

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 42

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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

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Ex parte GRANT STIPEK,

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Appeal No. 2000-1307  
Application No. 08/474,314

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ON BRIEF

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Before McQUADE, NASE, and BAHR, 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, 3 to 29, 43 to 48, 58 to 63, 67 and 69 to 77. Claims 30 to 42, 49 to 57 and 68 have been withdrawn from consideration. Claims 2 and 64 to 66 have been canceled.

We REVERSE.

### BACKGROUND

The appellant's invention relates to furniture for seating having a frame, the larger portion of which is made with a molding process (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

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

Thaden	2,818,107	Dec. 31, 1957
Burton et al. (Burton)	3,719,389	Mar. 6, 1973
Deegener et al. (Deegener)	4,685,739	Aug. 11, 1987

Claims 1, 3 to 28, 43 to 47, 58 to 63, 67 and 69 to 77 stand rejected under 35 U.S.C. § 103 as being unpatentable over Thaden in view of Deegener.

Claims 29 and 48 stand rejected under 35 U.S.C. § 103 as being unpatentable over Thaden in view of Deegener and Burton.

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. 34, mailed September 14, 1999) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 33, filed July 1, 1999) and reply

brief (Paper No. 35, filed November 22, 1999) 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, 3 to 29, 43 to 48, 58 to 63, 67 and 69 to 77 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 combine the relevant teachings of the references 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).

### **The claimed subject matter**

Claims 1, 67 and 74, the independent claims on appeal, read as follows:

1. Furniture for use by at least one human user, said human user having weight, said human user having a buttocks region, said furniture for seating above a support surface, the furniture having a main loading area, the main loading area being a substantially horizontal seat portion, said furniture comprising:

a weight-bearing frame, the larger portion of which is one or more molded components, wherein said weight-bearing frame defines at least one span across a part of said substantially horizontal seat portion;

wherein at least 50% of said molded components are shell-structure, at least a portion of said shell structure traversing said span across a part of said seat portion;

wherein a lattice form having the character of a skeletal framework is defined by said molded components and is positioned in said seat portion; and

wherein a part of said shell structure is positioned completely around a recessed or open area defined by said lattice form within said main loading area comprising said seat portion, said recessed or open area positioned and sized at least sufficiently to accommodate said buttocks region of said at least one user, said part of said shell structure which is positioned completely around said recessed or open area defining a substantially horizontal plane, said part of said shell structure assuming compressive loading placed on said substantially horizontal seat portion by which the weight of said at least one human user is transferred to the support surface.

67. Furniture for use by at least one human user, said human user having weight, said human user having a buttocks region, said furniture for seating above a support surface, the furniture having a main loading area, the main loading area being a substantially horizontal seat portion, said furniture comprising:

frame means for bearing weight of a user wherein at least 50% of said frame is composed of one or more molded components, wherein said weight-bearing frame means defines at least one span across a part of said substantially horizontal seat portion;

upholstery detachably coupled to said frame means;

wherein at least 50% of said molded components are shell-structure, at least a portion of said shell structure traversing said span across a part of said seat portion;

wherein a lattice form is defined by said molded components and is positioned in said seat portion; and

wherein a part of said shell structure is positioned completely around a recessed or open area defined by said lattice form within said main loading area comprising said seat portion, said recessed or open area being positioned and sized at least sufficiently to accommodate said buttocks region of said at least one user, said part of said shell structure which is positioned completely around said recessed or open area defining a substantially horizontal plane, said part of said shell structure assuming compressive loading placed on said substantially horizontal seat portion by which the weight of said at least one human user is transferred to the support surface.

74. Furniture for seating comprising:

a weight-bearing frame for supporting the weight of one or more users for seating above a support surface, said frame having a main loading area, said main loading area being a substantially horizontal seat portion, wherein said main loading area assumes compressive loading from the weight of said one or more users placed on said seat portion from above, said frame defining at least one span across a part of said substantially horizontal seat portion;

wherein the larger part of said frame is one or more molded components;

wherein the larger part of said molded components is shell-structure; and

wherein said seat portion is largely a lattice form, said lattice form defining a recessed or open area within said seat portion, wherein said lattice form is largely defined by said molded components.

## **The teachings of the applied prior art**

### *Thaden*

Thaden's invention relates to a chair adapted to be made by a molding process. An object of his invention was to provide an inexpensive but strong and durable chair construction having all of the essential parts thereof, i.e., the back, seat, arms and legs unitary.

Figures 1-4 of Thaden illustrate a chair having a molded unitary back 1, arms 2, seat 3, front legs 4 and rear legs 5. As may be seen more particularly in Figure 2, the rear legs are hollow and merge at their rear edges into the back and at the front edges into the seat. In the same way, the front legs 4 are hollow and flared at their upper ends and merge into the seat. The surface irregularities in the seat due to the openings where the legs 4 and 5 are attached are covered by a seat liner 13 which is formed by molding in the same way as the chair body. The seat liner 13 has a bottom wall 14, side walls 15 and a rear wall 16 which are all integral and preferably joined by curved portions thereby avoiding sharp angles. The seat liner 13 may simply rest on the seat 3 as shown in Figures 2 and 3 and remain removable therefrom or it may be attached by means of adhesive.

