

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BRIAN BALODIS

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Appeal No. 1997-3706  
Application 08/406,108<sup>1</sup>

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HEARD: September 11, 1999

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Before CALVERT, Administrative Patent Judge, MCCANDLISH,  
Senior Administrative Patent Judge, and BAHR, Administrative  
Patent Judge.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to  
5. Claims 6 to 10, the other claims in the application, stand

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<sup>1</sup> Application for patent filed March 17, 1995. According to applicant,  
this application is a CIP of S.N. 07/934,289, filed 09/24/1992; which is a CON  
of S.N. 07/718,063, filed 06/20/1991.

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withdrawn from consideration under 37 CFR § 1.142(b) as being directed to a nonelected invention.

The claims on appeal are drawn to a method of using a universal umbrella carrying device, and are reproduced in the appendix of appellant's brief.

The references applied in the final rejection are:

Vogel	2,493,705	Jan. 3, 1950
Girton	2,812,123	Nov. 5, 1957
Torres	3,279,663	Oct. 18, 1966
Saari et al. (Saari)	3,334,794	Aug. 8, 1967
Foo	4,085,872	Apr. 25, 1978
Taylor	5,025,819	June 25, 1991

Claims 2 to 5 stand finally rejected under 35 U.S.C. § 103 on the following grounds:

- (1) Unpatentable over Taylor in view of Foo and Torres;
- (2) Unpatentable over Saari;
- (3) Unpatentable over Saari in view of Girton, Torres and Vogel.

Since appellant states on page 4 of the brief that claims 1 to 5 are in a single group, we select claim 1 and will decide the appeal based thereon. 37 CFR § 1.192(c)(7).

Rejection (1)

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The basis of this rejection is stated on page 3 of the examiner's answer as follows:

As seen in figure 7, Taylor discloses a carrying device formed with two aperture loops (24,25) for carrying an umbrella. The device does not disclose the claimed positioning between the device and the umbrella for the particular embodiment nor the strap being formed from an elastic material. However, Torres and Taylor (Figure 3) show the attachment of a shoulder strap on the handle and bottom of an umbrella while Foo discloses elastic as a shoulder strap material. It would have been obvious to position the device (23) of Taylor on the handle and bottom of the umbrella as such arrangement is known as shown in Torres and in Figure 3 of Taylor, a mere choice between known arrangements. It also would have been obvious to make the aperture loop elastic as shown by Foo for providing a better grip between the strap and the umbrella.

We will not sustain this rejection. The device 23 shown in Taylor's Fig. 7, to which the examiner refers, is disclosed as being mounted with the upper loop 24 about a spine member (rib) 12a of the umbrella, and the lower loop 25 about the umbrella tip, as shown in Fig. 6 (col. 4, lines 19 to 23). Even assuming that it would have been obvious to make the Taylor loops 24, 25 of elastic, as the examiner proposes, in

order to perform the method recited in claim 1 one would have to lengthen the strap 23 of Taylor, insert the top (handle) end 14 of the umbrella into loop 24, and then carry the umbrella by strap 23. We do not consider that these modifications of Taylor would have been obvious to one of ordinary skill as "a mere choice between known arrangements" because Taylor does not disclose that the umbrella is carried by strap 23<sup>2</sup> and, as shown in Fig. 6, Taylor's umbrella is already provided with a carrying strap, namely, line 20 in housing 22. There would therefore be no motivation or suggestion for one of ordinary skill to modify Taylor's strap 23 to provide yet a second carrying strap in addition to the strap (20) already provided, it being noted that Torres and Foo each disclose the use of only a single carrying strap.

Rejection (2)

With regard to this rejection, the examiner states:

As seen in figure 6, Saari et al discloses a rubber shoulder strap with closed apertures (78 or 92) for holding elongated articles. The device does not specifically disclose holding an umbrella, however,

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<sup>2</sup> As disclosed in col. 4, lines 19 to 42, device 23 is called a "support strap web," and is used to carry a jacket 28 in cavity 27.

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in column 4 lines 3-5, Saari et al notes that the device can be used to carry other elongate sporting devices. It would have been obvious to carry a golf umbrella in the shoulder strap of Saari et al for freeing the hands of the user and as Saari et al notes the carrying of other elongate sporting devices, of which, a golf umbrella falls into this category. As the gun and fishing rod are shown attached at opposite ends, it would have been obvious to attach the umbrella in the same manner for allowing balanced carrying. The apertures 78 remain permanently closed if not removed and apertures 92 are permanently closed. [Answer, p. 4]

While appellant argues on page 8 of the brief that it would not have been obvious to use the Saari device to carry an umbrella we do not agree, for the reasons stated by the examiner, supra.

Appellant further argues that neither Saari's loops 78 nor slots 92 are "elastic cuffs . . . formed of a permanently closed loop of flexible, elastic material" as recited in claim 1 (brief, page 7; reply brief, page 4). We agree. As for loops 78, the examiner contends that they are "permanently closed if not removed" (answer, page 4), but it is evident from this statement that if they are not closed when removed, then they are not formed of permanently closed loops, which is what claim 1 requires. Slots 92 likewise do not meet the

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language of claim 1. Although the examiner contends that "[a]ny end member surrounding the article [being carried] can be considered a 'cuff'" (answer, page 6), claim 1 requires that each cuff be "formed of a permanently closed loop of . . . material." Words in a claim will be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently, Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed. Cir. 1984), and in the context of this case, the ordinary meaning of "loop" may be taken as "a folding or doubling of a cord, lace, ribbon, etc., upon itself, so as to leave an opening between the parts."<sup>3</sup> We do not consider that the slots 92 of Saari fit this definition, since they are not formed by any folding or doubling of strap 72,74.

Rejection (2) therefore will not be sustained.

Rejection (3)

In this rejection, the examiner combines Saari with Girton, Torres and Vogel, the latter three references being cited as evidence that it would have been obvious to utilize

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<sup>3</sup> The American College Dictionary (Random House, 1970).

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the Saari shoulder strap for carrying an umbrella (answer, page 5). However, as noted in the above discussion of rejection (2), even though we consider that it would have been obvious to put the Saari strap to such use, claim 1 still distinguishes over Saari in other respects, which are not taught by Girton, Torres and/or Vogel.

We accordingly will not sustain rejection (3).

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Conclusion

The examiner's decision to reject claims 2 to 5 is reversed.

REVERSED

	Ian A. Calvert	)	
	Administrative Patent Judge	)	
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		)	
	Harrison E. McCandlish, Senior	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
	Jennifer D. Bahr	)	
	Administrative Patent Judge	)	

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Karl F. Milde, Jr.  
Milde, Hoffberg & Macklin, LLP  
10 Bank Street, Suite 460  
White Plains, NY 10606