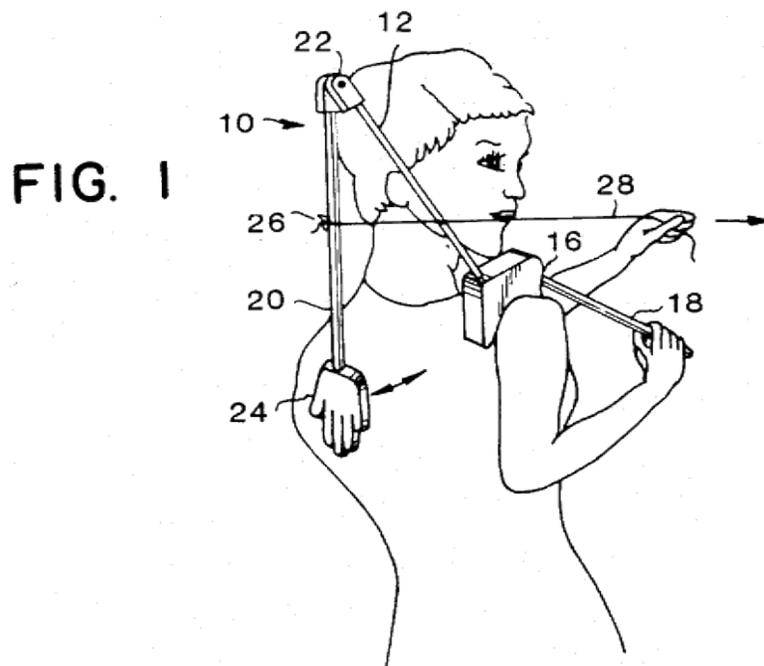


*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

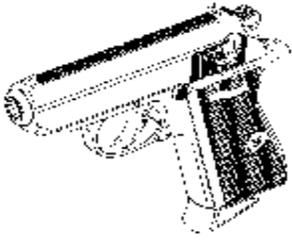
## [Shot in the Dark - the PPK Design Trademark](#)

Posted on November 10, 2010 by [Karen Brennan](#)



I found Fig. 1 (from what I am sure was a very valuable patent, although I could not locate it) to be very fitting for this post. After three and half years, four Office Actions, a Petition to the Director and finally an appeal, our client's product configuration mark for the PPK handgun design (below) will finally take its place on the Principal Register.





Although the design mark application originally faced a functionality refusal as well, the only issue on appeal was whether applicant had established that the PPK design had acquired distinctiveness. Despite the Board's less than favorable track record with product configuration marks (the [TTABlog](#) noted two reversals in the last four years), the Board reversed the registration refusal for the PPK design mark, finding the applicant had proven acquired distinctiveness in the design. *In re Carl Walther GmbH*, Serial No. 77906523 (Oct. 26, 2010) (download decision [here](#)).

By way of brief summary, the Board recognized the direct evidence submitted in support of acquired distinctiveness, including an online survey where 54% of the relevant consumers surveyed associated the PPK design with a single source and 33% correctly identified the source. The decision also emphasized a declaration from the author of the [Blue Book of Gun Values](#) as direct evidence. In addition to the direct evidence, the Board carefully considered the extensive circumstantial evidence submitted, including unsolicited media coverage for the PPK design as [James Bond's](#) weapon of choice for forty years, as well as evidence of advertising expenditures and licensing of the design for replica products. Additional evidence submitted, but not mentioned in detail included other industry declarations, blogs and websites dedicated to the PPK design and its fame, advertising and promotional pieces emphasizing the PPK design, evidence of expansion of the design mark into other products such as replicas, use of the mark on promotional products, and unsolicited use of the PPK design in other movies, television shows and video games.

A few blogs ([here](#) and [here](#)) have commented that the "cinematic fame" was the reason for the reversal. In my opinion (admittedly biased), the Board once again reiterated a totality of the evidence approach for product configuration marks. While the Board did appear to focus on the online survey, after evaluating its results, the Board clearly noted that no single piece of evidence was determinative; rather each was "considered in conjunction with the entire record before us." As for the Bond evidence, the Board questioned whether Bond's obvious effect on the public's PPK recognition was carried over into evidence of a similar effect on the relevant consumers (handgun owners or potential owners as compared to movie fans), but found that some of the survey responses clearly demonstrated that the films have "influenced handgun consumers and their recognition of the PPK handgun design."

Check out the [TTABlog](#) and [The Hollywood Reporter](#) blogs for more on the PPK Design decision.

