

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN A. TOWNSEND

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Appeal No. 96-1256  
Application 08/257,080<sup>1</sup>

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HEARD: October 13, 1998

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Before CALVERT, FRANKFORT and STAAB, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed June 9, 1994. According to the appellant, this application is a division of Application 07/912,790, filed July 13, 1992.

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DECISION ON APPEAL

This is an appeal from the final rejection of claim 42. Of the other claims in the application, claim 44 has been allowed, and claims 1 to 8, 19 to 27 and 36 to 41 stand withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to nonelected inventions.

Claim 42 defines the subject matter in issue as follows:

42. In a motor vehicle having a lateral door movable between a closed position and an open position and a passenger seat located to the interior of and adjacent the door, said seat having an upwardly disposed backrest portion and a lower seat portion disposed at a level below the backrest portion, the improvement comprising:

a) an armrest carried by the seat in a disposition located between the seat and the door for movement between a withdrawn position permitting substantially unobstructed ingress and egress to the seat through the door when open and a working position disposed above the level of the lower seat portion and between the seat and door when the door is in the closed position; and,

b) an airbag located inside the armrest for deployment in the event of a collision laterally of the armrest to an area located between the door and a passenger supported by the seat.

The references applied in the final rejection are:

Neale et al. (Neale) 1967	3,322,463	May 30,
Freedman 1974	3,807,799	Apr. 30,

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Stier 1976	3,967,851	July 06,
Fujiwara 1987	4,668,010	May 26,
Nomura et al. (Nomura) 1992	5,106,160	Apr. 21,
Sinnhuber 11, 1994	5,277,441	Jan.

(filed Feb. 24, 1992)

Claim 42 stands finally rejected under 35 U.S.C. § 103 as unpatentable over Nomura, Freedman, Stier or Fujiwara in view of Neale and Sinnhuber.<sup>2</sup>

On pages 2 and 3 of the final rejection (Paper No. 5), the examiner states the basis of the rejection thus:

It would have been obvious to provide any one of the above listed primary references, with a movable armrest carried by the seat in a disposition located outboard of the seat, in an automotive environment with a door located adjacent thereto as taught by Neale et al in order to provide ease of access and an airbag in an armrest deployable into an intermediate area between seat and door on lateral impact as taught by Sinnhuber in order to protect against side impacts. See col. 4, line 29 for the teaching of Sinnhuber

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<sup>2</sup> In the supplemental answer, the examiner also referred to Simsic patent 5,224,733, but that patent has been given no consideration since it was not positively included in the rejection. Ex parte Raske, 28 USPQ2d 1304, 1305 (Bd. Pat. App. & Int. 1993).

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regarding airbag placement in a seat  
mounted armrest.

The examiner also, on pages 3 and 4 of the answer, refers to claim 2 of Sinnhuber as further disclosure of an airbag in a seat armrest.

After fully considering the record in light of the arguments presented by appellant and the examiner, we conclude that claim 42 is unpatentable under 35 U.S.C. § 103.

Appellant argues that it would not have been obvious, from the applied references, to locate an airbag in an armrest. With regard to Sinnhuber, appellant states on page 5 of the brief:

The Sinnhuber patent discloses side airbags and at column 4, line 29, states: "the airbag may be accommodated in an armrest of the seat in the unactivated state." Sinnhuber neither illustrates the armrest nor in any way suggests that it may be moveable between a withdrawn and a working position, as called for by the claim at issue. For that matter, it is not even clear from Sinnhuber that the armrest is carried by the seat. The words "of the seat" in Sinnhuber could equally well mean that the armrest of the seat is located in the door adjacent the seat, as is conventional in the motor vehicle art. Sinnhuber actually seems to be suggesting this, since column 4, lines 24-29 only references the door mounted airbag 15. If

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he had intended the airbag accommodating armrest to be carried by the seat, he would have referenced the seat supported airbag 17.

Appellant further discusses the advantages of having an airbag in an armrest mounted on the seat, rather than on the door, in that the armrest moves with (maintains the same position relative to) the occupant of the seat, and there is less chance of its being displaced by a side impact.

Appellant's arguments are not persuasive. While Sinnhuber does not expressly disclose that the armrest in which the airbag is "accommodated" is carried by the seat, as claimed, the test of obviousness is not whether the claimed invention is expressly suggested in any one or all of the references, but rather what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In the present case, we agree with the examiner that since Sinnhuber discloses placing an airbag "in an armrest of the seat," this would have suggested to one of ordinary skill in the art placing an airbag in any vehicle armrest, whether it be located on the door or, as in the

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primary references, on the seat itself. While it may be somewhat more advantageous to enclose the airbag in a seat-mounted armrest, as appellant contends, we consider that any such advantages would have been obvious to one skilled in the art. Contrary to appellant's argument, we do not believe that the examiner's conclusion that the claimed subject matter would have been obvious was the result of "twenty-twenty hindsight based upon applicant's own teachings" (brief, page 6), but rather was the result of applying Sinnhuber's clear teaching of locating an airbag in an armrest to a particular type of armrest, i.e., to the seat-mounted movable armrests known in the prior art, as exemplified by the primary references.

Accordingly, we will sustain the rejection of claim 42.

Conclusion

The examiner's decision to reject claim 42 is affirmed.

AFFIRMED

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IAN A. CALVERT	)	)
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	APPEALS AND
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LAWRENCE J. STAAB	)	
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