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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/274,178	05/09/2014	Felix L. SORKIN	1101-357	7292
24106	7590	03/20/2020	EXAMINER	
Egbert Law Offices, PLLC 1001 Texas Ave., Suite 1250 Houston, TX 77002			LINFORD, JAMES ALBERT	
			ART UNIT	PAPER NUMBER
			3679	
			NOTIFICATION DATE	DELIVERY MODE
			03/20/2020	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* FELIX L. SORKIN

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Appeal 2019-001707  
Application 14/274,178  
Technology Center 3600

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Before BRETT C. MARTIN, MICHELLE R. OSINSKI, and JILL D. HILL,  
*Administrative Patent Judges.*

OSINSKI, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1, 2, 5–7, 10, 11, 18, and 20.<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> 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 the inventor, Felix L. Sorkin. Br. 5.

<sup>2</sup> Claims 3, 4, 8, 9, 12–17, and 19 are cancelled. Final Act. 2; Br. 23–25 (Claims App.).

## THE CLAIMED SUBJECT MATTER

Claims 1 and 18 are independent. Claim 1 is reproduced below.

1. A duct coupling system comprising:
  - a first concrete segment having an end surface;
  - a first duct positioned in said first concrete segment so as to have an end extending outwardly of said end surface, said first duct having a pair of ridges extending circumferentially outwardly thereof, said pair of ridges being in spaced relation to each other;
  - a second concrete segment having an end surface facing said end surface of said first concrete segment;
  - a second duct positioned in said second concrete segment so as to have an end extending outwardly of said end surface of said second concrete segment in a direction toward the end of said first duct, said second duct having a pair of ridges extending circumferentially outwardly thereof, said pair of ridges of said second duct being in spaced relation to each other;
  - a first seal positioned over an exterior of said first duct between said pair of ridges of said first duct, said first seal having an outer diameter greater than an outer diameter of each of said pair of ridges of said first duct;
  - a second seal positioned over an exterior of said second duct between said pair of ridges of said second duct, said second seal having an outer diameter greater than an outer diameter of each of said pair of ridges of said second duct; and
  - a tubular member slidably positioned over said ends of said first and second ducts so as to join said first and second ducts together in a liquid-tight relationship, said tubular member having an inner wall with a constant inner diameter that bears against the outer diameters of said first and second seals.

## EVIDENCE

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

Griffiths

US 3,873,138

Mar. 25, 1975

Larry B. Krauser, *Executive Summary Post-Tensioning Tendon Protection Strategies for Precast Elements*, PCMAC/Caltrans Bridge Seminar (2009) (hereinafter “Krauser”)

### REJECTION

Claims 1, 2, 5–7, 10, 11, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Krauser and Griffiths. Final Act. 3–12.

### OPINION

Appellant presents arguments for independent claims 1 and 18 together (Appeal Br. 15–20) and relies on the same arguments for dependent claims 2, 5–7, 10, 11, and 20 (*id.* at 20). We select claim 1 as representative of the issues that Appellant presents in the appeal, and claims 2, 5–7, 10, 11, 18, and 20 stand or fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Krauser teaches most of the limitations of independent claim 1, but acknowledges that Krauser fails to teach first and second seals positioned over an exterior of first and second ducts, respectively, between pairs of ridges extending circumferentially outward from the first and second ducts. Final Act. 4–5. Although the Examiner asserts that Krauser’s tubular member “is capable of being slidably positioned” (*id.* at 4), the Examiner also alternatively asserts that Krauser fails to teach “a tubular member slidably positioned over said ends of said first and second ducts so as to join said first and second ducts together in a liquid-tight relationship” (*id.* at 5).

The Examiner turns to Griffiths and finds that Griffiths teaches first and second seals 13, 13' positioned over an exterior of first and second ducts

11, 11', respectively, between pairs of ridges extending circumferentially outward from first and second ducts 11, 11'. *Id.* at 5. The Examiner also finds that Griffiths teaches tubular member 15 slidably positioned over the ends of first and second ducts 11, 11' so as to join first and second ducts 11, 11' together in a liquid-tight relationship. *Id.* The Examiner concludes that it would have been obvious to modify Krauser to have, among other things, first and second seals and a tubular member slidably positioned over the ends of the first and second ducts “as taught by Griffiths, for the purpose of providing a means to form a slip joint which can aid in reducing the time of assembling the joint, alternatively, providing a structural configuration which would yield the same predictable result(s) of forming a secure leak free joint.” *Id.* at 6.

