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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/610,800	12/14/2006	David Sellers	40036-014001	3343
69713	7590	02/20/2013	EXAMINER	
OCCHIUTI ROHLICEK & TSAO, I.L.P. 321 Summer St. Boston, MA 02210			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	
			NOTIFICATION DATE	DELIVERY MODE
			02/20/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID SELLERS and PARKER SELLERS

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Appeal 2011-005275  
Application 11/610,800  
Technology Center 3600

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Before CHARLES N. GREENHUT, MICHELLE R. OSINSKI, and  
WILLIAM A. CAPP, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-16 under 35 U.S.C. § 103(a) as unpatentable over O’Haire (US 5,941,540, iss. Aug. 24, 1999), Trenary (US 6,805,657 B2, iss. Oct. 19, 2004), and Hornsby (US 5,820,430, iss. Oct. 13, 1998). Ans. 3-5. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on February 8, 2013.

We AFFIRM.

CLAIMED SUBJECT MATTER

The claimed subject matter relates to “sleds having a restraint system.” Spec. 1, 1. 3. Claims 1 and 7 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A sled comprising:

a hull;

a strap extending transversely across the hull at a first longitudinal position selected such that the strap adapted to extend across a calf of a kneeling rider between the calf of the rider and a thigh of the rider, thereby enabling a rider to kneel erect or partially erect while riding the sled, and enabling the rider's center of gravity to be shifted vertically while riding the sled; and

a center anchor coupled to the strap, the center anchor being configured to anchor the strap to the hull whereby, when a rider rides the sled, the strap secures the rider's legs individually, thus suppressing lateral shifting of the legs during a turn.

## ANALYSIS

### *Claims 1 and 7*

Appellants argue claims 1 and 7 as a group. App. Br. 5-9; Reply Br. 1-7. We select independent claim 1 as the representative claim. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2011).

The Examiner found the claim limitation, “a strap extending transversely across the hull at a first longitudinal position selected such that the strap adapted to extend across a calf of a kneeling rider between the calf of the rider and a thigh of the rider” (Claims App’x.), constitutes a functional limitation (Ans. 7). The Examiner further found that while O’Haire “fails to specifically teach that the strap may be passed between the calf and thigh of a rider,” O’Haire’s strap 50 is “capable of being passed in a rearward configuration over a calf of a user.” Ans. 4. The Examiner pointed to utilization of the strap of O’Haire “in a rearward configuration” rather than “a forward configuration” (*Id.*) and the “wide range in the length of the material used for the strap” (*Id.* at 8) in support of finding O’Haire’s strap 50 to be capable of extending over a calf of a rider.

As our reviewing court’s predecessor explained in *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977) (quoting *In re Swinehart*, 439 F.2d at 212-13):

[W]here the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on.

We are not persuaded that Appellants have advanced evidence adequate to rebut the Examiner’s reasonable finding. Appellants contend

that “[t]he strap slots **40, 42** that engage the strap in *O’Haire* are too far forward to meet the limitation” (Reply Br. 1) and that “[i]f the strap is not anchored at the correct position, it will not be able to pass between the rider’s calf and thigh regardless of how long or short it is” (*Id.* at 2). However, Appellants have not addressed with persuasive reasoning or evidence why a strap disposed in rearward strap slots 44, 46 may be incapable of passing over a rider’s calf contrary to the Examiner’s finding.

Moreover, the Examiner found that “Trenary teaches that it is very well known to provide a rider securing strap element . . . which pass[es] over a rider’s calf” and concluded that:

[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to provide the strap taught by O’Haire as capable of extending between a rider’s calf and thigh, as explicitly taught by Trenary, for the purpose of allowing a rider a greater degree of freedom in body position while riding the board.

Ans. 4. Appellants contend that the Examiner’s proposed combination is impermissibly based on hindsight in view of Appellants’ Specification.

App. Br. 6-8. In particular, Appellants first contend that the problem solved by Trenary’s straps, namely, to allow a rider to freely flex his knees so as to extend or lengthen the wheelbase between separate front and rear wheel assemblies, does not exist in O’Haire so there is no reason to modify O’Haire based on Trenary’s teachings. *Id.* at 6. This argument is unconvincing since it does not address the rationale actually articulated by the Examiner.

