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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/739,464	01/11/2013	Thomas M. Turner	TURN-50425	5304
116	7590	12/01/2016	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			GUAN, GUANG H	
			ART UNIT	PAPER NUMBER
			3631	
			NOTIFICATION DATE	DELIVERY MODE
			12/01/2016	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* THOMAS M. TURNER

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Appeal 2015-003356  
Application 13/739,464  
Technology Center 3600

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Before EDWARD A. BROWN, WILLIAM A. CAPP, and  
SEAN P. O'HANLON, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Thomas M. Turner (Appellant) appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–7.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative, and reads:

1. An adjustable pipe support comprising:
  - a) a base having a bottom surface configured to rest on a building roof,

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<sup>1</sup> Claim 8 is withdrawn from consideration. Final Act. 1 (Office Action Summary).

- b) parallel rods extending from and secured to said base,
- c) a pipe supporting strut mounted for movement on said rods to a selected height position above said base, and,
- d) quick release clips carried on said strut, said clips having a locking position securing said strut to said rods and a release position permitting movement of said strut on said rods.

Appeal Br. 10 (Claims App.).

#### REJECTION

Claims 1–7 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Neider (US 6,364,256 B1, issued Apr. 2, 2002) and Galassi (US 6,286,661 B1, issued Sept. 11, 2001).

#### ANALYSIS

##### *Claim 1*

The Examiner finds that Neider discloses an adjustable pipe support comprising base 15, parallel rods 19, 20, and pipe supporting strut 38, but does not disclose “quick release clips” as claimed. Final Act. 5–6 (citing Neider, col. 3, ll. 3–5, 47–52, Figs. 11, 12). The Examiner finds that Galassi discloses a support system comprising quick release clips 15', 15" fastened to a block 12 and which have a “locking position” and a “release position” as claimed. *Id.* at 6–7 (citing Galassi, col. 5, l. 58–col. 6, l. 21, Figs. 1, 3); *see also* Ans. 3.

The Examiner determines that it would have been obvious to implement Galassi’s quick release clips 15', 15" on Neider’s rods 19, 20 by fixing block 12 to strut 38 to facilitate convenient height adjustment of the strut on the rods. Final Act. 7.

Appellant contends that Galassi’s squeeze arms could not be incorporated in place of Neider’s nuts and washers. Appeal Br. 8.

Appellant also contends that using quick release spring clips in Neider's pipe support is not reasonably suggested by Galassi. *Id.*

These contentions are not persuasive. Neider discloses a pipe support including lower nuts 28 and upper nuts 30 threaded onto studs 19, 20. Neider, col. 3, ll. 1–7. As shown in Figure 11, lower nuts 28 are rotatable on studs 19, 20 to adjust the position of strut 38. Galassi discloses support member 12 provided on guide bar 14. Galassi, Fig. 3. Plate arms 15', 15" including extensions 22', 22" are fixed to support member 12. *Id.* at col. 5, ll. 29–32, col. 6, ll. 7–9, Fig. 3. Extensions 22', 22" are squeezed to allow support member 12 to be moved along guide bar 14 in direction 27' or 27". *Id.* at col. 6, ll. 7–15, Fig. 3. Accordingly, Neider and Galassi disclose alternative adjustment mechanisms that allow a user to adjust the position of a member mounted to a rod. “[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *KSR Intl. Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (citing *United States v. Adams*, 383 U.S. 39, 50–51 (1966)). Appellant does not provide any persuasive reason why the Examiner's substitution would not yield a predictable result.

Appellant's contention that the Examiner has not provided “reasoning as to how one of ordinary skill in the art, starting with a pipe support known in the art, such as that found in Neider, would modify such a pipe support with the squeezable arms in Galassi” is also not persuasive. *See* Reply Br. 6. To the extent Appellant is contending that the structure of Neider must be physically combinable with the structure of Galassi, we disagree. “It is well-established that a determination of obviousness based on teachings from

multiple references does not require an actual, physical substitution of elements.” *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citations omitted); *see also In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”); *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 . . .”). Accordingly, Appellant’s contention is not persuasive of Examiner error.

The Examiner also finds that “the mere replacement of a position adjustment mechanism on a rod with another known mechanism is within the level of ordinary skill in the art.” Ans. 3–4. Appellant fails to provide a persuasive reason, or evidence, to show why the Examiner’s proposed modification of Neider in view of Galassi would *not* have been within the level of skill of one of ordinary skill in the art. Accordingly, we sustain the rejection of claim 1 as unpatentable over Neider and Galassi.

### *Claims 2 and 3*

Claim 2 depends from claim 1 and recites that  
each clip comprises a first leg fixed to said strut and a second leg having a hole through which a rod extends, said legs forming an included angle greater than 90 degrees, and said second leg being flexible so that it is configured to be pressed from said locking position to said release position.

Appeal Br. 10 (Claims App.).

