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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/476,664	09/03/2014	Michael V. Smeja	331107.00003	4640
35614	7590	06/16/2020	EXAMINER	
Reed Smith, LLP 10 SOUTH WACKER DRIVE CHICAGO, IL 60606-7507			WALRAED-SULLIVAN, KYLE	
			ART UNIT	PAPER NUMBER
			3635	
			NOTIFICATION DATE	DELIVERY MODE
			06/16/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL V. SMEJA

Appeal 2019-000878
Application 14/476,664
Technology Center 3600

Before MICHAEL L. HOELTER, JAMES P. CALVE, and
MICHELLE R. OSINSKI, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1, 2, 5–12, 26, 39–49, and 52. An oral hearing was held on May 14, 2020.² We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Sno-Gem Incorporated, which “is a related entity to Smeja Enterprises, LLC.” Appeal Br. 1.

² The record includes a transcript of the oral hearing (“Tr.”).

THE CLAIMED SUBJECT MATTER

Claims 1, 26, 39, and 52 are independent. Claim 1 is reproduced below.

1. A roof mounting bracket for securing accessories to seamed panel roof systems, the roof mounting bracket being mounted on a roof panel seam in a manner that creates a generally wave-shaped distortion in the roof panel seam, the roof mounting bracket comprising:

a first member, the first member having coupled thereto two or more first projections disposed on a first side of the roof panel seam, wherein the two or more first projections define a space between each of the two or more first projections;

a second member disposed opposite the first member on an opposite side of the roof panel seam, the second member having coupled thereto one or more second projections, wherein the one or more second projections are positioned opposite the space defined between the two or more first projections;

wherein the two or more first projections are movable relative to the first member to engage the first side of the roof panel seam to create two or more first deformations in the roof panel seam;

wherein the one or more second projections are movable relative to the second member to engage the opposite side of the roof panel seam to create one or more second deformations in the roof panel seam in the spaces defined between the two or more first deformations, thereby creating the generally wave-shaped distortion of the roof panel seam;

wherein the two or more first projections and the one or more second projections comprise screws, and each screw has a head;

wherein the screws are coupled to the first member and the second member by threaded fasteners formed in the first member and the second member; and

wherein the heads of each of the screws directly engage the roof panel seam and create the first two or more deformations and the second one or more deformations in the roof panel seam

and create the generally wave-shaped distortion in the roof panel seam.

Appeal Br. 20–21(Claims App.).

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Alley	US 6,318,028 B2	Nov. 20, 2001
Haddock '196	US 2002/0088196 A1	July 11, 2002
Hockman	US 2007/0051053 A1	Mar. 8, 2007
Haddock '711	US 2013/0145711 A1	June 13, 2013

REJECTIONS

- I. Claims 1, 2, 8, 26, 39, 40, 44, 45, and 52 stand rejected under 35 U.S.C. § 103 as unpatentable over Haddock '711 and Alley. Final Act. 2–14.
- II. Claims 5 and 41 stand rejected under 35 U.S.C. § 103 as unpatentable over Haddock '711, Alley, and Hockman. *Id.* at 14–15.
- III. Claims 6, 7, 42, and 43 stand rejected under 35 U.S.C. § 103 as unpatentable over Haddock '711, Alley, and Haddock '196. *Id.* at 15–16.
- IV. Claims 9–12 and 46–49 stand rejected under 35 U.S.C. § 103 as unpatentable over Haddock '711, Alley, and Official Notice. *Id.* at 16–17.

