

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(2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WERNER-GEORG SCHRODER and CASPER TUGEL

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Appeal No. 2000-0913  
Application 09/067,123

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ON BRIEF

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Before CALVERT, FRANKFORT and STAAB, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's final rejection of claims 1-7, 9-12, 14 and 16-20, all the claims currently pending in the application.

Appellants' invention pertains to a driver restraint system for an industrial truck. A further understanding of the invention can be derived from a reading of independent claims 1

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and 9, copies of which are found in the appendix to appellants' brief.

The references relied upon by the examiner as evidence of anticipation and obviousness are:

Eggert, Jr.	3,859,625	Jan. 07, 1975
Nilsson	4,244,601	Jan. 13, 1981
Cameron	5,062,662	Nov. 05, 1991
Busch	5,286,091	Feb. 15, 1994
Niebuhr (UK Patent Application)	GB 2,277,869	Nov. 16, 1994

The following rejections are before us for review:

(a) claims 1, 3 and 5, under 35 U.S.C. § 102(b), as being anticipated by Niebuhr;

(b) claims 2, 4, 6 and 10-12, under 35 U.S.C. § 103, as being unpatentable over Niebuhr in view of Busch;

(c) claim 7, under 35 U.S.C. § 103, as being unpatentable over Niebuhr in view of Cameron;

(d) claim 9, under 35 U.S.C. § 103, as being unpatentable over Niebuhr in view of Eggert;

(e) claims 14 and 16-18, under 35 U.S.C. § 103, as being unpatentable over Niebuhr in view of Busch and Nilsson;

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(f) claim 19, under 35 U.S.C. § 103, as being unpatentable over Niebuhr in view of Busch and Cameron; and

(g) claim 20, under 35 U.S.C. § 103, as being unpatentable over Niebuhr in view of Cameron.

Reference is made to appellants' brief (Paper No. 10) and to the examiner's final rejection and answer (Paper Nos. 8 and 11) for the respective views of appellants and the examiner with respect to the merits of these rejections.

*Rejection (a)*

The limitation of claim 1 argued by appellants as distinguishing over Niebuhr is the requirement of claim 1 that "at least one of an industrial truck operational control element and an industrial truck operational status display element [being] located on the [driver restraint] bar."

The essence of the examiner's anticipation rejection is that restraint bar release buttons 44, 46 mounted on Niebuhr's restraint arms 20, 22, respectively, constitute "an industrial truck operational control element."

Niebuhr pertains to a restraining device for the driver's

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seat of a lift truck. The restraining device comprises a pair of arms 20, 22 pivotally mounted on pins 32 to move between a rest position (indicated in solid lines in Figure 2) to allow the

driver to sit down, and a restraining position (shown in phantom lines in Figure 2) to hold the driver in the seat.

The release

of the arms is described by Niebuhr in the paragraph spanning pages 4 and 5 as follows:

Only when the driver arbitrarily releases the pivoting arms 20, 22 can they be pivoted back into the rest position. To this end, push buttons 44, 46 may be provided on the upper side of the restraining portions 24, 26, which push buttons can be connected to the locking means (not shown) via a linkage or a tie cable.

Niebuhr states that the restraining arms may be moved manually, or automatically by a pneumatic or electrical drive, with the drive being operatively coupled to the release buttons (page 5, lines 7-16). As a further enhancement, Niebuhr explains that "[i]t is possible to integrate the pivoting arms 20, 22 into a safety device for the lift truck -

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for example, it would be possible to provide that operation of the lift truck is prevented until the pivoting arms 20, 22 are in the restraining position" (page 5, lines 23-27).