Appellants secondly contend that the Examiner’s articulated rationale—to provide a greater degree of freedom in body position while riding the board (Ans. 4)—lacks rational underpinnings because it (i) is

inconsistent with the common understanding in the art that a rider would want “to be held snugly in one kneeling position by the strap” rather than have “additional freedom of body movement beyond that already available” (App. Br. 7); and (ii) does not come from any reference of record such that it must have come from Appellants’ disclosure. (*Id.* at 8).

The Examiner points out that Trenary teaches a riding position “where only one section of Trenary’s vehicle (such as the rear section) is on the ground . . . and the front section is not [which] would be seen as being reasonably analogous to the use of O’Haire.” Ans. 8; *see also* Trenary, col. 2, ll. 26-28 (“By practice, the rider can perform unusual maneuvers, and even temporarily raise the front and rear roller assemblies during riding.”). The Examiner determined that Trenary provides a motivation to provide a greater degree of freedom in body position to allow “for a greater number of rider stances” as disclosed by Trenary. Ans. 9. Similarly, a sled rider may benefit from a greater number of rider stances for maneuvers. Appellants have not provided persuasive reasoning or evidence as to why the Examiner must have relied on impermissible hindsight rather than the stated reason having a rational underpinning for making the proposed combination. *See KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006)).

With respect to the center anchor limitation, the Examiner found that “O’Haire fails to specifically teach a center anchor.” Ans. 4. However, the Examiner found that Trenary taught straps 119A, 119B are “anchored at both inboard and outboard sides (otherwise a user’s calf would not remain in secure contact with the support elements 115A, 115B” (*Id.*) and that “Hornsby teaches that it is well known to provide a strap arrangement

wherein a strap (22) is provided with laterally separate elements and a central anchoring arrangement (inboard anchors 32).” (*Id.* at 4-5). The Examiner then concluded that:

[I]t would have been obvious to one of ordinary skill in the art . . . to provide the center anchor portion of O'Haire's board as modified by Trenary . . . , with at least one anchor structure with an aperture defined by a horizontal bar and vertical legs, as is taught by Hornsby et al., for the purpose of preventing forward or rearward translation of the central portion of the strap of O'Haire as modified by Trenary during vigorous usage, thus beneficially ensuring that the strap remains appropriately aligned in its central portion, even under heavy use, thus improving the feel of the rider's connection to the sled.

*Id.* at 5.

The Examiner explained that O’Haire “teaches an arrangement wherein a strap having the slack taken up would abut a center anchor portion [70, 76]” (Ans. 5) and that “Trenary teaches that the straps which individually secure a rider’s legs are anchored, including both laterally outward and laterally inward locations, the laterally inward locations being on either side of the center portion (e.g., Trenary at 309, analogous to O’Haire at 70, 76)” (Ans. 10). The Examiner further explained that the rejection is not based on “a wholesale bodily incorporation of all limitations of Hornsby et al. but rather the use of the anchor structure shown at element 32 in Hornsby since the modifying reference to Trenary is silent on that specific structure.” *Id.*

Appellants contend that neither of Hornsby’s straps 22 “has any sort of center anchor coupled to it” nor “secures the rider’s legs individually.” App. Br. 8 (quoting Claims App’x.). Additionally, Appellants contend that Hornsby’s lateral anchor 32 that is closer to the center line of the watercraft

is still a lateral anchor placed along the side of the watercraft and that there are two straps, one for each rider, neither strap having a center anchor. Reply Br. 6-7. Appellants further contend that Trenary's fender that protrudes between a rider's calves "does not cooperate with the straps in any way" and that O'Haire's center hump "does not anchor the strap in anyway" "[a]lthough a strap can occasionally rest on this [center] hump." App. Br. 9.

One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The Examiner has based the rejection on a proposed combination of O'Haire, Trenary, and Hornsby as described in more detail hereinabove, and Appellants have not provided persuasive reasoning or evidence that the proposed combination as articulated by the Examiner, which would include modification to O'Haire based on Trenary and Hornsby (as opposed to each individual reference making up the combination), fails to teach a center anchor coupled to the strap, whereby the strap secures the rider's legs individually and suppresses lateral shifting of the legs during a turn.

