

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES K. BARRETT

Appeal No. 2000-1614
Application No. 08/944,371

ON BRIEF

Before CALVERT, COHEN, and FRANKFORT, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 11 and 13 to 15, all the claims remaining in the application.

The claims on appeal are drawn to a portable or hunter's armrest, and are reproduced in Appendix A of appellant's brief.

Appeal No. 2000-1614
Application No. 08/944,371

Appeal No. 2000-1614
Application No. 08/944,371

The references applied in the final rejection are:

Cover 1904	759,593	May 10,
Baggett 1996	5,528,846	Jun. 25,
Dubé 7, 1998	5,735,496	Apr.

(filed Sep. 13, 1996)

The appealed claims stand finally rejected on the following grounds:¹

- (1) Claim 2, anticipated by Cover, under 35 U.S.C. § 102(b).
- (2) Claims 1, 3, 4 and 6 to 8, unpatentable over Cover in view of Dubé, under 35 U.S.C. § 103(a).
- (3) Claims 5 and 13 to 15, unpatentable over Cover in view of Dubé and Baggett, under 35 U.S.C. § 103(a).
- (4) Claims 9 to 11, unpatentable over Cover in view of Baggett, under 35 U.S.C. § 103(a).

Rejection (1)

Claim 2 reads:²

¹ The examiner indicates in the Advisory Action of Feb. 5, 1999 (Paper No. 7) that a rejection of claim 15 under 35 U.S.C. § 112, second paragraph, has been overcome by the amendment filed on Jan. 19, 1999.

² We note that in line 5 of claim 2, "said user" has no antecedent basis.

Appeal No. 2000-1614
Application No. 08/944,371

2. A portable armrest comprising:
 - a base rod having a first end and an opposed second end;
 - a strap coupled to said first end of said base rod, said strap adapted to attach said arm rest to said user, wherein said strap extends through said first end of said base rod pivotably supporting said base rod relative to the user at a position where said strap extends through said base rod;
 - at least one upper rod having an armrest member at one end thereof, said at least one upper rod adapted to be adjustably attached to said second end of said base rod.

The basis of the rejection is stated on page 3 of the examiner's answer. Appellant argues that strap 2 of Cover does not extend through the first end of base rod 5, and that even if it does, the base rod does not pivot "at a position where said strap extends through said base rod," as claimed (brief, page 6; reply brief, pages 1 and 2). The examiner asserts that (answer, page 6):

Although Cover suggests that the belt may fit neatly within the loop, it does not convey that the strap is snugly fitted within the loop, and thus, the strap is capable of pivotably supporting the base rod at the position where the strap extends through the first end of the base rod.

We consider this rejection to be well taken. Before the PTO, claims are to be given their broadest reasonable

Appeal No. 2000-1614
Application No. 08/944,371

interpretation, and limitations are not to be read thereinto from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993). With regard to appellant's first argument, the term "rod" is a broad term, meaning "a stick, wand, staff, shaft or the like, of wood, metal, or other material."³ Nothing in this definition requires a "rod" to be of

³ The American College Dictionary (1970).

Appeal No. 2000-1614
Application No. 08/944,371

constant diameter, or free from joints. Therefore, elements 1, 3, and 5 of Cover may together be considered a "base rod," as that expression is broadly recited in claim 2, and Convey's belt (strap) 2 does extend through the first end of the base rod, as claimed, since it extends through element 1.

As for appellant's second argument, belt (strap) 2 of Cover "may be the ordinary cartridge-belt generally employed" (page 1, lines 61 and 62), and would be made of a flexible material, such as leather. Where the belt passes through loop 1 the base rod would inevitably be pivotable relative to the belt, for even if the belt were a snug fit in the loop, the rod would be pivotable, at least to a slight extent, due to the flexibility and compressibility of the belt material. In this regard we note that claim 2 does not recite any particular degree of pivoting, so that even though Cover's elements 1, 3, 5 might only be pivotable on belt 2 to a very slight extent, that still would inherently meet the recitation in claim 2 of "pivotably supporting said base rod relative to the user at a position where said strap extends through said base rod."

Appeal No. 2000-1614
Application No. 08/944,371

Accordingly, rejection (1) will be sustained, since Cover anticipates claim 2 in that it discloses every limitation of the claim, either expressly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Appeal No. 2000-1614
Application No. 08/944,371

Rejection (2)

Claim 1 reads:

A portable armrest comprising:
a base rod having a first end and an opposed second end;
a strap coupled to said first end of said base rod, said strap adapted to attach said arm rest to the user; and
a plurality of upper rods, each said upper rod having an arm rest member at one end thereof, and each said upper rod adapted to be adjustably attached to said second end of said base rod, and wherein each said upper rod has a differently shaped arm rest member than said arm rest members of a remaining [sic: the remainder ?] of said plurality of upper rods, wherein said plurality of upper rods is adapted for use with a variety of weaponry.