Considering a configuration of Niebuhr's restraining device that includes automatically driven restraint arms and a safety system that prevents operation of the lift truck until the pivoting arms are in the restraining position, we view the

release buttons 44, 46 of the thus configured device as collectively constituting an "operational control element" within the broad meaning of that terminology. In this regard, appellants' specification indicates at page 3, lines 9-11, that the operational control element *may* control movement of a lifting device of the truck, and at page 5, lines 33-37, that a variety of control elements may be mounted on the arm *for example* a steering wheel and control knobs for controlling operation of the vehicle or the lifting device attached thereto. Thus, when the term "operational control element" of claim 1 is read in light of appellants' specification, it is

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clear that the terminology should be interpreted broadly and should not be limited to a steering wheel or control knob for controlling vehicle speed or direction, or operation of the lifting device of the vehicle, as argued by appellants on page 8 of the brief. Since in the configuration of Niebuhr noted above, operation of the truck would be prevented until the arms are pivoted to the restraining position, and since release of the arms requires actuation of the arm locking means via the buttons 44, 46 carried by the arms, the arm mounted buttons 44, 46 may be considered an "operational control element" within the broad meaning thereof.

In light of the above, we will sustain the rejection of claim 1 as being anticipated by Niebuhr. The anticipation rejection of claim 3 will also be sustained, since this claim has not been separately argued with any reasonable degree of specificity. See *In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987). The anticipation rejection of claim 5 likewise will be sustained because Niebuhr's arms 20, 22 cooperate to hold the driver in the driver's seat in the

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restraining position thereof, and because appellants' claims are cast in open "comprising" format that does not limit the claimed subject matter to a restraint device having one and only one restraint bar.

*Rejection (b)*

At the outset, we note that the rejection of claim 4, which depends from claim 3, has not been argued with any reasonable degree of specificity apart from the claims from which it depends. Therefore, the rejection of claim 4 as being unpatentable over Niebuhr in view of Busch will be sustained. *See Nielson*, 816 F.2d at 1572, 2 USPQ2d at 1528.

The Busch reference additionally cited by the examiner against claims 2, 4, 6 and 10-12 is directed to a passive seat belt system comprising an arm assembly that moves between a Figure 1 position for allowing an occupant to be seated and a Figure 2 position across an occupant's lap for holding the occupant in the seat. In addition, a shoulder belt (not numbered) is connected at one end to the latch assembly 20 of the arm assembly and at another end to the seat back.

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As to claims 2, 6, 11 and 12, given the similarity of purpose and operation of Niebuhr and Busch, the examiner's position that it would have been obvious to substitute the single restraint arm and shoulder belt arrangement of Busch in Niebuhr in place of the primary reference's plural restraining arm arrangement in order to more securely hold an occupant in the seat is well taken. The result would be a restraint system that corresponds to the subject matter of claim 2 ("restraint device has a single pivoting arm"), claims 11 and 12 ("restraint device . . . including a belt connected to the bar and configured to hold the driver in the driver's seat"), and claim 6, which reads substantially the same as claims 11 and 12.

Appellants argue on page 11 of the brief that Busch does not disclose a restraint arm in the form of a "single bar," but

rather a series of articulated male and female segments 24, 26 surrounded by a molded cover. While we appreciate that Busch's arm assembly comprises a number of internal parts or

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segments, the result is nevertheless a single arm assembly that corresponds to the claimed "single bar" of claim 2. In this regard, claim 2 does not preclude the bar from being made up of a plurality of segments. Appellants argue on page 12 of the brief that Busch teaches away from the claimed invention because Busch's arm is an automatic device whereas both appellants' device and Niebuhr are manual devices. This argument is not persuasive because it fails to take into account that Niebuhr also discloses an automatic embodiment (see page 5, lines 7-16), and because the claims are silent as to how deployment of the restraint bar is accomplished. As to the case law cited by appellants on pages 13-19 of the brief, we agree with the principles of law articulated therein and are of the view that our conclusions of obviousness comport with the legal concepts for which these cases were cited.

Concerning, in particular, appellants' contention that there is no suggestion for the examiner's proposed modification of Niebuhr, we observe that the suggestion to combine may come from

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the prior art as filtered through the knowledge of one skilled in the art. *Motorola, Inc. v. Interdigital Technology Corp.*, 121 F.3d 1461, 1472, 43 USPQ2d 1481, 1489 (Fed. Cir. 1997).

Here, Busch discloses a restraint device that includes a single arm assembly in combination with a shoulder belt, and in our view it would have been obvious to one of ordinary skill in the art to utilize a similar combination of restraint arm and belt in Niebuhr, instead of Niebuhr's plural restraint arm arrangement, this being merely the use of one known occupant restraint arrangement in place of another.

