

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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte J.D. HARVEY

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Appeal No. 2000-0759  
Application No. 08/772,198

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ON BRIEF

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Before FRANKFORT, STAAB, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 8 through 20, all of the claims remaining in the application. Claims 1 through 7 have been canceled.

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Appellant's invention relates to a fiber optic coupler and clip assembly for inserting into an opening in a panel (claim 11) and to a coupler, clip and panel combination (claim 8). An adequate understanding of the claimed subject matter can be had from a reading of illustrative claims 8 and 11, a copy of which is attached to this decision.<sup>1</sup>

The single prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Bailey et al. (Bailey)                      3,446,467                      May 27,  
1969

Claims 8 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bailey. The examiner's position regarding this rejection is found on pages 3 and 4 of the answer (Paper No. 15, mailed November 8, 1999).

Reference is made to the answer (Paper No. 15) for the examiner's reasoning in support of the rejection and response

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<sup>1</sup> Contrary to the examiner's statement in the answer (page 2), we note that the copy of claim 8 set forth in the Appendix to appellant's brief is not a correct copy of the claim. A correct copy of claim 8 may be found in Paper No. 3.

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to

arguments, and to appellant's brief (Paper No. 14, filed August 16, 1999) for the arguments thereagainst.

OPINION

Having carefully reviewed and evaluated the obviousness issues raised in this appeal in light of the record before us, we have come to the conclusion, for the reasons which follow, that the examiner's rejection of the appealed claims under 35 U.S.C.

§ 103 will not be sustained.

The law followed by our Court of review, and thus by this Board, is that "[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). See also, In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir.

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1984) ("In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification").

Looking at the Bailey patent, it is apparent that it discloses a connector (13), clip (29, 31) and panel (11) assembly akin to that disclosed by appellant. However, a close review of the disclosure of the Bailey patent regarding the construction and operation of the clip member(s) reveals that the clip in Bailey is both structurally and functionally different than that set forth in appellant's claims on appeal. More specifically, in contrast to appellant's claimed subject matter in independent claims 8 and 11 on appeal, it is clear to us that the clip in Bailey has no first tab

having a first portion that extends away from the coupler and toward the back side of the panel to an apex, the apex spaced in the longitudinal direction from the back side of the panel and laterally outward of the edge surface of the aperture, the first tab having a second portion that extends from the apex toward the coupler and toward the back side of the panel and terminating at the first tab end,

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as is set forth in claim 8, and also in claim 11 in slightly different terms.

Like appellant (brief, pages 5-8), it is our understanding that Bailey does not have a tab that extends away from the coupler to an apex and then back toward the coupler to terminate at a tab end. A careful review of the Bailey patent at column 3, line 37 through column 4, line 22 indicates that the tab or latching lug (27) therein has a portion that extends upwardly (from bend line 43) away from the coupler to a diagonal bend line (49) and from there is bent further upwards and away from the coupler, thereby providing a corner (at 47') that is elevated and deflected away from the medial portion (33) of the clip. Thus, in contrast to the examiner's position, we do not see how the bend line (49) in Bailey can be said to correspond to the "apex" of appellant's tab, or that Bailey's tab (27) includes first and second portions constructed and arranged as set forth in appellant's claims on appeal, especially, a second portion that "extends from the apex toward the coupler and toward the back side of the panel and terminating at the first

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tab end" (claim 8), or a second portion extending "from the apex back toward the coupler and terminating at a first tab end" (claim 11). For this reason alone, we would refuse to sustain the examiner's rejection of claims 8 through 20 on appeal under 35 U.S.C. § 103.

As a further point, we also find that we are in agreement with appellant's position (brief, pages 8-9) that there is nothing in Bailey to suggest any of the changes urged by the examiner, or any other possible changes, needed to arrive at appellant's claimed subject matter.

Thus, it is our opinion that the examiner has failed to provide an adequate evidential basis to support the § 103 rejection before us on appeal, and that the examiner has relied upon impermissible hindsight knowledge derived from appellant's own teachings to reconstruct the claimed subject matter out of the applied prior art. Accordingly, we will not sustain the examiner's rejection of claims 8 through 20 under 35 U.S.C. § 103 as being unpatentable over Bailey.

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The decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

CEF:lbg  
WESLEY T. NOAH  
P.O. BOX 489  
HICKORY, NC 28603-0489

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CLAIM 8

8. A coupler and panel assembly, comprising:

(a) a generally planar panel having a front side and a back side, the panel defining an aperture therethrough, the aperture having an edge surface perpendicular to the front and back sides;

(b) a coupler disposed through the aperture, the coupler defining a longitudinal direction that is perpendicular to the panel, the coupler having a first arm and a second arm extending laterally therefrom, the first arm and the second arm disposed against the front side of the panel;

(c) a clip mounted to the coupler adjacent the back side of the panel, the clip having a first tab extending from the clip and terminating at a first tab end, the first tab having a first portion that extends away from the coupler and toward the back side of the panel to an apex, the apex spaced in the longitudinal direction from the back side of the panel and laterally outward of the edge surface of the aperture, the first tab having a second portion that extends from the apex toward the coupler and toward the back side of the panel and terminating at the first tab end, the first tab end disposed at a point between the coupler and the edge surface of the aperture, the first tab sufficiently flexible such that pulling of the coupler from the front side of the panel will cause the apex to flatten to a point where it can pass through the aperture.

CLAIM 11

11. A fiber optic coupler and clip assembly for inserting into an opening in a panel comprising:

a coupler having a front portion, a back portion, and two arms extending laterally from the coupler; and

a clip member mounted on the back portion of the coupler, the clip [sic] having a first tab, the first tab having a first portion extending toward the front portion of the coupler at an outward angle relative to the coupler and terminating at an apex, the apex spaced outward from the coupler to extend beyond the opening in the panel, the first tab having a second portion extending from the apex back toward the coupler and terminating at a first tab end, the first tab end disposed adjacent the coupler.