

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(2) is not binding precedent of the Board.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. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL F. BARNETT,
DONALD P. MARRIOTT, CHRISTOPHER J. BARRETT
and
JOHN L. BREAUGH

Appeal No. 96-2455
Application 08/223,323¹

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, and
FRANKFORT and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

¹ Application for patent filed April 5, 1994. According to appellants, the application is a continuation of Application 07/952,839, filed February 8, 1993, abandoned; which is a continuation-in-part of Application 07/567,113, filed August 13, 1990, abandoned; which is a continuation-in-part of Application 07/528,559, filed May 24, 1990, abandoned.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 12, 18 through 21 and 24, which are all of the claims remaining in this application. Claims 13 through 17, 22, 23 and 25 through 39 have been canceled.

Appellants' invention is directed to a temporary disposable seat cover that may be used, for example, to protect vehicle seats during (1) the manufacture of the vehicle, (2) shipment thereof, and (3) also during any subsequent repairs thereof at a car dealership, etc. A copy of independent claims 1, 18 and 24 on appeal may be found in Appendix A attached to appellants' brief.

The prior art references of record relied upon by the examiner as evidence of obviousness of the claimed subject matter are:

Nail
1959

2,904,103

Sept. 15,

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Gemy 1951 (French)	1,062,196	Apr. 20,
Schenz 1985 (German)	3,419,728	Nov. 11,
Horn 1986 (German) ²	3,500,928	July 17,

Claims 1 through 7, 9 through 12, 18 through 21 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schenz in view of Nail and Gemy.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Schenz in view of Nail and Gemy as applied above, and further in view of Horn.

Reference is made to the examiner's answer (Paper No. 25, mailed December 13, 1995) for the examiner's full reasoning in support of the above-noted rejections. A complete exposition of appellants' arguments thereagainst are

² A copy of a translation of each of the above-noted foreign documents prepared by or for the U.S. Patent and Trademark Office is attached to this decision.

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found in the appeal brief filed October 2, 1995 (Paper No. 24) and reply brief (Paper No. 26, filed February 12, 1996).

OPINION

After careful consideration of appellants' specification and claims, the teachings of the applied references and the arguments and comments advanced by appellants and the examiner, it is our determination that the examiner's conclusions of obviousness regarding appellants' claimed subject matter are unsupported by the applied prior art and the rejections based thereon will therefore not be sustained.

As the examiner has recognized (answer, page 4), Schenz discloses, e.g., in Figure 1, a temporary seat cover comprising a two-layer member having an upper pocket (12) and a lower pocket (10), however, there is no teaching or suggestion therein of either the tabs located intermediate the upper and lower pockets or the adhesive means associated with the tabs and used to secure the seat cover to the seat, as re-

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quired in appellants' claims on appeal. To address these differences, the examiner points to Gemy and Nail, urging that

Gemy (figs. 1, 2) teaches the use of adhesives means to facilitate anchoring a cover means to a chair and the patent to Nail teaches the use of flaps for a covering means to conform and facilitate anchoring and producing an aesthetically pleasing cover to be old (answer, page 4).

The examiner then concludes that

[i]t would have been obvious and well within the level of ordinary skill in the art to modify the structure of Schenz to include adhesives and flap means, as taught by Nail and Gemy, to provide an alternative conventional anchoring means and better aesthetics, such structure used in the same intended purpose, thereby providing structure as claimed.

Contrary to the position of the examiner, the applied references do not teach or suggest "tabs," like those claimed by

appellants, positioned on a temporary seat cover in the manner required in the claims on appeal. Even more disturbing, however, is the fact that none of the applied references teach

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or suggest an "adhesive means" like that set forth in the claims before us on appeal. In contrast with the examiner's position, it is apparent from the translation of the Gemy reference that there is nothing therein which provides any teaching, suggestion or incentive regarding an adhesive means to facilitate anchoring a cover means to a chair, as the examiner seems to have believed. Instead, Gemy discloses a protective device for a vehicle seat wherein a fabric cover (2), such as velour, is attached peripherally to a smooth, slippery surface element (1), such as plastic, by stitching as seen in Figure 1. Ties (3, 4) are used to secure the protective device to the seat. No adhesive is used or disclosed in Gemy. Thus, the examiner's position with regard to claims 1 through 7, 9 through 12, 18 through 21 and 24 is totally without factual support in the applied references and must therefore be reversed.

As for the examiner's rejection of claim 8 under 35 U.S.C. § 103 as being unpatentable over Schenz, Nail, Gemy

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and Horn, even if one of ordinary skill in the art were to combine the teachings of Horn with those of the references applied above, the deficiencies in the teachings of Schenz, Nail and Gemy, as noted above would not be overcome. Accordingly, the examiner's rejection of dependent claim 8 under 35 U.S.C. § 103 will also not be sustained.

As is apparent from the foregoing, the decision of the examiner rejecting claims 1 through 12, 18 through 21 and 24 under 35 U.S.C. § 103 is reversed.

REVERSED

	HARRISON E. McCANDLISH)	
	Senior Administrative Patent Judge)	
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)	BOARD OF
PATENT)	
	CHARLES E. FRANKFORT)	APPEALS
AND)	

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Administrative Patent Judge)
INTERFERENCES)
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LAWRENCE J. STAAB)
Administrative Patent Judge)

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