

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TODD A. ELSON

Appeal No. 2006-2233
Application No. 10/697,472
Technology Center 3600

ON BRIEF

Before CRAWFORD, NAPPI and HORNER, *Administrative Patent Judges*.
HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the examiner's final rejection of claims 1-6 and 12-14. Claims 7-11 have been allowed.

We affirm in part.

BACKGROUND

The appellant's invention relates to a floating dock. Claim 1, reproduced below, is representative of the subject matter on appeal. A copy of the claims on appeal can be found in the appendix to the appellant's brief.

1. For facilitating travel of a watercraft hull on a floating dock having a longitudinal valley for receiving a keel of the watercraft therein and a pair of ridges flanking the valley for supporting opposite sides of the hull thereon during docking and launching of the craft on and from the dock, an improvement comprising
 - a pocket in one of the ridges and
 - a wheel mounted in said pocket for rotation about a mid-portion of an axle with a circumferential plane of said wheel parallel to a path of travel of the watercraft on the dock, an upper portion of said wheel protruding above a crest of the ridge, said axle having end bearing portions co-operable with seats in said pockets to list said circumferential plane toward the valley.

The examiner relies upon the following as evidence of unpatentability:

Holsclaw	3,058,756	Oct. 16, 1962
Masters	5,855,180	Jan. 05, 1999
Kilgore	6,092,961	Jul. 25, 2000

The following rejections are before us for review.

1. Claims 1-6 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Masters in view of Kilgore.
2. Claims 12 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Masters in view of Kilgore and further in view of Holsclaw.

Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the examiner's answer (mailed January 9, 2006) for the examiner's complete reasoning in support of the rejection and to the appellant's brief (filed October 28, 2005) and reply brief (filed March 9, 2006) for the appellant's arguments.

OPINION

In reaching our decision in this appeal, we have carefully considered the appellant's specification and claims, the applied prior art, and the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1-6

The appellant appears to argue claims 1-6 as a group. As such, we treat claim 1 as the representative claim. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004). In the rejection of independent claim 1, the examiner determined that Masters discloses a floating dock with a valley and a pair of ridges. The examiner acknowledged that Masters fails to disclose wheels mounted within pockets within the ridges as claimed. Answer, p. 3. The examiner determined that Kilgore teaches ridges for supporting a watercraft and that each ridge includes pockets with wheels mounted

therein upon bearings. Answer, p. 3. The examiner found that Kilgore shows in Figure 2 that the wheels list inwardly. Answer, pp. 3, 5. The examiner determined that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Masters with wheels as taught by Kilgore so as to provide ease in loading and hull protection. Answer, p. 3.

The appellant argues that Masters discloses nothing about the appellant's claimed improvement, and merely shows a floating dock with ridges and a valley. Brief, p. 5. We agree. In particular, we find that Masters discloses every element in the preamble of claim 1, including a floating dock (B) for facilitating travel of a watercraft hull (jet ski 10), the dock (B) having a longitudinal valley (contoured portion 14) for receiving a keel of the watercraft therein and a pair of ridges (raised ribs 16, 18) flanking the valley for supporting opposite sides of the hull thereon during docking and launching of the craft on and from the dock. Masters, col. 3, lines 26-31.

The appellant argues that Kilgore relates to a beach ramp system for watercraft and teaches nothing about floating docks. Brief, p. 5. We do not find this argument persuasive, because the examiner is not relying on Kilgore to teach a floating dock. Rather, the examiner has combined the teaching of the floating dock of Masters with the wheels, as taught by Kilgore. In particular, the examiner determined that it would have been obvious to modify the floating dock of Masters with the wheels as taught by Kilgore to ease in loading and hull protection. The appellant's argument that Kilgore lacks the teaching of a floating dock is insufficient to overcome the examiner's obviousness determination based on the collective teachings of Masters and Kilgore. *See In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) (holding that "the test [for obviousness] is what

the combined teachings of the references would have suggested to those of ordinary skill in the art”); and *In re Merck & Co.*, 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”). As such, the fact that Kilgore relates to a ramp used for dry docking, rather than a floating dock, does not render the claimed invention non-obvious.

