

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM J. COOPER

Appeal No. 98-1038
Application 08/438,512¹

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed May 11, 1995. According to appellant, the application is a continuation of Application 08/084,356, filed June 28, 1993, now abandoned.

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William J. Cooper appeals from the final rejection of claims 1, 2 and 7, all of the claims pending in the application. We reverse.

The invention relates to a plastic fastener of the sort used in the retail industry to attach tags to articles of clothing. Claim 1 is illustrative and reads as follows:

1. A fastener adapted for attachment to a sheet of material, said fastener comprising a unitary plastic member shaped to include an elongated filament having a cross bar at one end thereof, said cross bar being insertable through the sheet of material and engageable with the opposite side thereof to retain said fastener thereon, said cross bar being sufficiently short in length so that, once said cross bar has been inserted through an installation hole in the sheet of material, said cross bar cannot easily be manipulated in such a way as to be aligned with and withdrawn through the installation hole, said cross bar having a length of approximately 0.1 inch.

The references relied upon by the examiner as evidence of obviousness are:

Bone (Bone '666) 1963	3,103,666	Sept. 17,
Bone et al. (Bone '854) 20, 1990	4,901,854	Feb.

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bone '854, and claim 7 stands rejected

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under 35 U.S.C. § 103 as being unpatentable over Bone '854 in view of Bone '666.

Reference is made to the appellant's brief (Paper No. 18) and to the examiner's final rejection and answer (Paper Nos. 11 and 19) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

The dispositive issue in this appeal is whether Bone '854, the examiner's primary reference, would have suggested a fastener meeting the limitation in claim 1 requiring the cross bar to be

sufficiently short in length so that, once said cross bar has been inserted through an installation hole in the sheet of material, said cross bar cannot easily be manipulated in such a way as to be aligned with and withdrawn through the installation hole, said cross bar having a length of approximately 0.1 inch.

Bone '854 discloses a plastic fastener capable of a variety of uses such as securing matching garments together (see Figure 7) or forming a hanging loop for a single garment

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(see Figure 6). To this end, the fastener includes a pair of elongated filaments 16 joined at one end by a seamless connector 40 and carrying at their other ends penetrating parts or cross bars 12 and 14. Bone teaches that

[i]n a typical embodiment . . . the filament 16 extends approximately four inches in length while parts 12, 14 are approximately 13/32 in. in length and 0.070 inch in diameter. It should be noted however, that these dimensions may be varied considerably depending upon the particular attachment and its specific end use application [column 4, lines 36 through 43].

The examiner submits that "it would have been obvious to one of ordinary skill in the ar[t] at the time the invention was made

to choose 0.1 inches as a **considerable variation** of 13/32 (0.4

inches), the Bone cross bar dimension" (final rejection, page

3). The examiner goes on to explain that

[t]he crossbar must be of a length long enough to prevent pulling through the weave of a fabric of the merchandise, and yet it cannot be too long such that it cannot be applied with an attachment tool. The aforementioned variables support the Examiner[']s conclusion that it would have been obvious to one of ordinary skill in the art to "considerably vary" the length of the cross bar of Bone et al such that it

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were 0.1 inch. That is to say it is well within the scope of the Bone et al reference to form the cross bar to be 0.1 inch long [answer, pages 4 and 5].

The appellant, on the other hand, argues that

Bone et al. (854) is directed at a completely different problem than that solved by Appellant, namely, tampering. Instead, Bone et al. is directed at the problems of using an individual attachment to secure together two or more objects having a substantial combined thickness . . . and using a plastic fastener to hang articles of commerce or to function as thread substitutes Bone et al. (854) not only does not appreciate the problem of tampering solved by Appellant but goes so far as to state, at col. 1, lines 35-37, that conventional fasteners "are effective in preventing shoppers from switching tags by removing a tag from a low-priced article, and substituting it on a higher priced article." None of the "specific end use applications" referred to in Bone et al. (854) require or even benefit from a cross-bar having the length limitation recited in claim 1. Consequently, viewing in its proper context the statement in Bone et al. (854) that the dimensions may be varied depending upon the specific end use application of the fastener, one of ordinary skill in the art would not have been motivated to reduce the length of the cross bar to approximately 0.1 inch [brief, pages 5 and 6].

The appellant's position here is persuasive. Bone '854 does teach that the cross bar length of the fastener disclosed

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therein may be varied considerably from the specified 13/32 inch length depending on the end use application. The examiner has failed to point out, however, nor is it apparent, where Bone '854 indicates any end use application suggestive of the "approximately 0.1 inch" cross bar length required by claim 1. In this regard, Bone '854 certainly does not contemplate the fastener withdrawal/tampering problem addressed by the appellant or the recited cross bar solution thereto. Thus, Bone '854 does not provide the factual basis necessary to support the examiner's determination that the subject matter recited in claim 1, and in claim 2 which depends therefrom, would have been obvious within the meaning of § 103. Bone '666, applied in combination with Bone '854 to reject dependent claim 7, does not overcome this deficiency in the primary reference.

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Accordingly, we shall not sustain the standing 35 U.S.C.
§ 103 rejections of claims 1, 2 and 7.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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JPM/pgg
Edward M. Kriegsman
Kriegsman & Kriegsman
838 Edgell Road
Framingham, MA 01701