

COMMISSIONER'S DECISION

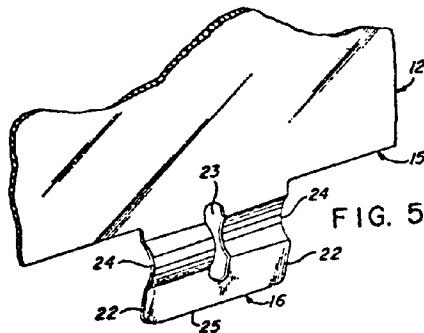
SUPPORT IN DISC.: Windshield Mounting for Snowmobiles

The windshield comprises a moulded sheet of transparent resilient material having a series of mounting tabs spaced along its lower edge. The claims do not have to be restricted to the preferred embodiment as required by the Final Action, but may define the invention described as broad as the prior art will permit.

Final Action: Withdrawn

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated December 13, 1977, on application 210954 (Class 296-41). The application was filed on October 8, 1974, in the name of Jérôme Bombardier, and is entitled "Windshield Mounting."

The application is directed to a snowmobile windshield comprising a moulded sheet of transparent resilient material having a series of mounting tabs spaced along its lower edge. The mounting tabs are of resilient form having laterally extending parts which can be compressed together to allow the tab to pass into engagement with a narrow mounting slot in the cab of the snowmobile. Figure 5 shown below illustrates one embodiment of that arrangement:



In the Final Action the examiner refused claims 1 and 3 to 8 because the matter claimed is not set forth in distinct and explicit terms so as to "be adequately supported by the disclosure." He argues that "since the disclosure and drawings specifically describe and show only one type of tab, then the claims, in order to be adequately supported by the

disclosure of this application, must distinctly describe the said tab in sufficient detail such that the tab claimed is the same tab as that disclosed."

The examiner further argues that "... There is no doubt, that numerous ways are possible to produce or construct a tab with locking properties similar to that disclosed by this application. The applicant has failed, however, to disclose such in the disclosure of this application as originally presented. Applicant has disclosed and shown in great detail only one form of said tab, hence applicant can only claim such a form...."

In response to the Final Action the applicant relied on his arguments of June 2 and October 31, 1977. In the action of June 2 he had, inter alia, this to say:

...

In the fourth paragraph of the official action, the Examiner summarizes some of the features of the preferred embodiment of the invention, which, in fulfillment of the requirements of the Patent Act, is disclosed. As is noted in line 4 of page 1a, this embodiment is disclosed "by way of example only". For the Examiner to suggest, as appears to be implied from the wording of the official action, that the particular features of the exemplary embodiment disclosed ought to constitute precise limitations on the scope of the invention claimed, has no justification in law, reason, or practice. As will be abundantly clear from a consideration of the applicant's specification as a whole, the broad concept of applicant's invention is in no sense restricted to the specific structural details of the exemplary embodiment disclosed. Were the situation otherwise, a patent would be virtually useless since it would protect nothing other than the exact structure disclosed, so that third parties could readily avail themselves of the fruits of the patentee's invention without infringing the patent.

...

The suggestion that if all the tabs were made according to the claim none of the individual tabs would offer any resistance to removal, is clearly inconsistent with the wording of the claim which contains a detailed recitation of the resiliently compressible nature of the intermediate portion of the tab, so that it can be compressed to a smaller overall width, passed through the slot, and then returned to its extended condition to form a releasable connection between the windshield and the mounting slots.

Accordingly, it is submitted that the rejection of claim 1 is totally inappropriate and ought to be withdrawn. Applicant does not argue with the principle that a claim must be fully supported by the disclosure, and must not be broader than the invention disclosed. However, this is quite a different matter to the Examiner's assertion that the claim ought to be restricted to the specific structural details of the preferred embodiment disclosed.

...

In the response of October 31, 1977, he also had this to say:

...

In the paragraph bridging pages 1 and 2 of the official action of August 3, 1977, the Examiner notes that claim 1 omits any recitation of the vertical slot (23) and notes:

"Without that slot the reversely curved portion (24) could not be formed in the plastic sheet. Without that slot the squeezing and wedging action shown in Figures 3 and 4 could not occur. By the omission of any definition of this vertical slot in claim 1, and as a result of the limitations which are recited, the claim defines a tab which cannot have the basic character of the tab disclosed".

Applicant agrees that the vertical slot (23) is essential to the specific embodiment illustrated in the drawings of the application. However what the Examiner has repeatedly failed to appreciate is that claim 1 is not restricted to the precise details of the disclosed embodiment. The Examiner emphasizes that without the slot the "reversely curved portion (24) could not be formed". Whether or not this statement is correct is immaterial. Claim 1 does not recite "reversely curved portions" but rather recited (see lines 10-12) that the tab has an intermediate portion "wherein the tab is laterally extended to define a region the overall width of which is increased" relative to the end portions of uniform thickness.

In the same vein, the suggestion in the above quoted passage that by omission of the vertical slot claim 1 defines a tab which cannot have the basic character of the tab disclosed is non-sensical. The basic character of the tab disclosed is that it enables the windshield to be mounted without requiring access to the underside of the part of the snowmobile in which the mounting slots are provided, such that during insertion the intermediate portion of the tab is squeezed to pass through the narrow slot, and once it has passed through expands to retain the windshield in position.

