

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 H. MEYER

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Appeal 2008-1858  
Application 10/166,635  
Technology Center 3600

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Decided: October 30, 2008

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Before JENNIFER D. BAHR, LINDA E. HORNER, and JOHN C.  
KERINS, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John H. Meyer (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 22, 26-30, 32, and 33. Claims 31 and 34 stand objected to as depending from a rejected claim. The Examiner has withdrawn the rejection of claim 35 under 35 U.S.C. § 112 (Advisory Action

mailed February 5, 2007) and indicated that it is allowable. No other claims are pending. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

Independent claims 22, 29, and 32, reproduced below, are illustrative of the claimed invention.

*The Invention*

Appellant's claimed invention is directed to a connection assembly for connecting shoring beams of a shoring arrangement. As illustrated in Figure 2, the connection assembly includes two connectors 29, 30 having main bodies 40, 70 with openings to receive shoring beams and connected via a connecting pin 100 through tabs 32, 34, 36. As illustrated in Figure 1, Appellant's disclosure is directed to temporary shoring arrangements for shoring up an excavation site (Specification 1:4-5).

22. A corner connection for connecting shoring beams of a temporary shoring arrangement, said corner connection comprising:

a first shoring beam connector including a hollow main body portion formed along a first longitudinal axis and an opening situated at one longitudinal end of said main body portion, wherein said main body portion is adapted to slidably receive, through said opening, a respective end portion of one of said shoring beams; and

a tab extending from said main body portion, said tab having an aperture located therein adapted to receive a connecting pin;

a second shoring beam connector including a hollow main body portion formed along a second longitudinal axis and an opening situated at one longitudinal end of the main body portion of the second connector, wherein the main body portion

of the second connector is adapted to slidably receive, through said opening of the second connector, an end portion of a respective one of said shoring beams; and a first tab extending from the main body portion of the second connector, said first tab having an aperture located therein adapted to receive the connecting pin whereby the first and second shoring beam connectors are capable of withstanding hydraulic pressure associated with the temporary shoring arrangement.

29. An apparatus for joining at least two wales of a shoring system comprising:

(a) a first substantially rigid end-cap adapted to enclose an end of a first horizontally disposed wale, said first end-cap having a horizontally extending flange with a first vertically disposed aperture cut there through;

(b) a second substantially rigid end-cap adapted to enclose an end of a second horizontally disposed wale, said second end-cap having a horizontally extending flange with a second vertically disposed aperture cut there through of substantially the same diameter of said first vertically disposed aperture;

(c) a locking pin dimensioned to be slideably received by said first and second vertically disposed apertures when said first and second vertically disposed apertures are in substantial alignment with one another;

wherein a leading end of said first horizontally disposed wale and a leading end of said second horizontally disposed wale are oriented in substantially perpendicular fashion to one another and in relative proximity so that said horizontally extending flange of said first end-cap and said horizontally extending flange of said

second end-cap overlap when said first and second vertically disposed apertures are substantially aligned with one another to permit said locking pin to be slideably received therein securing said apparatus together.

32. An apparatus for joining at least two wales of a shoring system comprising:

(a) a first substantially rigid end-cap adapted to engage an end of a horizontally disposed, fixed length wale, said first end-cap having a horizontally extending flange with a first vertically disposed aperture cut there through;

(b) a second substantially rigid end-cap adapted to engage an end of a second horizontally disposed, fixed length wale, said second end-cap having a horizontally extending flange with a second vertically disposed aperture cut there through of substantially the same diameter of said first vertically disposed aperture;

(c) a locking pin dimensioned to be slideably received by said first and second vertically disposed apertures when said first and second vertically disposed apertures are in substantial alignment with one another;

wherein said first horizontally disposed, fixed length wale and said second horizontally disposed, fixed length wale are oriented in substantially perpendicular fashion to one another and in relative proximity to one another so that said horizontally extending flange of said first end-cap and said horizontally extending flange of said second end-cap overlap when said first and second vertically disposed apertures are substantially aligned with one another to permit said locking pin to be sideably [*sic*: slideably] received therein securing said apparatus together whereby said first and second wales, when respectively capped with

said first and second end-caps, are interconnected  
in the absence of welding.

