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ExxonMobil Upstream Research Company 22777 Springwoods Village Parkway (EMHC-N1.4A.607) Spring, TX 77389			TOLEDO-DURAN, EDWIN J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HAYDAR ARSLAN and PATRICK C. WONG

Appeal 2019-004813
Application 14/591,669
Technology Center 3600

Before MICHAEL L. HOELTER, JAMES P. CALVE, and
LEE L. STEPINA, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–21, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as “ExxonMobil Upstream Research Company.” Appeal Br. 3.

The disclosed subject matter “relates generally to a modified pile foundation system for scour protection.” Spec. ¶ 2. Claims 1, 11, 19, and 21 are independent. Claim 1 is illustrative of the claims on appeal and is reproduced below.

1. A system for reducing scouring, comprising:
a pile having a maximum cross-sectional dimension, D_p ;
and
an enclosure circumferentially disposed around the pile, the enclosure having a first end proximate a surface of a seabed and proximate a top end of the pile; a second end distal the surface of the seabed, and a maximum cross-sectional dimension, D_e , wherein D_e is at least $1.25 * D_p$ providing a soil sediment area within the seabed between an outer surface of the pile and an inner surface of the enclosure such that the soil sediment area provides load carrying capacity for the pile; wherein the enclosure is fixedly attached to the top end of the pile.

EVIDENCE

Name	Reference	Date
Groneck et al. (“Groneck”)	US 6,012,874	Jan. 11, 2000
Saugier et al. (“Saugier”)	US 6,659,182 B1	Dec. 9, 2003
Maconocie et al. (“Maconocie”)	US 2011/0002742 A1	Jan. 6, 2011
Hosøy et al. (“Hosøy”)	US 2012/0003048 A1	Jan 5, 2012
Harris	US 8,596,919 B2	Dec. 3, 2013

REJECTIONS

Claims 1–5 and 7–21 are rejected under 35 U.S.C. § 103 as unpatentable over Harris and Maconocie.

Claim 6 is rejected under 35 U.S.C. § 103 as unpatentable over Harris, Maconocie, and Saugier.

Claims 1–5, 7, and 9–21 are rejected under 35 U.S.C. § 103 as unpatentable over Hosøy and Maconocie.

Claim 6 is rejected under 35 U.S.C. § 103 as unpatentable over Hosøy, Maconocie, and Saugier.

Claim 8 is rejected under 35 U.S.C. § 103 as unpatentable over Hosøy, Maconocie, and Groneck.

Claims 1, 11, 19, and 21 are rejected under 35 U.S.C. § 103 as unpatentable over Maconocie and Harris.

ANALYSIS

*The rejection of claims 1–5 and 7–21
as unpatentable over Harris and Maconocie*

Each independent claim on appeal, i.e., claims 1, 11, 19, and 21, is directed to a pile and also an enclosure disposed around the pile, “wherein the enclosure is fixedly attached to the top end of the pile.” The Examiner primarily relies on Harris for disclosing many of the recited limitations, but acknowledges that “Harris is silent about . . . the enclosure fixedly attached to the top end of the pile.” Final Act. 3. The Examiner relies on Maconocie for teaching such an enclosure attached to the top of a pile and states that the “motivation” for combining Harris and Maconocie would arise from those “settings that [don’t] require long piles.” Final Act. 3 (referencing Maconocie ¶ 33); *see also* Maconocie Figs. 2, 3A, 3B, 8.

Appellant challenges the combination of Harris and Maconocie stating, “fixing the disk of Harris to the pile of Harris [as disclosed in Maconocie] would be adverse to the functionality of Harris which is designed to be able to move separate from the pile.” Reply Br. 9; *see also*

Appeal Br. 18–21 (“it is the clear intent of Harris to fix the disk to the seabed (not to fix the pile to the disk as in the presently claimed invention)”).

