

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

SEP 5 1996

PAT.&T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte DONALD SPECTOR

Appeal No. 94-3549  
Application 07/945,408<sup>1</sup>

ON BRIEF

Before ABRAMS and McQUADE, Administrative Patent Judges, and  
CRAWFORD, Acting Administrative Patent Judges.

CRAWFORD, Acting Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-4, 6, 7  
and 9. Claims 5, 8, 10 and 11 have been cancelled.

<sup>1</sup>Application for patent filed September 16, 1992. According to applicant, this application is a continuation-in-part of Application 07/821,062, filed January 16, 1992, now abandoned; which is a continuation-in-part of Application 07/701,078, filed May 16, 1991, now Patent No. 5,090,561, issued February 25, 1992.

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Appellant's invention is an album which forms a protective package for a compact disc. Claim 1 is representative of the subject matter on appeal and recites:

1. An album forming a protective package for a compact disc having a recording on one side, the other side of the disc being unrecorded, said disc being removable from the album so that it may be inserted in a compact disc player, said album comprising:

(a) a rectangular front cover panel hinged to a rectangular rear cover panel; and

(b) a face panel overlying the inner surface of the rear cover panel and secured thereto, said face panel and said rear cover panel being formed of flexible material, said face panel having a circular opening therein which is backed by said rear cover panel to define a well, said opening having a diameter matching that of the disc whereby said disc is snugly nested in said well, whereby when the album is closed, said disc is surrounded by said face panel and is sandwiched between said front and rear cover panels, and when the album is open, the disc may be popped out by flexing the rear cover panel, the recording on one side of the disc being related to a character, such as a sports figure, the other side being printable, said face panel having a picture of the character printed thereon, a portion of which is printed on the printable surface of the disc, the same portion being printed on the inner surface of the rear cover panel surrounded by the opening.

#### The References

References of record relied upon by the examiner are:

Pelkey	3,430,761	Mar. 4, 1969
Bernstein	5,188,229	Feb. 23, 1993
		(filed Apr. 5, 1991)

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The Rejection

Claims 1-4, 6, 7 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bernstein in view Pelkey.

Rather than reiterate the respective positions of the appellant and the examiner, reference is made to appellant's Brief and Reply Brief and the Examiner's Answer for the full exposition thereof.

Opinion

In reaching our conclusion on the issue raised in this appeal, we have carefully considered appellant's specification and claims, the applied references and respective viewpoints advanced by the appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's rejection should not be sustained. Our reasons for this determination follow.

Appellant's claimed compact disc album includes a rectangular front cover panel hinged to a rectangular rear cover panel. A face panel overlies the inner surface of the rear cover panel and has a circular opening which is backed by the rear

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cover panel to define a well and which has a diameter matching that of the disc whereby the disc is snugly nested in the well. The disc "may be popped out by flexing the rear cover panel."

Bernstein discloses a compact disc package or album including a face panel (28) with a generally circular opening or recess (52) which is "adapted to receive the periphery of a compact disc" (column 3, line 25) and a rear panel (22) which is folded so as to back the recess and define a well. There is also disclosed a pintle (51) glued to panel (22). Bernstein discloses that the "pintle resiliently engages the usual small opening in the center of a compact disc" (column 3, lines 28-29) to firmly maintain the disc within the circular opening (52) (see column 1, lines 58-62).

The examiner has found that the opening (52) has a diameter matching that of the disc whereby the disc is snugly nested therein (see page 4 in the answer). The examiner is also of the opinion that:

Bernstein shows the compact disc package being formed of a flexible material, and the disc may (i.e., possibly, is able to) be popped out by flexing the rear cover panel. Furthermore, Bernstein does not simply

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disclose that the recess 52 receives the disc. Bernstein specifically teaches that the "major peripheral portions of recess 52 are adapted to receive the periphery of a compact disc" (emphasis added by the examiner) (Examiner's Answer, page 7).

The examiner has made the assertion that the disc is snugly nested in the well of Bernstein's album and that the disc may be popped out by flexing the rear cover panel without providing any evidence or factual basis to support this assertion. Bernstein's disclosure that the opening (52) is adapted to receive the periphery of the disc is simply not sufficient in this regard.

In addition, the presence in Bernstein's album of the pintle (51) which resiliently engages the usual small opening in the center of the disc to maintain it within the opening (52) would appear to refute the examiner's finding.

Pelkey, the only other reference cited by the examiner does not overcome the deficiencies of Bernstein. Accordingly, the



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