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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/691,076	11/30/2012	Michael W. N. Wilson	009044-00008	1052
28827	7590	01/25/2019	EXAMINER	
GABLE & GOTWALS 100 WEST FIFTH STREET, 10TH FLOOR TULSA, OK 74103			TROUTMAN, MATTHEW D	
			ART UNIT	PAPER NUMBER
			3671	
			NOTIFICATION DATE	DELIVERY MODE
			01/25/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL W. N. WILSON

Appeal 2018-004741
Application 13/691,076
Technology Center 3600

Before LINDA E. HORNER, JAMES P. CALVE, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the
Examiner's Decision rejecting claims 27–33. We have jurisdiction under 35
U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

Claim 27 is the sole independent claim on appeal, and claims 28–33 depend from claim 27. Claim 27 is reproduced below:

27. A method of clearing boulders from a path on a seabed comprising the steps of:

positioning a plow having a forward skid and aft port and starboard moldboards bow-forward in a direction of an initial seabed path with the skid and moldboards on a floor of the seabed; and

propelling the plow along the initial seabed path to cause of the moldboards to clear boulders from the initial seabed path to the port and starboard sides of the plow.

REJECTIONS

1. Claims 27–31 are rejected under 35 U.S.C. § 103 as being unpatentable over Journal (A. R. Schultz and R. J. Brown, XP-001334447, 492 Oil and Gas Journal - vol. 79, no. 6, 77–80, published Feb. 1981) and Wharton (US 4,245,927, issued Jan. 20, 1981).

2. Claims 32 and 33 are rejected under 35 U.S.C. § 103 as being unpatentable over Journal, Wharton, and Ecosse Subsea Systems, *SCAR pre-cut trenching plough* YouTube video, <https://www.youtube.com/watch?x-yt-ts=1421914688&v=clPyXqHq6Yw&x-yt-cl=84503534#t=19>, posted Nov. 1, 2010¹.

OPINION

The Examiner finds that Journal teaches the plow recited in method claim 27, but “is silent as to the use of the underwater plow and therefore

¹ The web address for the YouTube video referenced by the Examiner does not appear to be correct, as it does not direct one to a trenching plough video.

lacks the explicit teaching of propelling the plow along the seabed to move boulders out of the path of the plow.” Final Act. 2. The Examiner reasons that it would have been obvious to use Journal’s plow to clear boulders based on Wharton’s teaching that “it is old and well known in the art to utilize an underwater plow for moving boulders out of a desired path on the seabed.” *Id.* at 3 (citing Wharton 5:10–20).

Appellant responds that “the Examiner cites no evidence that JOURNAL’s fixed and/or floating moldboards travel on the floor of the seabed.” Appeal Br. 9. Appellant contends, for example, that JOURNAL and Wharton are trenching plows which were never used to clear boulders. *Id.* at 16.

The Examiner attempts to address Appellant’s contentions, asserting that even if Journal’s plow is a trenching plow, “this does not prevent the plow of JOURNAL from being capable of clearing boulders.” Ans. 4. The Examiner explains that “the combination as a whole is viewed to constitute a ‘boulder clearing plow’ as Wharton teaches wherein it is known to use an underwater plow for clearing boulders.” *Id.*

Wharton describes an option of “a skeleton plough . . . to remove boulders” that “could be provided at the front of the skids.” Wharton 5:15–18. The Examiner does not propose any modification to the plow disclosed in Journal. Whether Wharton discloses the option of including additional structure on its plow for boulder clearing does not mean one skilled in the art would have found it obvious to use the particular plow disclosed in Journal in the manner recited in the method of claim 27. The preponderance of the evidence before us does not support the Examiner’s assertion that the

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particular plow disclosed in Journal, without modifications, would be used to clear boulders.

For at least this reason, we do not sustain the Examiner's decision to reject claim 27, or claims 28–33, which depend from claim 27.

DECISION

We REVERSE the Examiner's decision to reject claims 27–33 as unpatentable under 35 U.S.C. § 103.

REVERSED