*The Rejections*

The Examiner relies upon the following as evidence of  
unpatentability:

Kranick	US 2,690,326	Sep. 28, 1954
Reid	US 4,208,038	Jun. 17, 1980
French	US 4,398,840	Aug. 16, 1983
Ferrarin	US 5,593,143	Jan. 14, 1997
Purvis	US 5,683,074	Nov. 4, 1997
Harris	GB 2,166,774 A	May 14, 1986

The following rejections under 35 U.S.C. § 102(b) are before us for  
review.

- (1) Claims 22, 27, 29, 30, 32, and 33 as anticipated by French;
- (2) Claims 22, 27, 29, 30, 32, and 33 as anticipated by Reid;
- (3) Claims 22, 27, 29, 30, 32, and 33 as anticipated by Purvis;
- (4) Claims 22, 26-30, 32, and 33 as anticipated by Ferrarin; and
- (5) Claims 22, 27, 29, 30, 32, and 33 as anticipated by Kranick.

The following rejections under 35 U.S.C. § 103(a) are also before us  
for review.

- (6) Claims 26 and 28 as unpatentable over French in view of Harris  
and
- (7) Claims 26 and 28 as unpatentable over Reid in view of Harris.

We refer to the Examiner's Answer ("Answer"), mailed October 19,  
2007 for the Examiner's position and to the Appeal Brief ("Appeal Br."),  
filed February 28, 2007, and Reply Brief ("Reply Br."), filed November 29,  
2007, for the Appellant's position with regard to these rejections.

## THE ISSUES

The issues in this appeal are:

- whether the connectors for fencing taught in French, Reid, Ferrarin, and Kranick, and the connectors for a temporary guardrail system of Purvis are “shoring beam connectors” and “capable of withstanding hydraulic pressure associated with the temporary shoring arrangement” as called for in claim 22;
- whether claims 29 and 32 actually require wales and, if so, whether the frame members, fence rails, guardrails, fence posts, and braces of French, Reid, Purvis, Ferrarin, and Kranick are “wales”; and
- whether the Examiner erred in determining it would have been obvious to add a second tab to the French or Reid connector, in view of Harris.

## FINDINGS OF FACT

- FF1 Appellant does not define “shoring beam” or “shoring beam connector” in the Specification or in the briefs.
- FF2 Appellant’s Specification indicates that federal and state governments have set up requirements for all excavation sites to avoid cave-ins, but does not specify what those requirements are, aside from the requirement that “excavation sites be prepared with some type of shoring” (Specification 2:1-6).
- FF3 Each excavation site is unique (Specification 2:10 to 3:24).
- FF4 Neither Appellant's claims nor Appellant's Specification limits the scope of the invention to particular shoring arrangement depths or conditions.

- FF5 Appellant has presented no evidence that a “shoring beam” or “shoring beam connector” has an art-recognized definition that specifies a minimum magnitude, type, or direction of force that it must withstand.
- FF6 The ordinary and customary meaning of “shore” is: “a supporting post or beam with auxiliary members, esp. one placed obliquely against the side of a building, a ship in drydock, or the like; prop; strut” or “to support by or as if by a shore or shores; prop (usually fol. by up): to shore up a roof; government subsidies to shore up falling corn prices.” <http://dictionary.reference.com/browse/shore> (last visited Oct. 13, 2008).
- FF7 Appellant does not use the term “wale” in the Specification, much less define it.
- FF8 The ordinary and customary meaning of “wale” is “*Engineering, Building Trades*. a horizontal timber or other support for reinforcing various upright members, as sheet piling or concrete form boards, or for retaining earth at the edge of an excavation.” <http://dictionary.reference.com/browse/wale> (last visited Oct. 13, 2008).
- FF9 Appellant copied claims 29-34 from US Patent 6,267,538 (claims 1-3 and 5-7), now expired.
- FF10 French teaches a frame connection assembly for a fence gate which enables positioning the frame members of the gate at preselected angles relative to one another so as to minimize gaps between the gate and the supporting surface (col. 1, ll. 6-11).

