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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* GEOFFREY A. HERRING

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Appeal 2017-003870  
Application 13/739,704<sup>1</sup>  
Technology Center 3600

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Before STEFAN STAICOVICI, JILL D. HILL, and  
ARTHUR M. PESLAK, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Geoffrey A. Herring (“Appellant”) appeals under 35 U.S.C. § 134(a) from the Examiner’s decision in the Final Action (dated Jan. 30, 2015, hereinafter “Final Act.”) rejecting claims 1–20 under 35 U.S.C. § 102(b) as anticipated by Real Avid Bore Light (accessed on Feb. 2, 2018 at <http://www.midwayusa.com/product1639627/real-avid-bore-light>, first

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<sup>1</sup> Ares Defense Systems, Inc. is the applicant as provided in 37 C.F.R. § 1.46 and is identified as the real party in interest in Appellant’s Appeal Brief (filed Dec. 10, 2015, hereinafter “Br.”). Br. 2.

reviewed Oct. 2010, hereinafter “Real Avid”).<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

## SUMMARY OF DECISION

We AFFIRM.

## INVENTION

Appellant’s invention relates to a light for inspecting an interior space of a firearm. Spec. para. 5. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A firearm receiver assembly, comprising:
  - a receiver body having an interior space accessible through an opening within a sidewall of the receiver body;
  - a light emitting device mounting structure extending from the sidewall; and
  - a light emitting device mounted on the light emitting device mounting structure, wherein the light emitting device is mounted in an orientation for causing at least a portion of a beam of light emitted therefrom to be directed through the opening at an oblique angle into the interior space.

## OPINION

### *Claims 1 and 3*

Although Real Avid does not explicitly disclose a bore light mounted on a firearm, because Real Avid discloses that the light is “set . . . on the barrel, rib or receiver,” the Examiner takes the position that the body of the bore light is “capable of mounting onto the receiver.” Final Act. 2 (citing

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<sup>2</sup> Although the Examiner refers to the reference as “Avid” and Appellant refers to the reference as “ABL,” because Real Avid is the company that sells the bore light, “Real Avid” more accurately denotes this reference.

Real Avid, Product Information, ll. 1–3). According to the Examiner, Real Avid’s “flex neck is capable of being moved by a user so as to position the LED for illumination of the firearm interior.” *Id.* at 3.

Appellant argues that “claim 1 teaches a specific location to mount the light emitting device,” and that Real Avid “does not show or disclose a light emitting device mounting structure extending from a sidewall of a firearm receiver.” Br. 14. Appellant contends that “[n]owhere does . . . [Real Avid] show or disclose that its bore light would or should be placed on a receiver *sidewall*, as opposed to elsewhere on the receiver.” *Id.* According to Appellant, “[t]he rejection appears to be premised on the position that it would be *possible* to mount the [Real Avid] bore light on a receiver sidewall, and . . . would also be *possible* to direct the beam therefrom through an opening in the receiver sidewall,” as claimed, but that Real Avid does not disclose these limitations and the Examiner does not make clear why these limitations are “necessarily present.” *Id.* at 13.

The Examiner responds that Real Avid’s disclosure of setting the light on the receiver meets the claim limitation “mounting structure extending from a sidewall,” because “*any* exterior surface of the receiver to which the bore light is magnetically mounted constitutes a sidewall of the receiver.” Ans. 4 (emphasis added). According to the Examiner, Real Avid’s “flex neck would inherently have to be manipulated to direct light into [an] opening” to fulfill Real Avid’s “intended purpose of illuminating the interior of the firearm.” *Id.* at 5. The Examiner states that shining Real Avid’s light “at an oblique angle into the interior space is an intended use which is capable of being performed by” Real Avid. *Id.*

We are not persuaded by Appellant's arguments, because Appellant does not point to any evidence that would exclude Real Avid's "exterior surface" of the receiver from constituting a sidewall of the receiver, as called for by claim 1. We, thus, agree with the Examiner's finding that Real Avid's disclosure of setting the bore light body on the exterior surface of the receiver results in the mounting structure extending from a sidewall of the receiver.

We also agree with the Examiner's findings that, because Real Avid's bore light is for "illuminating hard-to-see areas of the chamber [and] receiver," Real Avid necessarily has an opening in the receiver to effect such illumination. *See* Real Avid, Product Information; *see also* Ans. 5. The jurisprudence is such that a prior art reference without expressed reference to a claim limitation may nonetheless anticipate by inherency. *See In re Cruciferous Sprout Litigation*, 301 F 3d. 1343, 1349 (Fed. Cir. 2002).

In addition, because Real Avid has a *flex* neck, Real Avid's device would direct light at any angle, including angles other than 180 degrees and 90 degrees, namely, at an oblique angle. Appellant has not provided persuasive argument or technical reasoning that the Examiner's findings are in error.

For these reasons, we sustain the Examiner's rejection of claim 1. Appellant does not separately argue claim 3, and, thus, for the same reasons, we likewise sustain the anticipation rejection of claim 3.

*Claims 2, 5, and 7*

Each of claims 2, 5, and 7 recites, in relevant part, “the interior space includes a bolt carrier bore,” and “the opening is a cartridge ejection port.” Br. 22–24.

Appellant argues that Real Avid does not disclose illuminating a bolt carrier bore, and “does not necessarily require [the bore light] to be mounted so as to direct light through a cartridge ejection port.” Br. 15.