Cover discloses a portable armrest with a base rod, 1, 3, 5, a strap 2 coupled to the first end of the base rod to attach the arm rest to the user, and an upper rod 6 adjustably attached to the base rod and having an arm rest member 7 at its end. Cover does not disclose a plurality of upper rods, each having a differently shaped arm rest member, as recited, but the examiner finds that it would have been obvious to provide such a plurality of upper rods in view of Dubé's disclosure that the arm rest member 14a at the end of the

Appeal No. 2000-1614
Application No. 08/944,371

upper rod 14y of a portable armrest may have various shapes,
as shown in Figs. 2 to 5 (col. 2, line 64, to col. 3, line 4).

Appeal No. 2000-1614
Application No. 08/944,371

Appellant contends that (brief, page 8):

The Dubé patent does not teach a plurality of distinct arm rest members associated with a single base. The Dubé patent teaches that the single arm rest may be formed in a variety of shapes. There is no teaching or suggestion in the Dubé patent to provide a variety of arm rests for use with a variety of weaponry with all the arm rests associated with a single base.

This argument is not persuasive. While Dubé does not expressly disclose providing a "kit" of a plurality of upper rods, each with a differently-shaped armrest and each attachable to the base rod, we consider that Dubé's disclosure of a variety of arm rest shapes would suggest such a "kit" to one of ordinary skill in the art, thereby allowing the user of the Cover apparatus to select an arm rest according to their personal preference. As for the recitation that the plurality of upper rods "is adapted for use with a variety of weaponry," the Cover arm rest is useable with a "gun" (shown as a long gun) and the Dubé arm rests are disclosed for use with a "rifle," which term itself includes a "variety of weaponry," such as rifles of different calibers, types of actions, etc.

The rejection of claim 1 will therefore be sustained, as will the rejection of claims 3, 6 and 7, which appellant has

Appeal No. 2000-1614
Application No. 08/944,371

not argued separately from parent claim 1. The rejection of claim 4 will also be sustained, since Cover is considered to meet the limitations of that claim for the reasons discussed under rejection (1), supra.

Rejections (3) and (4)

The claims to which these rejections apply all include the requirement that the arm rest member "of one said upper rod" (claim 5) or "of one of said at least one upper member [sic]" (claim 9) "is a spherical ball." The examiner cites Baggett, which discloses apparatus comprising a rod 45 which is pivotally attached to a base 13 attached to a belt 19 or harness 25 on the body B of user U. At the other end 49 of the rod is a cap 75, which appears from the drawings (Figs. 3 and 10) to be the shape of a crutch tip. The examiner takes the position that (answer, pages 4 and 5):

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the arm rest in Cover combined with Dube to have included the rounded arm rest member as taught by Baggett for the purpose of providing an alternative means for steadying objects used with the arm rest. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the rounded member in Baggett to have been a spherical ball

Appeal No. 2000-1614
Application No. 08/944,371

for the purpose of providing a different
aesthetical arm rest and since such a
modification would not have produced any
unexpected results.

We do not agree with the examiner's conclusion of obviousness. Even assuming that it would have been obvious to make Baggett's cap 75 in a spherical shape, cap 75 is not an arm rest, but simply the end of the rod 45. In the use of Baggett's device, the user's arm does not rest on the cap, but rather, the rod 45 is held against the forearm F of gun G, as shown in Fig. 9 (col. 6, lines 7 to 14). By contrast, arm rest 7 of Cover is a U-shaped "arm-receiving bracket" (page 1, line 69), on which, when in use as shown in Fig. 5, the wearer's elbow rests. We perceive no reason why one of ordinary skill would derive from Baggett any teaching or suggestion to substitute a tip 75 as disclosed by Baggett (whether spherical or not) for the arm rest 7 of Cover, since Baggett's tip 75 is not disclosed as an arm rest and clearly would not be suitable for use as an arm rest in the manner shown by Cover.

We therefore will not sustain rejections (3) and (4).

Conclusion

Appeal No. 2000-1614
Application No. 08/944,371

The examiner's decision to reject claims 1 to 11 and 13 to 15 is affirmed as to claims 1 to 4 and 6 to 8, and is reversed as to claims 5, 9 to 11 and 13 to 15.

Appeal No. 2000-1614
Application No. 08/944,371

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

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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IRWIN CHARLES COHEN)	APPEALS
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Appeal No. 2000-1614
Application No. 08/944,371

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Appeal No. 2000-1614
Application No. 08/944,371

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