There is merit to Appellant’s contentions. Harris clearly discloses the disk (i.e., the recited “enclosure”) “configured to be installed on the seabed with the pile protruding through the pile opening.” Harris 2:26–27, 2:37–38. Harris explains that “pile opening 7” of the disk is “adapted to receive the pile for installation through the disk and into the seabed 2.” Harris 4:12–16; *see also id.* at 6:64–66 (“When the disk 6 is finally installed on the seabed, the pile 1 can be driven through the pile opening 7 in the disk into the seabed 2 below.”). Thus, it is not altogether clear why, even if employing shorter piles as suggested by the Examiner (*see* Final Act. 3), one skilled in the art would fixedly attach the disk to the top end of Harris’ pile (as recited) when Harris’ disk is, instead, designed to “receive the pile” once the disk is “installed on the seabed.” *See supra*. Additionally, there is no indication that the top of Harris’ pile, even if shortened, is anywhere near the seabed upon installation.² *See* Harris Figs. 1, 2, 4, 8.

The Examiner also finds that “the anti-scour disk of Harris would work equally well with piles with their upper ends proximate to the upper surface of the disk.”³ Ans. 20; *see also* Ans. 22, 23, 25, 27. However, the Examiner does not explain how Harris’ pile would actually be able to “work equally well,” such as by providing support to “offshore wind turbines” and

² Harris is silent regarding the top of the pile being anywhere near the seabed. The pile can be used to support an offshore wind turbine (Harris 1:35–37), which would be located at the surface rather than at the seabed.

³ The Examiner finds “the length of the pile above the enclosure in Harris is not a critical element.” Ans. 20.

the like (Harris 1:21–23), when Harris’ pile only extends “proximate to the upper surface of the disk,” and no further.

Thus, based on the record presented, the Examiner’s “motivation” for combining Harris and Maconocie (i.e., use of a shorter pile) lacks sufficient articulated reasoning with rational underpinning. In other words, without more explanation on the part of the Examiner, Appellant is persuasive that the operation and function of Harris would be compromised by affixing the enclosure to the top of Harris’ pile and also locating the enclosure adjacent the seabed to reduce scouring. In short, the Examiner has not provided the requisite support for the legal conclusion of obviousness when suggesting that the combination of Harris and Maconocie renders obvious the limitation “wherein the enclosure is fixedly attached to the top end of the pile.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Accordingly, we do not sustain the Examiner’s rejection of independent claims 1, 11, 19, and 21, nor dependent claims 2–5, 7–10, 12–18, and 20.

*The rejection of claim 6
as unpatentable over Harris, Maconocie, and Saugier*

Claim 6 depends directly from claim 1. The Examiner does not rely on Saugier to cure the defect discussed above regarding securement to the top of the pile. *See* Final Act. 8–9. Thus, we likewise do not sustain the Examiner’s rejection of claim 6 as being obvious over Harris, Maconocie, and Saugier.

The rejections of: (a) claims 1–5, 7, and 9–21 as unpatentable over Hosøy and Maconocie; (b) claim 6 as unpatentable over Hosøy, Maconocie, and Saugier; (c) claim 8 as unpatentable over Hosøy, Maconocie, and Groneck; and, (d) claims 1, 11, 19, and 21 as unpatentable over Maconocie and Harris

Each rejection above is recited in the Examiner’s Final Office Action, and subsequently replicated in the Examiner’s Answer. *See* Final Act. 9–18; Ans. 9–19. Appellant presents no arguments with respect to any of these rejections. *See* Briefs *generally*. In fact, under the heading “Grounds of Rejection to be Reviewed,” Appellant only identifies the two rejections where Harris is the primary reference (and whose rejections are not sustained). Appeal Br. 10. Appellant does not discuss any of the above rejections where either Hosøy or Maconocie are primarily relied upon.

The Manual of Patent Examiner Procedure (MPEP) § 1205.02 states, “[i]f a ground of rejection stated by the examiner is not addressed in the appellant’s brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it.” We hereby sustain the above (and in some cases, redundant) rejections of claims 1–21.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 7–21	103	Harris, Maconocie		1–5, 7–21
6	103	Harris, Maconocie, Saugier		6
1–5, 7, 9–21	103	Hosøy, Maconocie	1–5, 7, 9–21	
6	103	Hosøy, Maconocie, Saugier	6	

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
8	103	Hosøy, Maconocie, Groneck	8	
1, 11, 19, 21	103	Maconocie, Harris	1, 11, 19, 21	
Overall Outcome⁴			1-21	

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

AFFIRMED

⁴ 37 C.F.R. § 41.50(a)(1) states: “The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim.”