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26096	7590	12/31/2019	EXAMINER	
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			CHAPMAN, JEANETTE E	
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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* KENNETH KYLE FRIESEN, JOHN FRIESEN, and  
ADAM SUDER

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Appeal 2019-004722  
Application 15/178,640  
Technology Center 3600

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Before MICHAEL C. ASTORINO, PHILIP J. HOFFMANN, and  
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–14 and 16–22. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Kenneth Friesen, John Friesen and Adam Suder. Appeal Br. 1.

### CLAIMED SUBJECT MATTER

Claims 1, 10, and 14 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A greenhouse system, comprising:  
a greenhouse structure including a metallic structural element; and  
an anode mechanically mounted on the metallic structural element.

Appeal Br. 9 (Claims Appendix).

### REFERENCES

The prior art relied upon by the Examiner is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Robinson et al. ("Robinson")	US 2,480,087	Aug. 23, 1949
Schleinkofer	US 4,189,658	Feb. 19, 1980
Zhang	US 5,449,563	Sept. 12, 1995
Lancaster-Larocque et al. ("Lancaster-Larocque")	US 9,884,369 B2	Feb. 6, 2018
Collins et al. ("Collins")	US 2015/0223418 A1	Aug. 13, 2015
Klaus <sup>2</sup>	DE 19946581 C1	Oct. 11, 2001
<i>Corrosion Protection Plan</i> , Engineering and Technical Consultants, Inc., <a href="http://www.etc-web.com/corrosion-protection-plan/">http://www.etc-web.com/corrosion-protection-plan/</a> (Mar. 9, 2012) ("CPP")		

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<sup>2</sup> The Examiner and the Appellant refer to Klaus by reference number, e.g., DE'581," rather than by the inventor's last name. *See, e.g.*, Final Act. 2, 5; Appeal Br. 3.

## REJECTIONS

Claims 1, 3–9, 14, and 17–21 are rejected under 35 U.S.C. § 103 as unpatentable over Collins, Klaus, and CPP.<sup>3</sup>

Claims 6 and 14 are rejected under 35 U.S.C. § 103 as unpatentable over Collins, Klaus, CPP, and Lancaster-Larocque.

Claims 2 and 16 are rejected under 35 U.S.C. § 103 as unpatentable over Collins, Klaus, CPP, and Zhang.

Claims 10 and 13 are rejected under 35 U.S.C. § 103 as unpatentable over Collins, CPP, and Robinson.

Claim 12 is rejected under 35 U.S.C. § 103 as unpatentable over Collins, CPP, Robinson, and Klaus.

Claims 11 is rejected under 35 U.S.C. § 103 as unpatentable over Collins, CPP, Robinson, and Zhang.

Claim 22 is rejected under 35 U.S.C. § 103 as unpatentable over Collins, Klaus, CPP, and Schleinkofer.

## ANALYSIS

The Examiner's rejections rely on Collins to teach a greenhouse having metallic structural elements. Final Act. 2, 5–8. The Examiner does not find that Collins teaches an anode mechanically mounted on the metallic structural element(s). The Examiner appears to rely on one or both of Klaus

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<sup>3</sup> The Examiner fails to list claims 18 and 20 in the statement of the ground of rejection. Final Act. 2. However, the Examiner rejects these claims in the body of the rejection. *Id.* at 5, 6. We understand the Examiner's omission of claims 18 and 20 in the statement of the ground of rejection as a minor oversight.

and CPP to remedy the deficiency of Collins' teachings with respect to the subject matter of independent claims 1, 10, and 14. *Id.* The Examiner determines, "[i]t would have been obvious to one of ordinary skill in the art to mount the anode on discrete portions on the metal framing to provide the anodes in all the desired locations and further providing a means to add or remove an anode." *Id.* at 2; *see id.* at 8.

The Appellant argues that the Examiner's rejection lacks a reasoned statement to support the conclusion of obviousness. Appeal Br. 3–4. More specifically, the Appellant contends that "[t]he Examiner's reasoning does not even attempt to explain why one of ordinary skill would desire anodes on the metal framing." *Id.* at 4. The Appellant's argument is persuasive.

Although the Examiner's conclusion is clear that an anode would be provided, it fails to explain why one of ordinary skill in the art would want to mount an anode to discrete portions on the metal framing of Collins' greenhouse. Despite stating that mounting an anode to discrete portions on the metal framing would be desired, the conclusion fails to explain a reason why the modification would be desired. Further, the remainder of the conclusion — i.e., "further providing a means to add or remove an anode" — presumes the validity of the addition of a mounted anode to the metal framing of Collins' greenhouse.

Additionally, the Appellant argues that "*Collins* already discloses a feature to prevent corrosion on the structure, and nothing indicates that the corrosion resistance taught by *Collins* is insufficient." *Id.* Still further, the Appellant argues, "CPP teaches that a protective coating is an alternative to cathodic protection"; therefore, "one would not simply add an anode to a structure already having corrosion resistance." *Id.* In response, the

Examiner acknowledges Collins' use of "'corrosion resistant' metal," but reasons that "'resistant' does not mean corrosion proof" and the addition of an anode would add more corrosion protection. Ans. 11. The Appellant's argument is persuasive. The Examiner presumes that more corrosion protection is desirable without explaining a scenario where Collins' corrosion protection would fail or is otherwise at risk of lacking sufficient corrosion protection. Moreover, we determine that the Examiner fails to establish adequate support for the notion that more than one means of corrosion protection is desirable.

We note that the Examiner points to Collins' paragraph 118 where "the framing is only stated to be 'usually galvanized steel.'" *Id.* It is the Examiner's position that "usually," as used in paragraph 118, "suggest[s] that non-corrosion resistant materials could be used which in that case an anode protection system would be even more desirable." *Id.* The relevant portion of Collins describes, "[r]oof framing members, usually galvanized steel open-web trusses, generally span across the short dimension of the rectangular plan and are supported by posts at each end of the trusses." Collins ¶ 118. However, the use of the term "usually" in paragraph 118 does not suggest a lack of corrosion resistance. *See* Reply Br. 2. Rather, it suggests the use of some type of corrosion resistance, but not galvanized steel. *See id.* As discussed above, the Examiner's reasoning to add an anode to framing already having corrosion resistance lacks adequate support. *See supra.*

The Examiner's rejections do not rely on Lancaster-Larocque, Zhang, Robinson, and/or Schleinkofer in any manner which would remedy the deficiency in the Examiner's rejection as discussed above.

For the above reasons we determine that the Examiner’s rejections of independent claims 1, 10, and 14 fail to articulate reasoning with rational underpinning to support the legal conclusion of obviousness. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds . . . [require] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) (cited with approval in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Thus, we do not sustain the Examiner’s rejections of claims 1–14 and 16–22.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 3–9, 14, 17, 19, 21	103	Collins, Klaus, CPP		1, 3–9, 14, 17, 19, 21
6, 14	103	Collins, Klaus, CPP, Lancaster-Larocque		6, 14
2, 16	103	Collins, Klaus, CPP, Zhang		2, 16
10, 13	103	Collins, CPP, Robinson		10, 13
12	103	Collins, CPP, Robinson, Klaus		12
11	103	Collins, CPP, Robinson, Zhang		11
22	103	Collins, Klaus, CPP, Schleinkofer		22
<b>Overall Outcome</b>				1–14, 16–22

REVERSED