For the foregoing reasons, we find that the Examiner did not err in concluding that the subject matter of independent claims 1 and 7 would have been obvious from the combination of O'Haire, Trenary, and Hornsby, and we sustain the rejection of claims 1 and 7 under 35 U.S.C. § 103(a).

*Claims 2-6, 8-10, 13, and 16*

Appellants present no separate arguments for patentability of dependent claims 2-6, 8-10, 13, and 16. As such, these claims fall with independent claims 1 and 7. *See* 37 C.F.R. § 41.37(c)(1)(vii).

*Claims 11 and 14*

Appellants present separate arguments for the patentability of claims 11 and 14. App. Br. 4-5. Appellants contend that while “*O’Haire* has a centered hump that is conceivably molded to conform to a rider[,] . . . this hump doesn’t have any apertures for receiving a strap, and plays no role in anchoring the strap.” App. Br. 4. Appellants particularly contend that “a strap . . . just resting on a surface [of knee grip structure 70 and seat-forming surface 76] is by no means ‘anchored’ to that surface.” *Id.* Appellants further contend that while Trenary’s brake actuators 415A “might be viewed as ‘molded to conform to the rider,’” “they still don’t have any ‘aperture for receiving a strap’ and do not function as a ‘center anchor’ for any strap.” *Id.* at 5. Finally, Appellants contend that while Hornsby discloses “inboard gunwales [or railings] having an aperture for receiving a strap[, they] . . . are not ‘molded to conform to the rider.’” *Id.*

The Examiner “recognizes that the reference to *O’Haire* on its own clearly does not teach an anchor structure having an aperture.” Ans. 6. However, the Examiner’s rejection is based on modification of *O’Haire* based on the teachings of Trenary and Hornsby. *Id.* at 6-7. The Examiner found Trenary teaches anchoring of a user’s legs “on either side of a central upstanding portion (e.g., illustrated at 309)” and Hornsby teaches “strap anchors having a particular structure (see element 32, figures 7, 9) which includes an aperture through which the strap portion would pass.” *Id.* at 7. The Examiner concluded that it would have been obvious to modify *O’Haire* to provide an anchor based on Trenary and to further modify the combination so as to provide the aperture of the anchor structure of Hornsby

to “beneficially prevent longitudinal shifting of the strap elements during vigorous usage.” *Id.*

The Examiner has based the rejection on a proposed combination of O’Haire, Trenary, and Hornsby, and Appellants have not provided persuasive reasoning or evidence that the proposed combination as articulated by the Examiner (as opposed to each individual reference) fails to teach a center anchor comprising a structure molded to conform to the rider and forming an aperture for receiving a strap. *See Keller*, 642 F.2d at 425.

For the foregoing reasons, we find that the Examiner did not err in concluding that the subject matter of claims 11 and 14 would have been obvious from the combination of O’Haire, Trenary, and Hornsby, and we sustain the rejection of claims 11 and 14 under 35 U.S.C. § 103(a).

*Claims 12 and 15*

Appellants present separate arguments for the patentability of claims 12 and 15. App. Br. 3. Appellants contend that O’Haire, Trenary, and Hornsby each fail to teach apertures that are defined by a horizontal bar supported by vertical legs as recited in the claims. App. Br. 3. The Examiner found that element 32 in Hornsby meets these limitations. Ans. 5-6 (“The cross section at figure 7 [of Hornsby] is particularly helpful as it illustrates the central bar portion which extends along a longitudinal axis coincident with the center of the circle defined by the material of the horizontal portion of the bar, one of the legs of the arch structure (i.e., the one distant from the viewer), and the strap portion 22 and/or 34 passing through the aperture formed by the arched anchor element between the anchor and its connection to the board proximate 31, 38 (also note Hornsby

Appeal 2011-005275  
Application 11/610,800

et al. at col. 2, lines 44-45 and col. 3, lines 43-45).”). Appellants have not provided persuasive reasoning or evidence as to why these particular findings of the Examiner are incorrect.

For the foregoing reasons, we find that the Examiner did not err in concluding that the subject matter of claims 12 and 15 would have been obvious from the combination of O’Haire, Trenary, and Hornsby, and we sustain the rejection of claims 12 and 15 under 35 U.S.C. § 103(a).

#### DECISION

The Examiner’s rejection of claims 1-16 under 35 U.S.C. § 103(a) 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)(1)(iv).

AFFIRMED

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