

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BRUCE KOCER, SCOTT SPICUZZA and  
WALTER A. SNYDER

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Appeal No. 2001-0738  
Application No. 08/953,606

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ON BRIEF

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Before COHEN, ABRAMS, and STAAB, Administrative Patent Judges.  
STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 12-19, all the claims currently pending in the application.

Appellants' invention pertains to a frame assembly for a vehicle, said frame assembly comprising a frame having a pair of frame rails and a subframe having a generally U-shaped unitary

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cradle. A further understanding of the invention can be derived from a reading of exemplary claim 12, which appears in the appendix to appellants' main brief.

The references applied in the final rejection are:

Wallace	2,189,719	Feb. 6, 1940
Raidel, Sr.	4,465,300	Aug. 14, 1984
Mukai et al. (Mukai)	5,385,369	Jan. 31, 1995
Ni et al. (Ni)	5,557,961	Sep. 24, 1996

Claims 12-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ni in view of Wallace and Mukai.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ni in view of Wallace, Mukai and Raidel.

Reference is made to appellants' main and reply briefs (Paper Nos. 13 and 16) and to the examiner's answer (Paper No. 15) for the respective positions of appellants and the examiner regarding the merits of these rejections.

#### *Discussion*

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Ni, the examiner's primary reference, pertains to a method for hydroforming a tubular structural member, such as the engine cradle illustrated in Figure 1. Although not expressly described, it would appear that the engine cradle is attached to the vehicle frame by means of the diagonally extending appendages at the corners of the cradle.

Wallace (Figures 6-7) is directed to an automobile frame comprising a pair of frame rails 10, 10', each frame rail having a front section connected to a mid section by a downwardly sloping intermediate section (adjacent element 24' in Figure 7) such that the front section is disposed in a generally horizontal plane that is higher than the mid section.

Mukai discloses a vehicle frame having a structure for fitting a suspension system to the frame. According to the examiner, Mukai

teaches a subframe (17) wherein the side members extend in a generally vertical direction from the front cross member (see Figure 4; downward angled piece 21 of 17). The subframe is has [sic] a pair of front attachment members (14) extending in a generally vertical direction from a front portion of the cradle and a pair of rear attachment members (16) extending in a generally vertical direction from a rear portion of the side members, the attachment members being

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adapted to be attached to the vehicle frame rails  
(13). [Answer, page 4.]

The examiner considers that Ni does not disclose (1) a pair of frame rails with a downwardly sloping intermediate section or (2) attachment members extending in a generally vertical direction from the cradle. The examiner takes the position that it would have been obvious to one of ordinary skill in the art to provide difference (1) is Ni in view of the teachings of Wallace, and to provide difference (2) is Ni in view of the teachings of Mukai. Implicit in the above is the examiner's position that the subject matter of claims 12-18 would result. The examiner's position in these matters is not well taken.

Our first difficulty with the standing § 103 rejection of claims 12-18 is the examiner's findings with respect to Mukai. Initially, we note that members 14, 15 and 16 of Mukai are described as being part of the frame rails 13 (see column 3, lines 47-63), and that the suspension cross member 17 is secured to members 14 and 15 by threaded fasteners 30 and 31 (see Figure 6; column 4, lines 61-68; column 6, line 66 through column 7, line 11) that are designed to break away in the event of a front end collision (column 6, lines 59-66; column 7, lines 6-11).

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Under these circumstances, it is inappropriate, in our view, to consider members 14, 15 and 16 as being parts of the suspension member 17. Rather, they are integral portions of the frame 13. In addition, elements 36 are not portions of the suspension cross member 17, as the examiner appears to believe, but rather separate "A-type suspension arms" that are pivotally mounted to the cross member 18 of suspension member 17 and to attachment members 16, respectively, by shafts 38 (see Figure 6) and connecting sleeves 41 (see Figure 4). Thus, it also is inappropriate to consider Mukai's elements 36 as being part of the suspension cross member 17. Based on the above, it is questionable whether Mukai would have suggested to one of ordinary skill in the art that the attachment members (not numbered) at the corners of Ni's Figure 1 tubular structural member should be disposed to extend vertically.

More importantly, we are in agreement with appellants' argument on page 6 of the main brief and pages 2 and 3 of the reply brief that the applied prior art does not teach or suggest mounting vertically extending rear attachment members to the downwardly sloping intermediate sections of the frame rails, as called for in the last paragraph of claim 12. Ni discloses no

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frame or frame rails whatsoever. As to Wallace, while this reference does indeed disclose a frame comprising frame rails having a downwardly sloping intermediate section between a front section and a mid section, there is no teaching of a subframe having vertical attachment members, much less any teaching of vertically extending rear attachment members attached to the downwardly sloping intermediate sections of the frame rails. Concerning Mukai, the frame rails 13 thereof do not include a downwardly sloping intermediate section connecting a front section and a mid section. Rather, as can be seen in Figure 4, the frame rails 13 of Mukai are straight, at least in the area of concern at the location where the suspension cross member 17 is mounted.

From our perspective, the only suggestion to combine selected elements of the Ni, Wallace and Mukai references in a manner that results in a frame assembly wherein a vertically extending rear attachment of a subframe is attached to a downwardly sloping intermediate section of a frame rail, as called for in claim 12, is found in the luxury of hindsight accorded one who first viewed appellants' disclosure. This, of

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course, is improper. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). This being the case, the teachings of Ni, Wallace and Mukai fail to establish a *prima facie* case of obviousness with regard to the subject matter recited in independent claim 12 or, it follows, of claims 13-18 that depend therefrom. Accordingly, the standing § 103 rejection of claims 12-18 will not be sustained.

As to the § 103 rejection of claim 19, the Raidel reference additionally applied in this rejection does not render obvious what we have found to be lacking in Ni, Wallace and/or Mukai. The rejection of claim 19 will therefore not be sustained.

The decision of the examiner is reversed.

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REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

LJS/lp

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# *Letty*

JUDGE STAAB

APPEAL NO. 2001-0738

APPLICATION NO. 08/953,606

APJ STAAB

APJ ABRAMS

APJ COHEN

DECISION: **REVERSED**

**PREPARED:** Sep 23, 2002

**OB/HD**

**PALM**

**ACTS 2**

**DISK (FOIA)**

**REPORT**

**BOOK**