

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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RONALD D. KRESS

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Appeal No. 1998-1372  
Application No. 08/295,708

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ON BRIEF

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Before COHEN, PATE and NASE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 13, 20, 23 and 25. Subsequent to the examiner's answer, appellant has filed a terminal disclaimer which has obviated the standing obviousness-type double patenting rejection of claims 13, 20, 23 and 25 and the standing nonobviousness-type double patenting rejection of claims 13, 20, 23, 25 and 26. Therefore, all rejections of claim 26 are withdrawn, and claim 26 stands allowed on this record.

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The claimed invention is directed to a molding or trim strip to be attached to a vehicle. The molding has lateral ends which define two channels on the edges of the molding. The mounting clip has a metal substrate with plastic bearing surfaces attached to one side of the substrate and adhesive tape attached to the other side of the substrate. The plastic bearing surfaces of the clip engage the channels in the trim strip while the adhesive tape holds the substrate to the side of the vehicle.

Claim 13, reproduced in appellant's brief, is further illustrative of the claimed subject matter.

The references of record relied upon by the examiner as evidence of obviousness are:

Watanabe 1982	4,328,052	May 4,
Nussbaum 1983	4,368,225	Jan. 11,

Claims 13, 20, 23 and 25 stand rejected under 35 U.S.C. § 103 as unpatentable over Watanabe in view of Nussbaum.

On page 3 of appellant's brief, appellant states that claims 13, 20, 23 and 25 fall together. Therefore, we will

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limit our consideration to claim 13 as the representative  
claim on appeal.

OPINION

We have carefully reviewed the rejection on appeal in light of the arguments of the appellant and the examiner. As a result of this review we have reached the conclusion that the applied prior art does not establish the prima facie obviousness of the claims on appeal. Accordingly, we reverse the examiner's rejection. Our reasons follow.

It is the examiner's finding that Watanabe discloses a combination of a molding and a clip for securing a molding to a vehicle. The molding 11 of Watanabe has lateral ends defining channels and the clip has an adhesive tape facing and a plurality of plastic bearing surfaces 18-23 which contact the molding and are received in the channels of the strip. Watanabe does not disclose a metal substrate.

Nussbaum discloses a unitary molding or trim strip for a vehicle which is adhesively attached to the vehicle by adhesive 22. Nussbaum does not disclose a separate clip and molding. The examiner, in his factual findings, refers us to the first complete sentence of column 4 of Nussbaum which states that if desired a conventional barrier layer, such as an aluminum layer, can be interposed between the PVC body and

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the adhesive layer of Nussbaum to prevent migration of plasticizer from the body into the adhesive 21.

Assuming arguendo, that it would have been obvious to use a metallic barrier layer on the mounting clip of Watanabe, we are in agreement with the appellant that it would not have been obvious to extend the metal substrate where there was no tape, as in claim 13, or to extend the metal substrate beyond the two pieces of tape, as claimed in claim 25.

The examiner's counterargument is that one of ordinary skill would place the metallic layer completely on the rear of the plastic bearing surface so that no matter the orientation of the adhesive whether "stripes, dots, wavy lines, or some other configuration," the metal would still protect the plastic bearing surface. However, this argument is not based on any teaching in the art but is based on speculation and conjecture on the part of the examiner. Of course, a proper obviousness rejection cannot

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be based on speculation or conjecture. Accordingly, the  
rejection of all claims on appeal is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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