

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte KENJI TSUGE

Appeal No. 2003-0109
Application No. 09/576,649

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2 and 14. Claims 3 and 5 to 13 have been withdrawn from consideration. Claim 4 has been canceled.

We REVERSE.

BACKGROUND

The appellant's invention relates to a bicycle seat assembly having a pair of in line seats, one for pedaling and the other for use by the rider to hold the bicycle in an at rest position or for mounting and dismounting the bicycle (specification, p. 1). A correct copy of claim 2 is set forth in the appendix to the appellant's brief. Claims 1 and 14 read as follows:

1. A bicycle seating assembly for alternately seating a rider in a first or second position on a bicycle having pedals comprising:
 - first and second seating members, said second seating member being smaller than said first seating member,
 - first means for mounting said first seating member in said first position which is above the bicycle pedals at a distance such that the feet of the bicycle rider just reach the pedals with the riders legs fully extended, and
 - second means for mounting said second seating member in said second position at a distance from the ground to permit at least one of the riders feet to reach the ground beneath the bicycle,
 - said first and second seating members being integrated into a unitary assembly,
 - whereby in said first position the rider can efficiently pedal the bicycle and in said second position the rider can readily hold the bicycle at rest.

14. A bicycle seating assembly for alternately seating a rider in a first or second position on a bicycle having pedals comprising:
 - first and second seating members, said second seating member being smaller than said first seating member,
 - first means for mounting said first seating member in said first position which is above the bicycle pedals at a distance such that the feet of the bicycle rider just reach the pedals with the rider's legs fully extended, and
 - second means for mounting said second seating member in said second position at a distance from the ground to permit at least one of the rider's feet to reach the ground beneath the bicycle,
 - said first and second seating members being integrated into a unitary assembly,

said first and second mounting means comprising a central longitudinal bar portion, a first vertical bar portion extending from said central portion for supporting said first seating member, and a second vertical bar portion extending from said central bar portion for supporting said second seating member, said first vertical bar portion being substantially longer than said second vertical bar portion,

whereby in said first position the rider can efficiently pedal the bicycle and in said second position can readily hold the bicycle at rest.

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

Murrell	2,550,200	Apr. 24, 1951
Robbin et al. (Robbin)	4,632,453	Dec. 30, 1986

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Murrell.¹

Claims 1, 2 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Robbin.

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

¹ In the final rejection, the examiner also rejected claim 14 under 35 U.S.C. § 103 as being unpatentable over Murrell. The examiner did not repeat the rejection of claim 14 under 35 U.S.C. § 103 as being unpatentable over Murrell in the answer. We assume that this ground of rejection of claim 14 has been withdrawn by the examiner. See Ex parte Emm, 118 USPQ 180, 181 (Bd. App. 1957).

(Paper No. 14, mailed July 2, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 13, filed April 12, 2002) 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, 2 and 14 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 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).

Murrell's invention relates to an auxiliary seat that is quickly and readily attached to the usual horizontal bar of a bicycle frame for the purpose of comfortably seating a second person. As shown in Figures 1-3, a bicycle frame 5 includes a horizontal top bar 6. The usual bicycle seat 7 is mounted to the frame 5. An auxiliary seat 8 is mounted to the horizontal top bar 6. The auxiliary seat 8 consists substantially of a rectangular-shaped board or base plate 9 having a pair of parallel and transversely disposed metallic strips 10 secured to the underside of the board 9 in any suitable manner. Welded or otherwise secured at 11 to the center of the strips are a pair of downwardly curved headers 12 that are adapted to conform to the curvature of the upper periphery of the horizontal bar 6. Pairs of bolts and nuts 13 and 14 extend downwardly from the base 9 and respectively through the metallic strips 10 on opposite sides of the headers 12. The bolts and nuts 13 and 14 are adapted for securing the arms 15 and 16 of a pair of U-shaped clamps 17 and 18 to the strips 10. The clamps are adapted to bear on the underside of the horizontal bar so that the clamps and headers contact substantially the entire periphery of the bar 6 to prevent slipping or turning of the seat on the frame. For the purpose of making the seat comfortable for an additional passenger, padding 19 is placed on the upper face of base 9 and a covering 20 placed over the padding is secured to the side and end edges of the base by suitable fastening means 21.

