

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(2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER M. BONUTTI

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Appeal No. 96-4021  
Application 08/289,300<sup>1</sup>

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HEARD: July 17, 1997

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Before CALVERT, McQUADE and CRAWFORD, Administrative Patent Judges.

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<sup>1</sup> Application for patent filed August 11, 1994. According to appellant, the application is a division of Application 07/955,201, filed October 1, 1992, now U.S. Patent 5,407,249, issued April 18, 1995; which is a continuation-in-part of Application 07/597,691, filed October 15, 1990, now U.S. Patent 5,215,282, issued June 1, 1993.

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McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 35 through 38, 40, 41, 44, 46, 48 and 52 through 58. Claims 20, 22 through 25 and 27 through 34 stand allowed. Claims 39, 42, 43, 45, 47, 49 through 51, 59 and 60, the only other claims pending in the application, have been indicated as containing allowable subject matter, but stand objected to as depending from a rejected base claim.

The subject matter on appeal relates to "an armrest assembly for attachment to a chair" (specification, page 1).

Claim 44 is illustrative and reads as follows:

44. An armrest assembly for use with a chair having a seat, said armrest assembly comprising an armrest engageable with a portion of an arm of a person sitting on the seat of the chair, and a one-piece tubular support member having an upright lower portion connected with the seat of the chair and an upper portion which extends transversely to said lower portion, said one-piece tubular support member being rotatable about a central axis of said upright lower portion of said one-piece tubular support member under the influence of force transmitted from the arm of a person sitting on the seat of the chair to said armrest, said upper portion of said one-piece tubular support member including surface means for defining a slot in said upper portion of said one-piece tubular support member, said armrest extending into said slot to guide movement of said armrest along said upper portion of said one-piece tubular support member under the influence of force transmitted from the arm of the person sitting on the seat of the chair to said armrest.

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The references relied upon by the examiner as evidence of obviousness are:

|                            |           |               |
|----------------------------|-----------|---------------|
| Rogers, Sr. (Rogers)       | 1,816,747 | July 28, 1931 |
| Hough, Jr. (Hough)         | 2,950,890 | Aug. 30, 1960 |
| Van Seenus                 | 3,950,026 | Apr. 13, 1976 |
| Danziger et al. (Danziger) | 4,155,588 | May 22, 1979  |

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

a) claims 35 through 38, 40, 44, 46, 48 and 52 through 58 as being unpatentable over Van Seenus in view of Danziger and Hough; and

b) claim 41 as being unpatentable over Van Seenus in view of Danziger and Hough, and further in view of Rogers.

Reference is made to the appellant's main and reply briefs (Paper Nos. 9 and 11) and to the examiner's final rejection and answer (Paper Nos. 7 and 10) for the respective positions of the appellant and the examiner with regard to the propriety of these rejections.

Van Seenus discloses a wheelchair having an armrest assembly which is described in the following terms:

FIG. 2 shows a bottom view of one of the two arm-supports 25. A plate 27 is fixed to the frame-part 26 and is provided with a longitudinal channel 28. The arm-support 25 has at its under side a plate 29 provided with a channel 30 extending at right angles to the channel 28. A hook bolt extends into the channel 28 and may be fixed to the arm-support 25 by means of a coupling nut 31. Since the channels 28 and 30 extend at right angles towards each other, the arm-supports 25 may be adjusted at right angles to each other in two extending directions [column 3, lines 19 through 29].

The channel 28 is actually a slot in the plate 27 which receives the hook bolt so as to allow the armrest or arm-support 25 to be moved along the frame-part 26 linearly with respect to the seat of the chair.

Danziger discloses a wheelchair having an armrest assembly 2 which includes a "gallows-like arm 14 the vertical portion of which is turnable" (column 2, lines 15 and 16). The arm 14 has an upright lower portion and an upper portion which extends transversely to the upright lower portion. This arm is turnable or rotatable about the central axis of the upright lower portion to allow the occupant of the chair to transfer laterally to a bed or car (see column 2, lines 25 through 35).

Hough discloses an armrest assembly 10 having an armrest element 36 which is adjustably mounted for linear

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movement along a tubular support arm 30 via a stud 42 which extends through a longitudinal slot 43 in the arm. The armrest element can be fixed with respect to the slot by means of a wing nut 44 threaded onto the free end of the stud.

Rogers discloses a display rack comprising an upright tubular supporting post 6, a bearing 12 adjustably disposed within the post, and a rod 9 rotatably received by the post and resting on the bearing. The position of the bearing is fixed by a set screw 13 which extends through a slot 7 in the post. Rogers teaches that this construction allows the rod 9 to be vertically adjusted with respect to the post to accommodate the display of articles having various lengths (see page 1, lines 51 through 63).