### *Deegener*

Deegener's invention relates to an upholstery support for the back rest of a vehicle seat, particularly of a motor vehicle seat, of the type having two reinforced half-shells which are connected with each other to form hollow, box-like arms. The object of his invention was to create an upholstery for the back rest of a vehicle seat, which offers the greatest possible safety under a given weight in case of a crash, and particularly when force is applied off-center. This object was achieved by an upholstery support having two reinforced half-shells as illustrated in Figures 1-2 which are

connected with each other at least along a portion of their edges, and which form hollow, box-like arms. The arms separate from each other beginning in a hollow, box-like joining area, extending away from the joining area, and terminating at their free ends. The free ends of the two arms form the lower end of the upholstery support, which has a V-like shape that is open at the lower end.

*Burton*

Burton's invention relates to methods and apparatus for construction of furniture, and more particularly concerns tubular furniture involving improved joint arrangements and configuration.

As illustrated in Figure 1, a chair is formed of first and second substantially upright side frames, each composed of a substantially vertical rear leg section 10, 12 and a substantially upright forward leg section 14, 16, interconnected by curving arm sections 18, 20 that extend rearwardly and generally upwardly in the indicated curved condition to provide arm rests. An upper cross member 22 extends between and is rigidly connected to the respective side frames. First and second substantially rectangular cross member frame full sections 24, 26 are fixedly connected at the respective corners thereof to the several side frame legs. The uppermost of the two

rectangular cross member frame sections is positioned substantially near the upper end of the forward legs 14 and 16 and is connected to the rear legs 10, 12 at a point intermediate their ends. The lower of the two cross member frame sections is connected to the several chair legs at the bottom ends thereof. The vertical position of sections 24, 26 relative to the legs may be varied as deemed necessary or desirable for appearance, use and assembly, as long as requisite rigidity of the structure is retained. Body support in the illustrated chair is formed by a plurality of slats, of which only two are shown at 28 and 30, with slat 30 being broken away for clarity of the illustration.

### **The examiner's position**

The examiner concluded (answer, pp. 3-4) that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the chair of Thaden to employ a shell structure as taught by Deegener to ensure greater stability and with respect to claims 29 and 48 to further employ interconnecting frame members as taught by Burton to enable the assembly of the chair without the need for tools.

### **The appellant's position**

The appellant argues (brief, pp. 8-12; reply brief, pp. 1-4) that the proposed modification(s) to the chair of Thaden are improper and not suggested by the applied prior art.

### **Our position**

It is clear to us that the combined teachings of the applied prior art (i.e., Thaden, Deegener and Burton) would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified the chair of Thaden to arrive at the claimed subject matter.

When it is necessary to select elements of various teachings in order to form the claimed invention, we ascertain whether there is any suggestion or motivation in the prior art to make the selection made by the appellant. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. The extent to which such suggestion must be explicit in, or may be fairly inferred from, the references, is decided on the facts of each case, in light of the prior art and its relationship to the appellant's invention. It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the appellant's structure as

a template and selecting elements from references to fill the gaps. The references themselves must provide some teaching whereby the appellant's combination would have been obvious. In re Gorman, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) (citations omitted). That is, something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. See In re Beattie, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992); Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984).

In this case there is no motivation, suggestion or teaching of the desirability in the applied prior art of modifying the molded chair of Thaden to produce the claimed subject matter. In that regard, the applied prior art would not have suggested modifying the molded chair of Thaden to employ a shell structure as taught by Deegener to ensure greater stability since the construction of the chair of Thaden and the seat of Deegener are vastly different such that it would not have been obvious at the time the invention was made to a person of ordinary skill in the art to have provided design features of Deegener in the chair of Thaden. Moreover, it is not apparent to us that Thaden's chair is unstable or that employing a shell structure would increase stability. In addition, the applied prior art would not have suggested modifying the molded chair of Thaden to employ interconnecting frame members as taught by Burton to enable the

assembly of the chair without the need for tools since the construction of the chair of Thaden and the chair of Burton are vastly different such that it would not have been obvious at the time the invention was made to a person of ordinary skill in the art to have provided design features of Burton in the chair of Thaden. Moreover, Thaden's chair does not require tools to assembly the chair since the chair is molded as a one-piece unitary structure.

In our view, the only suggestion for modifying Thaden in the manner proposed by the examiner stems from hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 1, 3 to 29, 43 to 48, 58 to 63, 67 and 69 to 77 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3 to 29, 43 to 48, 58 to 63, 67 and 69 to 77 under 35 U.S.C. § 103 is reversed.

REVERSED

JOHN P. McQUADE  
Administrative Patent Judge

JEFFREY V. NASE  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

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