Robbin's invention relates to a system that is attachable to a conventional bicycle for safely carrying a bicycle passenger, especially a child of preschool age. With reference to Figure 1, the bicycle includes a horizontal tubular frame member 48 that extends from the upper end of neck 44 of the bicycle to the vicinity of the primary seat 11. A seat mount assembly 12 is affixed to the horizontal tubular frame member 48. An auxiliary bicycle seat 56 of conventional design is attached to the seat mount assembly 12. A footrest assembly 14 is provided so that the passenger, typically a child of preschool age, will be comfortably supported as he or she rides on auxiliary seat 56. Harnesses are incorporated into the footrest assembly to secure the child's feet to the footrest. With reference to Figures 5 and 6, the seat mount assembly 12 comprises a semitubular shaped first clamp member 50 and a semitubular shaped second clamp member 52 that are placed together to substantially envelop the circumference of the horizontal tubular frame member 48. Clamp members 50 and 52 are securely held in position by suitable means such as the pair of hose clamps 58. Projecting upwardly from, and integrally formed with, the first clamp member 50 is a tubular seat post 54. The diameter of the seat post 54 is of a size to accommodate a conventional bicycle seat 56 (not shown in Figure 6). The seat mount assembly provides a quick and convenient method of mounting the conventional seat 56 in a position where it is least likely to interfere with the pedalling action of the rider.

In the rejection of claims 1 and 2 under 35 U.S.C. § 103 as being unpatentable over Murrell, the examiner ascertained² (answer, p. 4) that Murrell disclosed all the claimed subject matter except for the second seating member being smaller than the first seating member (i.e., Murrell's auxiliary seat 8 being smaller than primary seat 7). The examiner then determined that it would have been obvious to one of ordinary skill in the art at the time the invention was made to design the second seating member (i.e., Murrell's auxiliary seat 8) smaller than the first seating member (i.e., Murrell's primary seat 7).

In the rejection of claims 1, 2 and 14 under 35 U.S.C. § 103 as being unpatentable over Robbin, the examiner ascertained (answer, pp. 4-5) that Robbin disclosed all the claimed subject matter except for the second seating member being smaller than the first seating member (i.e., Robbin's auxiliary seat 56 being smaller than primary seat 11). The examiner then determined that it would have been obvious to one of ordinary skill in the art at the time the invention was made to design the second seating member (i.e., Robbin's auxiliary seat 56) smaller than the first seating member (i.e., Robbin's primary seat 11).

² After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

All the claims under appeal recite a bicycle seating assembly comprising, inter alia, first and second seating members integrated into a unitary assembly; first means for mounting the first seating member in the first position which is above the bicycle pedals at a distance such that the feet of the bicycle rider just reach the pedals with the riders legs fully extended; and second means for mounting the second seating member in the second position at a distance from the ground to permit at least one of the riders feet to reach the ground beneath the bicycle. In the rejections before us, the examiner asserts that the above-noted limitations are met by Murrell and Robbin. The appellant argues (brief, pp. 3-8) that the applied prior art does not teach or suggest the above-noted combination of limitations. We find ourselves in agreement with the appellant on this point. The claims under appeal are directed to a bicycle seating assembly usable with a bicycle in which the first and second seating members of the bicycle seating assembly are integrated into a unitary assembly. While the auxiliary seat and primary seat of both Murrell and Robbin are integrated into a unitary bicycle, they are not integrated into a unitary bicycle seating assembly usable with a bicycle as claimed. Thus, even if (1) the primary seat of either Murrell or Robbin were mounted in a first position which is above the bicycle pedals at a distance such that the feet of the bicycle rider just reach the pedals with the riders legs fully extended; (2) the auxiliary seat of either Murrell or Robbin were mounted in a second position at a distance from the ground to permit at least one of the riders feet to reach the ground beneath the bicycle;

and (3) the auxiliary seat were smaller than the primary seat, the claimed subject matter would not result.

For the reasons set forth above, the decision of the examiner to reject claims 1, 2 and 14 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2 and 14 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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