The Examiner responds that “[a]n assembled firearm receiver only has one opening through which a receiver mounted light would be able to shine: the ejection port.” Ans. 5. According to the Examiner, all firearms include “the bolt carrier, which is located in the bolt carrier bore” that moves cartridges between the magazine and barrel chamber, and, after firing, because the spent [bullet] shell moves backward from the barrel chamber into the bolt carrier bore and out of the ejection port, “the interior space of the receiver to which the ejection port leads can only be the bolt carrier bore.” *Id.* The Examiner thus finds that “all receivers have a bolt carrier bore and an ejection port arranged as claimed and that the light, in order to illuminate the interior of the receiver, must [necessarily] shine into the bolt carrier bore through the ejection port since that is the only opening in the receiver.” *Id.*

Appellant’s arguments are not persuasive. The Real Avid device is a “Bore Light” for illuminating hard-to-see areas of the chamber and receiver, and Appellant does not explain adequately why these hard-to-see areas of a firearm do not necessarily include a bolt carrier bore that would be illuminated, as the Examiner finds. Nor has Appellant provided persuasive argument or technical analysis to rebut the Examiner’s position that Real

Avid's light "must [necessarily] shine into the bolt carrier bore through the ejection port since that is the only opening in the receiver." Ans. 5. Absent persuasive evidence or technical argument that alternate openings exist for illuminating the interior of the receiver, Appellant does not apprise us of Examiner error.

For these reasons, we also sustain the Examiner's anticipation rejection of claims 2, 5, and 7.

*Claims 4, 6, and 8*

Claims 4 and 6 both recite, in relevant part, "the light emitting device is mounted within a passage extending through the light emitting device mounting structure." Br. 22–23. Claim 4 additionally recites, in relevant part, as well as claim 8, that "the LED is located at a first end portion of the passage; and the switch is located at a second end portion of the passage." *Id.* at 22–24.

Appellant argues that it is not clear how Real Avid's LED is mounted in a passage, because any "passage [in Real Avid] does not extend through a light emitting device mounting structure (which must extend from the receiver sidewall), but rather is located in a head at the end of a flex neck remote from any mounting structure." Br. 16. According to Appellant, the most plausible choice for Real Avid's switch "appears to be a button on a cylindrical portion," but the button "is certainly not located at the opposite end of a passage from the LED." *Id.*

The Examiner replies that "the entire body of the [Real Avid] bore light was considered to be the mounting structure, including the magnetic base and the flex neck." Ans. 6. According to the Examiner, "there must be

a hollow passageway extending between the LED at one end of the flex neck and the switch/power source positioned at the opposite end of the flex neck adjacent the magnet,” for internal wiring between these elements. *Id.*

The Examiner has the better position, because Real Avid’s flex neck necessarily has a wiring passage that connects the LED to a power source, as the Examiner correctly finds. *See* Ans. 6. The LED is mounted within a first end portion of this passage and the switch (button) is located at a second end of this passage. *See* Br. 12 (showing a reproduction of the Real Avid Borelight). Moreover, because Real Avid’s mounting structure includes both the magnetic body and the flex neck (*see* Ans. 6), mounting Real Avid’s magnetic body to the sidewall will necessarily result in the mounting structure extending from the sidewall, as well as the passage extending through (the flex neck portion of) the mounting structure, as required by the claims. Appellant does not apprise us of Examiner error.

For these reasons, we likewise sustain the Examiner’s anticipation rejection of claims 4, 6, and 8.

#### *Claims 9–16*

Appellant makes the same arguments as discussed *supra* in the rejection of claims 1–8. *See* Br. 17–19. Therefore, for the same reasons as discussed above, we also sustain the anticipation rejection of claims 9–16 as anticipated by Real Avid.

#### *Claims 17–20*

Appellant makes some of the same arguments as discussed *supra* in the rejection of claims 1–8, which we have found unpersuasive, and

additionally argues that Real Avid does not disclose 1) a barrel having a chamber at a first end, 2) a receiver body attached to the barrel, 3) that the chamber is accessible through a bolt carrier bore extending through the receiver body, and 4) a cartridge ejection port that intersects the bolt carrier bore. Br. 20. According to Appellant, because “these recitations are . . . not expressly disclosed,” Real Avid is not an anticipatory reference. *Id.*

Appellant’s arguments are not persuasive. Real Avid discloses a “chamber, receiver and barrel interior” (Real Avid, Product Information), and Appellant does not adequately explain how these components differ from Appellant’s chamber, receiver, and barrel such that they would not be arranged in the manner of claim 17. An artisan must be presumed to know something about the art apart from what the references disclose. *See In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962). Here, for example, with respect to the bolt carrier bore and cartridge ejection port, as discussed *supra*, we agree with the Examiner that “an ejection port is the only opening in the receiver of an assembled firearm,” and that “the interior space [chamber] of the receiver to which the ejection port leads can only be the bolt carrier bore.” Ans. 5. Appellant does not adequately explain why the Examiner’s finding that “all receivers have a bolt carrier bore and an ejection port arranged as claimed,” is in error. *Id.* Moreover, a person of ordinary skill in the art of firearms would have readily understood that the barrel of a firearm has a chamber (interior space) at an end thereof in the firearm’s receiver and that the receiver is attached to the barrel. Accordingly, for the reasons discussed *supra* in the rejection of claims 1–8, and for the reasons discussed above, we also sustain the rejection of claims 17–20 as anticipated by Real Avid.

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SUMMARY

The Examiner's decision rejecting claims 1–20 as anticipated by Real Avid is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED