

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. NORMAN WINNINGSTAD

Appeal No. 96-0552
Application 08/146,525¹

ON BRIEF

Before THOMAS, FLEMING and LEE, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1 to 11 and 14 to 20, which constitute all the claims remaining in the application.

¹ Application for patent filed November 1, 1993.

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At the outset, we note that claim 18 has been reproduced above because of the note made by the examiner at the bottom of page 2 of the answer. Claim 18 as reproduced in the brief is not claim 18 on appeal. The above reproduced version of claim 18 is the original unamended version of this claim, since claim 18 has not been amended during the prosecution of the application.

As to independent claim 1, we agree with appellant's view that Campbell does not show or even suggest a portable video camera that has a separate power supply and recording unit located on opposite sides of an operator. Although we find that col. 4, lines 42 to 49 do teach that the bulk of a recorder as well as its power supply may be separated into two components in separate containers, this portion and any other portion of Campbell do not indicate that the power supply is located on an opposite side of the operator from where the recorder unit is located as required by independent claim 1 on appeal. In a related sense, the distribution of the weight feature recited in claim 1 and at the end of independent claim 11 on appeal is also not taught in Campbell. Therefore, the artisan would not have been placed in possession of the presently claimed invention in independent claims 1 and 11 as is required by 35 U.S.C. § 102.

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The examiner's responsive arguments at pages 5 through 7 of the answer relating to the rejection of claims under 35 U.S.C. § 102 relate to positions proper to be advocated within 35 U.S.C. § 103 and not § 102. Use of the language such as quite obvious, a suggestion implies, the disclosure in Campbell implicitly suggests, and a mere design choice are arguments properly raised within 35 U.S.C. § 103 and not 35 U.S.C. § 102.

Finally, claim 2 is rejected under 35 U.S.C. § 102, yet contains a feature of a garment where a video sensor is attached to the first shoulder of the garment and the audio sensor is attached to the second shoulder of the garment. Dependent claim 7 and independent claim 18 stand rejected under 35 U.S.C. § 103 and specify that the attaching means is a jacket worn by an operator. Our detailed study of Campbell leads us to conclude that there is no express teaching or showing in Campbell of a garment let alone a garment having a video sensor attached to a first shoulder and an audio sensor attached to a second shoulder of the same garment in dependent claim 2, as well as no teaching or suggestion within 35 U.S.C. § 103 as to dependent claim 7 and independent claim 18 of a jacket such that the attaching means may comprise a jacket worn by an operator. The teachings and showings in the various figures as well as the teachings and

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suggestions at col. 4, lines 42 to 49 and lines 66 to 68; col. 5, lines 9 to 14 and 46 to 50 as well as col. 5, line 55 through col. 6, line 20 do not lead us to conclude otherwise.

In view of the foregoing, the decisions of the examiner rejecting various claims 1 to 11 and 14 to 20 under 35 U.S.C. § 102 and § 103 are reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
MICHAEL R. FLEMING)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JAMESON LEE)	
Administrative Patent Judge)	

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