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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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MINISTRY OF LEGAL AFFAIRS, TRINIDAD, W.I.  
Requester, Respondent

v.

TREVOR KING  
Patent Owner, Appellant

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Appeal 2012-009948  
Reexamination Control No. 95/000,255  
Patent 6,750,386 B2  
Technology Center 3900

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Before DANIEL S. SONG, JOSIAH C. COCKS, and  
SCOTT E. KAMHOLZ, *Administrative Patent Judges*.

KAMHOLZ, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellant, patent owner Trevor King, appeals under 35 U.S.C. §§ 134(b) and 315(a) (2002) from a decision of the primary examiner finally rejecting claims 1-3.<sup>1</sup> We have jurisdiction under 35 U.S.C. §§ 134(b) and 315 (2002). In addition to the Appeal Brief (“App. Br.”), Appellant relies on a Rebuttal Brief and a declaration of the Patent Owner, Mr. Trevor King (“Second King Declaration”), in support of patentability.<sup>2</sup> The Requester relies on its Respondent Brief (“Resp. Br.”) and a declaration of Mr. Elliot Mannette (“Mannette Declaration”) in support of the Examiner’s rejections.

This proceeding arose from a request by the Ministry of Legal Affairs, Trinidad, West Indies, for an *inter partes* reexamination of U.S. Patent 6,750,386 B2 (hereinafter, the ’386 patent), entitled “Cycle of Fifths Steel Pan,” and issued to Trevor King (Jun. 15, 2004).

For the reasons set forth below, we AFFIRM the Examiner’s rejection of claims 1-3 of the ’386 patent.

## THE CLAIMED SUBJECT MATTER

The ’386 patent describes a steel drum musical instrument (col. 1, ll. 6-13). Claim 1 on appeal reads as follows:

1. A cycle of fifths steel pan device comprising:  
a first series of musical instruments bonded in  
a 360 degree circumference, consisting of twelve

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<sup>1</sup> Appellant sought to present new claims 4-11 in response to the Action Closing Prosecution, but entry of these claims was denied as untimely. *See* “Decision on Patent Owner’s Petition Under 37 CFR 1.181,” mailed April 4, 2012. These claims are therefore not before us on appeal, and we do not consider them further.

<sup>2</sup> As Appellant’s Rebuttal Brief is directed entirely to claims not before us on appeal, we do not consider it further.

primary notes arranged in a clockwise pattern creating an outer circumference of the device, the twelve primary notes arranged in a pattern of D-A-E-B-F#-C#-G#-Eb-Bb F-C-G, the twelve primary notes generally large and semi-circular in shape,

a second series of musical instruments bonded in a 360 degree circumference, consisting of twelve octave notes to the twelve primary notes arranged in a clockwise pattern creating a middle circumference of the device, the twelve octave notes arranged in a pattern of D-A-E-B-F#-C#-G#-Eb-Bb F-C-G, the twelve octave notes generally circular in shape, and of a smaller size than the twelve primary notes, functioning to create higher octave tones,

a third series of musical instruments bonded in a 360 degree circumference, consisting of five higher octave notes arranged in a clockwise pattern creating an inner circumference of the device, the five higher octave notes arranged in a pattern of D-E-F#-Eb-F, the five higher octave notes generally circular in shape, and of a smaller size than the twelve octave notes, functioning to create highest octave tones,

the device further comprising a pattern guide on an exterior surface thereof, the pattern guide exhibiting the primary tones, octave tones, and higher octave tones in a cycle of fifths pattern, allowing the user to strike the notes to achieve a desired music scale and/or chords, and further allowing for musical instruction and playing of the instrument with less challenge to mental comprehension of a player.<sup>3</sup>

(App. Br. 30, Appendix A.)

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<sup>3</sup> The recitation “a third series ... D-E-F#-Eb-F” was changed from “a third series ... G-E-F#-Eb-F” by way of a Certificate of Correction issued Dec. 18, 2007.

