



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/260,119	09/08/2016	Kenneth Brown	BrownK-1	2756
32132	7590	11/13/2019	EXAMINER	
LAMORTE & ASSOCIATES P.C. P.O. BOX 434 YARDLEY, PA 19067			PENCE, JETHRO M	
			ART UNIT	PAPER NUMBER
			1717	
			NOTIFICATION DATE	DELIVERY MODE
			11/13/2019	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@uspatlaw.com  
malamorte@verizon.net  
uspatlaw1@verizon.net

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* KENNETH BROWN

---

Appeal 2019-001330  
Application 15/260,119  
Technology Center 1700

---

Before JEFFREY B. ROBERTSON, MONTÉ T. SQUIRE, and  
BRIAN D. RANGE, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner’s decision to reject claims 1, 3–7, 9, 15, and 16. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

---

<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Kenneth Brown. Appeal Br. 2.

## CLAIMED SUBJECT MATTER<sup>2</sup>

Appellant describes the invention as relating to a paint shield that can be used to protect a circular fixture such as a lighting pot, ceiling fan, or chandelier base. Spec. 1. We reproduce illustrative claim 1 below and add emphasis to certain disputed recitations:

1. A protective collar for temporarily protecting an item on a surface from paint that is being applied, said protective collar including:

a band that extends from a first end to a second end, said band having a first edge and a second edge that extend from said first end to said second end, wherein said first edge and said second edge are parallel, said band having one concave surface that extends from said first end to said second end and one convex surface that extends from said first end to said second end, wherein said band has a maximum thickness between said convex surface and said concave surface; and

a tapered region that extends along said band proximate said first edge, wherein said tapered region tapers toward said first edge causing said first edge on said tapered region to be thinner than said maximum thickness,

**wherein said band embodies a spring bias that biases said band into a circular configuration where said first end and said second end of said band overlap in an overlap region.**

## REFERENCES

The Examiner relies upon the prior art below in rejecting the claims on appeal:

Sarkisian	US 4,443,283	Apr. 17, 1984
Schwartz	US 4,921,028	May 1, 1990

---

<sup>2</sup> In this Decision, we refer to the Final Office Action dated December 21, 2017 (“Final Act.”), the Appeal Brief filed May 21, 2018 (“Appeal Br.”), and the Examiner’s Answer dated July 20, 2018 (“Ans.”).

### REJECTIONS

The Examiner maintains (Ans. 4) the following rejections on appeal:

- A. Claims 1, 4, and 9 under 35 U.S.C. § 102 as anticipated by Crane. Final Act. 3.
- B. Claims 3, 5, and 6 under 35 U.S.C. § 103 as obvious over Crane. *Id.* at 6.
- C. Claim 7 under 35 U.S.C. § 103 as obvious over Crane in view of Sarkisian. *Id.* at 9.
- D. Claims 15 and 16 under 35 U.S.C. § 103 as obvious over Crane in view of Schwartz. *Id.* at 10.

### OPINION

To resolve the issues before us on appeal, we focus on the Examiner's findings and determinations that relate to the error Appellant identifies. In particular, the Examiner rejects claim 1 as anticipated by Crane. A reference is anticipatory if it "disclose[s] each and every element of the claimed invention, whether it does so explicitly or inherently." *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009) (citation omitted). The elements "must be arranged or combined in the same way as in the claim." *Id.* (internal quotes and citation omitted). Here, the Examiner finds that claim 1's recited band is "formed by two flexible clamshell shaped half cups 14, 16." Final Act. 3-4; *see also* Ans. 14-16 (elaborating on Examiner's position as to why Crane's two half cups are a "band"). The Examiner also finds that claim 1's element "wherein said band embodies a spring bias" is met by Crane

teaching a “band formed by two flexible clamshell shaped half cups 14, 16 [that] includes an elastic bias 26 that secures the band formed by two flexible clamshell shaped half cups 14, 16, into a circular configuration.”  
Final Act. 4.

Appellant persuasively identifies error in the Examiner’s rejection by arguing that Crane does not disclose a spring bias embodied by claim 1’s recited band. Appeal Br. 7. Rather, as Appellant explains, Crane’s two clamshell shaped half cups (the band of claim 1 according to the Examiner) are held together by a separate elastic band 26 as illustrated by, for example, Crane Figure 3. *See also* Crane 4:4–13 (“the elastic band 26 is wrapped repeatedly as necessary around each of the prongs 22 and 24”). Thus, the Examiner’s position does not establish that what the Examiner identifies as corresponding to claim 1’s band (the two clamshell shaped half cups) “embodies a spring bias that biases said band into a circular configuration” as claim 1 recites. To the contrary, the preponderance of the evidence indicates that separate elastic band 26 is necessary to hold Crane’s half cups together.

For this reason, we do not sustain the Examiner’s rejection of claim 1. Because the Examiner’s treatment of the dependent claims<sup>3</sup> does not cure this error, we also do not sustain the Examiner’s rejection of those claims.

---

<sup>3</sup> With respect to the Examiner’s obviousness rejections, the Examiner does not propose any modification of Crane that would address the error we discuss above. Ans. 16–17.

CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 4, 9	102	Crane		1, 4, 9
3, 5, 6	103	Crane		3, 5, 6,
7	103	Crane, Sarkisian		7
15, 16	103	Crane, Schwartz		15, 16
<b>Overall Outcome</b>				<b>1, 3-7, 9, 15, 16</b>

REVERSED