

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LORIE K. BREWSTER

Appeal No. 98-0808
Application No. 08/566,689¹

ON BRIEF

Before MCCANDLISH, MEISTER, and STAAB, **Administrative Patent Judges**.

MEISTER, **Administrative Patent Judge**.

DECISION ON APPEAL

Lorie K. Brewster (the appellant) appeals from the final rejection of claims 1-5, the only claims present in the application.

¹ Application for patent filed December 4, 1995.

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We REVERSE.

The appellant's invention pertains to (1) the combination of a brassiere and a clip for preventing the shoulder straps of the brassiere from slipping off the shoulders of a user and (2) a method of securing a brassiere including the step of mounting a clip on the shoulder straps of the brassiere. Independent claims 1 and 5 are further illustrative of the appealed subject matter and copies thereof may be found in the appendix to the brief.

The references relied on by the examiner are:

Baldwin 8, 1924	1,489,731	Apr.
Sanchez 18, 1991	5,024,628	Jun.

Claims 1-5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Baldwin in view of Sanchez. According to the examiner it would have been obvious "to employ the clip of Baldwin with such an undergarment as that of Sanchez in order to prevent shoulder straps from sliding off of the shoulders of a wearer and being seen" (answer, page 4). It thus appears that the examiner is proposing to utilize the clip of Baldwin to hold Sanchez's pair of brassiere straps together in order

to retain the straps in a desired position on the shoulders of a user (the brassiere of which already includes an adjustable connector band 12 for this same purpose).

In support of this position the answer states that:

Contrary to applicant's arguments the clip in Baldwin receives more than a single shoulder strap and more accurately it receives the pair. On lines 47-60, Baldwin discloses. "The top bar 6 is provided adjacent its opposite ends . . . the lingerie shoulder strap(s) may be engaged between adjacent ends of the legs 7 and 8 and positioned between the legs and the top bar 6"

Thus the same is capable of spanning the distance between the shoulder straps and prevents slipping of a brassiere strap. . . .

It is clear from the structure of Baldwin [that it] might be installed on the left, right or center shoulder and shoulder blad[e] area. Baldwin and Sanchez clearly provides [sic, provide] support for the clip to be installed in any or all of the above areas. Baldwin clearly states that the clip is to engage shoulder straps of lingerie and in most conventional situations a [sic] lingerie only has two shoulder strips since the wearer only has two shoulders.

* * *

. . . The connector of Baldwin discloses a rigid connector engaging both straps and discloses a connector which is capable of sliding down brassiere straps; it is at the discretion of the wearer as to w[h]ether he/she desires to secure the connector to the garment. It is also at the discretion of the wearer as to the location of the connecto[r] and how they engage the shoulder straps of the brassiere.

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As can be seen by Sanchez these connectors may occupy a variety of locations on the shoulders and shoulder blade area. [Pages 5 and 6.]

From the above, it appears that the examiner's position is bottomed on the belief that, since "in most conventional situations" a particular item of lingerie "only has two shoulder straps," Baldwin teaches or suggests a "connector" clip for connecting together a pair of shoulder straps of a single item of lingerie (which straps extend over different shoulders of a user).

We do not support the examiner's position. "A rejection based on section 103 must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. . . . [The examiner] may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in . . . [the] . . . factual basis." *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967). It does not follow that just because (1) most individual items of lingerie have only two shoulder straps (one for each shoulder) and (2) Baldwin states "lingerie shoulder straps may be engaged between the adjacent ends" of the holder or clip, that there is a teaching or

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suggestion Baldwin's holder or clip is used to connect together a pair of shoulder straps of a single item of lingerie, which straps extend over different shoulders of a user as the examiner apparently believes. Baldwin has previously made reference in lines 15 and 16 to "the straps of **any** or **all** undergarments" (emphasis ours). Thus, Baldwin's reference to shoulder "straps" being engaged between the ends of the clip may simply be (1) to the fact that, in the broad sense, either of the customary two shoulder "straps" on a single undergarment may be engaged in the clip or (2) to the straps of a plurality of undergarments, each having a strap which passes over the same shoulder, engaging the clip.

Contrary to the examiner's position, Baldwin expressly states that the holder or clip is "adapted to be stitched or otherwise secured to the underside of the gown, dress or blouse **at the shoulder**" (lines 13-15; emphasis ours) and makes no mention of the holder or clip being secured to the gown, dress or blouse at any other location, or being used in other manner. Obviously, when a holder or clip is secured "at the shoulder" (i.e., one clip at each shoulder) as stated by Baldwin, it cannot be used to connect together a pair of

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shoulder straps of a single undergarment wherein the straps extend over different shoulders as the examiner contends.

Baldwin and Sanchez simply teach two entirely different ways of preventing shoulder straps of undergarments or lingerie from shifting position on the shoulders of a user. That is, Baldwin provides a clip on the underside of an outer garment at each shoulder for engaging the "straps" of single or multiple undergarments at that location, while Sanchez provides a connecting band 12 which may be fastened between two straps of a single undergarment at selected locations along an extent of the straps. There is simply nothing in the combined teachings of Baldwin and Sanchez which would fairly suggest providing a clip to receive the shoulder straps of a brassiere which pass over different shoulders of a user in the manner expressly required by the claims on appeal. This being the case, we will not sustain the rejection of claims 1-5 under 35 U.S.C. § 103 based on the combined teachings of Baldwin and Sanchez.

The decision of the examiner is reversed.

REVERSED

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Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
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