OPINION

Rejection I

Appellant argues claims 1, 2, 8, 26, 39, 40, 44, 45, and 52 as a group. Appeal Br. 7–15. We select claim 1 as representative of the issues that

Appellant presents in the appeal, and claims 2, 8, 26, 39, 40, 44, 45, and 52 stand or fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Haddock teaches all of the limitations of independent claim 1, except for teaching “the roof mounting bracket being mounted on a roof panel seam in a manner that creates a generally wave-shaped distortion in the roof panel seam, thereby creating the generally wave-shaped distortion of the roof panel seam, the one or more second deformations in the roof panel seam in the spaces defined in [between] the two or more first deformations.” Final Act. 3–4. The Examiner finds that Alley teaches the missing limitation. *Id.* at 4 (“Alley discloses the roof mounting bracket (Fig. 18b) being mounted on a roof panel seam (shown deformed in Fig. 19A) in a manner that creates a generally wave-shaped distortion (Fig. 19A) in the roof panel seam (Fig. 19A), thereby creating the generally wave-shaped distortion of the roof panel seam (Fig. 19A), the one or more second deformations in the roof panel seam in the spaces defined in the two or more first deformations (as shown in Fig. 19A, the bottom projections are shown offset in relation to the top set of projections. In doing so, the left projection on the bottom is disposed in the space defined between the top two projections).”). The Examiner concludes that it would have been obvious

to modify the bracket of Haddock [’711] wherein the roof mounting bracket being mounted on a roof panel seam in a manner that creates a generally wave-shaped distortion in the roof panel seam, thereby creating the generally wave-shaped distortion of the roof panel seam, the one or more second deformations in the roof panel seam in the spaces defined in the two or more first deformations as disclosed by Alley in order to place one projection between the others such that the bracket is unlikely to move in the longitudinal direction so as to securely

grasp the seam. Moreover, it has been held that combining prior art elements (bracket of Haddock [’711] with the hole positioning of Alley) according to known methods to yield predictable results (fastening), simple substitution of one known element (hole positioning of Haddock [’711]) for another (hole positioning of Alley) to obtain predictable results (fastening), and/or use of known technique (hole positioning of [Alley]) to improve similar devices (methods, or products) (bracket of Haddock [’711]) in the same way are within the level of ordinary skill in the art. *See* MPEP 2143 (I).

Id. at 4–5.

Appellant argues that “Haddock [’711] clearly requires the fasteners to be disposed along a common axis, thereby teaching away from the suggested modification of the fasteners’ alignment.” Appeal Br. 11 (emphasis omitted); *see also* Haddock ’711 ¶¶ 58, 59, 61 (reproduced by Appellant on pages 9–10 of Appeal Brief). Such an argument is unconvincing. In order to “teach away,” a reference must “criticize, discredit, or otherwise discourage the solution claimed.” *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Here, Appellant has not identified any passage in Haddock ’711 that actually criticizes, discredits, or discourages the use of offset or staggered hole positioning. We note that “[a] reference does not teach away . . . if it merely expresses a general preference for an alternative invention but does not ‘criticize, discredit, or otherwise discourage’ investigation into the invention claimed.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009) (quoting *Fulton*, 391 F.3d at 1201).

Although Haddock ’711 discloses moving opposing fasteners along a common axis in opposite directions in order to compress or collapse hollow seam rib 86, thereby resulting in contact between opposing internal surfaces

of hollow seam rib 86, Appellant has not identified any passage in Haddock '711 that actually criticizes, discredits, or discourages offset or staggered movement of opposing fasteners. Haddock '711 indicates that “[e]ach instance” [of contact between opposing internal surfaces of hollow seam rib 86] provides an enhanced lift-off resistance—a resistance to pulling the mounting device 10 off of the hollow seam rib 86.” Haddock '711 ¶ 63. In other words, Haddock more generally attributes enhanced lift-off resistance to contact between opposing internal surfaces of hollow seam rib 86, as opposed to the specific use of a common axis for opposing fasteners. So long as the offset or staggered hole positioning would continue to result in contact between opposing internal surfaces of hollow seam rib 86 as urged by Haddock '711, we are not persuaded that Haddock '711 teaches away from offset or staggered hole positioning.

