

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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RYUICHI ENDA

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Appeal No. 1999-2799  
Application No. 08/609,381

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HEARD: OCTOBER 24, 2001

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-19, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a pivoted saddle-type seat for a vehicle having a seat post (specification,

page 2). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

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

Christoffel	5,562,322	Oct. 8, 1996
Davies	408,954	Apr. 13, 1934
(British patent specification)		
Suzuki et al. (Suzuki)	JP 6270867	Sep. 27, 1994 <sup>1</sup>
(published unexamined Japanese patent application)		

Claims 1-15 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davies in view of Christoffel.

Claims 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davies in view of Christoffel and Suzuki.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 17) for the examiner's complete reasoning in support of the rejections

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<sup>1</sup> An English language translation of this reference, prepared by the Patent and Trademark Office, is appended hereto.

and to the brief (Paper No. 16) 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. For the reasons which follow we cannot sustain the examiner's rejection.

The examiner contends that Davies discloses the subject matter of independent claim 1 with the exception of the feature that the second latching member is selectively moveable to a released position free of engagement with the first latching member when the seat is in its normal riding position, and appellant does not take issue with this contention. As is apparent from Davies' discussion on page 2, in lines 110-126, Davies' second latching members (spring controlled balls provided in the portion b2), which are adapted to engage with corresponding recesses (first latching members) in the inner faces of the cheeks of the head a1, are moveable to the released position free of engagement with the

recesses only when the seat is pivoted out of its riding position.

To overcome the above-noted deficiency, the examiner urges that it would have been obvious to one of ordinary skill in the art to have utilized the latching system as taught by Christoffel in the Davies device "since such a modification is merely a substitution of one known latching arrangement for another alternate equivalent latching system performing the same intended function, i.e., to provide for a pivotal saddle-type seat" (answer, page 4). For the following reasons, the examiner's position in this regard is not well taken.

First, the examiner has not proffered any evidence establishing that the simple detent arrangement of Davies and the latching system of Christoffel are, or would have been recognized as, functional equivalents. In fact, Christoffel's latching system is not disclosed as providing a pivotal saddle-type seat, as the examiner's statement implies. Rather, Christoffel's latching system is used for securing or releasing a removable vehicle seat, especially a motor vehicle seat, to a vehicle structure.

Second, expedients which are functionally equivalent to each other are not necessarily obvious in view of one another. In re Scott, 323 F.2d 1016, 1019, 139 USPQ 297, 299 (CCPA 1963). The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this instance, we perceive no teaching or suggestion in the applied references to replace the simple and easy to use spring controlled ball detent arrangement of Davies with a complicated, expensive and cumbersome latching system as taught by Christoffel. From our perspective, the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellant's disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

Accordingly, we shall not sustain the examiner's rejection of claims 1-15 and 19 as being unpatentable over

Davies in view of Christoffel. Further, in that the above-noted deficiency in the combination of Davies and Christoffel finds no cure in the teachings of Suzuki, we also shall not sustain the examiner's rejection of claims 16-19 as being unpatentable over Davies in view of Christoffel and Suzuki.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-19 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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