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## REFERENCES

The Examiner relies on the following prior art references:

Bond	US 4,074,607	Feb. 21, 1978
Fernandez	TT 23 of 1983	Jul. 19, 1983

Seeger, P., Steel Drums: How to Play Them and Make Them (1964)  
("Seeger").

New Harvard Dictionary of Music (1986) ("Harvard").

Kronman, U., Steel Pan Tuning (1992) ("Kronman").

Imbert, C. et al., The Technology of the Steelpan as a Musical Instrument  
(1994) ("Imbert").

Blake, F.I.R., The Trinidad & Tobago Steel Pan: History and Evolution  
(1995) ("Blake").

Murr, L.E. et al., Materials Science and Metallurgy of the Caribbean Steel  
Drum, Part I, Journal of Materials Science 34 (Mar. 1999) ("Murr").

Wilson, S.A., Steelpan Playing with Theory (1999) ("Wilson").

New Grove Dictionary of Music and Musicians (2001) ("Grove").

## OTHER EVIDENCE

Second Declaration of Trevor King (submitted by Appellant).

Declaration of Elliot Mannette (submitted by Respondent).

## REJECTIONS

Appellant seeks our review of the following rejections set forth by the Examiner in the Right of Appeal Notice ("RAN"), which was incorporated by reference into the Examiner's Answer:

1. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Blake.  
RAN 22.

2. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Blake and Seeger. RAN 27.
3. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Imbert and Blake. RAN 32.
4. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Imbert and Bond. RAN 37.
5. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Imbert and Harvard. RAN 41.
6. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Imbert and Grove. RAN 46.
7. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Murr and Blake. RAN 51.
8. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Kronman, Bond, and Blake. RAN 63.
9. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Kronman, Harvard, and Blake. RAN 66.
10. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Kronman, Grove, and Blake. RAN 70.
11. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Wilson, Bond, and Blake. RAN 76.
12. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Wilson, Harvard, and Blake. RAN 79.
13. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Wilson, Grove, and Blake. RAN 83.
14. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Fernandez, Bond, and Blake. RAN 88.

15. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Fernandez, Harvard, and Blake. RAN 91.
16. Claim 1 under 35 U.S.C. § 103(a) for obviousness over Fernandez, Grove, and Blake. RAN 94.
17. Claim 2 under 35 U.S.C. § 103(a) for obviousness over Blake. RAN 100.
18. Claim 3 under 35 U.S.C. § 103(a) for obviousness over Blake. RAN 101.
19. Claim 3 under 35 U.S.C. § 103(a) for obviousness over Imbert and Wilson. RAN 102.

#### PRINCIPLES OF LAW

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

#### ANALYSIS

##### *1. Claim 1*

##### *a. Obviousness over Blake*

The Examiner found that Blake discloses a steel pan as claimed except for the particular arrangement of the notes in the first series and the

third series. RAN 22-26. With regard to the first series, the Examiner noted that the “low tenor” steel pan shown at the bottom of Blake’s page 109 includes a first series that includes the twelve notes, arranged in a clockwise pattern as claimed, but that it also includes two additional notes. *Id.* at 23. The Examiner further found that the “exact sequence” of twelve notes in the first series is disclosed in Blake’s “high tenor” and “spider web” steel pans, albeit in a counter-clockwise pattern instead of the clockwise pattern claimed. *Id.* at 24. The Examiner additionally found that, as set forth in the Mannette Declaration, it is “common knowledge” in the musical arts that the notes of the circle of fifths may be arranged in a clockwise or counter-clockwise direction. *Id.* The Examiner concluded that it would have been obvious to omit the two additional notes “so that the steel pan players can find ease in playing the steel pan.” *Id.* at 26.

