



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/942,546	11/19/2007	Andrew Roman Gizara	IPT.001C1	1795
20995	7590	02/28/2013	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			AVILA, STEPHEN P	
			ART UNIT	PAPER NUMBER
			3617	
			NOTIFICATION DATE	DELIVERY MODE
			02/28/2013	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jayna.cartee@knobbe.com
efiling@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW ROMAN GIZARA

Appeal 2011-002258
Application 11/942,546
Technology Center 3600

Before: GAY ANN SPAHN, WILLIAM V. SAINDON, and
REMY J. VANOPHEM, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-6, 8-14, and 21-24. We have jurisdiction under 35 U.S.C. § 6(b).

The Claimed Subject Matter

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1 A sailing vessel including a generator which generates electricity in response to moving fluids, the sailing vessel comprising:
a hull configured to provide flotation;
a mast coupled to said hull;
one or more sails configured to be coupled to said mast, the sails configured to harness wind forces to move the hull in a desired direction; and
a hydrofoil coupled to said hull, the hydrofoil configured to reduce drag on the hull, wherein the hydrofoil houses a turbine for extracting energy from moving fluids.

References

The Examiner relies upon the following prior art references:

Jones	US 4,027,614	Jun. 7, 1977
Harloff	US 4,279,569	Jul. 21, 1981
Yang	US 5,476,293	Dec. 19, 1995
Lehoczky	US 6,104,097	Aug. 15, 2000
Morales	US 6,192,821 B1	Feb. 27, 2001
Mathias	US 6,375,523 B1	Apr. 23, 2002
Salls	US 6,472,768 B1	Oct. 29, 2002
Bourn	US 6,675,735 B1	Jan. 13, 2004

Rejections

The following obviousness rejections under 35 U.S.C. § 103(a) are on appeal:

- I. Claims 1, 3, 4, 8, and 21 over Jones, Morales, and Salls. Ans. 4.
- II. Claim 2 over Jones, Morales, Salls, and Harloff. Ans. 4.
- III. Claim 5 over Jones, Morales, Salls, and Yang. Ans. 4-5.
- IV. Claim 6 over Jones, Morales, Salls, and Bourn. Ans. 5.
- V. Claims 9-11 over Jones, Morales, Salls, and Lehoczky. Ans. 5.
- VI. Claims 12-14 and 22-24 over Jones, Morales, Salls, and Mathias. Ans. 5-6.

SUMMARY OF DECISION

We AFFIRM.

OPINION

The Examiner found that Jones describes a sailboat having a hull, mast, sail, and foils for drag reduction. Ans. 4. The Examiner then found that Morales describes a boat having a turbine to generate electricity. *Id.* Lastly, the Examiner found that Salls describes a generator inside a hydrofoil, for reduced drag. *Id.* The Examiner concluded that it would have been obvious to modify Jones to include a generator to provide an energy source, as taught in Morales, and specifically to house a generator in the hydrofoil, as taught in Salls. *Id.*

Appellant does not challenge the propriety of the Examiner's findings and conclusions with respect to Jones and Morales. Instead, Appellant argues: (1) Salls does not describe a generator in a hydrofoil (App. Br. 13-15); (2) Salls teaches away from combination with devices such as those of Jones and Morales (App. Br. 15-16); and (3) combining the Salls teachings

with those of Jones and Morales would render the prior art unsatisfactory for its intended purpose (App. Br. 16). We address each argument in turn.¹

Regarding argument 1, we agree with the Examiner that Salls discloses a generator in a hydrofoil. As the Examiner notes on page 6 of the Answer, Salls states that the hull surrounding the generator “provides a surface which acts like a hydrofoil.” Salls, col. 1, ll. 56-58; *see also* Salls, col. 3, ll. 42-43. The hull (and turbine housing) directs water toward the turbine vanes. Salls, col. 3, ll. 52-58. Directing water is the key to being a hydrofoil.² Appellant’s argument that a structure must provide lift to be a hydrofoil is not persuasive. *See* App. Br. 15. Appellant does not provide any compelling reason as to why the claim should be interpreted using this more narrow meaning, given that the plain meaning is understood to be broader, as evidenced by a dictionary definition and the explicit teaching of Salls.

In addition, we note that the Examiner’s proposed combination is to modify *Jones*’s hydrofoil to include a turbine inside of *it*. Ans. 4. Thus, the Salls hydrofoil is not to be bodily incorporated and replace *Jones*’s hydrofoil. *See, e.g., In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973)

¹ Appellant does not set forth any further arguments in the brief. Appellant notes that the rejection of independent claims 8 and 21 are improper for those reasons claim 1 is allegedly improper. App. Br. 17. Appellant notes that the rejections of the dependent claims are improper because their corresponding independent claims are allowable. App. Br. 18. Accordingly, the outcome of the issues on appeal for claim 1 controls the outcome of the appeal for all claims.

² Hydrofoil: “a flat or curved plane surface designed to obtain reaction upon its surfaces from the water through which it moves.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993) (retrieved from lionreference.chadwyck.com).

(“Combining the teachings of references does not involve an ability to combine their specific structures.”). The Examiner is not proposing to unnecessarily destroy the beneficial hydrofoil features of Jones (which include providing lift); rather, the Examiner is proposing to *add* the beneficial features of Salls’s hydrofoil (i.e., a hydrofoil having a turbine inside) to seek the features it provides. Ans. 4, 7 (“Salls is simply applied as providing a known teaching of a generator *in a hydrofoil*” (emphasis added)); *see Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984) (one of ordinary skill is not compelled to blindly follow the teaching of one prior art reference over the other without the exercise of independent judgment). Accordingly, even if Appellant was correct and that Salls’s device was not a hydrofoil (as Appellant understands the term), such an argument is not responsive to the Examiner’s proposed combination, in which Jones describes such a feature.

Regarding argument 2, Appellant has not pointed to any disclosure in Salls that criticizes, discredits, or otherwise discourages the solution claimed in order to teach away. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Salls discloses a hull shape that does not provide lift because that particular feature is beneficial in the particular embodiment Salls discusses. Appellant does not link the ability of the hull to collect and speed up water to feed to a turbine with the hull being shaped to not provide lift; nor is such a link apparent. Likewise, that Salls utilizes an anchor to hold the hull in one location relative to the floor of a body of water has no apparent link to the ability of the hull to collect water for the turbine. As the Examiner points out, Salls operates by using the kinetic energy of moving water. Ans. 6. Whether the water moves or the device moves seems irrelevant, as energy

Appeal 2011-002258
Application 11/942,546

is generated using the same mode of operation either way. Appellant's arguments are merely arguing the references in isolation. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (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").

Regarding argument 3, Appellant's arguments are unpersuasive for the same reasons those in argument 2 are unpersuasive. Appellant is arguing the references in isolation.

In view of the above, we are not apprised of error in the Examiner's rejection of claim 1. We sustain all of the Examiner's rejections. *See n. 1.*

DECISION

We AFFIRM the Examiner's decision regarding claims 1-6, 8-14, and 21-24.

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

AFFIRMED

Klh