In explaining the first of the rejections on appeal, the examiner concludes that it would have been obvious to one of ordinary skill in the art "to make the support member of Van Seenus rotatable as shown in Danziger in order to make it easier of [sic, for] a user to enter and exit the seat" (final rejection, page 2), and "to connect the armrest to the support of [the] modified Van Seenus [armrest assembly] by a slot in the

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tubular support member as shown in Hough because it would simplify the connection by not requiring the additional plate member [27] as show[n] in Van Seenus" (final rejection, page 3).

As for the second rejection, the examiner concludes that it also would have been obvious to one of ordinary skill in the art "to connect the vertical support member portion of [the] modified Van Seenus [armrest assembly] as disclosed in Rogers so that in addition to provided [sic, providing] for rotation a height adjustment could also be made thus making the device more versatile" (final rejection, page 3).

The appellant's broadly stated contention that "it would not be obvious to a person of ordinary skill in the art to combine these four references in the manner suggested by the Examiner without having applicant's own disclosure as a blueprint to indicate how the various patents are to be combined" (main brief, page 12, emphasis in the original) is not well taken.<sup>2</sup>

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the

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<sup>2</sup> Although this argument was made with specific regard to the standing rejection of claim 41, we presume that it was intended to apply generally to both of the rejections on appeal.

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structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is 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, the teachings of the applied references would have provided the artisan with ample suggestion to combine them in the manner proposed by the examiner. In this regard, the rationale advanced by the examiner in support of the proposed combinations finds reasonable support in the references themselves, and has not been specifically challenged by the appellant.

The appellant also argues that even if the references were combined in the manner proposed, the resulting armrest assembly would not meet various limitations in the appealed claims. Such arguments are well taken in some instances, but not in others.

With regard to independent claims 35 and 44, the appellant contends that the proposed reference combination would

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not meet the limitations in these claims relating to the combined pivotal/rotatable and linear movement of the upper side surface means (claim 35) or armrest (claim 44) under the influence of force transmitted from the arm of the person sitting on the seat of the chair (see pages 5 through 10 and 12 through 15 in the main brief and pages 1 and 2 in the reply brief). In large part, such arguments are predicated on the failure of Van Seenus and Danziger to disclose such combined movement.

Non-obviousness, however, cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references. In re Merck & Co., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986). Van Seenus provides for linear armrest movement and Danziger provides for pivotal/rotatable armrest movement. As indicated above, the rationale advanced by the examiner in support of the proposed combination of these two features finds reasonable support in the references. It is not apparent, nor has the appellant cogently explained or factually established, why the examiner's implicit determination that the resulting armrest assembly would be inherently capable of the combined movement

recited in the claims (see page 3 in the final rejection) is unsound.

The appellant's argument (see pages 10 and 11 in the main brief) that the combined teachings of the applied references would not have suggested a guide member which is disposed within a cavity in a support member and is slidable along an inner side surface of the support member as recited in claim 38, which depends from claim 35, is also unconvincing. Hough's guide member or stud 42 is disposed within the cavity defined by the tubular support arm 30 and is slidable along the inner side surface of this tubular support arm. In this regard, claim 38 does not require the guide member to be in contact or engagement with the inner side surface of the support member.

In contrast, claims 46 and 48, which depend from claim 44, and independent claim 53 recite a guide portion which is disposed within the tubular support member and has a surface which is in engagement with and is slidable along an inner side surface of the tubular support member. Claim 52, which depends from claim 44, recites a guide portion which is disposed within the tubular support member and has an outer side surface which has a configuration corresponding to the configuration of the

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inner surface of the tubular portion and is slidable there along. The appellant's arguments (see pages 15 through 19 in the main brief) that the combined teachings of the references would not have suggested an armrest assembly having these particular features is persuasive. The examiner's conclusion to the contrary (see pages 8 through 11 in the answer) is predicated on an unreasonable interpretation of the relationship between Hough's stud 42 and tubular support arm 30.

In light of the foregoing, we shall sustain the standing 35 U.S.C. § 103 rejection of claims 35, 38, 41 and 44. We shall also sustain the standing 35 U.S.C. § 103 rejection of claims 36, 37, 40, which depend from independent claim 35, since the appellant has not challenged such with any reasonable specificity, thereby allowing these claims to stand or fall with claim 35 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)). We shall not sustain, however, the standing 35 U.S.C. § 103 rejection of claims 46, 48, 52 and 53, or of claims 54 through 58 which depend from claim 53.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in con-

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nection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IAN A. CALVERT )  
Administrative Patent Judge )  
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JOHN P. McQUADE )  
Administrative Patent Judge )  
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MURRIEL E. CRAWFORD )  
Administrative Patent Judge )

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