

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 41

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN F. BRANHAM and  
JOHN TCHENG

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Appeal No. 96-2780  
Application 08/162,362<sup>1</sup>

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ON BRIEF

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Before LYDDANE, MCQUADE and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 2-15 and 17. Claims 1 and 16 have been cancelled.

THE INVENTION

Appellants invention is a support frame for a vehicle

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<sup>1</sup> Application for patent filed November 5, 1993. According to appellants, the application is a continuation of Application 07/366,529, filed June 15, 1989.

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passenger seating unit. Claims 2 and 13 are illustrated of the claims on appeal and read as follows:

2. A support frame for a vehicle passenger seating unit which provides a plurality of seat locations abreast, said support frame comprising two transverse parallel beams joined by a plurality of spaced parallel longitudinal members substantially perpendicular to said beams, said longitudinal members defining elongated first portions having bores in which said beams extend, and wherein at least the longitudinal member at one side of said support frame is a one-piece member that includes an integral second portion which extends away from said first portion and an integral third portion which is elongated and extends away from said second portion and generally in parallel with said first portion, said third portion providing at least a major part of an armrest.

13. A one-piece longitudinal member for use in a support frame for a vehicle passenger seating unit that includes a plurality of spaced, parallel beams, said longitudinal member defining an elongated first portion having a plurality of openings in which said plurality of beams can extend so as to connect said beams to said longitudinal member, an integral second portion which extends away from said first portion, and an integral third portion which is elongated and extends away from said second portion and generally in parallel with said first portion, said third portion constituting an integral armrest part.

#### THE PRIOR ART

The following references were relied on by the examiner:

Marrujo et al. (Marrujo '441)	4,440,441	Apr. 3, 1984
Moscovitch	4,603,903	Aug. 5, 1986

#### THE REJECTIONS

Claim 17 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Marrujo '441. Claims 2, 3 and 6-15 stand rejected

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under 35 U.S.C. § 103 as being unpatentable over Marrujo '441. Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Marrujo '441 as applied to claim 13 above, and further in view of Moscovitch.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by appellants and the examiner regarding those rejections, we make reference to the examiner's answer (Paper No. 40) for the examiner's complete reasoning in support of the rejections and to appellants substitute brief (Paper No. 39) for appellants' arguments thereagainst.

#### OPINION

In reaching our conclusions in this case, we have given careful consideration to the appellants' invention as described in the specification, to the appealed claims, to the prior art applied by the examiner and to the respective viewpoints advanced by the appellants in the substitute brief and by the examiner in the answer. These considerations lead us to the conclusions which follow.

In regard to the anticipation rejection of claim 17, we

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find that Marrujo '441 discloses, as is depicted in Figure 1, a longitudinal member or end bay 22 for use in a support frame for a vehicle passenger seating unit. We are of the opinion that the finding of the examiner that end bay 22 is a one piece longitudinal member is reasonable in view of the depiction of end bay 22 in Figure 1. In addition, we note that Marrujo '441 expressly discloses that the longitudinal member serves as an armrest (Col. 3, lines 52-53).

Appellants argue that Marrujo '441 does not disclose a one piece longitudinal member. According to appellants, a person of ordinary skill in the art would have understood end bay 22 of Marrujo '441 to be constructed as disclosed in Marrujo et al., U.S. Patent No. 4,186,964 (Marrujo '964) which was not cited in support of the rejection. Murrujo '964 discloses a longitudinal member which connects to an adjacent longitudinal member via projections 112 and 114 to form end bay 12. This argument is not persuasive because appellants have not submitted objective factual evidence which proves that end bay 22 of Marrujo '441 is the same as end bay 12 of Marrujo '964. Arguments of counsel are no substitute for evidence. See In re Scarbrough, 500 F.2d 560, 566, 182 USPQ 298, 302 (CCPA 1974); In re Langer, 503 F.2d 1380, 1395, 183 USPQ 288, 299 (CCPA 1974).

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As the examiner's finding that end bay 22 of Marrujo '441 is a one piece longitudinal member is reasonable and has not been challenged by objective factual evidence, we will sustain the examiner's rejection of claim 17.

We will not sustain the examiner's rejections of claims 2-15 under 35 U.S.C. § 103 because we agree with the appellants that there is no teaching or suggestion in Marrujo '441 that the end bay 22 has bores as required by independent claims 2 and 13. We observe that the examiner has not directed our attention to any portion of the Marrujo '441 written disclosure which supports the conclusion that Marrujo '441 discloses bores in the longitudinal members. Figure 2 of Marrujo '441, which is referred to be the examiner, does not in our opinion, depict bores in end bay 22.

Moscovitch, which was cited in combination with Marrujo '441 in rejecting claims 4 and 5 does not cure the deficiencies of Marrujo '441.

In summary, the examiner's rejection of claim 17 under 35 U.S.C. § 102(b) is sustained, the examiner's rejections of claims 2-15 is not sustained.

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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

WILLIAM E. LYDDANE	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN F. MCQUADE	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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