

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN A. KORDIAK

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Appeal No. 1998-1748  
Application No. 08/758,295

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REQUEST FOR REHEARING

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Before KRASS, FLEMING, and HECKER, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests rehearing and reconsideration of our decision of June 30, 2000 wherein we affirmed the examiner's decision rejecting claims 1, 11, 12, 16-18 and 25 under 35

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U.S.C. 102(b) and rejecting claims 1, 9, 16 and 25 under 35  
U.S.C. 103.

In particular, appellant takes issue with our interpretation of the claimed shield being "readily deformable." Appellant contends that while they agree that all materials are "deformable" to a degree, this does not mean that all materials, such as that in the reference to Kirschner are "readily deformable," as claimed. Appellant points to instant Figure 3 for an illustration of what is intended by "readily deformable." Figure 3 shows a shield being pushed in by a falling coffee mug. Appellant's position is that "readily deformable" is clearly defined in claim 1 in stating that the purpose of the shield being "readily deformable" is to protect the display screen on which it is mounted.

We disagree. We find nothing in claim 1 which would distinguish the shield being "readily deformable" from that which is disclosed by Kirschner. While the primary purpose of the shield in Kirschner is to reduce the amount of ambient light impinging on the screen, the shield also clearly protects the screen. Moreover, since the material of the shield in Kirschner does deform to some degree and deforms

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"immediately" upon impact by an object, we hold that Kirschner's shield is "readily deformable," as claimed and as defined by appellant. The shields of Kirschner and appellant may differ by the amount, or degree, of deformation, but we find no language in the instant claims which would distinguish over that disclosed by Kirschner.

At the bottom of page 2 of the Request for Rehearing, appellant states that "Kirschner can only logically be applied to the skins of Kirschner's "rigid" composite. Applicant's claim 1 sets forth that the top and sides of the shield can be readily deformed, not just the skins thereof."

Appellant's argument is not well taken. If, by "skins," appellant refers to the flexible vinyl cover sheets overlying the laminated chipboard of Kirschner's shield, the top and sides of Kirschner's shield are both covered by the vinyl sheets. Therefore, if one accepts that the vinyl coverings, or "skins," of Kirschner's shield are "readily deformable," then clearly the top and sides of Kirschner's shield are, or can be, readily deformed, as required by claim 1. But, we note again, that in addition to the vinyl covering of Kirschner being "readily deformable," the laminated chipboard

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which is covered by the vinyl sheets is also "readily deformable," to a degree, when impacted by a foreign object. Thus, the language of instant claim 1 would appear to be anticipated by Kirschner under alternative interpretations.

At page 3 of the Request for Rehearing, appellant contends that our decision is "deficient" because while claims 1, 9, 16 and 25 are rejected under 35 U.S.C. 103, only claim 9 is discussed in the opinion. We addressed only claim 9 because appellant argued the merits of no other claim with regard to the rejection under 35 U.S.C. 103. If appellant had arguments with regard to the substance of any other claim, those arguments should have been presented. Arguments not made are waived. In re Kroekel, 803 F.2d 705, 231 USPQ 640 (Fed. Cir. 1986). Even in the Request for Rehearing, appellant offer no arguments as to why the examiner's rejection of these claims under 35 U.S.C. 103 is in error.

In arguing claim 9 in the Request for Rehearing (pages 3-4), appellant contends that the Giulie reference does not disclose the claimed structure wherein the side walls are releasably cojoined by means of interfitting tabs and slots. We disagree. Figure 2 of Giulie and the section depicted in

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Figure 3 clearly show that the sides and top of Giulie's glare shield are releasably interconnected by "interfitting tabs and slots" (for example, horizontal portion 29 is a "tab" and gaps 27 and 28 form a "slot"). While Giulie's joined portions may differ from the "interfitting tabs and slots" shown in appellant's drawing wherein the portions are meshed together, Giulie clearly discloses a glare shield which has a top wall and two side walls and wherein the side walls are "releasably joined to said top wall by means of interfitting tabs and slots," as broadly claimed. Giulie's portions are "interfitting" because the tabs of the side portions fit into the slots of the top portion.

Appellant's Request for Rehearing has been granted to the extent that we have reconsidered our decision but the request is denied with respect to making any changes in our decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED

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ERROL A. KRASS	)	
Administrative Patent Judge	)	
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MICHAEL R. FLEMING	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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STUART N. HECKER	)	
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EK/RWK

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