



1           The claims on appeal relate to water vessels which the Appellant  
2 asserts incorporate the features, quality and styling of land-based homes in a  
3 cost effective manner. (Spec. 8, ll. 24-26). Independent claim 21 is typical  
4 of the appealed claims and reads as follows:

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6                           21.   A water vessel comprising:  
7                                   a floating section; and  
8                                   a manufactured home mounted on the  
9 floating section, the manufactured home being a  
10 home that is built as a dwelling unit with a chassis  
11 to assure transportability of the manufactured  
12 home.  
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14           Claims 22, 25, 26, and 28 stand rejected under 35 U.S.C. § 112, ¶ 1  
15 (2002) as failing to comply with the enablement requirement, and under 35  
16 U.S.C. § 112, ¶ 2 (2002) as being indefinite for failing to particularly point  
17 out and distinctly claim the subject matter which the Appellant regards as  
18 the invention. Claims 21, 22, and 24-35 stand rejected under 35 U.S.C.  
19 § 103(a) (2002) as being unpatentable over Watson (U.S. Patent 2,429,381)  
20 in view of Cohen (U.S. Patent 6,000,192). Claim 23 stands rejected under  
21 § 103(a) as being unpatentable over Watson in view of Cohen and Kelley  
22 (U.S. Patent 3,877,094).

23           We AFFIRM the rejection of claims 22, 25, 26, and 28 under § 112,  
24 ¶ 2; the rejection of claims 21, 22, and 24-35 under § 103(a); and the  
25 rejection of claim 23 under § 103(a). We REVERSE the rejection of claims  
26 22, 25, 26, and 28 under section 112, ¶ 1.

1 ISSUES

2 There are three primary issues to be determined in this appeal:  
3 whether the Examiner erred in determining that the teachings of Watson and  
4 Cohen sufficed to conclude that a water vessel combining a floating section  
5 and a manufactured home mounted on the floating section, the manufactured  
6 home being a home that is built as a dwelling unit with a chassis to assure  
7 transportability of the manufactured home, would have been obvious to one  
8 of ordinary skill in the art; whether the Examiner erred in determining that  
9 the description in the Specification was insufficient to enable one of ordinary  
10 skill in the art to make and use the subject matter of claims 22, 25, 26, and  
11 28 as of the filing date of the present application; and whether the Examiner  
12 erred in concluding that claims 22, 25, 26, and 28 are indefinite.

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14 FINDINGS OF FACT

15 The record supports the following findings of fact (“FF”) by a  
16 preponderance of the evidence.

17 1. Watson discloses a rectangular house structure carried by a raft.  
18 (Watson, col. 2, ll. 3-5).

19 2. One side of the house structure is supported by a timber or sill  
20 which rests directly on the raft and supports two corners of the house  
21 structure. (Watson, col. 2, ll. 12-18).

22 3. The other side of the house is supported by a vertical mast or  
23 post which is incorporated into the house structure. (Watson, col. 2, ll. 28-  
24 32).



1 the art concerning the scope of issued claims. *Energizer Holdings, Inc. v.*  
2 *International Trade Comm’n*, 435 F.3d 1366, 1369 (Fed. Cir. 2006).

3 A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if  
4 “the differences between the subject matter sought to be patented and the  
5 prior art are such that the subject matter as a whole would have been obvious  
6 at the time the invention was made to a person having ordinary skill in the  
7 art to which said subject matter pertains.” In *Graham v. John Deere Co.*,  
8 383 U.S. 1 (1966), the Supreme Court set out factors to be considered in  
9 determining whether claimed subject matter would have been obvious:

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[U]nder § 103, the scope and content of the prior  
art are to be determined; differences between the  
prior art and the claims at issue are to be  
ascertained; and the level of ordinary skill in the  
pertinent art resolved. Against this background,  
the obviousness or nonobviousness of the subject  
matter is determined.

19 *Id.*, 383 U.S. at 17.

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## ANALYSIS

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A. *The Rejection of Claims 22, 25, 26, and 28 Under Section*  
23 *112, ¶ 1, as Failing to Comply With the Enablement*  
24 *Requirement*

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The Examiner concludes that claims 22, 25, 26, and 28 fail to meet the  
26 enablement requirement because the standards, regulations and codes recited  
27 in the claims may be changed in the future and the Specification does not  
28 “enable one of ordinary skill in the art to build said manufactured home  
29 according to future manufactured housing standards which do not as of yet

1 exist.” (Ans. 5). The Appellant contends that “while future manufactured  
2 home standards do not yet exist, they will exist when the manufactured  
3 home is built such that one of ordinary skill in the art will be able to  
4 determine whether the manufactured home complies with the manufactured  
5 home standards at that time.” (Reply Br. 2).

