

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HYMAN I. KAPLAN

Appeal No. 2001-1368
Application No. 09/130,904

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge,
FRANKFORT and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Hyman I. Kaplan appeals from the final rejection of claim 1, the sole claim pending in the application.

THE INVENTION

The invention relates to "a protector for preventing the occurrence of carpal tunnel syndrome" (specification, page 1).

Claim 1 reads as follows:

1. A carpal tunnel protector for use on a person's hand, comprising,

a tubular sleeve having a longitudinal direction and a transverse direction, and

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having a front end and a rear end, and being open at both ends, thereby forming end openings, the sleeve also having a side thumb hole near the front end, the sleeve forming front and rear leaves each having an inner surface and an outer surface,

the sleeve being adapted to be worn on the hand and having such length as to reach from a position adjacent the middle of the palm of the hand, longitudinally, rearwardly beyond the palm of the hand and cover a portion of the wrist, with no parts extending forwardly beyond the middle of the palm of the hand during use,

the sleeve including a body with binding strips thereon around the end openings and the thumb hole,

the body being made up of woven material, and being of uniform construction throughout its entire extent,

the sleeve being elastic in both longitudinal and transverse directions, and

a single cushion secured only to the inner surface of the front leaf of the sleeve, the cushion including a single substantially rectangular member having a cover defining a single interior space with cushion material in the space, and filling the space and engaging the hand throughout the space, the cushion being so secured to the sleeve by stitching the cover only around its edges to the sleeve, and the cushion, as defined by its interior space, is so dimensioned as to completely cover the carpal tunnel both longitudinally and transversely, and the cushion material also extending rearwardly and covering a portion of the wrist, and,

the binding strips being elastic and operable for yieldingly holding the sleeve against the hand and wrist of the bearer.

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THE PRIOR ART

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

Lewis	2,567,489	Sep. 11, 1951
Eberbach	5,810,753	Sep. 22, 1998

THE REJECTION

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Eberbach in view of Lewis.

Attention is directed to the appellant's brief (Paper No. 17) and to the examiner's answer (Paper No. 19) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

DISCUSSION

I. Petitionable matter

The appellant has raised for consideration on appeal alleged actions by the examiner which purportedly impeded the prosecution of the application (see pages 4 and 9 through 14 in the brief). Such actions, however, do not directly pertain to the merits of the issues involving the rejection of claim 1. They are therefore reviewable by petition to the Director

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rather than by appeal to this Board.¹ See In re Hengehold, 440 F.2d 1395, 1403-1404, 169 USPQ 473, 479 (CCPA 1971). Accordingly, we shall not review or further address this matter.

II. The merits of the examiner's rejection

Eberbach, the examiner's primary reference, discloses a glove designed to prevent and relieve the symptoms of carpal tunnel syndrome. To this end, the glove includes a pair of anatomically linear, laterally spaced, resilient, load-bearing members positioned to lie on either side of the median nerve to prevent the direct application of pressure thereto. In the embodiment shown in Figures 1 and 2, the load-bearing members 14 and 15 are attached to the inner surface of the front of the glove by pocket means 84 consisting of one or more pieces of fabric stitched to the glove (see column 6, line 59, through column 7, line 5). Also of interest is the embodiment shown in Figure 13 wherein the load-bearing members, which are joined by a transverse support member 118, are connected to the outer surface of the front of the glove absent a pocket

¹The record shows that the appellant filed such a petition and received a decision thereon prior to taking this appeal (see Paper No. 13).

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means.

As indicated above, claim 1 recites a carpal tunnel protector comprising, inter alia,

a single cushion secured only to the inner surface of the front leaf of the sleeve, the cushion including a single substantially rectangular member having a cover defining a single interior space with cushion material in the space, and filling the space and engaging the hand throughout the space, the cushion being so secured to the sleeve by stitching the cover only around its edges to the sleeve, and the cushion, as defined by its interior space, is so dimensioned as to completely cover the carpal tunnel both longitudinally and transversely, and the cushion material also extending rearwardly and covering a portion of the wrist.

In applying Eberbach against claim 1, the examiner has determined (see pages 4 through 6 in the answer) that the foregoing claim limitations find response in the combination of the pocket means shown in Eberbach's Figures 1 and 2 and the one-piece load-bearing means shown in Eberbach's Figure 13. Even if it is assumed for the sake of argument, however, that the artisan would have found it obvious to somehow combine these features, the examiner's position that the resulting structure would meet all of the cushion limitations in claim 1 is ill founded. Due to the U-shaped cross-section of Eberbach's load-bearing member (see Figure 13), no combination of same with the pocket means 84 would result in

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cushion material (the load-bearing member) both filling the space defined by the cover (the pocket means) and engaging the wearer's hand throughout the space defined by the cover as required by the claim. Indeed, Eberbach's objective of preventing the direct application of pressure to the median nerve (see column 1, lines 9 through 30) teaches away from a cushion material which would engage the wearer's hand throughout the space defined by the cover.

As Lewis' disclosure of a hand bandage having elastic hems around its finger and wrist openings does not cure the foregoing deficiencies of Eberbach, the examiner's conclusion that the combined teachings of these references would have suggested the subject matter recited in claim 1 is unsound.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 1 as being unpatentable over Eberbach in view of Lewis.

SUMMARY

The decision of the examiner to reject claim 1 is reversed.

REVERSED

Harrison E. McCandlish, Senior)

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Administrative Patent Judge)	
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)	BOARD OF PATENT
Charles E. Frankfort)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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John P. McQuade)	
Administrative Patent Judge)	

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