

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** DOUGLAS D. DEMASI

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Appeal No. 97-1702  
Application 08/355,599<sup>1</sup>

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REHEARING

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Before MEISTER, NASE, and CRAWFORD, Administrative Patent Judges.

MEISTER, Administrative Patent Judge.

***ON REQUEST FOR REHEARING***

The appellant requests that we reconsider our decision mailed on March 31, 1998 wherein we (1) affirmed the rejection of claims 6, 7, 16 and 17 under 35 U.S.C. § 102(b), (2) affirmed the rejection of claims 8 and 18 under 35 U.S.C. § 103, (3) reversed the rejections of claims 9-15, 19 and 20

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<sup>1</sup> Application for patent filed December 14, 1994.

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under 35 U.S.C. § 103 and (4) entered a new rejection of claims 19 and 20 under 35 U.S.C. § 112, second paragraph. The request is directed to our affirmance of claims 6, 7, 16 and 17 under 35 U.S.C. § 102(b) and claims 8 and 18 under 35 U.S.C. § 103. We have carefully reconsidered our decision in light of the arguments advanced; however, we decline to alter our decision in any respect.

The appellant's arguments are based on the position that the claimed "cover" must be an element which is entirely separate and distinct from the ball. In support of this position the appellant has cited various dictionary definitions; however, as we pointed out on pages 4 and 5 of our decision, it is well settled that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1028 (Fed. Cir. 1997) and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1989)).

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Webster's dictionary<sup>2</sup> defines "cover" as -- 2(c): an overlay **or outer layer** esp. for protection . . .(emphasis ours).

Clearly, the outermost portion the segments 4 of Finn form a layer which (in light of this definition) can be considered to be a "cover," much as the outermost layer or skin of a baseball is commonly referred to as its cover. We also observe that the examiner throughout the prosecution of this case has maintained that the Finn's segments 4 comprise a cover and, thus, the appellant had ample opportunity to amend the claims to clearly define that the cover is an entirely separate member, but chose not to do so until after final rejection (at which point the examiner refused to consider such an amendment as presenting a new issue - see Paper Nos. 6 and 10, which refusal was upheld on petition (see Paper No. 12)). In effect, the appellant is asking us to read into the claims a limitation which he tried to add by way of an amendment after final rejection (the entry of which was denied). This, we decline to do.

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<sup>2</sup> Webster's Third New International Dictionary of the English Language, Unabridged, G. & C. Merriam Co., Springfield, MA, 1971.

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As to claim 7, the outermost and innermost surfaces which define the cavities in Finn form inner and outer walls as broadly claimed.

The appellant's request is granted to the extent of reconsidering our decision, but is denied with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

***DENIED***

JAMES M. MEISTER )  
Administrative Patent Judge )  
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JEFFREY V. NASE ) BOARD OF PATENT

