

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY A. SWANN et al.

Appeal No. 2000-2217
Application No. 09/067,287

ON BRIEF¹

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 14, 16, 18 and 20.² Claim 10, the only other claim pending in this application, has been allowed.

¹ On March 1, 2001, the appellants waived the oral hearing (see Paper No. 20) scheduled for March 21, 2001.

² Claims 16, 18 and 20 were amended subsequent to the final rejection.

Appeal No. 2000-2217
Application No. 09/067,287

We REVERSE.

BACKGROUND

The appellants' invention relates to an apparatus for inflating an inflatable vehicle occupant protection device. A substantially correct copy of the claims under appeal is set forth in the appendix to the appellants' brief.³

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

Evans et al. 1963 (Evans)	3,082,691	Mar. 26,
Refouvelet et al. 1996 (Refouvelet)	5,576,509	Nov. 19,
Mossi et al. 1997 (Mossi)	5,622,381	Apr. 22,

Claims 14, 16, 18 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mossi in view of Evans and Refouvelet.

³ A minor error in claim 16 was noted by the examiner (answer, p. 2).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (Paper No. 15, mailed August 7, 2000) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 14, filed July 10, 2000) and reply brief (Paper No. 16, filed September 11, 2000) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants 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 14, 16, 18 and 20 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).

Claim 14, the sole independent claim on appeal, reads as follows:

An apparatus for inflating an inflatable vehicle occupant protection device, said apparatus comprising:
a container for containing a quantity of inflation fluid;
a burst disk blocking flow of fluid out of said container; and
an actuatable initiator for rupturing said burst disk to enable flow of fluid out of said container, said initiator comprising:
a body of ignitable material for, when ignited, generating combustion products;
electrically energizable means for igniting said body of ignitable material, said electrically energizable means located in said body of ignitable material;

a base supporting said body of ignitable material and said means for igniting; and a cap supported on said base at a location spaced apart from said burst disk, said cap enclosing said body of ignitable material and maintaining said body of ignitable material in position on said base;

at least a first portion of said cap being releasable from said base as a unitary body under as a unitary body and into engagement with said burst disk to rupture said burst disk,

said first portion of said cap having an inner side surface which is in intimate contact with said body of ignitable material and an outer side surface which is engageable with said burst disk upon movement of said first portion of said cap into engagement with said burst disk,

said body of ignitable material comprising an ignitable powder which is enclosed by said cap and maintained in position on said base by said cap.

The rejection under appeal as set forth in the answer

(pp. 3-4) reads as follows:

Claims 14, 16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mossi et al in view of Evans et al and Refouvelet et al. Mossi et al disclose an apparatus for inflating an inflatable vehicle occupant protection device comprising a container 42 for containing a quantity of inflation fluid, a burst disk 44 blocking flow of fluid out of the container, and an actuatable initiator 10 and projectile 22 for rupturing the burst disk to enable flow of fluid out of the container. However, Mossi et al do not disclose the claimed initiator. Evans et al clearly teach an actuatable initiator comprising an ignitable material 14 and 15, an electrically energizable means 28 for igniting the ignitable material, a base 17 for supporting the

ignitable material and the means for igniting the ignitable material, and a cap 11 welded to said base, said cap enclosing said ignitable material and maintaining said ignitable material in position on said base, and a bottom 13 of said cap 11 being releasable from said base as a unitary body under the force of the combustion products of said ignitable material to enable movement of the bottom of said cap away from said base, see lines 8-10 of col. 2. However, Evans et al do not disclose a resistive wire within the ignitable material. Refouvelet et al teach a resistive wire located in a body of ignitable material to be an art recognized equivalent means for igniting an ignitable material. Furthermore, Refouvelet et al also teach a base for an initiator comprising a metal header 5, an electrical terminal 8a connected to the header, an electrical terminal 8b extending through the header, an insulating means 15 surrounding the electrical terminal 8b and the resistive wire 9 connected to the header and electrical terminal 8b. To employ the art recognized equivalent base and the resistive wire of Refouvelet et al in the Evans et al initiator would have been obvious to one having ordinary skill in the art at the time the invention was made. To substitute the art recognized equivalent initiator formed by the combination of Evans et al and Refouvelet et al for the initiator and projectile 22 of Mossi et al would have been obvious to one having ordinary skill in the art at the time the invention was made.

The appellants argue (brief, pp. 10-13) that the applied prior art does not suggest the subject matter recited in claim 14. We agree.

Obviousness is tested by "what the combined teachings of the references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). And "teachings of references can be combined only if there is some suggestion or incentive to do so." Id. Here, it is our view that the teachings of the applied prior art contain no suggestion or incentive to combine them together in the manner set forth above by the examiner. In fact, the advantages of utilizing a first portion of a cap having (1) an inner side surface which is in intimate contact with the body of ignitable material and (2) an outer side surface which is engageable with the burst disk are not appreciated by the prior art applied by the examiner.

In our view, the only suggestion for modifying Mossi in the manner proposed by the examiner to arrive at the claimed

invention stems from hindsight knowledge derived from the appellants' 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 14, 16, 18 and 20.

CONCLUSION

To summarize, the decision of the examiner to reject claims 14, 16, 18 and 20 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
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Appeal No. 2000-2217
Application No. 09/067,287

Page 11

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Appeal No. 2000-2217
Application No. 09/067,287

Page 12

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