The appellant further argues that Kilgore’s rails are not the same as the claimed ridges. Specifically, the appellant describes Kilgore’s rails as tracks, and the ridges of the claimed invention as raised portions of the surface of a floating dock of which they are a part. Brief, p. 6. While we agree that the rails of Kilgore are not raised portions of the surface of the dock, we do not see how this makes a difference in the obviousness analysis, because Masters teaches a pair of ridges formed as raised portions on the surface of a floating dock. The examiner’s obviousness rejection is based on the finding that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the ridges of the floating dock of Masters to add the wheels, as taught by Kilgore. We see no reason why Kilgore’s use of rails to support the wheels instead of ridges would have led one away from this combination.

The appellant also argues that Kilgore does not teach ridges that support a watercraft. The appellant contends that the watercraft shown in Kilgore never comes in contact with Kilgore’s rails (16) and only the roller supports (32) of Kilgore support the watercraft. Brief, p. 6. As with the previous argument, we note that the examiner’s obviousness rejection is based on the finding that it would have been obvious to one having ordinary skill in the art at the time the invention

was made to have modified the ridges of the floating dock of Masters to add the wheels, as taught by Kilgore. Masters teaches ridges (raised ribs 16, 18) flanking the valley for supporting opposite sides of the hull thereon during docking and launching of the craft on and from the dock. Masters, col. 3, lines 26-31. We see no reason why the addition of Kilgore's rollers to the floating dock of Masters would result in ridges that no longer support the watercraft. Because the rollers of Kilgore are supported by the rails, the rails at least indirectly support the sides of the hull of docked watercraft. Similarly, the dock of Masters, once modified with the rollers of Kilgore, would have ridges that support the hull.

The appellants further argue that Kilgore does not teach "wheels that list inwardly as claimed." Brief, p. 6. The appellants note that the claims require that the axle end bearing portions cooperate with the pocket seats to cause listing. Brief, p. 7. We find that Figure 2 of Kilgore shows the upper portions of the Y-shaped post (44) tilted inwardly at an angle toward each other. Although Kilgore does not disclose that the drawings are to scale, the description of the apparatus pictured can be relied on, in combination with the drawings, for what they would reasonably teach to one of ordinary skill in the art. *See In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). The specification describes with respect to Figure 2 that these upper portions of the Y-shaped post (44) are "essentially vertical." As the examiner noted on page 5 of the Answer, "essentially" broadens "vertically" such that a purely vertical orientation is not required. This interpretation is supported by Figure 2, which shows the upper portions angled inwardly. Because the wheels are disposed in a rectilinear arrangement on the rails, the inward tilt of the rails, results in tilted pockets within the rails. The axle bearings of the wheels thus cooperate with the tilted pockets to cause the inward

tilt of the circumferential plane of the wheels (32). As such, we agree with the examiner that claims 1-6 would have been obvious to one having ordinary skill in the art at the time the invention was made based on the combined teachings of Masters and Kilgore. Accordingly, we sustain the examiner's rejection of these claims under 35 U.S.C. § 103(a).

Claim 13

Claim 13 depends from claim 1 and recites, "An improvement according to claim 1, said wheel protruding above said edge not more than 5/16". We note at the outset that there is insufficient antecedent basis for "said edge," because an "edge" is not recited in claim 1 from which claim 13 depends. Rather, claim 1 recites, "an upper portion of said wheel protruding above a crest of the ridge." In the rejection of claim 13, the examiner found that the degree of protrusion of the roller(s) above the edge is considered to have been an obvious design consideration, well within the level of skill of the ordinary routineer working in the art at the time of the invention, providing no unexpected results. Answer, p. 3.

The appellant argues that the claimed distance by which the wheel protrudes above ridges is critical to allow the hull to rest on the ridges of the floating dock. Reply Brief, pp. 2, 3. The appellant relies on the following disclosure in the specification:

The elevation of the seats 71 and 72 is also such that, when the roller assembly 60 is properly seated in the pocket 32, the upper portion 74 of the wheel 65 will protrude for a distance ranging from approximately 3/16 to 5/16 of an inch above the crest 30 of the ridge 28. A protrusion 75 of 3/16 inch without shims is preferred. A protrusion 75 of 3/16 inch will permit most personal watercraft to ride on the wheels 65 during the docking

and launching processes and, when not in motion, due to the hereinbefore discussed “give” of the dock walls, as well as the slight flex of the hull of the watercraft and the slight compression of the wheels 65 of the roller assemblies 60, to rest on the ridges 27 and 28 of the dock 10. (Specification page 7, line 25 – page 8, line 2).

