

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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANWAR R. DAUDI

Appeal No. 2000-1478
Application No. 09/052,531

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, STAAB 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 and 2, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a drum brake assembly. A copy of the claims under appeal is set forth on page 9 of the appellant's brief.

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

Naudzius 1961	2,999,566	Sep. 12,
Swift 1963	3,108,659	Oct. 29,

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Naudzius in view of Swift.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 10, mailed July 30, 1999) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 9, filed July 6, 1999) and reply brief (Paper No. 11, filed October 4, 1999) for the appellant's arguments thereagainst.

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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 and 2 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**¹ that would

¹ Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art,
(continued...)

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 appellant argues that the applied prior art does not suggest the claimed subject matter. We agree.

All the claims under appeal require the drum brake assembly to include a backing plate, a leading brake shoe and

¹(...continued)
or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg., Inc. v. SGS Importers Int'l., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), cert. denied, 117 S. Ct. 80 (1996), although "the suggestion more often comes from the teachings of the pertinent references," In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., C.R. Bard Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998), cert. denied, 119 S. Ct. 1804 (1999). A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

a trailing brake shoe, only a single hold down device extending through the trailing brake shoe at a single location for retaining the trailing brake shoe against the backing plate, and at least two spaced apart hold down devices extending through the leading brake shoe for retaining the leading brake shoe against the backing plate.

Naudzius' invention relates to a vehicle drum brake and more particularly to a spring and pin assembly for supporting the brake shoe. As shown in Figure 1, the drum brake includes a backing plate 1, a leading brake shoe 3 and a trailing brake shoe 5, only a single hold down device extends through the trailing brake shoe at a single location for retaining the trailing brake shoe against the backing plate, and only a single hold down device extends through the leading brake shoe for retaining the leading brake shoe against the backing plate.

Swift's invention relates to a vehicle drum brakes. As shown in Figure 1, the drum brake includes a backing plate 12, a leading brake shoe 15 and a trailing brake shoe 14, two hold

down devices 35 extend through the trailing brake shoe for retaining the trailing brake shoe against the backing plate, and two hold down devices 36 extend through the leading brake shoe for retaining the leading brake shoe against the backing plate.

In our opinion, the claimed subject matter is not suggested by the teachings of the applied prior art. In that regard, while Swift does teach two hold down devices for the leading brake shoe, Swift does not teach or suggest using two hold down devices for the leading brake shoe while using only one hold down device for the trailing brake shoe. To supply this omission in the teachings of the applied prior art, the examiner made a determination (answer, pages 4-5) that the claimed subject matter would have been obvious to an artisan. However, this determination has not been supported by any **evidence** that would have led an artisan to arrive at the claimed invention.

In our view, the teachings of the applied prior art suggest applying an equal number of hold down devices to the

two brake shoes. We see no teaching or suggestion in the applied prior art that would have suggested using two hold down devices for the leading brake shoe while using only one hold down device for the trailing brake shoe. Thus, we conclude that the only suggestion for modifying the applied prior art in the manner proposed by the examiner to arrive at the claimed invention 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). It follows that we cannot sustain the examiner's rejections of claims 1 and 2.

CONCLUSION

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

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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