

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID J. DYER

Appeal No. 97-4455
Application 08/616,605¹

ON BRIEF

Before ABRAMS, FRANKFORT and CRAWFORD, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 3-5 and 9. Claims 1 and 2 have been canceled, and claims 6-8 have been indicated as containing allowable subject matter.

No claims have been allowed.²

¹ Application for patent filed March 15, 1996.

² Although the appellant stated on page 2 of the Brief that it was indicated that “newly proposed claims 10-12 would be allowable,” it appears to us that these claims (Paper No. 7) were denied entry by the examiner (Paper No. 8). This is borne out by the fact that they were not mentioned in the

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The appellant's invention is directed to an inflatable cushion for a vehicle passenger restraint system (airbag). The claims on appeal have been reproduced in an appendix to the Brief.

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Kalberer et al. (Kalberer)	5,335,884	Aug. 9, 1994
Sakai ('191) (Japanese Patent) ³	6-239191	Aug. 30, 1994
Imai ('859) (Japanese Patent) ³	4-278859	Oct. 5, 1992

THE REJECTIONS

Claims 3, 4 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kalberer in view of Japanese '859.

Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kalberer in view of Japanese '859 and Japanese '191.

The rejections are explained in the Paper No. 6 (the final rejection).

Answer.

³ PTO translations of these references are enclosed.

OPINION

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the examiner and the appellant as set forth in the Answer and the Brief. As a result of our review, we have determined that neither of the rejections should be sustained. Our reasoning in support of this conclusion follows.

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. *See, for example, In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a *prima facie* case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. *See Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. *See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1052 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988).

The objective of the appellant's invention is to provide an improved vehicle airbag that is so shaped as to offer additional cushioning between the occupant and the "A" pillar of the vehicle when

deployed.⁴ The airbag is made up of a plurality of panels of flexible material and is inflatable to a predetermined three-dimensional configuration. As manifested in independent claim 9, the panels comprise an inner side panel having a neck portion and an enlarged wall portion projecting from the neck portion, an outer wall panel having a neck portion and an enlarged wall portion projecting from the neck portion that is “of greater cross-sectional dimensions than the enlarged wall portion of said inner side panel,”⁵ and a center panel complementary to the peripheral edges of the inner and outer side panels and attaching the two together. The examiner finds in Kalberer an airbag having the same shape as that of the claimed invention when in the inflated state but lacking the claimed panel construction. However, it is the examiner’s position that it would have been obvious to construct the Kalberer airbag of multiple panels meeting the terms of the claim 9, in view of the teachings of Japanese ‘859.

Like the appellant’s invention, the Kalberer airbags are shaped to provide more extensive protection to one side for the occupant of the vehicle (see Figure 1). Kalberer is silent as to the construction of the airbags. Therefore, this reference fails to teach that the airbag is comprised of two opposed panels attached together by a third panel, much less that the cross-sectional dimensions of one of the opposed panels are greater than the other.

Japanese ‘859 discloses airbags constructed of three panels. This reference does not,

⁴ The “A” pillar is the roof support pillar located between the windshield and the adjacent door.

⁵ We interpret this to mean simply that the enlarged wall portion of the outer panel is larger than that of the inner panel.

however, disclose an airbag in which two opposing side panels are of different cross-sectional dimensions.

We begin our analysis by pointing out that the mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. *See In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the present situation we find no such suggestion. Kalberer is totally silent as to how the disclosed airbags could be made and therefore, from our perspective, one of ordinary skill in the art would have a multitude of choices, ranging from making each of a single panel such as a balloon, or a number of panels attached together at their edges, with the orientation of each of the panels with respect to the others being unspecified. Japanese '859 teaches making an airbag of three panels attached together at their edges, and discloses in Figure 3 an embodiment having opposed panels (3) which are connected together by a third panel (2). However, the oppositely oriented panels are of the same size.

We fail to perceive any teaching, suggestion or incentive in either of these references which would have led one of ordinary skill in the art to form the airbag disclosed in Kalberer such that one of the pair of opposed panels is of greater cross-sectional dimensions than the other

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one, much less that it be the “outer” panel that is the largest. From our perspective, the only suggestion for doing so is found in the hindsight afforded one who first viewed the appellant’s disclosure. This, of course, is not a proper basis for establishing obviousness. *See In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). A *prima facie* case of obviousness having not been established with regard to the subject matter of claim 9, we will not sustain the rejection. Nor, it follows, will we sustain the rejection of claims 3 and 4, which depend from claim 9.

The addition of Japanese ‘191 to the other two references does not cure the defect set forth above, and therefore we also will not sustain the rejection of claim 5.

SUMMARY

Neither of the rejections is sustained.

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The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)
Administrative Patent Judge)
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CHARLES E. FRANKFORT)
Administrative Patent Judge)
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)
MURRIEL E. CRAWFORD)
Administrative Patent Judge)

BOARD OF PATENT
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NEA/dal

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