- FF11 French's connection assembly includes first and second brackets 22, 22' each comprising a receptacle 24, 24' and a connector member 30, 30". The connector members have openings 34, 36 and 38, 38' formed therein for passage of bolt 42. (French, figs. 1-3.)
- FF12 French's receptacles 24, 24' receive frame members 12, 14, respectively (French, col. 3, ll. 9-15, col. 3, ll. 59-62, fig. 1).
- FF13 Reid teaches a connector assembly for connecting fence rails 11 together, the connector assembly including two end caps 13 for receiving rails 11, with lugs 14 provided on each end cap (Reid, col. 2, ll. 36-47, figs. 1 and 6). Lugs 14 have openings formed therein for receipt of a nut and bolt assembly 15 (col. 2, ll. 54-55, figs. 4 and 5).
- FF14 Reid teaches alignment of the lug openings for receipt of bolt assembly 15 in an orientation such that the rails received in the end caps 13 are oriented perpendicularly relative to one another (figs. 1, 3, 5, and 6).
- FF15 Purvis teaches a temporary guardrail system comprising rails 16 including hollow external segments 16*e* adapted to receive internal rail segments 16*d* (Purvis, col. 5, ll. 11-13). Each external rail segment 16*e* has an extension bracket 16*c* attached thereto by means such as weldment, with a mounting aperture 16*f* formed in the extension bracket for receipt of a threaded fastening stud 19 (Purvis, col. 4, ll. 59-65; fig. 7).
- FF16 As illustrated in Figure 2, Purvis's extension brackets permit rail segments to be connected to one another so as to be oriented perpendicularly relative to one another when the mounting apertures are aligned for receipt of a threaded fastening stud therein.

FF17 Purvis's guardrail system is designed and fabricated to withstand at least two hundred pounds of pressure without failing (Purvis, col. 1, ll. 24-29, col. 6, ll. 22-24).

FF18 Ferrarin teaches a fence post connector 46 used to attach braces 20, 22, 24 to each other and to fence posts (Ferrarin, col. 1, ll. 6-8) at any desired angle, including 90 degrees (col. 5, ll. 9-11).

FF19 Ferrarin's connector 46 includes collars 60, 62 for receiving the braces 20 and tabs 74, 76, 84, 86 provided with openings for receipt of bolt 90 (col. 4, ll. 22-44).

FF20 Ferrarin's braces are used to generally support the fence to, for example, prevent animals from breaking out of the fence or support the weight of snow when the fence is acting as a snow barrier (Ferrarin, col. 1, ll. 19-23).

FF21 Kranick teaches a connector for attaching bracing frames 61 to fence posts so as to withstand a strike from a vehicle without damage to the fence (Kranick, col. 1, ll. 7-10, col. 4, ll. 4-5).

FF22 Kranick's connector comprises end cap fitting 66 with one or more apertured lugs 67 and end fitting 70 with apertured end lugs 71 secured by bolts 72 to the lugs 67 of fitting 66 (Kranick, col. 4, ll. 18-21 and 24-29, fig. 7).

FF23 The connectors of French, Reid, Purvis, Ferrarin, and Kranick inherently are capable of withstanding some degree of force, whether from hydraulic pressure or other sources. Otherwise, they could not function as connectors for holding members in position relative to one another. The posts, rails, braces, frames, and guard rails of these references also inherently are capable of withstanding some degree of

force, whether from hydraulic pressure or other sources. These capabilities are supported by the express teachings of Purvis, Ferrarin, and Kranick, as noted in our findings (FF17, FF20, and FF21) above, that connectors and frame members of fences and guardrails are designed and fabricated to withstand forces applied thereto.

FF24 Harris teaches a connection arrangement for a waling system comprising telescopic units A wherein two parallel lugs 5 are provided on one of the connectors and receive a lug 4 of the mating connector member therebetween (Harris 1:58-64, fig. 5). The lugs 4, 5 are apertured to permit coupling by heavy duty steel pins 6 (Harris 1:65-67).

