

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte RICHARD FRANK

Appeal No. 2005-2198
Application No. 10/286,942

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed May 19, 2004) of claims 1 to 4, 8 to 15 and 19 to 22, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention is in the field of ergonomic supports for seats, especially automobile seats (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's replacement brief (filed February 16, 2005).

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

DeLisle et al. (DeLisle)	4,421,110	Dec. 20, 1983
Harrison et al. (Harrison)	5,217,278	June 8, 1993
Sessini	5,567,011	Oct. 22, 1996
Martin et al. (Martin)	Des. 413,985	Sept. 14, 1999
Cosentino et al. (Cosentino)	6,296,308	Oct. 2, 2001

Claims 1 to 4, 8 to 11, 13 to 15 and 19 to 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over either Cosentino or Sessini in view of DeLisle and Martin.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Harrison in view of DeLisle and Martin.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final

rejection and the answer (mailed August 23, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed June 25, 2004), reply brief (filed September 29, 2004) and replacement brief for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 4, 8 to 15 and 19 to 22 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See

In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Products Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

The appellant argues that the examiner failed to present a prima facie case of obviousness since the applied prior art does not suggest the claimed subject matter. We agree.

All the claims under appeal require that the pressure surface of the support have integrally formed convexities. The examiner properly found that each of the primary references (i.e., Cosentino, Sessini or Harrison) does not teach the pressure surface of

the support having integrally formed convexities. While both DeLisle and Martin do teach a mat or board having integrally formed convexities, they do not teach or suggest providing the pressure surface of the support of any of the primary references with integrally formed convexities. The integrally formed convexities of DeLisle and Martin are designed to directly interact with the back of a user. The pressure surfaces of the support of the primary references are mounted inside the back cushion of a chair or seat (see for example Figures 5 and 11 of Sessini and Figure 1 of Harrison). As such, the pressure surfaces of the primary references are not designed to directly interact with the back of a user. It is our opinion that absent the use of hindsight knowledge derived from the appellant's own disclosure there would be no reason why a person having ordinary skill in the art would have modified the pressure surfaces of any of the primary references so as to arrive at the claimed subject matter.

For the reasons set forth above, the decision of the examiner to reject claims 1 to 4, 8 to 15 and 19 to 22 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4, 8 to 15 and 19 to 22 under 35 U.S.C. § 103 is reversed.

REVERSED

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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