

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANTHONY J. ANDREWS  
and JOHN NEWSHAM

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Appeal No. 1997-3255  
Application No. 08/199,455

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ON BRIEF

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Before KRASS, GROSS and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, 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 1-10, all the claims in the application.

We affirm.

BACKGROUND

The invention is directed to a loudspeaker having a member extending from a cone driver.

Claim 1 is reproduced below.

1. A loudspeaker comprising an enclosure, an electroacoustic transducer having a frustoconical diaphragm which has an axis and which defines a frustoconical volume, and a member<sup>1</sup> extending along said axis and having a front portion with a front end and a rear portion with a rear end, said rear portion extending into said frustoconical volume and defining with said diaphragm a first acoustic channel having a generally annular lateral cross-section tapering outwardly away from said rear end, said front portion having a non-circularly symmetric lateral cross-section and being spaced apart from and co-operating with said enclosure to define a second acoustic channel forming a continuation of said first acoustic channel and having a generally annular lateral cross-section, said second acoustic channel having a first cross-sectional shape in a vertical plane including the axis and a second cross-sectional shape different from said first cross-sectional shape in a horizontal plane which includes the axis.

The examiner relies on the following reference:

|        |                                   |               |
|--------|-----------------------------------|---------------|
| Isaacs | Re. 32,183                        | Jun. 17, 1986 |
|        | (Reissue of U.S. Patent 4,181,193 | Jan. 1, 1980) |

Claims 1-10 stand rejected under 35 U.S.C. § 102 as being anticipated by Isaacs.<sup>2</sup>

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<sup>1</sup> The appendix of claims submitted with the Brief incorrectly recites a “single” member, as the claim was proposed to be changed by the After Final amendment filed July 24, 1995 (Paper No. 12). Appellants were notified that the amendment had not been entered in the Advisory Action mailed August 9, 1995 (Paper No. 13).

<sup>2</sup> A second Section 102 rejection over a different reference was not repeated in the Examiner’s Answer and is deemed withdrawn.

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We refer to the Final Rejection (Paper No. 5) and the Examiner's Answer (Paper No. 20) for a statement of the examiner's position and to the Brief<sup>3</sup> (Paper No. 19) and the Reply Brief (Paper No. 22) for appellants' position.

#### OPINION

The examiner rejected Claims 1-10 under 35 U.S.C. § 102 as being anticipated by Isaacs, asserting that the "member extending along the axis" reads on restrictor 20a of the reference. (See Final Rejection, page 3.) As pointed out in the Answer (page 4), appellants' Brief was not responsive to the rejection, but argued that the claims distinguished over "restrictor member 20" as seen in "Fig. 2." Isaacs, however, discloses that Figs. 1 and 2 (with restrictor member 20) and Figs. 3 and 4 (with restrictor member 20a) represent two distinct embodiments of the invention.

In the Reply Brief, appellants argue that the Claim 1 recitation "said front portion having a non-circularly symmetric lateral cross-section" sets forth structure that is different from Isaacs. "Clearly, the lateral cross section defined in claim 1 is transverse to the axis of the frustoconical diaphragm." (Reply Brief, page 3.) Appellants contend that the rejection is based on "taking the cross section in the wrong plane, i.e. through the axis, and not lateral to the axis as required by claim 1." (Id.)

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<sup>3</sup> We have not considered initial briefs (those prior to Paper No. 19, the Brief filed June 27, 1996, with Certificate of Mailing June 21, 1996) which were refused entry by the examiner.

We consider appellants' arguments to be more specific than the requirements of Claim 1. Claims are to be given their broadest reasonable interpretation during prosecution, and the scope of a claim cannot be narrowed by reading disclosed limitations into the claim. See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969).

The normal definition of "lateral" is "of or relating to the side : situated on, directed toward, or coming from the side." Webster's Ninth New Collegiate Dictionary, 1990. Appellants argue that the submitted interpretation is required because "original claim 3 [sic; presumably, original Figure 3] shows the 'non-circularly symmetric lateral cross section' of the front portion of the member...." (Reply Brief, page 3.) Appellants also refer to page 4, lines 14 through 17 of the specification. (Id.)

However, appellants' disclosure, including the identified portion of the written description, does not define "lateral" as anything different from its accepted meaning. We do not agree that the cross section is required to be "transverse" or "perpendicular" to the longitudinal axis. In addition to the examiner's finding that the relevant language of Claim 1 reads on a "lateral" cross section in Isaacs which includes the longitudinal axis, we note that a "lateral" cross section may also denote a cross section that is to the side of, and parallel with, the central cross section extending along the longitudinal axis. Since appellants have not shown the

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rejection to be in error, and have not argued any dependent claims separately, we sustain the Section 102 rejection of Claims 1-10 over Isaacs. See 37 CFR § 1.192(c)(7).

We add the following two observations to ensure clarity regarding the constitution of the record upon which we base our decision. First, appellants filed a proposed amendment to Claim 1 on November 4, 1996 (Paper No. 21), along with the instant Reply Brief; the amendment which has not been entered. The proposed amendment -- to change Claim 1 such that “said front portion having a non-circularly symmetric lateral cross-section taken in a plane transverse to the axis of the frustoconical diaphragm” -- is more commensurate in scope with the arguments made. Appellants were notified by the examiner that neither the Reply Brief nor the proposed amendment had been entered. Appellants petitioned for entry of the Reply Brief, and the Reply Brief was subsequently entered into the record for consideration on appeal. However, the proposed amendment has not been entered. Claim 1 before us contains the language concerning the “lateral cross-section” as submitted with the appendix of claims in the Brief and reproduced in the “Background” section supra.

Second, on page 3 of the Reply Brief, appellants refer to material submitted with the “amendment of April 26, 1995,” namely “informal drawings...identified as Figs. 6 and 7, showing lateral cross sections of member 21 taken perpendicular to axis 31. The Examiner refused consideration of such drawings.” Actually, the examiner’s response, according to the

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Advisory Action mailed May 16, 1995 (Paper No. 9), notified appellants that “[t]he proposed drawings (Figs. 6 and 7) are not associated with the 4/26/95 Amendment.” Consistent with this, we do not find informal drawings, “Figs. 6 and 7,” in the instant file wrapper. There is not any notation on the “Contents” portion of the file wrapper that informal drawings were received with the amendment filed April 28, 1995 (with Certificate of Mailing April 26, 1995; Paper No. 8), which suggests that the drawings were not received and entered into the file by the clerical staff before the file was forwarded for the examiner’s action. (In view of the requirements of 35 U.S.C. § 132, we presume that “Figs. 6 and 7” would not have added new matter to the disclosure, and we would have reached the same result had the proposed informal drawings been a part of the instant record.)

#### CONCLUSION

The rejection of Claims 1-10 is affirmed.

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

AFFIRMED

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|-----------------------------|---|-----------------|
| ERROL A. KRASS              | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| ANITA PELLMAN GROSS         | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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|                             | ) |                 |
| HOWARD B. BLANKENSHIP       | ) |                 |
| Administrative Patent Judge | ) |                 |

HBB/caw

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