Although Appellant argues that “the modified Haddock ['711], with staggered seam fasteners would not cause the sides to actually contact at the indentation points” (Reply Br. 7), Appellant also suggests that “the modification of the location of the seam fasteners in view of Alley would make no difference on the seam fasteners['] ability to hold the mounting block in place” (*id.* at 4 (emphasis omitted)). In our view, the latter is the better position in that the indentations appear to extend along the length of the interior surfaces of the hollow seam rib (Haddock '711 Fig. 2A), such that contact of indentations in an offset or staggered fastener configuration would still be possible.

Appellant next argues that “Haddock ['711], as modified by Alley, would not function as claimed by the Examiner.” Appeal Br. 11. More particularly, Appellant argues that “[a]s Haddock ['711] relies on, and

indeed requires, the hollow interior and movement of fasteners 74 along a common axis, Haddock [’711] modified as shown in Alley would not create a wave shaped formation as recited in the claims because each fastener 74 in Haddock [’711] would contact with an *opposing* side wall of a **hollow** seam 86” and “would not create the wave shaped deformation and would not operate in the manner intended by Haddock [’711].” *Id.* at 13; *see also* Reply Br. 7 (“the staggered configuration would not create the wave shaped distortion because the fasteners on the opposite sides would only act on and deflect the rib sidewall on the side that they were on” and “[t]herefore, Haddock [’711], even as modified by Alley, would not create a wave shaped distortion”).

We are not persuaded that offset or staggered fasteners, each contacting an opposing side wall of a hollow seam rib so as to compress that side wall in a manner sufficient to cause contact between the opposing internal surfaces of the hollow seam rib as required in Haddock ’711, would fail to create a wave shaped formation as recited in the claim. As explained by the Examiner, “[m]oving the location of the compression of the fasteners does not preclude compression altogether, and the fasteners would still function to collapse the sidewalls no matter where each fastener is laterally aligned” and “[u]pon collapse, the sidewalls 88a/88b are crimped together.” Ans. 5.

We have considered Appellant’s argument that “the Examiner cites to nothing in Haddock [’711]’s disclosure that suggests that fasteners would be able to ‘crimp’ the side walls of the seams together sufficient to create a wave shaped distortion.” Reply Br. 5; *see also* Tr. 12:18–23 (“[I]n order to create the wave-shaped deformation of the claim, the fasteners have to go

beyond merely pinching something in between it or extended to the point that they are shifting the two sides of the seam essentially in a plane past one another in order to create a wave.”). We, however, are not persuaded that creation of a wave-shaped deformation as set forth in the claim requires such specific deformation as urged by Appellant, nor requires any deformation beyond that which the Examiner has already explained. As explained by the Examiner, “[t]here is no claim language that requires the wave shape formation be in a single plane, or be located in a single, flat or planar seam.”

Ans. 5. In our view, the alternating, offset collapse of (i) a first side wall of a hollow seam and (ii) a second opposing side wall of a hollow seam, so as to crimp the side walls together in each instance, creates a succession of curves in the hollow seam rib that constitutes a wave-shaped distortion according to the claim in the absence of evidence or persuasive reasoning supporting that such an interpretation of a “generally wave-shaped distortion” is unreasonable.

Appellant further argues that “the Examiner fails to provide a reason to modify Haddock [’711] in view of Alley.” Reply Br. 2 (capitalization omitted). Appellant asserts that “[t]he Examiner does not point to any teaching, suggestion or motivation to modify the location of the fasteners.” *Id.* (citing *Securus Techs. Inc. v. Global Tel*link Corp.*, 2017 WL 2992516, *4 (Fed. Cir. 2017)). To the extent Appellant is insisting on an explicit teaching, suggestion, or motivation in the cited references for the Examiner’s proposed modification, such an argument has been foreclosed by the Supreme Court. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 415, 419 (2007) (stating that a rigid insistence on teaching, suggestion, or motivation is incompatible with its precedent concerning obviousness). Rather, the

Court requires that we look to whether the Examiner has provided “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited with approval in *KSR*, 550 U.S. at 418).