The Examiner finds that Galassi discloses these limitations. Final Act. 7–8. The Examiner provides an annotated copy of Figure 3 of Galassi identifying the “first leg,” “second leg,” and “included angle.” *Id.* at 8.

Appellant contends that the claimed structure is not disclosed by Galassi. Appeal Br. 8. The Examiner responds that Figure 3 of Galassi shows two quick release clips 15', 15", each including all the limitations of claim 2. Ans. 5. In support, the Examiner provides a second annotated copy of Figure 3 of Galassi showing the locations of the "first leg," "second leg," and "included angle" for each of clip 15' and clip 15". *Id.* at 6.

Appellant also contends that Galassi uses two clips in combination on the same rod to allow locking, whereas,

[r]ather than using two clips on one rod where the clips are elastically preloaded by reducing the natural bend of the clips, *claim 2 requires each clip to be fixed to the strut at one end and have a hole for a rod to extend at the other end. Claim 2 also requires a clip for each rod.*

Reply Br. 7 (emphasis added).

These contentions are not persuasive. The Examiner's second annotated Galassi Figure 3 shows how each of the first and second clips is fixed to a support at one end and also has a hole (bores 20', 20" of plate arms 15', 15", respectively). Claim 2 does not exclude the structure of Galassi's plate arms 15', 15". Claim 2 also does not recite any limitation that "requires a clip for each rod." Thus, we sustain the rejection of claim 2, and claim 3 depending therefrom, as unpatentable over Neider and Galassi.

#### *Claim 4*

Claim 4 depends from claim 1 and recites that "said strut is a channel, and further comprising blocks in ends of the channel, said clips being fastened to said blocks, and said clips and blocks having holes through which said rods extend." Appeal Br. 10 (Claims App.). The Examiner determines that the combination of Neider and Galassi discloses these

limitations. Final Act. 8. Particularly, the Examiner explains that, in the proposed combination, Neider's strut 38 is a channel, Galassi's blocks 12 are provided in the ends of the channel, clips 15', 15" are fastened to blocks 12, and blocks 12 and clips 15', 15" have holes through 19, 20 of Neider. *Id.*

Appellant contends that the Examiner ignored "recited structure of blocks in the ends of pipe support channel, both the recited clips being fastened to the blocks and the clips and blocks having holes through which the recited rods extend." Appeal Br. 8. Appellant also contends that Galassi does not suggest modifying Neider to meet the recited construction. *Id.*

The Examiner responds that, in the combination, one block 12 of Galassi is positioned in a respective end of channel 38 of Neider, two clips 15', 15" of Galassi are fastened to each block 12, and clips 15', 15" and blocks 12 of Galassi have holes 19, 20', 20" through which Neider's rods 19, 20 extend. Ans. 7. Appellant replies that one of ordinary skill in the art "would not arrive at blocks that fit within the strut of a pipe support such as Neider by the teaching of the support member of Galassi." Reply Br. 7–8.

In Neider's pipe support, nuts 30 of the adjustment mechanism are disposed in a channel of strut 38. Providing Galassi's support members 12 in the ends of the channel of Neider's strut 38 would support clips 15', 15" and allow a user to access and squeeze extensions 22', 22" to adjust the position of strut 38 on rods 19, 20. Appellant's contentions do not apprise us of any error in the Examiner's findings or reasoning. Thus, we sustain the rejection of claim 4 as unpatentable over Neider and Galassi.

*Claims 5–7*

Claim 5 depends from claim 4 and recites that "said clips have first legs fastened to said blocks and second legs, said legs forming an included

angle greater than 90 degrees, and said second legs being flexible between said locking position engaging said rods and said release position permitting movement of said strut on said rods.” Appeal Br. 10 (Claims App.). The Examiner determines that the combination of Neider and Galassi teaches these limitations. Final Act. 9.

Appellant contends that Galassi does not suggest a construction having “first spring clips” fastened to ends of its blocks. Appeal Br. 9. The Examiner explains that the combination of Neider and Galassi would include two quick release clips 15', 15" fastened to a block 12 positioned at each end of channel 38 of Neider. Ans. 7 (citing Neider Fig. 11; Galassi Fig. 3). Consequently, the clips at each end of channel 38 would be fastened to an end of their respective block. *Id.* Appellant responds that claim 5 requires a leg of each clip to be fastened to each block, and one block is at each end of the strut. Reply Br. 8. Appellant states that “the Examiner’s contention that Galassi shows two clips fastened to an end of the block is incorrect.” *Id.*

Appellant does not explain persuasively why the Examiner’s position that Galassi discloses two clips 15', 15" fastened to an end of block 12 is incorrect, or why the combination otherwise lacks any limitation of claim 5. Thus, we sustain the rejection of claim 5, and claims 6 and 7 depending therefrom, as unpatentable over Neider and Galassi.

#### DECISION

We affirm the Examiner’s decision to reject claims 1–7.

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

AFFIRMED