

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(2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CLETUS W. JAEGER, JR.  
and  
LAURA R. CUEVAS

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Appeal No. 96-3693  
Application 08/360,109<sup>1</sup>

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ON BRIEF

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Before CALVERT, STAAB and McQUADE, Administrative Patent Judges.  
CALVERT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed December 20, 1994.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 5. Claims 6 to 11, the other claims in the application, stand withdrawn from consideration under 37 CFR § 1.142(b) as being directed to a nonelected species.

The claims on appeal are drawn to a hypodermic needle and syringe assembly, and are reproduced in the appendix to appellants' brief.

The reference applied in the final rejection is:

Bloch	3,354,881	Nov. 28, 1967
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Claims 1 to 5 stand finally rejected under 35 U.S.C. § 102(b) as anticipated by Bloch.

"To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). Appellants have argued that claims 1 to 5 are not anticipated by Bloch, because Block does not disclose (1) a needle cover adhered to a syringe, or (2) a single bodied needle cover. Both of these limitations are

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recited in the first portion of claim 1, the only independent claim on appeal, which portion reads (emphasis added):

A hypodermic needle and syringe assembly having adhered to the syringe a single bodied hollow bulb shaped flexible needle cover [,] said needle cover comprising

In response to the limitations argued by appellants, the examiner asserts that the "recitation of 'adhered to the syringe' does not structurally define over the removable sliding attachment of Bloch" (answer, page 2). He does not explain how Bloch meets the "single bodied" limitation.

First considering the "adhered" limitation, we do not agree with the examiner that it does not "structurally define" over Bloch, and therefore, presumably, may be ignored in determining patentability. It is well settled that "[i]t is error to ignore specific limitations distinguishing over the references." In re Glass, 472 F.2d 1388, 1392, 176 USPQ 489, 491 (CCPA 1973). In the present case, appellants are claiming the combination of a hypodermic needle, syringe and needle cover, and the recitation that the needle cover is "adhered" to the syringe requires that

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there be something (e.g., glue) present in order to cause such adhesion.<sup>2</sup> Thus, even if we were to apply the

examiner's reasoning, "adhered" could not be ignored because it is a "structural" limitation. Since Bloch does not disclose, either explicitly or inherently, any means for adhering needle cover 11,13 to syringe 16, the anticipation rejection cannot be sustained.

In view of the foregoing, it is unnecessary to consider appellants' argument concerning the "single bodied" limitation.

Conclusion

The examiner's decision to reject claims 1 to 5 under 35 U.S.C. § 102(b) is reversed

REVERSED

IAN A. CALVERT )  
Administrative Patent Judge )  
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<sup>2</sup> On page 3, lines 15 to 18, of the specification, appellants disclose that the needle cover is adhered to the syringe "by suitable adhesion means such as adhesives, pressure-sensitive adhesives, or mechanical means such as ribs or bands."

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	)	BOARD OF PATENT
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JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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