The Examiner reasons that the proposed modification to Haddock ’711 so as to create a generally wave-shaped distortion in the roof panel seam in which one projection would be placed between two other opposing projections would make the bracket “unlikely to move in the longitudinal direction so as to securely grasp the seam.” Final Act. 5. Although Appellant argues that “the modification would provide no benefit to the system disclosed in Haddock [’711]” (Reply Br. 3), Appellant does not identify in the briefing any flaw in the Examiner’s findings or reasoning with respect to the advantage of preventing movement along the roof panel seam in the longitudinal direction.

Appellant argued at the oral hearing that “the pressure on the respective sides of the seam are going to be less . . . in a staggered configuration” and wouldn’t “provide the lift-off resistance that’s noted in Haddock [’711].” Tr. 13:12–15, 14:2–3; *see also id.* at 15:14–19 (“[I]t wouldn’t have been obvious to somebody [of] ordinary skill in the art to read Haddock [’711] and understand that they can stagger the configuration of the screws and still retain that improved lift-off resistance that Haddock [’711] describes.”). Appellant further explains that “Haddock [’711] has an improved lift-off resistance because it has the two members that are pinching those two sides of the seam. And then they are also creating a mechanical barrier essentially to the crimped top portion of the seam. If you were to pull on the block, those two opposed pinching members would abut a

crimped portion of the seam.” Tr. 16:4–11. Appellant contrasts the configuration described in Haddock ’711 “[w]ith [Haddock ’711 being modified to have] the wave deformation,” noting that “you now have the seam that is essentially . . . bending in the direction that it is being acted on by each of the opposed projections. And there is no longer that mechanical block that’s formed between the two opposed members and the crimped portion of the seam on the top.” *Id.* at 16:11–17. Appellant suggests that such a potential negative effect on lift-off resistance, coupled with the fact that “the path set out in Alley . . . would increase the difficulty and cost in manufacturing by requiring machining non-linear paths for opposing seam fasteners without any added benefit” (Reply Br. 4) would discourage one of ordinary skill in the art from modifying Haddock ’711 with the teachings of Alley.

On the record before us, we do not agree that one of ordinary skill in the art would have been discouraged from modifying Haddock ’711 to stagger or offset the fasteners in order to prevent movement of a bracket in the longitudinal direction of a roof panel seam (Final Act. 5), even if that might have potentially had a negative effect on lift-off resistance and/or might have increased manufacturing complexity/cost. Our reviewing court has recognized that a given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate any or all reasons to combine teachings. *See Medichem, S.A. v. Rolabo, S.I.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (explaining that if there are tradeoffs involved regarding features, such things do not necessarily prevent the proposed combination); *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 n.8 (Fed. Cir. 2000) (“The fact that the motivating benefit comes at the

expense of another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another. Instead, the benefits, both lost and gained, should be weighed against one another.”). Given (i) the acceptable consideration of tradeoffs, (ii) Appellant’s failure to establish error in the Examiner’s position that modifying Haddock ’711 to have an offset and/or staggered configuration would advantageously help prevent movement of a bracket in the longitudinal direction of a roof panel seam, and (iii) that any potential negative effect on lift-off resistance due to offset or staggered fasteners as identified by Appellant might be countered by a wave shape (as opposed to a linear shape) as well as the presence of alternating side forces, we are not persuaded that the potential negative effect on lift-off resistance and/or increase in manufacturing complexity/cost outweighs the benefit in preventing longitudinal movement. In sum, we are not persuaded that the Examiner’s articulated reasoning as to why it would have been obvious to modify Haddock ’711’s mounting device lacks rational underpinnings.