We need not consider whether or not Krauser’s tubular member is capable of being slidably positioned as asserted by the Examiner, and as contested by Appellant, because the Examiner’s rejection specifically modifies Krauser so as to have Griffiths’ tubular member. Final Act. 6. Thus, we do not discuss Appellant’s arguments as to Krauser’s tubular member failing to be slidably positioned. Br. 16–17.

We have considered Appellant’s argument that “Krauser fails to show first and second seals position[ed] between the pair of ridges at the ends of each of the ducts” because “the ends of [Krauser’s] coupler actually overlie only a single ridge,” and “[t]hus, to the extent that there are seals located within the interior surface of the coupler, the seals would only be located at the ends of the duct[,] not between the pair of ridges of the duct.” *Id.* at 17–18. We do not find such an argument persuasive because the Examiner’s rejection does not rely on any seals or tubular member of Krauser, but rather

on Griffiths for such limitations. Appellant has not shown error in the Examiner's finding that Griffiths teaches the claimed location of seals between pairs of ridges extending circumferentially outwardly of ducts.

As to whether Griffiths's tubular member is "slidably positioned," Appellant argues that "Griffiths . . . shows a coupling that is specifically designed so as to be in a fixed position and not to be axially displaceable." Br. 18–19 (citing Griffiths 1:18–26, 2:7–11). The Examiner responds that "when one or both of the clip members 18 and 18'[] are removed from the inner surfaces of the fla[r]ed ends 16 and 16' by removing the corresponding cap screws 19 and 19'[,], the sleeve 15 can then slide off and on the duct(s)" and queries "[i]f the annular sleeve 15 cannot be 'slidably positioned' over the duct(s) end(s)[,], then how is the joint of Griffiths assembled?". Ans. 6. The Examiner also responds that "[t]he claims do not set forth that the coupler is able to slide from a first position over one of the ducts to a second position overlying the ends of both of the ducts and that the sliding motion that is carried out [is] from one duct to the other duct[,], but rather the independent claim(s) recites a broader language." *Id.* at 12–13.

We agree with the Examiner that upon removal of cap screws 19, 19', Griffiths' annular sleeve 15 is slidably positioned over the first and second ducts so as to join them together in a liquid-tight relationship, and that removal of the cap screws would be necessary in order to assemble Griffiths' joint. Appellant does not address this position by the Examiner with sufficient particularity so as to persuade us of error in the Examiner's finding that Griffiths' tubular member is "slidably positioned" over the ends of the ducts so as to join the ducts in a liquid-tight relationship, as claimed. Indeed, it is exactly because of the slidability between ducts 11, 11' and

annular sleeve 15 that clip members 18, 18' and cap screws 19, 19' are utilized in the design of Griffiths.

Moreover, we agree with the Examiner that the claim language “a tubular member slidably positioned over said ends of said first and second ducts so as to join said first and second ducts together in a liquid-tight relationship” does not require any particular amount of slidability of the tubular member relative to the ducts (e.g., sufficient slidability so as to be movable between a first position entirely overlying the first duct to a second position entirely overlying the second duct). *See* Ans. 12–13. Although clip members 18, 18' that are attached to flared ends 16, 16' of annular sleeve 15 cooperate with annular shoulders 14, 14' of conduits 11, 11' in order to “prevent[] the conduits from moving axially *away* from the sleeve” (Griffiths 1:25; 2:10–11 (emphasis added)), this does not necessarily mean that any and all axial movement of annular sleeve 15 relative to conduits 11, 11' is prevented. Rather, it appears that some amount of axial movement may be tolerated so long as conduits 11, 11' do not move in an amount that would separate conduits 11, 11' from annular sleeve 15. *See* Griffiths Fig. (illustrating space between annular shoulders 14, 14' and circularly-shaped end of clip members 18, 18' in the longitudinal direction of ducts 11, 11'). In this way, Griffiths also may be considered to teach “a tubular member slidably positioned over said ends of said first and second ducts,” as claimed.