None of the cited prior art on which the examiner relies teaches or suggests that the distance by which the rollers extend above the crest of the ridge is important to the invention. Specifically, Masters does not teach the use of rollers, and Kilgore does not describe the placement of the axles within the rails or the distance by which the rollers extend above the rails. As such, we find that the appellant has provided an explanation of the claimed distance which is neither taught nor suggested by the prior art and which is more than just a matter of design choice. Accordingly, we do not sustain the examiner’s rejection of claim 13 under 35 U.S.C. § 103(a) as unpatentable over Masters in view of Kilgore.

Claim 12

Claim 12 recites that the list angle is in a range of 65 to 75 degrees. The examiner found that Holsclaw provides roller assemblies which may assume an appropriate angular relationship for contact with a boat hull. The examiner found that it would have been obvious to one having ordinary skill in the art at the time of the invention to permit adjustability of the rollers to permit alignment to the hull of Masters, as taught by Holsclaw, and one would have been motivated to do so to provide for adjustability to conform to various hull shapes. Answer, p. 4.

The appellant argues that Holsclaw teaches pivoting support members (50) to cause the wheels to list, and that such teaching is not usable in the non-tiltable ridges of a floating dock for watercraft. Brief, p. 7. We find this argument

unpersuasive, because the test for obviousness is not whether the structure of Holsclaw could be bodily incorporated into the ridges of Masters. *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) (“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.”) As such, we agree with the examiner that the claimed range of the list angle would have been obvious to one having ordinary skill in the art at the time the invention was made based on the teachings in Holsclaw to use adjustable arms to position the rollers at the appropriate angle to conform to a boat hull. Specifically, we hold that one having ordinary skill, possessed with the teachings of Masters, Kilgore, and Holsclaw, would have been led to adjust the list angle of the rollers in the modified floating dock of Masters, to adjust the position of the rollers to best conform to the hull of the boat.

The appellant further argues that the claimed invention relates to fixing a circumferential plane of a wheel in a fixed ridge, rather than adjustment of rollers to conform to a hull. As such, the appellant argues that Holsclaw does not teach a fixed list angle, as recited in claim 12. Brief, p. 8. We do not see where claim 12 requires a “fixed” list angle. Claim 12 merely recites that the list angle is within a claimed range. Nowhere does the claim require the angle to be fixed. Accordingly, we sustain the examiner’s rejection of claim 12 under 35 U.S.C. § 103(a) as unpatentable over Masters in view of Kilgore and Holsclaw.

Claim 14

Claim 14 recites that the list angle is substantially perpendicular to a contour of the hull of the watercraft at a point of contact there between. As with claim 12, the examiner found that Holsclaw provides roller assemblies which may assume an appropriate angular relationship for contact with a boat hull. The examiner found that it would have been obvious to one having ordinary skill in the art at the time the invention was made to permit adjustability of the rollers to permit alignment to the hull of Masters, as taught by Holsclaw, and one would have been motivated to do so to provide for adjustability to conform with various hull shapes. Answer, p. 4.

The appellant argues that “Holsclaw has no point of contact but tries to conform the length of the roller to the hull.” Brief, p. 8 (emphasis in original). We are not persuaded by this distinction. If Holsclaw has a length of the roller that contacts the hull, then it also has a multitude of points that contact the hull. The claim does not require that there be only one point of contact between the roller and the hull. Rather, claim 14 merely requires that at a point of contact, the list angle is substantially perpendicular to a contour of the hull. As such, by the appellant’s own acknowledgement that Holsclaw teaches positioning a roller along multiple points to conform to the hull, we hold that the subject matter of claim 14 would have been obvious. We find sufficient motivation to combine this teaching of Holsclaw with the teachings of Masters and Kilgore for the same reasons set forth *supra* for claim 12. Accordingly, we sustain the examiner’s rejection of

claim 14 under 35 U.S.C. § 103(a) as unpatentable over Masters in view of Kilgore and Holsclaw.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-6, 12 and 14 under 35 U.S.C. § 103(a) is sustained, and the decision of the examiner to reject claim 13 under 35 U.S.C. § 103(a) is not sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED IN PART

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Administrative Patent Judge)	
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