

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT AMORE, JEFFREY M. LEE, MIKKE PIERSON,  
KENNETH A. TARLOW and PAUL BERMAN

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Appeal No. 98-0176  
Application No. 08/022,308<sup>1</sup>

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ON BRIEF

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Before CALVERT, MEISTER, and MCQUADE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants have filed a request for rehearing under 37  
CFR

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<sup>1</sup> Application for patent filed February 25, 1993.

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§ 1.197(b) of our decision of December 23, 1998 (Paper No. 30), insofar as we affirmed the rejections of claims 1 to 3, 6, 12 14, 42 and 43, and rejected claims 44 to 46 pursuant to 37 CFR

§ 1.196(b).

With regard to rejection (1)(a), appellants argue, as they did in their brief, that element 33 of Kahlert is not a "brake pad," as claimed. Appellants cite dictionary definitions of "brake" to the effect that a brake is a device for slowing or stopping a vehicle, wheel or machine, and assert that Kahlert's tip or bumper does not so act because it merely prevents the skate from moving forward when it (33) is in contact with the ground. This same argument was presented, in less detail, in appellants' brief, and we do not agree with it for the reasons stated on pages 4 and 5 of our decision. Even accepting the dictionary definitions cited by appellants as controlling, bumper 33 still constitutes a "brake pad" because it certainly would be capable of stopping the skate if it were brought into contact with the ground while the skate was still moving. We do not consider that the patentability of the apparatus recited in these claims may be predicated on

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whether or not element 33 of Kahlert should happen to engage the ground while the skate was still moving.

For the same reasons, the rejections of claims 44 to 46 under 37 CFR § 1.196(b), and rejection 2(e) of claim 42, are still considered correct.

As for rejection (2)(a), appellants contend that there would have been no motivation to modify Gray in view of Landers, because Landers teaches away from using fixed-surface brakes as disclosed by Gray. This argument was addressed on pages 8 and 9 of our decision, and we still consider the rejection to be well taken. We do not believe that one of ordinary skill, considering the problem of mounting a non-rotatable brake pad on a skate, would ignore the disclosure in the prior art of mountings for rotatable brake pads. Although Landers discloses that a rotatable brake per se is superior to a fixed-surface brake, that would not teach away from using the rotatable brake support disclosed by Landers for supporting a non-rotatable brake.

The request for rehearing is accordingly denied to the extent that it seeks any reversal or modification of the decision on appeal (Paper No. 30).

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DENIED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JAMES M. MEISTER	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOHN P. MCQUADE	)	
Administrative Patent Judge	)	

SLD

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APJ CALVERT

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DENIED

Prepared: May 18, 2000