FF25 Harris, French and Reid all address the problem of connecting shoring beams, in one form or another, together, and thus would have commended themselves to an inventor's attention in considering the problem of connecting shoring beams together.

#### PRINCIPLES OF LAW

When construing claim terminology in the United States Patent and Trademark Office (USPTO), claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

In considering the issue of whether a claim copied from an issued patent is patentable in light of prior art, the PTO must interpret the claim in

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light of the specification in which it appears. *Rowe v. Dror*, 112 F.3d 473, 479 (Fed. Cir. 1997).

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

*KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”  
*Id.* at 1739.

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely

bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 1740. We must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.  
*Id.*

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Clay*, 966 F.2d 656, 658-59 (Fed. Cir. 1992).

“A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.” In other words, “familiar items may have obvious uses beyond their primary purposes.”

*In re Icon Health and Fitness, Inc.*, 496 F.3d 1374, 1379-80 (Fed. Cir. 2007)  
(citations omitted).

## ANALYSIS

### *The Anticipation Rejections*

Appellant's arguments in contesting each of the five anticipation rejections are essentially the same. Appellant presents arguments with respect to each of the independent claims 22, 29, and 32, with the dependent claims standing or falling with the independent claim from which they depend.<sup>1</sup>

Turning first to independent claim 22, Appellant argues that the Examiner fails to accord the terminology "shoring beam connector" the ordinary and customary meaning it would have to a person of ordinary skill in the art (Appeal Br. 8-9, 14-15, 20-21, 27, and 32; Reply Br. 2, 4, 6, 8, and 10). According to Appellant, shoring beams are well known in the construction/excavation arts as having a certain strength and size to withstand substantial loads, and the shoring beam connectors, tabs, and pin must likewise comprise structure sufficient to support such shoring beams (Appeal Br. 7, 13, 19, 25, and 31). Appellant's position is that French's fence gate frame members, Reid's fence rails, Purvis's guardrails, Ferrarin's fence braces and posts, and Kranick's bracing frames and posts are not "shoring beams" and that, consequently, the connector members of these references are not "shoring beam connectors." Appellant additionally argues that the Examiner fails to construe the limitation in claim 22 that the shoring

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<sup>1</sup> Appellant does not specifically mention claims 26 and 28 in the arguments presented for rejection (4). This is ostensibly an inadvertent error, in light of the inclusion of claims 26 and 28 in the main heading for the arguments directed to this rejection (Appeal Br. 23). We therefore credit Appellant's argument directed to claims 22 and 27 as also being directed to claims 26 and 28, which also depend from independent claim 22.

beam connectors be “capable of withstanding hydraulic pressure associated with the temporary shoring arrangement” in light of Appellant’s Specification and the plain meaning of “temporary shoring arrangement” (Appeal Br. 8, 14, 20, 26, and 32-33).

Appellant does not specifically define “shoring arrangement,” “shoring beam,” or “shoring beam connector” in either the Specification or the Appeal Brief or Reply Brief as being limited to particular shoring arrangement depths or conditions or to structures capable of withstanding a specified minimum magnitude, type, or direction of force (FF1 through FF4). Moreover, Appellant has presented no evidence that a “shoring beam” or “shoring beam connector” has an art-recognized definition that specifies a minimum magnitude, type, or direction of force that it must withstand (FF5). We therefore construe “shoring beam” consistent with Appellant’s Specification and in accordance with its accepted meaning in the art as a post or beam that props up or provides support to a structure (FF6). We likewise construe a “temporary shoring arrangement” as an arrangement wherein posts or beams are used to prop up or provide support to a structure.