6 Enablement is determined as of the filing date of the application of  
7 which the Specification at issue is a part. *Plant Genetic Sys.*, 315 F.3d at  
8 1337. Undue experimentation is the linchpin of a rejection based on lack of  
9 enablement. *See Plant Genetic Sys.*, 315 F.3d at 1337. Here, the Examiner  
10 has fallen far short of establishing that undue experimentation would be  
11 required of those of ordinary skill in the art to construct a water vessel  
12 including a manufactured home complying with the standards, regulations  
13 and codes to which claims 22, 25, 26, and 28 refer as of the filing date of the  
14 present application. Even if the enablement of claims 22, 25, 26, and 28  
15 were determined as of a future date when a manufactured home incorporated  
16 into a water vessel subject to one or more of those claims might be built, we  
17 do not understand the Examiner to find that undue experimentation would be  
18 required of one of ordinary skill in the art to construct a water vessel at that  
19 future date including a manufactured home complying with the extent  
20 versions of the standards, regulations and codes. On the record before us,  
21 we conclude that the Examiner erred in rejecting claims 22, 25, 26, and 28  
22 under section 112, ¶ 1, as failing to comply with the enablement  
23 requirement.

1           B.     *The Rejection of Claims 22, 25, 26, and 28 Under Section*  
2                     *112, ¶ 2 as Indefinite*

3           The Appellant contends that “the scope of the manufactured home  
4 codes is not boundless as suggested by the Examiner because the  
5 manufactured home is built according to codes that exist at a particular time,  
6 which [*sic*, is] when the manufactured home is built.” (Reply Br. 2).  
7 Despite this, claims 22, 25, 26, and 28 are indefinite.

8           One purpose of the definiteness requirement is “to provide those who  
9 would endeavor, in future enterprise, to approach the area circumscribed by  
10 the claims of a patent, with the adequate notice demanded by due process of  
11 law, so that they may more readily and accurately determine the boundaries  
12 of protection involved and evaluate the possibility of infringement and  
13 dominance.” *In re Hammack*, 427 F.2d 1378, 1382 (C.C.P.A. 1970).  
14 Claims 22, 25, 26, and 28 provide a “moving target”—if the regulatory  
15 agencies or other bodies which created the standards, regulations and codes  
16 recited in those claims choose to relax those standards, regulations and  
17 codes, those who have engaged in an on-going enterprise or made a  
18 substantial investment in reliance on a good faith opinion of non-  
19 infringement of those claims under the former standard, regulation or code  
20 may find the object of the enterprise or investment swept into the vortex of  
21 infringement by the relaxation.

22           Another purpose of the definiteness requirement is to facilitate the  
23 examination of applications by the Patent and Trademark Office. *Energizer*  
24 *Holdings*, 435 F.3d at 1369. The problem here is that a future relaxation in  
25 the scope of the standards, regulations and codes recited in claims 22, 25, 26,  
26 and 28 might broaden the claims subsequent to examination. Barring re-

1 examination, such a relaxation would deny the Patent and Trademark Office  
2 the opportunity to fulfill its statutory role by broadening the claims beyond  
3 the scope examined and allowed by the Office.

4 On the record before us, the Appellant has not shown that the  
5 Examiner erred in rejecting claims 22, 25, 26, and 28 under section 112, ¶ 2,  
6 as being indefinite for failing to particularly point out and distinctly claim  
7 the subject matter which the Appellant regards as the invention.

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9 *C. The Rejection of Claims 21, 22, and 24-28 Under Section*  
10 *103(a) as Being Unpatentable Over Watson in View of Cohen*

11 The Appellant contends that “Watson does not teach or suggest a  
12 ‘manufactured home’ as recited in claim 21” and that “there does not appear  
13 to be any description in Watson that the disclosed house structure includes a  
14 chassis.” (App. Br. 10). We disagree. The present Specification expressly  
15 defines the phrase “manufactured home” to mean “a home that is built as a  
16 dwelling unit with a chassis to assure transportability of the home.” (Spec.  
17 4, ll. 22-23). The present Specification does not define the word “chassis”  
18 as used in claim 21 or in the Appellant’s definition of “manufactured  
19 homes.” The common meaning of the phrase “chassis” includes “the frame  
20 upon which is mounted the body (as of an automobile or airplane) . . . or the  
21 roof, walls, floors, and facing (as of a building).” *WEBSTER’S THIRD NEW*  
22 *INTERNATIONAL DICTIONARY* at 379 (G. & C. Merriam Co. 1971) (definition  
23 2a). Pursuant to these definitions, Watson’s house structure is a  
24 “manufactured home” in that the house structure is built as a dwelling unit;  
25 and the sill and vertical mast which support the house serve as a chassis  
26 assuring transportability of the home by water.

1           The Appellant, contrary to his own broad definition of “manufactured  
2 home,” urges that the term has a more limited and specific meaning in the  
3 art. The Appellant further contends that the Watson house structure does not  
4 fall within that meaning, but is instead an individually built home. Even if  
5 we accept that a more restrictive meaning is to be afforded the term  
6 “manufactured home,” we note that the “simple substitution of one known  
7 element for another” typically will have been obvious. *KSR Int’l Corp. v.*  
8 *Teleflex, Inc.*, 127 S. Ct. 1727, 1740 (2007).