We have also considered Appellant’s argument that “the Griffiths patent is from a field of art far removed from that of the present invention or the Krauser article.” Appeal Br. 19. The established precedent of our reviewing Court sets up a two-fold test for determining whether art is

analogous: “[’](1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (quoting *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004)). The Examiner responds that “[b]oth Griffiths . . . and the instant invention are in a field of art related to pipes, where the pipes are connected to each other via a sleeve coupler” and further that “the Griffiths patent . . . [is] solving the same problem as the instant application because both . . . illustrate how two pipe ends are being bridged by a slidable coupler to form a joint between the two pipes.” Ans. 19. Appellant has not persuasively presented arguments and evidence to refute the Examiner’s position that Griffiths is in Appellant’s field of endeavor and that Griffiths is reasonably pertinent to a particular problem with which the inventor is involved. Moreover, to the extent that Appellant is comparing the relevance of the references to each other, this is not the required legal test and is not persuasive.

We have also considered Appellant’s argument that “the Griffiths patent actually teaches away from any structure that would allow such ‘axial slidability’” and “[t]he Griffiths patent would provide no teaching, suggestion or motivation for the inventor of the device shown in [the] Krauser article to allow for this axially slidable sleeve for use in a wet joint.” Appeal Br. 19. The Examiner responds that such an argument is “not commensurate with the scope of the claims” in that “[t]he claims do not recite ‘axial slidability of a tubular member.’” Ans. 10. The Examiner also responds that, in any event, “[t]he Griffiths patent does not teach away

because the Griffiths [patent] illustrates a structure that would allow such ‘axial slidability’, as discussed above.” *Id.* at 20. In our view, as described above Griffiths teaches “a tubular member slidably positioned over . . . ends of . . . first and second ducts so as to join . . . first and second ducts together in a liquid-tight relationship,” as claimed, and thus, does not teach away from such an arrangement. Consequently, when modifying Krauser with the arrangement of Griffiths in accordance with the Examiner’s articulated rejection, the Examiner has explained adequately how the combination results in a tubular member slidably positioned over the ends of first and second ducts so as to join the first and second ducts together in a liquid-tight relationship.

We have also considered Appellant’s arguments that “[s]ince the Griffiths patent is designed for marine applications, it is unlikely that there would be any suggestion of a ‘first concrete segment’ or a ‘second concrete segment and the relationships between the ducts and these concrete segments” and that “[t]he prior art combination would fail to show the structure of the present invention as used in a ‘wet joint.’” Appeal Br. 19–20. The Examiner responds that “the Griffiths patent is not being used to disclose/teach a ‘first concrete segment’ or a ‘second concrete segment’ and the relationships between the ducts and these concrete segments because Krauser discloses such.” Ans. 19. The Examiner also responds that “Krauser (see Fig. 2) illustrates a joint to be used in a wet joint (see page 8 in lines 1 and 2; which recites ‘Figure 2 shows a duct-to-duct coupler . . . in the wet joint . . .’) so Krauser in view of Griffiths would also then be in a ‘wet joint.’” *Id.* at 21. We agree with the Examiner’s response as to why Appellant’s arguments regarding Griffiths being designed for marine

applications are not persuasive of error by the Examiner, and adopt the Examiner's reasoning as our own.

For the foregoing reasons, Appellant does not apprise us of error in the Examiner's determination that Krauser and Griffiths renders obvious the subject matter of independent claim 1. Accordingly, we sustain the rejection of claim 1, and claims 2, 5-7, 10, 11, 18, and 20 falling therewith, under 35 U.S.C. § 103 as unpatentable over Krauser and Griffiths.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 5-7, 10, 11, 18, 20	103	Krauser, Griffiths	1, 2, 5-7, 10, 11, 18, 20	

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