With regard to the third series, the Examiner noted that Blake’s “low tenor” pan includes a third series in which the claimed “G” is substituted for “D” but that Blake discloses the “low tenor” pan as extending through a range of notes that would include “G.” *Id.* at 25-26. The Examiner concluded that it would have been obvious to modify Blake’s “D” to the claimed “G” “based on the design choice of the musician and/or maker of the steel pan.” *Id.*

In response, Appellant argues that: (a) the notes in the first series of Blake’s low tenor pan are “not in a circle of fifths arrangement”; (b) “a person of skill in the art would have to remake the pan by measuring and placing each note 700 cm apart in a clockwise direction”; and (c) “Blake discloses that the low tenor pan ‘covers the entire tenor range,’” and the two additional notes in Blake’s first series are necessary to cover this range, so

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that Blake “does not provide any motivation to remove non-duplicate notes from the 14-note outer circle to achieve a ‘true’ circle of fifths because such action would alter the range of the low tenor pan.” App. Br. 5-6 (emphasis in original). Appellant also argues, citing the Second King Declaration for support, that (d) the claimed clockwise arrangement is an improvement over the prior-art counter-clockwise arrangement because the clockwise arrangement mimics the left-to-right convention for reading and writing music; and (e) the “skilled artisan . . . would not have been motivated to rearrange the notes in Blake’s high tenor and spider web pans”; instead, the skilled artisan would have arranged the notes “in the manner which suited him”<sup>4</sup> rather than in “standard positions” as claimed. App. Br. 6-7.

Respondent argues in support of the Examiner’s rejection. Resp. Br. 2-9.

We agree with the Examiner. Blake differs from the claimed steel pan merely in the inclusion of two additional notes in the first series.<sup>5</sup> The Examiner’s conclusion that it would have been obvious to “remove notes” from the first series of Blake’s low tenor pan “so that the steel pan players can find ease in playing” is adequately supported by evidence of record that 12-note steel pan series are known in the art and that the notes may be arranged in a clockwise or counterclockwise pattern. We determine that the Examiner articulated a reason with a rational underpinning in reaching the conclusion of obviousness.

Appellant’s arguments do not persuade us that the Examiner erred. Argument (a) is non-responsive to the rejection in that the Examiner

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<sup>4</sup> Second King Declaration, para. 17.

<sup>5</sup> The “G” vs. “D” difference in the third series is moot in view of the correction to claim 1. *See* n. 3, *supra*.

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acknowledged that Blake's low tenor first series is not in a perfect circle of fifths arrangement, due to the presence of additional notes. The Examiner's rejection was instead premised on the obviousness of modifying Blake's 14-note low tenor first series to the claimed 12-note series. *See* RAN 26.

Appellant's argument that Blake's low tenor first series is "not in a circle of fifths arrangement" does not address the Examiner's rationale.

Argument (b) is unsupported by objective evidence of record and is therefore merely conclusory. Attorney argument does not take the place of evidence where evidence is required. Even so, Appellant has not explained why a need to "remake the pan" would have rendered the modification unobvious nor that the modifications would have been so extensive as to require more than the "ordinary creativity" possessed by the person of ordinary skill. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.").

Argument (c) is premised on a supposed lack of "motivation" in Blake to prompt one having ordinary skill in the art to remove certain notes in the first series, but the test for obviousness is not so constrained; *see id.* at 418 (rejecting the rigid requirement of a teaching, suggestion or motivation to combine known elements in order to show obviousness). The Examiner correctly found that Blake discloses steel pans having 12-note first series, particularly pans in which the notes of the first series are arranged in the order claimed except for the direction. The Examiner also correctly found that Blake discloses pans in which the notes follow both clockwise and counter-clockwise patterns. We perceive no error in the Examiner's conclusion, based upon those findings, that one of ordinary skill would have

found it obvious to make a pan having Blake's 12-note first series arranged in a clockwise pattern.

While argument (d), supported by the Second King Declaration, asserts advantages of the clockwise pattern over a counter-clockwise pattern, none of the arguments or evidence presented establishes that those advantages would have been unexpected or otherwise non-obvious. For example, we do not discern, and Appellant fails to explain cogently, how it is unexpected that arranging the notes such that the circle of fifth proceeds left-to-right would have made it easier for a skilled musician to play the instrument. We also observe that Mr. King's statements concerning the left-to-right arrangement of notes that results from a clockwise pattern are illusory: on a steel pan with the notes arranged clockwise in a circumference, only those notes positioned in the upper portion of the pan would progress from left to right; the notes would proceed vertically on the sides and from right to left on the bottom. Thus, the supposed advantage is not commensurate in scope with the claim. Moreover, on a pan with the notes arranged counter-clockwise, the notes at the bottom of the pan would appear left-to-right; the argument is therefore equally applicable to the prior art and identifies no advantage over it.