As to claim 10, this claim depends from claim 2 and its rejection has not been argued apart therefrom. Accordingly, claim 10 will fall with claim 2.

For these reasons, the standing rejection of claims 2, 4, 6 and 10-12 under 35 U.S.C. § 103 will be sustained.

*Rejection (c)*

Claim 7 depends from claim 1 and adds that the restraint device of claim 1 includes an air bag connected to the bar. Cameron discloses a vehicle seat belt having an integral air bag. The examiner's reliance on Cameron's teachings as

evidence that

it would have been obvious to provide an integral air bag in one of the restraint arms of Niebuhr to gain the advantages thereof is reasonable on its face and has not been argued with any reasonable degree of specificity. In this regard, appellants' very general argument (brief, page 20) that there is no teaching or suggestion, outside appellants' disclosure, to combine the teachings of Niebuhr and Cameron is not persuasive that the examiner erred in rejecting claim 7.

*Rejections (d) and (g)*

Independent claim 9 calls for a restraint device wherein the restraint device is connected to a parking brake of the industrial truck such that "the parking brake is released as a function of the pivoting position of the bar."

Independent claim 20 calls for a restraint device wherein the restraint device is connected to a parking brake of the industrial truck such that "the parking brake is disengaged when the restraint bar is in the closed position and the parking brake is engaged when the restraint bar is in the open

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position."

The Eggert reference relied upon by the examiner to teach the claimed parking brake release arrangement is deficient in that the parking brake is not released as a function of the position of the seat belt. Rather, Eggert teaches that when each occupied seat has its seat belt fastened, the detent 18'' is retracted by a solenoid from a position blocking movement of the parking brake release latch 26, thereby allowing for manual release of the parking brake (column 3, lines 11-15). Accordingly, Eggert's safety system merely *allows for* manual release of the parking brake *by the operator* as a function of seat belt position, which is not what is being claimed. It follows that the § 103 rejection of claim 9 cannot be sustained. Likewise, the § 103 rejection of claim 20 cannot be sustained, it being noted that the Busch reference additionally relied upon in this rejection does not make up

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for the deficiencies of Eggert noted above.

*Rejections (e) and (f)*

Independent claim 14 is directed to a restraint device having a restraint bar and a belt, wherein "the first end of the belt is attached to the restraint bar . . . such that when the

restraint bar is in the closed position, *the belt is placed around the driver's lap area* to hold the driver in the driver's seat" (emphasis added).

Niebuhr discloses a restraint device comprising two restraint arms that are placed about the driver's lap area. Busch pertains to a restraint device comprising a single arm assembly placed across the driver's lap area and a shoulder belt positioned diagonally across the driver's torso. Nilsson is directed to a restraint device comprising a seat belt placed across a driver's lap area in combination with a shoulder belt positioned diagonally across the driver's torso.

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From our perspective, the only way the teachings of Niebuhr, Busch and Nilsson could be combined to arrive at the above noted subject matter of claim 14 is through the use of hindsight knowledge gleaned from first reading appellants' disclosure. It follows that the § 103 rejection of claim 14, as well as claims 16-18 that depend therefrom, based on Niebuhr, Busch and Nilsson is not sustainable.

The rejection of claim 19 as being unpatentable over Niebuhr, Busch and Cameron is not sustainable for essentially the

same reasons set forth in the previous paragraph. In this regard, while Cameron certainly teaches an integral air bag mounted in the portion of the restraint device that is placed around the driver's lap area, the subject matter of claim 14, from which claim 19 depends, could only be derived from the combined teachings of Niebuhr, Busch and Cameron through the use of impermissible hindsight.

*Summary*

The rejection of claims 1, 3 and 5 as being anticipated

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by Niebuhr (rejection (a)) is affirmed.

The rejection of claims 2, 4, 6 and 10-12 as being unpatentable over Niebuhr in view of Busch (rejection (b)) is affirmed.

The rejection of claim 7 as being unpatentable over Niebuhr in view of Busch (rejection (c)) is also affirmed.

All other rejections are reversed.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

*AFFIRMED-IN-PART*

IAN A. CALVERT )  
Administrative Patent Judge )

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LAWRENCE J. STAAB	)	)
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