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3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			SHAO, PHILLIP Y	
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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* PIERRE LEGARE, GARY E. DWYER, ANDREW MURPHY,  
and SIMON J. SMITH

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Appeal 2015-002444  
Application 12/935,630  
Technology Center 1700

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Before ADRIENE LEPIANE HANLON, KAREN M. HASTINGS, and  
JULIA HEANEY, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> seek our review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1–21 under 35 U.S.C. § 103 as unpatentable over at least the basic combination of Greer et al., ( US 7,419,526 B2, issued Sept. 2, 2008) and Johansson ( US 5,394,870, issued March 7, 1995).<sup>2</sup>

We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> The real party in interest is stated to be 3M Company (App. Br. 2).

<sup>2</sup> The Examiner applies additional prior art to dependent claims 13, 18, and 19 (Ans. 8, 9). Appellants do not present any additional arguments for these rejections (App. Br. 6, 7).

Independent claim 1 is illustrative of the subject matter on appeal (emphasis added to highlight key limitation in dispute):

1. An air filtering device comprising:

a first filter cartridge having a cartridge inlet and a cartridge outlet and comprising a curved filter bed having a concave surface disposed such that air to be filtered passes through the inlet, the curved filter bed, and the outlet;

a blower assembly having a blower inlet in fluid communication with the cartridge outlet and a blower outlet, the blower assembly comprising a motor proximate to the concave surface of the curved filter bed *and wherein the motor has a rotational axis such that the rotational axis is adjacent to the center of curvature of the curved filter bed*, wherein the air filtering device has a low profile.

#### ANALYSIS

Upon consideration of the evidence on this record and each of Appellants' contentions, we find that the preponderance of evidence supports the Examiner's conclusion that the subject matter of Appellants' claims is unpatentable over the applied prior art. We sustain the Examiner's § 103 rejection essentially for the reasons set out by the Examiner in the Answer.

We add the following primarily for emphasis.

Appellants' principal argument regarding claim 1 in the Appeal Brief is that the applied prior art does not teach or suggest that the rotational axis of the motor of the applied prior art combination would have been located "at the center of curvature" of the curved filter bed of Greer (e.g., Reply Br. last line of first page of Remarks), because Greer does not have a center of curvature (e.g., App. Br. 4, 5; Reply Br. *generally*).

It has been established that “the [obviousness] 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.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Likewise, it is also well settled that a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in the art would have reasonably been expected to draw therefrom. *See In re Fritch*, 972 F.2d 1260, 1264–65 (Fed. Cir. 1992).

Appellants’ arguments are not persuasive of reversible error. The Examiner aptly points out that the claims require “adjacent to” a center of curvature (e.g., Ans. 13). The plain meaning of “adjacent to” encompasses next to the center of curvature; it does not limit the claim to the motor axis necessarily being “at” or aligned with the center of curvature of the filter bed as Appellants appear to be urging (e.g. App. Br. 4). As the Examiner de facto determined, one of ordinary skill in the art would have readily appreciated that a motor located at the outlet 32 of Greer would indeed be adjacent to “a center of curvature” of the curved filter bed of Greer (Greer, e.g., Fig. 2; Ans. 13).

Appellants’ contention that the filter bed of Greer does not have a center of curvature is in error as Greer explicitly states its filter may have a center of curvature about one axis, or more axes (Greer, col. 8, l. 48 to col. 9 l. 10). Indeed, Appellants’ own Specification likewise describes its curvature may be defined about one axis, or two or more axes (Spec. 8:19 to Spec. 9:5). Thus, the Examiner’s determination that the claim phrase “adjacent to the center of curvature” encompasses what one of ordinary skill

in the art would have inferred, and/or found obvious, from the design of Greer's filter bed modified to include a blower at 32 was reasonable.

The use of a blower as exemplified by Johansson (for the reasons of relieving the strain on a user's lungs) on the outlet of the Greer filter device would have been *prima facie* obvious as the predictable use of a prior art element for its known function is ordinarily *prima facie* obvious. The rejection is not based upon a bodily incorporation of Johansson's blower into the Greer filter device. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) ("The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art."); *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973) ("Combining the teachings of references does not involve an ability to combine their specific structures.").

Further, Appellants have not asserted that the proposed modification of Greer would have been beyond the capabilities of a person of ordinary skill in the art. Absent such an assertion, we "take account of the inferences and creative steps that a person of ordinary skill in the art would employ," and find a person of ordinary skill in the art would have overcome those difficulties within their level of skill. *KSR Int'l* 550 U.S. at 418; *see also id.* at 421 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton."); *Ball Aerosol & Specialty Container, Inc. v. Limited Brands, Inc.*, 555 F.3d 984, 993 (Fed. Cir. 2009) (under the flexible inquiry set forth by the Supreme Court, the PTO must take account of the "inferences and creative steps," as well as routine steps, that an ordinary artisan would employ)).

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Accordingly, we affirm the Examiner's prior art rejections of the claims under 35 U.S.C. § 103(a) for the reasons given above and presented by the Examiner.

#### DECISION

The Examiner's § 103 rejections are affirmed.

#### TIME PERIOD FOR RESPONSE

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).

AFFIRMED