Argument (e), like argument (c), is wrongly premised on the lack of "motivation" to modify Blake. Moreover, we agree with the Examiner that Mr. King's acknowledgment in paragraph 17 of the Second King Declaration that the skilled artisan would have arranged the notes on the pan "in the manner which suited him" is evidence that the claimed arrangement of notes would have been an obvious variant of Blake's embodiments.

We therefore affirm the rejection.

*b. Obviousness over Blake and Seeger*

Appellant refers to the arguments given in response to the rejection of claim 1 for obviousness over Blake alone and does not address any arguments to the combination of Blake and Seeger except to say that “Seeger... does not disclose the claimed instrument.” App. Br. 7. Because we discern no error in the Examiner’s findings regarding Blake, discussed *supra*, and because Appellant does not challenge the Examiner’s findings concerning Seeger’s disclosure of the recited pattern guide, we affirm the rejection.

*c. Obviousness over Imbert and other references*

*(i) Imbert and Blake*

The Examiner found that Imbert discloses a steel pan having all of the features recited in claim 1 except that the notes of each of Imbert’s series are arranged in a counter-clockwise pattern. RAN 32-35. The Examiner further found that Blake discloses steel pans having note series arranged in both clockwise and counter-clockwise patterns. *Id.* at 36. The Examiner concluded that it would have been obvious to modify Imbert “by changing the direction of the notes as taught by Blake so that the steel pan players can find ease in playing the steel pan and/or have the pan designed based on their music preference.” *Id.*

Appellant argues that (a) the notes of Imbert’s pan are arranged counter-clockwise and alleges various advantages to a clockwise arrangement, relying upon the Second King Declaration. App. Br. 8. Appellant further argues that (b) Blake does not cure Imbert’s deficiency, because Blake’s clockwise-patterned low tenor pan includes a 14-note first series that is not arranged in a circle-of-fifths progression. *Id.*

We agree with the Examiner. Imbert shows exactly the note series recited in claim 1 except for their direction around the pan, and Blake shows that steel pans with the notes in clockwise and counter-clockwise arrangement were known. We determine that a preponderance of the evidence of record supports the Examiner's conclusion that it would have been obvious to reverse Imbert's note pattern to obtain a pan that suited a musician's preference.

Neither of Appellant's arguments is responsive to the rejection. As to argument (a), the Examiner acknowledged that Imbert's pan is not arranged in a clockwise pattern. The Examiner's rejection was instead premised on the obviousness of reversing Imbert's pattern in view of Blake's disclosure of both clockwise- and counter-clockwise-patterned pans. Appellant's argument that Imbert's pan is counter-clockwise does not address the Examiner's rationale. As discussed above, Mr. King's statements in the Second King Declaration concerning the advantages of a left-to-right arrangement both are not commensurate in scope with the claim and fail to establish non-obviousness over the prior art. As to argument (b), the Examiner did not rely on Blake for the particular ordering or number of notes; the Examiner cited Imbert for this teaching. Appellant does not explain how the Examiner erred in relying upon Blake for the limited proposition that it was known in the art to make pans with notes arranged in clockwise and counter-clockwise patterns. For these reasons, we affirm the rejection.

*(ii) Imbert and Bond*

As in the rejection over Imbert and Blake, the Examiner found that Imbert discloses all features of claim 1 except the clockwise pattern.