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The consideration before the Board is whether or not claims 1 and

3 to 8 are supported by the disclosure.

We should first make it clear that the object of a claim is mainly to define the extent of the monopoly to which protection is granted and we must look to the specification for a description of the invention (vide, Baldwin Int. Radio of Canada v Western Electric Co. (1933) Ex. C.R. 13). It was also held in Riddel v Patrick Harrison (1956-1960) Ex.C.R. 213 at 253, "... an inventor need not restrict his claims to what has been 'specifically described in the specification and illustrated in the accompanying drawings,' but within the breadth of his invention, may claim it as broadly as it would normally be construed by persons skilled in the art." On the other hand however, a claim cannot be so broad in scope that it will encroach on the prior art.

The invention is succinctly put in the disclosure as filed at page 1, line 4 f.f., and reads:

According to the invention there is provided a recreational vehicle, comprising a moulded sheet of transparent plastics material, said windshield having a central section integral with two curved rearwardly extending side sections, having a lower edge for engagement on a body portion of the vehicle, and attachment means on said lower edge to form a releasable connection of the windshield on the vehicle, said attachment means comprising a number of tabs spaced at intervals along, and extending downwardly from, said lower edge, each tab being of generally flat form substantially co-planar with the area of the windshield adjacent thereto, said tab being of resilient material and having a laterally extended portion spaced from and extending parallel to the lower edge of the windshield, the arrangement being such that said laterally extended portion can be resiliently compressed to pass through a narrow mounting slot in the vehicle, and having passed through the slot can return to its extended condition to form a releasable connection between the windshield and the mounting slot.

Claim 1 reads:

A windshield for a recreational vehicle, comprising a moulded sheet of transparent plastics material, said windshield having a central section integral with two curved rearwardly extending side sections, having a lower edge for engagement on a body portion of the vehicle, and attachment means on said lower edge to form a releasable connection of the windshield on the vehicle, said attachment means comprising a number of tabs spaced at intervals along, and extending downwardly from said lower edge, each tab being generally co-planar with the area of the windshield adjacent thereto, each said tab being of resilient material and having a first region of uniform thickness adjacent the lower edge of the windshield, an intermediate portion adjacent the first region wherein the tab is laterally extended to define a region the overall width of which is increased relative to

said first region of uniform thickness, and a free end portion comprising a second region of uniform thickness beneath the intermediate portion, said first and second regions of uniform thickness being generally aligned with each other, first and second transition surfaces extending vertically of the tab at an angle to the plane thereof from opposite sides of said intermediate portion to each of said first and second regions respectively, the intermediate portion being itself resiliently compressible to a smaller overall width when urged through a slot narrower than said original overall width through interaction of the edges of the slot with said first or second transition surfaces respectively, and then returning to its extended condition when disengaged from the slot edges, to thereby form a releasable connection between the windshield and the mounting slot.

The applicant then goes on to say that "the invention will be further described, by way of example only, with reference to the accompanying drawings...."

In other words the applicant now proceeds to give a preferred embodiment, but he does not have to restrict his claim to define the preferred embodiment.

If a person skilled in the art can vary the type of tab to carry out the invention described, without inventive ingenuity, then the claims may define that invention as broad as the prior art will permit.

We do not agree with the examiner that "the disclosure and drawings very specifically describe and show only one type of tab...." In a description of the invention supra the applicant gave a broad description of the tab: "... the tab being of resilient material and having an extended portion spaced from and extending parallel to the lower edge of the windshield, the arrangement being such that said laterally extended portion can be resiliently compressed to pass through a narrow mounting slot in the vehicle, and having passed through the slot can return to its extended condition to form a releasable connection between the windshield and the mounting slot." This is clearly a broad description of a tab which can, in our view, be produced in various ways without any inventive effort. In any event, the examiner states in the Final Action, and we agree: "There is no doubt that numerous ways are possible to produce or construct a tab with locking properties similar to that disclosed by this application;..." Furthermore, the claims do not have to "distinctly describe the said tab...." The claims, as mentioned, must define

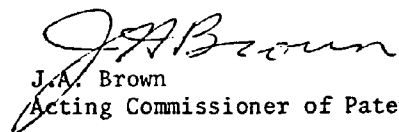
the limits of the scope of monopoly of the invention; the tab is merely a part of what may be an inventive idea or concept. We suggest however, that the term "width" in claim 1 should more properly read "thickness."

We are not satisfied that the decision in the Final Action refusing claims 1 and 3 to 8 for non support in the disclosure is proper. We recommend that the Final Action be withdrawn and the application returned to the examiner for resumption of prosecution.



J.E. Hughes
Assistant Chairman
Patent Appeal Board, Canada

I have studied the prosecution of this application and I agree with the recommendation of the Patent Appeal Board. Accordingly, I withdraw the Final Action and return the application to the examiner for resumption of prosecution.



J.A. Brown
Acting Commissioner of Patents

Agent for Applicant

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Dated at Hull, Quebec

this 4th. day of July, 1978