections as well.

REVERSED

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