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RAN 37-40. The Examiner found that Bond depicts the circle of fifths in a clockwise pattern, *id.* at 40, and concluded that it would have been obvious to modify Imbert “by changing the direction of the notes as taught by Bond so that the steel pan players can find ease in playing the steel pan and/or have the pan designed based on their music preference.” *Id.*

Appellant argues that: (a) Imbert fails to teach all elements of claim 1, as also argued in response to the rejection over Imbert and Blake; (b) Bond is merely a “geometrical depiction of music theory” and so does not suggest “applying the theoretical circle of fifths arrangement of notes to the physical arrangement of notes” on a steel pan; (c) Bond is nonanalogous to Imbert because Bond is directed to a device for helping musicians to compose music, while Imbert is directed making and tuning steel pans; and (d) the “skilled artisan ... would not have been motivated to rearrange the notes depicted on Imbert’s drum by reading Bond” in an argument similar to argument (e) addressed in section 1(a), *supra*.

We agree with the Examiner. Argument (a) is not persuasive for reasons given in section 1(c)(i), *supra*. Argument (b) is non-responsive to the rejection. The Examiner did not cite Bond for arranging the notes according to the circle of fifths; rather, the Examiner cited Imbert for this disclosure. The Examiner cited Bond for the limited teaching that the circle is commonly depicted in a clockwise pattern and that such a pattern would consequently have occurred to one having ordinary skill in the art when considering Imbert. Appellant’s argument (b) does not explain how the Examiner’s rationale was in error and is therefore not persuasive.

Argument (c) is not persuasive because the test is not whether Bond and Imbert are analogous to one another; rather, the test is whether the prior

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art is analogous to the claimed invention. *See In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). Appellant does not explain how either Bond or Imbert is non-analogous to the claimed invention, and we see no reason to disturb the Examiner’s findings in this regard.<sup>6</sup>

Argument (d) is not persuasive for the reasons given in section 1(a), *supra*.

For these reasons, we affirm the rejection.

(iii) *Imbert and Harvard*

As in the rejection over Imbert and Bond, the Examiner found that Imbert discloses all features of claim 1 except the clockwise pattern. RAN 41-44. The Examiner found that Harvard depicts the circle of fifths in a clockwise pattern, *id.* at 44, and concluded that it would have been obvious to modify Imbert “by changing the direction of the notes as taught by Harvard... so that the steel pan players can find ease in playing the steel pan and/or have the pan designed based on their music preference.” *Id.*

Appellant’s arguments in response are analogous to those given in response to the rejection over Imbert and Bond. App. Br. 11-12. They do

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<sup>6</sup> Moreover, though not specifically necessary to reach our decision, we note that Appellant’s claimed invention and Bond are in the same field of endeavor because they both concern the understanding of relationships between musical notes. Appellant acknowledges that Bond is “used by musicians to understand and describe [the] relationships [among the 12 pitch classes of the tempered scale.]” App. Br. 9. Appellant describes a similar purpose for his claimed invention: “[I]t is generally an object of the present invention to provide an instrument that allows for convenient teaching and learning of music theory and the inter-relationship of chords and keys.” ’386 patent, col. 3, ll. 31-34.

not persuade us of error for reasons similar to those given above in section 1(c)(ii). We affirm the rejection.

(iv) *Imbert and Grove*

This rejection is cumulative to the rejection over Imbert and Harvard. Appellant's arguments (App. Br. 11-12) do not persuade us of error for reasons similar to those given above in section 1(c)(ii). We affirm the rejection.

d. *Obviousness over Murr and Blake*

The Examiner found that Murr discloses all features of claim 1 except the clockwise arrangement of notes and the specific notes making up the third series. RAN 51-53. The Examiner further found that Blake discloses the exact notes in the claimed third series as well as steel pans having note series arranged in both clockwise and counter-clockwise patterns. *Id.* at 53-54.<sup>7</sup> The Patent Owner's arguments with respect to this rejection are similar to those proffered regarding the rejection based on the combination of Imbert and Blake. While the Examiner concluded that it would have been obvious to modify Murr to use Blake's clockwise arrangement, the Examiner did not explain why it would have been obvious to replace Murr's third series with Blake's. We find that the Examiner has not provided sufficient reasoning to make out a prima facie case of obviousness and reverse the rejection.

e. *Obviousness over Kronman and other references*

In rejecting claim 1 for obviousness over Kronman, Bond, and Blake, the Examiner found that Kronman discloses all features of claim 1 except