Appellant further argues that “Alley provides insufficient disclosure of [Appellant’s] claimed limitation.” Appeal Br. 13. More particularly, Appellant argues that “Alley does not disclose the use of the screw configured to directly engage the seam as claimed” and “does not disclose the use of the mounting assembly that does not include a clamping pad 11.” *Id.* at 14. The Examiner did not rely on Alley for teaching screws configured to directly engage the seam or for the lack of a clamping pad. Instead, the Examiner relied on Haddock ’711 for “disclosing heads 76 of the screws 74 directly engaging the roof panel seam 90 to create the first two or more deformations in Fig. 2F.” Ans. 6. As explained by the Examiner,

“Alley was solely relied upon as disclosing, ‘the roof mounting bracket being mounted on a roof panel seam in a manner that creates a generally wave-shaped distortion in the roof panel seam’” *Id.* That Alley lacks any other claim limitations is not persuasive of error in the Examiner’s rejection.

Appellant additionally argues that Alley “teaches away from using singular contact surface in the ball and screw arrangement” and “teaches that direct engagement by the screw is a negative to be avoided.” Appeal Br. 14 (citing Alley 1:61–63, 2:44–58). Even assuming *arguendo* that Alley teaches away from direct engagement by a screw, this is not persuasive of error in the Examiner’s rejection which does not rely on a modification of Alley. Instead, the Examiner’s rejection is based on a modification of Haddock ’711, which already teaches direct engagement of a screw with a roof panel seam, solely so as to utilize Alley’s hole positioning.

Appellant also argues that “Graham factors of non-obviousness rebut any potential prima facie case of obviousness based on [the] Alley patent.” Appeal Br. 14 (citing MPEP § 2141). More particularly, Appellant argues that the Declaration of Jim Carpenter (Feb. 10, 2017) (hereinafter “the Carpenter Declaration” or “Carpenter Decl.”) “describes the significant installation difficulties that would be associated with attempting to install the multi-part Alley device and contrasts those deficiencies with the easy installation of the claimed device.” *Id.* at 14–15 (citing Carpenter Decl. ¶¶ 9–10). Appellant continues that the Carpenter Declaration also describes (i) “the potential complete failure of the Alley device should the screw back out due to thermal contraction and expansion”; and (ii) “the substantial

commercial success of the present invention as contrasted with the Alley device.” *Id.* at 15 (citing Carpenter Decl. ¶¶ 9–10).

We do not find the Declaration to be sufficient to rebut the Examiner’s prima facie case of obviousness. Even assuming *arguendo* that the declaration testimony is sufficient to establish deficiencies or problems of the Alley device relative to the claimed device, we do not find such evidence to be effective to rebut a prima facie case of obviousness that is based on a combination of Haddock ’711 and Alley. In other words, the Carpenter Declaration compares the claimed subject matter to Alley, but does not compare the claimed subject matter to Haddock ’711. *See, e.g., In re Burckel*, 592 F.2d 1175 (CCPA 1979) (citing *In re Wright*, 569 F.2d 1124 (CCPA 1977)) (“A Rule 132 [A]ffidavit, to be effective, must compare the claimed subject matter with the closest prior art.”); *see also In re Merchant*, 575 F.2d 865, 868 (CCPA 1978) (emphasis omitted) (“A comparison of the claimed invention with the disclosure of each cited reference to determine the number of claim limitations in common with each reference, bearing in mind the relative importance of particular limitations, will usually yield the closest single prior art reference.”). Because there is never a comparison between the claimed subject matter and Haddock ’711, the Declaration fails to establish that any benefit or advantage of the claimed subject matter is due to features recited in the claims and not merely due to those features that might be present in prior art such as Haddock ’711. In sum, the Carpenter Declaration does not compare the claimed invention with Haddock ’711 in any way so as to be effective to rebut a prima facie case of obviousness that is based on combination of Haddock ’711 and Alley.