9           Watson discloses a combination including an individually built  
10 rectangular house structure carried by a raft. (FF 1). Cohen teaches that  
11 manufactured homes and individually built homes are alternative types of  
12 dwellings. (FF 5). The simple substitution of a manufactured home for the  
13 individually built home disclosed by Watson would have been obvious to  
14 one of ordinary skill in the art. Cohen would have suggested that the  
15 substitution of a manufactured home for an individually built house structure  
16 would have resulted in cost savings due to the “major cost efficiencies”  
17 associated with the fabrication of manufactured homes. (*See* FF 6). Neither  
18 the present Specification nor the Appellant’s arguments persuade us that  
19 such a substitution was beyond the level of ordinary skill in the art or that  
20 one of ordinary skill in the art could not have predicted the results of such a  
21 substitution.

22           On the record before us, the Appellant has not shown that the  
23 Examiner erred in rejecting claim 21 under § 103(a) as being unpatentable  
24 over Watson and Cohen. Since the Appellant grouped claims 21, 22, and  
25 24-35 for purposes of this rejection, the Appellant also has not shown that

1 the Examiner erred in rejecting claims 22 and 24-28 under § 103(a) as being  
2 unpatentable over Watson and Cohen.

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4 *D. The Rejection of Claims 29-35 Under Section 103(a) as Being*  
5 *Unpatentable Over Watson in View of Cohen*

6 The Appellant presents no arguments sufficient to demonstrate that  
7 method claims 29-35 might be patentable over Watson and Cohen if  
8 apparatus claim 21 is not. The Appellant advances the same arguments for  
9 the patentability of claim 29 as he does for claim 21. As noted above, we  
10 find those arguments unpersuasive.

11 The Appellant appears to argue that claims 30, 31, and 32 are  
12 separately patentable from claim 29, even though the arguments are not set  
13 forth under separate headings, as required by 37 C.F.R. § 41.37(c)(1)(vii).  
14 An assertion is made that the Watson patent does not teach or suggest the  
15 limitations set forth in claims 30, 31 and 32. (App. Br. 11). This is nothing  
16 more than an attack on the Watson reference individually, and is not  
17 persuasive as to any unsoundness in the rejection based upon the  
18 combination of Watson and Cohen.

19 In particular, once the Watson and Cohen references are considered  
20 together, market considerations such as the cost efficiencies which follow  
21 from the production of manufactured homes in factory environments would  
22 have suggested to those of ordinary skill in the art the purchase of  
23 manufactured homes from a supplier (claim 32) and the hauling of such  
24 manufactured homes over roadways to a yard for mounting on the floating  
25 sections of water vessels (claims 30 and 31). Since we conclude that the  
26 Appellant has not shown that the Examiner erred in rejecting claim 21 as

1 being unpatentable under section 103(a) over Watson and Cohen, we also  
2 conclude that the Appellant has not shown that the Examiner erred in  
3 rejecting claims 29-35 under section 103(a) as being unpatentable over  
4 Watson and Cohen.

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6 *E. The Rejection of Claims 23 Under Section 103(a) as Being*  
7 *Unpatentable Over Watson in View of Cohen and Kelley*

8 The Appellant presents no arguments sufficient to demonstrate that  
9 claim 23 might be patentable over Watson, Cohen and Kelley if claim 21 is  
10 unpatentable over Watson and Cohen. Since we conclude that the Appellant  
11 has not shown that the Examiner erred in rejecting claim 21 as being  
12 unpatentable under § 103(a) over Watson and Cohen, we also conclude that  
13 the Appellant has not shown that the Examiner erred in rejecting claim 23  
14 under § 103(a) as being unpatentable over Watson, Cohen and Kelley.

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#### CONCLUSIONS OF LAW

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On the record before us the Appellant has shown that the Examiner  
erred in rejecting claims 22, 25, 26, and 28 under § 112, ¶ 1, as failing to  
comply with the enablement requirement. The Appellant has not shown that  
the Examiner erred in rejecting claims 22, 25, 26, and 28 under § 112, ¶ 2, as  
being indefinite for failing to particularly point out and distinctly claim the  
subject matter which the Appellant regards as the invention. The Appellant  
also has not shown that the Examiner erred in rejecting claims 21, 22, and  
24-35 under § 103(a) as being unpatentable over Watson and Cohen or in  
rejecting claim 23 under § 103(a) as being unpatentable over Watson, Cohen  
and Kelley.

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DECISION

We AFFIRM the Examiner’s rejection of claims 22, 25, 26, and 28 under § 112, ¶ 2 and of claims 21-35 under § 103(a). We REVERSE the rejection of claims 22, 25, 26, and 28 under § 112, ¶ 1.

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) (2006).

AFFIRMED

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