French’s fence gate frame members, Reid’s fence rails, Purvis’s guardrails, Ferrarin’s fence braces and posts, and Kranick’s bracing frames and posts are posts or beams that prop up or provide support to fencing or guardrail structures in which they are incorporated (FF10 through FF22). Moreover, the connectors and the fence posts, braces, and guardrails of these references are capable of receiving some degree of force, whether from hydraulic pressure or other sources (FF23). Claim 22 does not specify the magnitude or direction of hydraulic pressure that the connectors must be capable of withstanding. Therefore, each of the connectors of French, Reid,

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Purvis, Ferrarin, and Kranick is a “shoring beam connector” that is “capable of withstanding hydraulic pressure associated with the temporary shoring arrangement” as called for in claim 22.

Appellant objects that the Examiner construes the term “shoring beam connector” differently in the present application than in another application that ultimately issued as US 6,416,259 (Appeal Br. 7, 13, 19-20, 25-26, and 32). This line of argument is unconvincing. We are not constrained by the Examiner’s prior position in construing the term “shoring beam.” Nor is the construction of claim terminology accorded by an examiner in one application or patent controlling in another application. Rather, as noted above, when construing claim terminology in the USPTO, we must give claims their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. Claims are not to be interpreted during proceedings in the USPTO “in the same manner as judges who, post-issuance, operate under the assumption the patent is valid.” To do so would be inconsistent with the role assigned to the USPTO in issuing patents. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). For the reasons discussed above, we find no error in the Examiner’s interpretation of “shoring beam connector” in light of Appellant’s Specification.

In light of the above, Appellant’s arguments fail to demonstrate error in the rejections of claim 22 or the dependent claims standing or falling with claim 22 as anticipated by French, Reid, Purvis, Ferrarin, and Kranick. We thus sustain the rejections of claims 22 and 27 as anticipated by French, Reid, Purvis, and Kranick and the rejection of claims 22 and 26-28 as anticipated by Ferrarin.

Turning next to independent claim 29, Appellant argues that none of French, Reid, Purvis, Ferrarin, and Kranick discloses “shoring systems having first and second end-caps with horizontally extending flanges ‘wherein a leading end of [a] first horizontally disposed wale and a leading end of [a] second horizontally disposed wale are oriented in substantially perpendicular fashion’ as is required by claims 29 and 30” (Appeal Br. 10, 16, 22, 28, and 34). Likewise, with respect to independent claim 32, Appellant argues that none of French, Reid, Purvis, Ferrarin, and Kranick discloses “shoring systems having first and second end-caps with horizontally extending flanges ‘wherein [a] first horizontally disposed, fixed length wale and [a] second horizontally disposed, fixed length wale are oriented in substantially perpendicular fashion to one another and in relative proximity to one another’ as is required by claims 32 and 33” (Appeal Br. 11, 17, 23, 29, and 35). According to Appellant, the Examiner fails to give the term “wale” its ordinary and customary meaning in the art (Appeal Br. 10, 11, 16, 17, 22, 23, 28, 29, 34, and 36).

Appellant’s arguments are not commensurate with the scope of claims 29 and 32. Specifically, neither claim 29 nor claim 32 positively recites a shoring system. Rather, claims 29 and 32 are directed to an “apparatus for joining at least two wales of a shoring system.” Nor does either claim 29 or claim 32 positively recite a wale. The final paragraph of each of claims 29 and 32 is merely functional language setting forth a structural relationship that must be achievable by the first and second end caps and locking pin of the apparatus for joining at least two wales. Each of French (FF10), Reid (FF14), Purvis (FF16), Ferrarin (FF18), and Kranick (FF22) either expressly teaches alignment of the mounting openings or apertures for receipt of a

mounting bolt or stud in an orientation such that the posts, rails, or braces received in the connectors are oriented perpendicularly relative to one another or at least teaches connector pairs having such capability.

Moreover, the connectors and posts, rails, frame members, and braces of French, Reid, Purvis, Ferrarin, and Kranick support the fence or guardrail system against applied forces (FF23) and thus comprise a shoring system as that term is ordinarily and customarily understood (FF6).

