

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD C. CURTINDALE and ANTHONY J. FINOCCHIO

Appeal No. 1999-0278
Application No. 08/604,026¹

ON BRIEF

Before CALVERT, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 3, 5, 7 and 8, which are all of the claims pending in this application.²

¹ Application for patent filed February 20, 1996.

² Claims 7 and 8 were amended subsequent to the final rejection.

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We REVERSE.

BACKGROUND

The appellants' invention relates to a speaker support bar for use above vehicle headliner. An understanding of the invention can be derived from a reading of exemplary claims 3 and 5, which appear in the appendix to the appellants' brief.

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

Okamoto et al. (Okamoto) 1, 1977	4,056,165	Nov.
Dowd et al. (Dowd) 1990	4,913,484	Apr. 3,

Claims 3, 5, 7 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dowd in view of Okamoto for the reasons set forth in paragraphs 8 and 9 of the final rejection (Paper No. 8, mailed October 15, 1997).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the final rejection and the examiner's answer (Paper No. 13, mailed June 8, 1998) for the

examiner's complete reasoning in support of the rejection, and to the appellants' brief (Paper No. 12, filed March 20, 1998) and reply brief (Paper No. 14, filed June 26, 1998) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 3, 5, 7 and 8 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of

obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

It is our opinion that even if the teachings of Dowd and Okamoto were combined, one skilled in the art would not have arrived at the claimed invention. In that regard, it is our view that Okamoto's teachings would have suggested modifying Dowd's vehicle only by the addition of speakers beneath Dowd's headliner 12 by the inside panel of the vehicle as set forth in Okamoto (column 1, lines 59-63, and column 2, lines 50-55). Accordingly, all the limitations of the appealed claims are not suggested from the applied prior art (e.g., speakers in speaker openings formed/extending through the headliner, and the recited "speaker support bar"). Thus, we agree with the

appellants' argument (brief, pp. 4-5) that the examiner's rejection of claims 3, 5, 7 and 8 is improper.

For the reasons stated above, the decision of the examiner to reject claims 3, 5, 7 and 8 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 3, 5, 7 and 8 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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APPLICATION NO. 08/604,026

APJ NASE

APJ CALVERT

APJ STAAB

DECISION: **REVERSED**

Prepared By: Gloria Henderson

DRAFT TYPED: 07 Jun 99

FINAL TYPED: