

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

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS GOLDSTEIN

Appeal No. 2000-0512
Application No. 08/880,760

ON BRIEF

Before ABRAMS, GONZALES and JENNIFER D. BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3-8. Claims 9 and 10, the only other claims pending in this application, stand objected to as depending on a rejected base claim. In an amendment filed November 2, 1998 (Paper No. 7), subsequent to the final rejection, claim 1 was amended and claim 2 was canceled.

BACKGROUND

The appellant's invention relates to a cafe chair that is multi-functional, making it possible for a seated occupant to use the chair in various modes (specification, page 1). Claim 1 is illustrative of the invention and is reproduced in the opinion section of this decision.

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

Vosbikian et al. (Vosbikian)	2,789,631	Apr. 23, 1957
Engel	4,850,647	Jul. 25, 1989
Johnson	5,474,356	Dec. 12, 1995

The following rejections are before us for review.

- (1) Claims 1 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Johnson.
- (2) Claims 3¹ and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Johnson in view of Engel.
- (3) Claims 5-7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Johnson in view of Vosbikian.

¹ Notwithstanding the examiner's statement that claim 3 is rejected as unpatentable over Johnson in view of Engel, the examiner's rejection of claim 3, which does not recite that the panel is formed of plywood, appears to be based upon the teachings of Johnson alone.

Reference is made to the brief and reply brief (Paper Nos. 12 and 14) and the answer (Paper No. 13) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims², to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. For the reasons indicated below, we cannot sustain the examiner's rejections.

Claim 1, the only independent claim involved in this appeal, reads as follows:

1. A cafe chair comprising:

A. a back section constituted by a contoured panel defining a flat figurative form that includes an ovoid head that merges with a body region having outwardly swelling hips from which extend a pair of widely-spaced legs between which is a crotch zone, the legs acting as rear legs of the chair and the body region as a back rest; and

B. a front section including a lobe-shaped seat having a generally-straight front end supported on a pair of front legs spaced from the rear legs of the chair, said seat having an arcuate rear end coupled at its center to the crotch zone to connect the front section to the back section, said lobe-shaped seat having inwardly curved opposing sides extending from the generally-straight front end to the center of said arcuate rear end to create between the curved sides and the rear legs free spaces adjacent said rear legs, whereby an occupant

² We note that claims 3 and 4 depend from canceled claim 2. For purposes of our review of the rejections under appeal, we treat claims 3 and 4 as depending from claim 1. Additionally, we interpret the "sculptured panel" in claim 3 as referring back to the "contoured panel" recited in claim 1. However, these informalities are deserving of correction in the event of further prosecution before the examiner.

of the chair in a direct mode of use is seated to face in a forward direction with his legs in front of the front legs, and in a reverse mode of use the occupant is seated rearwardly with his legs then in the free spaces adjacent said rear legs.

In rejecting claim 1 as being unpatentable over Johnson, the examiner's position, in essence, is that the chair disclosed by Johnson meets all of the recited limitations, with the exception of the "outwardly swelling hips" and the back panel being "contoured." According to the examiner, providing the back section with contours and extending the hips outwardly are merely matters of design choice³ (answer, page 4).

In particular, the examiner considers Johnson's seat 12 to be a "lobe-shaped" seat having a generally-straight front, an arcuate rear end coupled at its center to the crotch zone and "inwardly curved opposing sides extending from the generally-straight front end to the center of said arcuate rear end to create between the curved sides and the rear legs free spaces" as recited in claim 1. We do not agree. Even if the seat, despite its generally rectangular shape with parallel front and rear edges 14, 16 and parallel side edges 18, were considered to be broadly "lobe⁴-shaped," by virtue of its rounded corners 20, it lacks "inwardly curved opposing sides extending from the generally-straight front end to the center of said arcuate rear end" as also required by the claim.

³ It has been held that features which relate to ornamentation only and have no mechanical function whatsoever cannot be relied upon for patentability of a claim in a utility patent application under 35 U.S.C. § 111. See In re Seid, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947).

⁴ A "lobe" is broadly defined as "a rounded projecting part" (Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988)).

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Moreover, we do not share the examiner's opinion, as expressed on page 4 of the answer, that the concave depression 92 (or, for that matter, the armrest 82 in which the depression is formed) is an "ovoid"⁵ head. In any case, we fail to appreciate how the protruding armrest structure, or the depression 92 formed therein, can reasonably be considered to be part of a panel defining a flat figurative form that also includes a body region (middle segment 70) from which extend a pair of legs (front legs 40).

It is elementary that to support an obviousness rejection, all of the claim limitations must be taught or suggested by the prior art applied (see In re Royka, 490 F.2d 981, 984, 180 USPQ 580, 582 (CCPA 1974)) and that all words in a claim must be considered in judging the patentability of that claim against the prior art (In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

Having determined that Johnson fails to teach or suggest the above-mentioned features of claim 1, we cannot sustain the examiner's rejection of independent claim 1, or claim 8 which depends therefrom.

The deficiencies in Johnson with respect to the subject matter recited in claim 1 find no cure in the additional teachings of Vosbikian and Engel applied to support the obviousness rejections of the remaining claims which depend, directly or indirectly, from claim 1. It follows then that we also cannot

⁵ We understand this term to mean "egg-shaped" (Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988)).

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sustain the examiner's rejections of claims 3 and 4 as being unpatentable over Johnson in view of Engel and of claims 5-7 as being unpatentable over Johnson in view of Vosbikian.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 3-8 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
JOHN F. GONZALES)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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