We next consider Appellant’s assertion of “the substantial commercial success of the present invention.” Appeal Br. 15. Appellant has explained that products incorporating the claimed invention have “replace[d] some of [Appellant’s] other products that do not embody the invention” because “[t]he response and demand for these products from contractors and distributors has been so overwhelmingly positive.” Carpenter Decl. ¶ 11. Appellant provides additional testimony that “the sales of the clamps that are the subject of the patent have more than doubled since 2014 and growth rates continue to be on the rise” and also that there has been “a substantial increase in . . . the total revenue attributable to these products.” *Id.* Appellant maintains that “[t]his increase in sales show that Sno-Gem’s existing and new customers are switching to products that embody the invention.” *Id.* Appellant points out that “[o]nly a handful of companies operate in this market” of “[t]he snow guard industry.” *Id.* ¶ 13. Appellant adds that it is the Declarant’s belief that the “commercial success is attributable to the design of the present invention” and “[t]his belief is because [Appellant’s] customers have commented on the unmatched strength, ease of installation, and versatility of [Appellant’s] products that embody the invention.” *Id.* ¶ 11.

“In considering evidence of commercial success, care should be taken to determine that the commercial success alleged is directly derived from the invention claimed, in a marketplace where the consumer is free to choose on the basis of objective principles, and that such success is not the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to applicant or assignee, or other business events extraneous to the merits of the claimed invention, etc.” MPEP § 716.03(b)

(citing *In re Mageli*, 470 F.2d 1380 (CCPA 1973) (conclusory statements or opinions that increased sales were due to the merits of the invention are entitled to little weight) and *In re Noznick*, 478 F.2d 1260 (CCPA 1973)). Here, the Carpenter Declaration does not provide sufficient evidence to support its asserted belief that increased sales were due specifically to the claimed invention as opposed to any of numerous other business reasons. For example, any commercial success might instead be due to the small number of companies operating in the market and/or Appellant's existing hold in the market. *See, e.g., Pentec, Inc. v. Graphic Controls Corp.*, 776 F.2d 309 (Fed. Cir. 1985) (commercial success may have been attributable to extensive advertising and position as a market leader before the introduction of the patented product).

Appellant provided only Mr. Carpenter's statement that customers purchased the clamps specifically because of "using three or more projections configured to engage the seam to create multiple deformation[s] in the roof panel seam that generate a wave-shaped distortion" based on customer comments regarding "strength, ease of installation, and versatility." Carpenter Decl. ¶ 11. This statement is evidence only of Mr. Carpenter's opinion as to why customers purchased the clamps. Appellant failed to provide any declarations or statements from customers themselves to explain why customers purchased the clamps. Appellant has failed to provide adequate proof that sales "were a direct result of the unique characteristics of the claimed invention—as opposed to other economic and commercial factors unrelated to the quality of the patented subject matter." *In re Huang*, 100 F.3d 135, 140 (Fed. Cir. 1996); *see also id.* (holding that "applicant must submit some factual evidence that demonstrates the nexus

between the sales and the claimed invention—for example, an affidavit from the purchaser explaining that the product was purchased due to the claimed features”); *see also Cable Elec. Prods. V. Genmark, Inc.*, 770 F.2d 1015, 1026 (Fed. Cir. 1985) (“[A] nexus between the merits of the claimed invention and the evidence of secondary considerations is required in order for the evidence to be given substantial significance in an obviousness decision.”) (internal quotation marks omitted). Having fully considered Appellant’s evidence of nonobviousness, including the arguments pertaining to the advantages and commercial success of the claimed invention relative to Alley’s device, we agree with the Examiner that the evidence of obviousness, on balance, outweighs the evidence of nonobviousness.

For the foregoing reasons, we sustain the rejection of claim 1, and claims 2, 8, 26, 39, 40, 44, 45, and 52 falling therewith, under 35 U.S.C. § 103 as unpatentable over Haddock ’711 and Alley.

