

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT GUADAGNA

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Appeal 2008-2491  
Application 11/176,983  
Technology Center 1700

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Decided: July 9, 2008

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Before THOMAS A. WALTZ, CATHERINE Q. TIMM, and  
KAREN M. HASTINGS, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 18-23. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

## I. BACKGROUND

The invention relates to a method of scaring off animals with a kite.

Claim 18 is illustrative:

18. A method for scaring off animals comprising the steps of launching a kite configured as a predatory bird and having a manually operable control reel coupled thereto by a control line in the vicinity of animals to be scared off, the kite following launch scaring off said animals.

Three rejections under 35 U.S.C. § 103(a) are presented for our review:

1. The rejection of claims 18-20 as obvious over Kilroy (US 3,787,998 issued Jan. 29, 1974 to Kilroy, Jr. et al.) in view of Scott (AU 986,814 A published Nov. 11, 1999) and Kwon (US 4,176,807 issued Dec. 4, 1979);
2. The rejection of claims 21 and 22 as obvious over Kilroy, Scott, and Kwon and further in view of Jensen (Jensen et al., Professor Kite and the Secret of Kites (1987), <http://www.gombergkites.com/howgen.html>);<sup>1</sup> and
3. The rejection of claim 23 as obvious over Kilroy, Scott, and Kwon, and further in view of Appellant's Admitted Prior Art at page 1 of the Specification.

## II. DISCUSSION

Appellant does not argue any claim separately from the others, therefore, we decide the issues on appeal based on claims 18, 21, and 23.

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<sup>1</sup> The Examiner lists claim 24 as rejected, but this claim has been canceled (Br. 2; Amendment of Aug. 4, 2006).

A. Claim 18

Appellant concedes that the combination of Kilroy and Scott would have suggested the use of Kilroy's predatory bird kite to scare birds away from an area to one of ordinary skill in the art (Br. 7). However, Appellant contends nothing in Kilroy or Kwon would have suggested the combination of Kilroy's kite string 12, which is attached to Kilroy's glider-kite by releasable clip 14, with Kwon's kite-flying control reel assembly 10 (Br. 7-9). According to Appellant, adding the control reel of Kwon to the kite of Kilroy would not be in keeping with the function of the Kilroy kite as a glider (Br. 7-8). Appellant also contends that there would have been no expectation of success because adding the control reel of Kwon to the kite of Kilroy would change the principle of operation of Kilroy's kite-glider (Br. 10).

The Examiner responds that the need to control Kilroy's glider-kite while it functions as a kite is sufficient motivation to add the control reel of Kwon to Kilroy's kite string 12, such reel providing the user with better control during kite launch and flying, i.e., before detaching the string and clip 14 from the kite and using the kite in glider mode (Ans. 5-6).

The issue on appeal arising from the contentions of Appellant and the Examiner is: has Appellant shown that the Examiner reversibly erred in finding that there was a reason to add a control reel as taught by Kwon to a glider-kite as taught by Kilroy?

We answer this question in the negative.

Kwon explicitly states that control reels permit the kite operator to more effectively control and maneuver a kite (Kwon, col. 1, ll. 5-53). These reels, for instance, allow the operator to wind or unwind the string attached

to the kite (Kwon, col. 1, ll. 29-31). The kite-glider of Kilroy is launched as a kite and is only released as a glider once the operator jerks the string or tow line 12 (Kilroy, col. 2, ll. 19-26). The evidence supports the determination that adding a control reel to the kite-glider of Kilroy for its known kite control function would result in an expected element of control, such as the ability to unwind and/or wind the string, when launching the Kilroy glider-kite and when otherwise using the glider-kite in kite mode. Such a combination of known elements for their known uses to obtain expected results provides evidence of obviousness. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (“[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.”) (quoting *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

We cannot agree with Appellant that because Kilroy also suggests a glider function and Kwon is not directed to kites in the shape of birds of prey, those of ordinary skill in the art would not have made the combination. Recently, in *KSR Int'l Co. v. Teleflex Inc.*, the Supreme Court set aside any “rigid” application of the teaching, suggestion, motivation (“TSM”) test, advising that: “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 127 S. Ct. at 1742. The Supreme Court clarified that while “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does,” *id.*, “the analysis need not seek out precise teachings [in the prior art] directed to the specific subject matter of the challenged claim.” *Id.* at 1741.

Appellant has not convinced us that the Examiner reversibly erred in finding that there was a reason originating in the prior art to add a control reel as taught by Kwon to a glider-kite as taught by Kilroy. Therefore, we sustain the rejection of claims 18-20 over Kilroy, Scott, and Kwon.

#### B. Claim 21

Claim 21 is directed to the method of claim 18 “wherein following launching, rotating the control reel effects the circling motion of the kite in one direction.” To reject claim 21, the Examiner adds Jensen. Jensen, as found by the Examiner, “discloses kites with controls will cause kites to affect circling motions in either circles in the left or right direction on the basis of control rotation.” (Ans. 4).

Appellant contends that the Examiner has not provided a motivation for using the teachings of Kwon and/or Jensen in the kite configured as a predatory bird of Kilroy (Br. 12). According to Appellant, Jensen “is little more than an expansion of Kwon which is solely concerned with a recreational or amusement kite, not a kite in the form of a predatory bird which is intended to provide a commercially useful function, i.e., ridding an area of undesirable animals such as geese” and as such Jensen “adds little to the basis for the Examiner’s rejection of Claims 18-20 for obviousness over Kilroy et al., Scott and Kwon.” (Br. 12)

Appellant has not convinced us of a reversible error on the part of the Examiner. Again, we note that the prior art need not expressly disclose a reason for the combination. The combination of the prior art is based on the combination of a known kite control (Jensen) in a known kite (glider-kite of Kilroy). The evidence is sufficient to support the rejection.

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We also note that claim 21 does not necessarily require that the control reel actually be rotated, it only states a cause and effect relationship between rotation and kite motion.

We sustain the Examiner's rejection of claims 21 and 22 over Kilroy, Scott, Kwon, and Jensen.

#### C. Claim 23

Appellant adds no further arguments directed to the rejection of claim 23 (Br. 13). Therefore, the rejection of claim 23 over Kilroy, Scott, Kwon and the admitted prior art is sustained for the reasons presented above.

#### IV. DECISION

The decision of the Examiner is affirmed.

#### V. TIME PERIOD FOR RESPONSE

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

AFFIRMED

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PL initial:  
sld

DILWORTH & BARRESE, LLP  
333 EARLE OVINGTON BLVD.  
SUITE 702  
UNIONDALE, NY 11553