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<sup>7</sup> See n. 5, *supra*.

the clockwise arrangement of notes, the specific notes making up the third series, and the pattern guide. RAN 63-66. The Examiner further found that Bond depicts the circle of fifths in a clockwise pattern, *id.* at 64, and concluded that one of ordinary skill “would recognize that the notes in the circle of fifths may be arranged in either a clockwise or counterclockwise direction.” *Id.* In addition, the Examiner further found that Blake discloses the exact notes in the claimed third series as well as the claimed pattern guide. *Id.* at 65-66. The Examiner, relying on paragraph 26 in the Mannette Declaration, concluded that substitution of Blake’s third series for Kronman’s would have been obvious in order “to include the notes one desires... to obtain a ... desired sound.” *Id.* at 65. The Examiner also concluded that it would have been obvious to include Blake’s pattern guide on Kronman’s instrument “to clearly identify the location of notes on the instrument, thus allowing for greater ease with which to play.” *Id.* at 66. The Examiner made similar findings and conclusions in rejecting claim 1 for obviousness over the combination of Kronman, Harvard, and Blake as well as the combination of Kronman, Grove, and Blake. RAN 66-74.

Appellant’s arguments in response are substantially the same as those made in response to the Imbert/Blake and Imbert/Bond rejections. App. Br. 14-18. We are not persuaded by those arguments for reasons similar to those given above in sections 1(c)(i)-(ii), *supra*, and affirm the rejections.

*f. Obviousness over Wilson and other references*

The rejections for obviousness over the combinations of Wilson, Bond, and Blake; Wilson, Harvard, and Blake; and Wilson, Grove, and Blake are cumulative to those over Kronman and the other references. Appellant’s arguments are substantially the same as the arguments in

response to the Imbert/Blake and Imbert/Bond rejections. App. Br. 18-23. We are not persuaded by those arguments for reasons similar to those given above in sections 1(c)(i)-(ii), *supra*, and affirm the rejections.

*g. Obviousness over Fernandez and other references*

The rejections for obviousness over the combinations of Fernandez, Bond, and Blake; Fernandez, Harvard, and Blake; and Fernandez, Grove, and Blake are cumulative to those over Kronman and the other references. RAN 88-97. Appellant's arguments are substantially the same as the arguments in response to the Imbert/Blake and Imbert/Bond rejections. App. Br. 23-28. We are not persuaded by those arguments for reasons similar to those given above in sections 1(c)(i)-(ii), *supra*, and affirm the rejections.<sup>8</sup>

*2. Claim 2*

Claim 2 depends from claim 1. Appellant relies upon the arguments presented for patentability of claim 1 and presents no separate arguments for patentability of claim 2 over Blake. App. Br. 28. We affirm the rejection of claim 2 for reasons similar to those given above in section 1(a).

*3. Claim 3*

*a. Obviousness over Blake*

Claim 3 depends from claim 1. Appellant relies upon the arguments presented for patentability of claim 1 and presents no separate arguments for

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<sup>8</sup> In these rejections, the Examiner erroneously states that Fernandez arranges the series in a counter-clockwise direction. RAN 88-97. Respondent correctly points out (Resp. Br. 6) that Fernandez actually shows a clockwise arrangement of the series. We hold this to be harmless error, because the correct interpretation of Fernandez, if anything, strengthens the rejection.

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patentability of claim 3 over Blake. App. Br. 28. We affirm this rejection of claim 3 for reasons similar to those given above in section *I(a)*.

*b. Obviousness over Imbert and Wilson*

Appellant's arguments are directed to features recited in claim 1 and are substantially similar to arguments presented for patentability of claim 1 over the Imbert and Wilson references. App. Br. 28-29. We affirm this rejection of claim 3 for reasons similar to those given above in section *I(c)(i)*.

DECISION

The Examiner's decision to reject claims 1-3 is AFFIRMED.

Requests for extensions of time in this *inter partes* reexamination proceeding are governed by 37 C.F.R. §§ 1.956 and 41.77(g).

AFFIRMED

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