Rejection II

Dependent claim 5 depends indirectly from independent claim 1 and recites “a notch in third member for aligning the roof panel seam within space.” Appeal Br. 21 (Claims App.). Dependent claim 41 depends indirectly from independent claim 39 and recites “a notch in said third wall for aligning said roof panel seam within said second space [defined by the first arm, second arm and third arm].” *Id.* at 25 (Claims App.). In rejecting claim 5 and 41, the Examiner acknowledges that Haddock ’711 “fails to disclose . . . a notch in third member for aligning roof panel seam within space.” Final Act. 15. The Examiner finds that Hockman teaches “a notch (Fig 2[,] 6) in third member (top member) for aligning roof panel seam within space (6 is capable of use for alignment, as this is a statement of

intended use).” *Id.* That is, the Examiner takes the position that “[n]otch 6 of Hockman is capable of helping align the roof panel seam in space.” Ans. 8. More particularly, the Examiner takes the position that “attachment to 7/8 of Hockman would straighten and align the bracket member, which would in turn align the roof panel seam in space.” *Id.* The Examiner concludes that it would have been obvious “to modify the bracket of Haddock [’711] with the notch of Hockman in order to simplify attachment to another object by allowing a slide over connection.” Final Act. 15 (citing Hockman ¶ 19).

Appellant replies that “the notch disclosed in [the] Hockman reference could not be used in the way described by the Examiner.” Reply Br. 7 (capitalization omitted). Appellant further replies that the Examiner’s position which relies on engagement of Hockman’s snow bar 8 with slots 7 with grooves 6 in Hockman’s mounting block/bracket so as to align Hockman’s mounting block/bracket, and, in turn, align a roof panel seam (disposed within Hockman’s mounting block/bracket) in space is speculation, which is insufficient to support the rejection. *Id.*

The Examiner has not explained adequately how Hockman’s notch 6 is capable of aligning a roof panel seam within the space defined by the first, second, and third members making up the U-shaped bracket or mounting block. That is, the Examiner has not explained adequately how attachment of snow rail 8 with slots 7 over groove 6 in the U-shaped mounting block/bracket so as to straighten the U-shaped mounting block/bracket would have any effect on alignment of a roof panel seam within the space defined by the first, second, and third members of the U-shaped mounting block/bracket. Hockman describes that “[s]ince there are many different raised seam shapes, the shape of the slot 3 and 4 will be determined by the

shape of the profile to which it will be attached.” Hockman ¶ 14, Figs. 2–3, 6. Thus, it appears that Hockman contemplates that slot 3, 4 of the mounting block/bracket will be shaped specifically to correspond to the profile of the roof panel seam. It does not appear that engagement between grooves 7 of snow rail 8 and groove 6 in the U-shaped mounting block/bracket affects the alignment of a roof panel seam within the specifically-shaped space defined by the first, second, and third members of the U-shaped mounting block/bracket.

For the foregoing reasons, we do not sustain the rejection of claims 5 and 41 under 35 U.S.C. § 103 as unpatentable over Haddock ’711, Alley, and Hockman.

Rejections III and IV

In contesting the rejections of claims 6, 7, 9–12, 42, 43, and 46–49, Appellant relies on the same arguments and reasoning we found unpersuasive in connection with independent claim 1. *See* Appeal Br. 7–15. Accordingly, we also sustain the rejections, under 35 U.S.C. § 103, of, claims 6, 7, 42, and 43 as unpatentable over Haddock ’711, Alley, and Haddock ’196, and claims 9–12 and 46–49 as unpatentable over Haddock ’711, Alley, and Official Notice.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 8, 25, 39, 40, 44, 45, 52	103	Haddock ’711, Alley	1, 2, 8, 26, 39, 40, 44, 45, 52	

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
5, 41	103	Haddock '711, Alley, Hockman		5, 41
6, 7, 42, 43	103	Haddock '711, Alley, Haddock '196	6, 7, 42, 43	
9–12, 46–49	103	Haddock '711, Alley, Official Notice	9–12, 46–49	
Overall Outcome			1, 2, 6–12, 26, 39, 40, 42–49, 52	5, 41

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

AFFIRMED IN PART