

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REV. ALFRED FERGUSON

Appeal No. 2004-0177
Application 09/792,574

ON BRIEF

Before ABRAMS, FRANKFORT, and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Rev. Alfred Ferguson appeals from the final rejection of claims 1 through 6, all of the claims pending in the application.

THE INVENTION

The invention relates to an apparatus for securing and displaying a picture on an article of apparel. Representative claim 1 reads as follows:¹

1. An apparel mounted picture securing and displaying apparatus comprising:

¹ The term "the shoe lace" in claim 5 lacks a proper antecedent basis, an informality which is deserving of correction in the event of further prosecution.

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a lower support member formed of a generally planar surface having a rectangular outer perimeter and having a pair of lateral sides intersecting a pair of horizontal sides at four corner points;

a corner attachment orifice formed at each said corner point;

an upper frame element forming a transparent retention means within an outer perimeter; and

attachment means for attaching said upper frame element to said lower support member.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Levin	4,924,613	May 15, 1990
Mayo	5,727,766	Mar. 17, 1998
Reid et al. (Reid)	5,740,557	Apr. 21, 1998
Mitchell	5,800,900	Sep. 1, 1998

THE REJECTIONS

Claims 1, 2 and 4 through 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reid in view of Levin or Mitchell.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Reid in view of Levin or Mitchell, and Mayo.

Attention is directed to the brief (Paper No. 7) and answer (Paper No. 8) for the respective positions of the appellant and examiner regarding the merits of these rejections.

DISCUSSION

Reid, the examiner's primary reference, discloses "an interchangeable magnetic display system which allows for a plurality of different magnetic display panels, bearing visual indicia, to be releasably attached to articles of apparel" (column 2, lines 38 through 41). The system comprises a ferromagnetic metal plate 22 and a plurality of flexible magnetic display panels 38 bearing visual indicia 38a produced, for example, by photography. The metal plate and display panels may have rectangular shapes (see column 6, lines 20 through 23), with the metal plate including extensions 16 and holes 15 at its four corners for accommodating various apparel attachment means. Reid teaches that

[i]n operation, the wearer of the hat or other apparel can releasably attach a magnetic display panel simply by placing the magnetic side of a magnetic display near the surface of the metal plate. The magnetic display will then click onto the metal plate as a result of magnetic attraction once the magnetic surface is close enough to the metal surface for magnetic attraction to pull the parts together. The display panel may then be easily adjusted to the center of the plate. This procedure can easily be performed while the wearer is wearing the hat or item of apparel [column 7, line 59, through column 8, line 1].

Likening Reid's metal plate 22 to a lower support member having corner attachment orifices as recited in independent claim 1, the examiner acknowledges (see page 3 in the answer) that the

Reid system lacks response to the additional limitations in the claim requiring an upper frame element forming a transparent retention means within an outer perimeter and attachment means for attaching the upper frame element to the lower support member. Reid discloses no such corresponding structures. To supply these deficiencies, the examiner turns to either Levin or Mitchell.

Levin discloses an arrangement for displaying a photograph or the like on a garment such as a T-shirt. The arrangement includes a transparent plastic window 2, a hook-and-loop fastener 3 affixed to the perimeter of the window, a complementary hook-and-loop fastener 4 affixed to the surface 5 of the T-shirt, and a photograph, paper or card 6 bearing indicia 7 sized to be sandwiched and releasably held between the T-shirt and the window within the boundaries of the hook-and-loop fasteners.

Mitchell discloses an apparatus for attaching decorative patches to an article of clothing. Figure 12 illustrates an embodiment wherein the apparatus 10 comprises a patch 12, a strip of material 40 having a clear cover 42, and hook-and-loop fasteners 26, 28, on the rear surfaces of the patch and strip of material and on the facing surface of the article of clothing

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whereby the patch can be sandwiched and releasably held between the clear cover and the article of clothing.

In proposing to combine Reid with Levin or Mitchell, the examiner concludes that "[i]n view of the teachings of Levin or Mitchell it would have been obvious to one in the art to modify Reid et al. by attaching a transparent retention means with attaching means over the display article since this would help to protect the display article from damage" (answer, page 3).

The combined teachings of Reid and Levin or Mitchell, however, do not provide any indication that Reid's magnetic display panels need additional retention means or protection from damage. Furthermore, the proposed modification of Reid in view of Levin or Mitchell ostensibly would frustrate Reid's objective of simply and easily attaching a display panel to the metal plate, even when the apparel bearing the plate is being worn. In this light, it is evident that the only suggestion to combine Reid and Levin or Mitchell in the manner advanced by the examiner stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 1, and dependent claims 2

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and 4 through 6, as being unpatentable over Reid in view of Levin or Mitchell.

As Mayo does not cure the above noted shortcomings of Reid in view of either Levin or Mitchell relative to the subject matter recited in parent claim 1, we also shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claim 3 as being unpatentable over Reid in view of Levin or Mitchell, and Mayo.

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SUMMARY

The decision of the examiner to reject claims 1 through 6 is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
)	
)	APPEALS AND
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	INTERFERENCES
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JOHN P. MCQUADE)	
Administrative Patent Judge)	

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