Moreover, even assuming the “wales” alluded to in the final paragraph of claims 29 and 32 are positively recited as part of the claimed invention, the posts, rails, frame members, and braces of French, Reid, Purvis, Ferrarin, and Kranick are “wales” as we construe that term. Specifically, as discussed above, Appellant does not even use the term “wale” in the Specification, much less define it (FF7).<sup>2</sup> Nor does Appellant limit the scope of the invention to structures capable of withstanding a specified magnitude, type, or direction of force (FF4, FF5). We thus construe “wale” in accordance with its ordinary and customary definition, and consistent with the Specification of the present application, as a support for reinforcing various upright members (FF8). The posts, rails, frame members, and braces of the applied references certainly meet that definition in that they are supports for reinforcing the fencing or guardrail systems in which they are incorporated.

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<sup>2</sup> The term “wale” was introduced into the application when Appellant copied claims 29-34 from US Patent 6,267,538 (claims 1-3 and 5-7) (FF9). As noted above, such claims are interpreted in light of the specification in which they appear, not the specification of the patent from which they were copied.

In light of the above, Appellant's arguments do not demonstrate error in the rejections of independent claims 29 and 32 as anticipated by French, Reid, Purvis, Ferrarin, and Kranick. We sustain the rejections of claims 29 and 32, and claims 30 and 33, which stand or fall with claims 29 and 32, respectively, as anticipated by French, Reid, Purvis, Ferrarin, and Kranick.

### *The Obviousness Rejections*

In contesting the obviousness rejections, Appellant argues for claims 26 and 28 together as a group. Therefore, in accordance with 37 C.F.R. § 41.37(c)(1)(vii) (2007), we select claim 26 to decide the appeal of these rejections, with claim 28 standing or falling with claim 26.

In rejecting claims 26 and 28 under 35 U.S.C. § 103(a), the Examiner finds that neither French nor Reid teaches a second tab on one of the connectors, but contends that it would have been obvious to modify either French or Reid to include a second tab as taught by Harris to "provide a robust connection" (Answer 7, 8). Appellant argues that the Examiner fails to provide proper motivation for either combination (Appeal Br. 37, 41) and at least implies that Harris is not analogous art to Appellant's invention (Appeal Br. 38-39, 42-43). Appellant further argues that the Examiner fails to set forth any argument for reasonable expectation of success in making the combination (Appeal Br. 39 and 43). Additionally, Appellant reiterates the arguments that the Examiner has failed to properly construe the requirement that the shoring beam connector be "capable of withstanding hydraulic pressure associated with the temporary shoring arrangement" (Appeal Br. 40 and 44).

For the reasons discussed above with respect to the rejections of claim 22, Appellant fails to convince us the Examiner erred in construing the limitations of shoring beam connectors “capable of withstanding hydraulic pressure associated with the temporary shoring arrangement.” Nor do we agree with Appellant that Harris is not analogous art to Appellant’s invention. First, Harris is directed to a waling system (FF24), which is squarely within Appellant’s field of endeavor. Second, Harris addresses the same problem addressed by Appellant, namely, connecting shoring beams together. In this regard, we also observe that both French and Reid also address the same problem, namely, connecting shoring beams, in the form of fence gate frame members and rails, together. Accordingly, Harris, French and Reid all would have commended themselves to an inventor’s attention in considering this problem (FF25).

To the extent that Appellant urges us to apply a rigid formula in obviousness determinations requiring demonstration of a teaching, suggestion, or motivation to combine known elements, such an approach has been expressly rejected in favor of a more flexible approach. *KSR*, 127 S. Ct. at 1741. While there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

The modification proposed by the Examiner is simply the addition of a second tab on one of the connector members of either French or Reid to provide a more robust connection, an expected and predictable result of

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increasing the thickness of the structure into which the securing bolt is received. This is nothing more than the predictable use of prior art elements according to their established functions. Appellant's arguments do nothing to convince us the Examiner erred in determining that the subject matter of claim 26 would have been obvious.

In light of the above, we sustain the rejections of claim 26, and claim 28 standing or falling with claim 26, as unpatentable over French and Harris and as unpatentable over Reid and Harris.

#### DECISION

We sustain all of the Examiner's rejections. The decision of the Examiner to reject claims 22, 26-30, 32, and 33 is affirmed.

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) (2007).

AFFIRMED

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