

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHIHIRO AOKI

Appeal No. 97-4244
Application 08/347,141¹

ON BRIEF

Before CALVERT, McQUADE and NASE, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

¹ Application for patent filed November 23, 1994.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 6, 8 and 10 to 14. Claims 7, 9 and 15 to 28, the other claims remaining in the application, stand withdrawn from consideration under 37 CFR § 1.142(b) as being directed to nonelected species.

The subject matter in issue concerns a magnetic lock device used to fasten together two objects, such as the flap and body of a handbag. The appealed claims are reproduced in the Appendix to appellant's brief.

The reference applied in the final rejection is:

Humiston

3,324,521

June 13, 1967

Claims 6, 8 and 10 to 14 stand finally rejected as anticipated by Humiston, under 35 U.S.C. § 102(b).

Claim 6

Appellant asserts that claim 6, the only independent claim on appeal, is not anticipated by Humiston, because Humiston does not disclose (1) "a curled edge . . . positioned radially laterally at said peripheral marginal edge [of the ferromagnetic plate]," as recited in lines 9 to 11 of the claim, and (2) a "flat disk plate having a thickness to be accommodated within the

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thickness of the second object so as not to form a thickened portion bulging therefrom," recited in lines 17 to 19. We will discuss these arguments separately.

(1) In reading claim 6 on Humiston as the examiner has done, the reference discloses a ferromagnetic plate 13 with a peripheral edge 15. Attached to the peripheral edge is a holder shell 22 which extends radially outward to a curled edge 26, 27 to receive the lugs 29 of an attaching device. As we understand appellant's argument, it is that Humiston's curled edge 26, 27 is not "positioned radially laterally at the peripheral marginal edge" of Humiston's ferromagnetic plate 13, but rather is located "radially outwardly" and "substantially axially spaced" from peripheral edge 15 of plate 13 (brief, page 11). In other words, appellant seems to be arguing that "radially laterally at said peripheral marginal edge" means that the curled edge must be at the same radial distance from the axis of the ferromagnetic plate as the peripheral marginal edge of the plate, and must not be axially spaced from the edge of the plate, i.e., must be in the same plane as the plate.

Appellant and the examiner have engaged in considerable discussion as to the meaning of the terms "radially" and "laterally," and as to what the broadest reasonable

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interpretation of these terms is, citing In re Pearson, 494 F.2d 1399, 1404,

181 USPQ 641, 645 (CCPA 1974). However, it is unnecessary to resolve this issue, because we note that on page 4 of the brief, appellant states that claim 6 "is generic to all of the disclosed species," and the species disclosed in Figures 6b and 9, for example, have a curled edge 35 which extends radially beyond the peripheral edge of the ferromagnetic plate 29 and is somewhat below the plane of the plate. Accordingly, if claim 6 is generic to such species as Figures 6b and 9, as appellant asserts that it is, the term "radially laterally at said peripheral marginal edge" must be inclusive of a curled edge which is located radially beyond the periphery of the ferromagnetic plate, and is not located in the plane of the plate. The claim is therefore readable on the curled edge 26, 27 of Humiston, which is located radially beyond the periphery 15 of plate 13, and is not in the plane of the plate.

(2) Humiston discloses an attaching device having an annular, flat disk plate 28. As shown in Figs. 1 and 2, the plate, although it has a thickness less than the thickness of the

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"second object" (garment flap) 8, is not within the thickness of the object. Appellant argues that (brief, page 12)

even a cursory consideration of Figures 1 and 2 of Humiston shows that the "annular,

flat disk plate" 28 of Humiston is positioned entirely outwardly of the thickness of second object 8 and clearly forms a bulge above the surface thereof. The Examiner's position to the contrary simply is unsupportable.

The problem with this argument is that the "second object" is not recited as an element of the combination, but rather it is recited as something to which the second element is "to be attached." Also, the claim does not limit the second object or recite any particular thickness or other characteristics of the second object in relation to the thickness of the disk. Thus, while Figs. 1 and 2 of Humiston show the disk located outside the second object 8, this is not conclusive on the issue of anticipation. Humiston discloses that second object 8 is the flap of a garment, and garments may be made of many different materials. The location of disk 28 in relation to the material would therefore depend on what type of material second object 8 consisted of. If, for example, second object 8

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were a bulky, fluffy material, when the attaching member of Humiston was assembled to the fastener, the disk 28 would sink down into the material to such an extent that it would then, in the words of claim 6, be "accommodated within the thickness of the second object so as not to form a thickened portion bulging therefrom."² The disk 28 disclosed by Humiston therefore meets the limitations recited in the last three lines of claim 6.

Accordingly, the apparatus disclosed by Humiston satisfies all the limitations of claim 6, and we will sustain the rejection of that claim under § 102(b).

Claim 8

Claim 8 recites:

8. A magnetic lock device as claimed in claim 6, wherein said curled edge is formed on the outer periphery of a metal disk plate that is rigidly attached to said ferromagnetic plate centrally thereof.

The examiner reads the recited metal disk plate on plate 30 of the attaching device of Humiston, and takes the position that the curled edge 26, 27 is "formed on" the outer edge of plate 30 because, as we understand it, when the fastener and attaching device are assembled together on second object 8

² While the center portion 32 of ring 30 might still bulge from the second object 8, disk 28 would not.

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they thus constitute a single item. We do not agree. We do not consider it to be reasonable to interpret a specific recitation that the curled edge is formed on one member (disk plate) as inclusive of a structure in which the curled edge is formed on

a member (Humiston's shell 22) attached to that one member (Humiston's plate 30).

We therefore will not sustain the rejection of claim 8.

Claims 10 to 14

Since claims 10 to 14 are all either directly or ultimately dependent on claim 8, the rejection of which under § 102(b) will not be sustained, the rejection of claims 10 to 14 on that ground will likewise not be sustained.

Conclusion

The examiner's decision to reject claim 6 is affirmed, and to reject claims 8 and 10 to 14 is reversed.

No time 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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IAN A. CALVERT)
Administrative Patent Judge)
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JOHN P. McQUADE)
Administrative Patent Judge)
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JEFFREY V. NASE)
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