

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS E. WITTMAN

Appeal No. 98-1531
Application No. 08/371,511¹

ON BRIEF

Before CALVERT, ABRAMS, and NASE, *Administrative Patent Judges*.
ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 1-10, which constitute all of the claims of record in the application.

The appellant's invention is directed to a seat assembly for limiting forward excursion of the head of a forward-facing

¹Application for patent filed January 11, 1995.

seat occupant. The claims before us on appeal have been reproduced in an appendix to the Brief.

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Horan 1981	4,301,983	Nov. 24,
Serber 1993	5,244,252	Sep. 14,

THE REJECTION

Claims 1-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Serber in view of Horan.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in the Brief.

OPINION

All of the claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Serber in view of Horan. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See

In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

In establishing a *prima facie* case of obviousness under 35 U.S.C.

§ 103, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1052 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988).

The objective of the appellant's invention is to provide a seat for vehicles such as aircraft which reduces the head excursion of the occupant in high impact crashes. As manifested in claim 1, the sole independent claim, the invention comprises a seat assembly having a frame, a seat back mounted to the frame, a seatpan, means for mounting the seatpan

to the frame for pivotal movement with respect to the seat back when the seat assembly is subjected to an inertial load of predetermined magnitude, and means for mounting a seat belt to the seat assembly at a point above the horizontal plane through the point where the seatpan and the seat back meet. The examiner has taken the position that Serber discloses all of this structure except for the point of attachment of the seat belt, a feature which is taught by Horan and would have been obvious to add to the Serber seat "since it would provide obvious protection to the passengers [sic] back" (Answer, page 4). We do not agree, for the reasons explained below.

Serber is directed to the problem of reducing the "submarining" of the body of an occupant of a vehicle in the event of a front end collision, which occurs

[s]ince a person's lower body has little or no contact and friction force with the seat . . . there is a tendency for the legs and lower body of the passenger to continue forward unrestrained and with the momentum which the person had immediately prior to the crash (column 1, lines 40-44).

Serber solves this problem by providing a seat cushion which can pivot forwardly and upwardly with respect to the seat back when subjected to the forward momentum of the passenger's body

(Figures 3A-3C). A shoulder belt 44 is disclosed which "has an upper end 46 coupled to vehicle 31 proximate the roof or side wall and a lower end 47 coupled by a mounting flange 48 to the floor of the vehicle" (column 5, lines 5-8). It is clear that Serber does not disclose or teach mounting the seat belt "to said seat assembly" or "at a point above the horizontal plane through the point where the seatpan and seat back meet," both as required by claim 1.

Horan is directed to a seat for use in aircraft which repositions the body of the occupant to improve G-load tolerance during high acceleration flight (column 1, lines 13-15). The essence of the Horan invention is a means for rotating the seat upwardly and moving the occupant's legs toward his/her chest when high acceleration forces are anticipated (Figures 1 and 2). Disclosed in this reference is a seat lap belt 30 that is attached at either side of the seat 10 to secure the lower torso of the pilot "through quick-release buckles 31 coupled to both sides of the torso harness suit 26" (column 3, lines 20-23).

We agree with the appellant that there would have been no suggestion to combine the references in the manner proposed by

the examiner. Serber is very specific in stating that the shoulder belt disclosed (there is no lap belt) is attached to the floor and the roof or side wall of the vehicle; it is not attached to the seat assembly. Nor is the Serber belt attached at its lower end, where a lap belt also conventionally would be attached if it were present, at a point above the horizontal plane where the seatpan and the seat back meet. Considering that Serber wants very specific motions occur to the seat occupant upon deceleration in order to prevent submarining (see Figures 3A-3C), absent any teaching in the reference or other evidence to the contrary, it is speculative to assume that these motions, which are the crux of Serber's invention, would result if the disclosed belt were replaced with one attached in the manner required by the appellant's claim 1. The examiner seeks to justify the proposed modification by offering the conclusion that it would provide obvious protection to the passenger's back. Such a teaching is not found in either reference, however, nor is evidence offered in support of it, and therefore from our perspective it also is based upon speculation.

We therefore fail to perceive any teaching, suggestion or incentive in either reference which would have led one of ordinary skill in the art to modify the Serber seat by attaching the seat belt to the seat assembly rather than to other parts of the vehicle, and to locate the mounting point above the horizontal point where the seatpan and the seat back meet, rather than on the floor of the vehicle. The mere fact that the prior art structure could be modified does not make such a modification obvious absent some suggestion of the desirability of doing so. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). We find that to be lacking here. From our perspective, the only suggestion for making the proposed modification is found in the luxury of the hindsight accorded one who first viewed the appellant's disclosure. This, of course, is not a proper basis for establishing obviousness. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

The teachings of the applied prior art fail to establish a *prima facie* case of obviousness with respect to the subject matter recited in claim 1. We therefore will not sustain the

rejection of claim 1 or, it follows, of claims 2-10, which depend therefrom.

The decision of the examiner is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
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