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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* DANIEL ERICSSON

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Appeal 2020-000481  
Application 14/888,565  
Technology Center 3700

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Before JENNIFER D. BAHR, MICHELLE R. OSINSKI, and  
SEAN P. O'HANLON, *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 1–6, 9, and 11–22.<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 is Husqvarna AB. Appeal Br. 1.

<sup>2</sup> Claims 7, 8, and 10 are cancelled. Appeal Br. 11 (Claims App.).

## THE CLAIMED SUBJECT MATTER

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

1. An apparatus arranged to secure a portable cutting machine on an elongated railshaped profiled object, the apparatus comprising:

    a base adapted to be disposed on an upper surface of the elongated railshaped profiled object; and

    an arm pivotably mounted to the base at a first pivot axis at right angles to a main extension of the elongated railshaped profiled object;

        wherein the base comprises:

            two parallel, spaced plates, each plate having an opening for receiving the object;

            a rocker arm; and

            a clamping device for actuating the rocker arm;

        wherein each plate comprises a central, first contact surface arranged to contact the upper surface of the elongated railshaped profiled object, the central, first contact surface being located between a first end and a second end of each plate;

        wherein a second inwardly angled contact surface extends from the first end of each plate towards a corresponding first side surface of the elongated railshaped profiled object, the second inwardly angled contact surface arranged to contact a first lower edge of a rail head of the elongated railshaped profiled object;

        wherein the rocker arm is pivotally mounted at a location between and spaced apart from an interior surface of each of the plates about a second axis and is configured to rotate about the second axis;

        wherein the rocker arm comprises a first end, a central portion, and a second end;

        wherein the first end of the rocker arm defines a third contact surface, the third contact surface extending towards a corresponding second side surface of the elongated railshaped profiled object to clamp the elongated railshaped profiled object;

wherein a first end of the clamping device is pivotably mounted to the base about the first axis between the parallel, spaced plates;

wherein the second end of the rocker arm is journaled on the clamping device about a third pivot axis; and

wherein the first, second, and third pivot axes are different.

## EVIDENCE

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

Larsson	US 5,545,079	Aug. 13, 1996
Huboud Peron <sup>3</sup>	US 6,234,889 B1	May 22, 2001
Welsh	US 6,745,804 B2	June 8, 2004
Mallookis	US 2010/0317498 A1	Dec. 16, 2010
DeMartine	US 7,926,771 B2	Apr. 19, 2011

## THE REJECTIONS

- I. Claims 1–6, 9, and 11–13 stand rejected under 35 U.S.C. § 103 as unpatentable over Huboud, DeMartine, and Welsh, as evidenced by Mallookis. Final Act. 2–9; Ans. 3–8.
- II. Claims 14–22 stand rejected under 35 U.S.C. § 103 as unpatentable over Larsson, DeMartine, and Welsh, as evidenced by Mallookis. Final Act. 9–16; Ans. 8–13.

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<sup>3</sup> We note that both the Examiner and Appellant refer to this reference as “Huboud.” *See, e.g.*, Final Act. 2; Appeal Br. 5. For consistency and convenience, we do likewise herein.

OPINION

*Rejection I*

In contesting the rejection of claims 1–6, 9, and 11–13, Appellant presents arguments for independent claim 1 (*see* Appeal Br. 5–8), and relies on the same arguments for dependent claims 2–6, 9, and 11–13 (*see id.* at 8). We select claim 1 as representative, and claims 2–6, 9, and 11–13 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Huboud discloses an

an apparatus arranged to secure a portable cutting machine on an elongated railshaped profiled object (see Figure 1), the apparatus comprising[:] a base adapted to be disposed on an upper surface of the profiled object (see Figure 1) and at least one arm mounted pivota[lly] around an arm (13) pivot axis of the base at right angles to the main extension of said profiled object (see Figure 1).

Ans. 3. The Examiner finds that Huboud fails to disclose “the specific detail of the claw joint arrangement of claim 1.” *Id.* at 4. In particular, the Examiner finds that Huboud fails to disclose, *inter alia*, “a rocker arm . . . pivotally mounted at a location between and spaced apart from an interior surface of each of the plates about a second axis and . . . configured to rotate about the second axis.” *Id.* However, the Examiner finds that DeMartine teaches

a claw joint arrangement including a base (724 and 722) capable of being adapted to be disposed on an upper surface of the elongated railshaped profiled object . . . wherein the base comprises two parallel, spaced plates, each plate having an opening (space around 722, 724) for receiving the object, a rocker arm (732), and a clamping device (748) for actuating the rocker arm (see Figure 11); . . . wherein the rocker arm [is] pivotally mounted about a second axis and is configured to rotate about the second axis.

*Id.* at 5–6. The Examiner determines that it would have been obvious “to substitute one claw joint arrangement for the other to achieve the predictable result of providing a joint arrangement for a clamp claw apparatus.” *Id.* at 7 (citing MPEP § 2143(I)(B)).

Next, the Examiner finds that “it is known in the art to have the rocker arm . . . be between the parallel, spaced plates (232 between 222, 224, see Figure 3 of DeMartine) or the rocker arm [be] outside of the two parallel, spaced plates (see Figure 11 of DeMartine).” Ans. 7. The Examiner determines that it would have been obvious to “rearrange the rocker arm to be in between the two parallel, spaced plates, since it has been held that rearranging the parts of an invention involves only routine skill in the art.” *Id.* (citing *In re Japikse*, 181 F.2d 1019 (CCPA 1950)).

Acknowledging that DeMartine is relied on “only . . . for the teaching that the location of the rocker arm is ‘between’ [the] plates” (Ans. 14), the Examiner additionally turns to Welsh. The Examiner finds that Welsh teaches “a washer (84W) between two rotatable mounted parts (84 and 83, see Figures 20B–C).” *Id.* at 7. The Examiner further finds that “Mallo[o]kis teaches that adding [a] washer between rotating parts would . . . reduce friction when pivoting (paragraph 0047).” *Id.* (boldface omitted).<sup>4</sup> The Examiner determines that it would have been obvious “to modify the device

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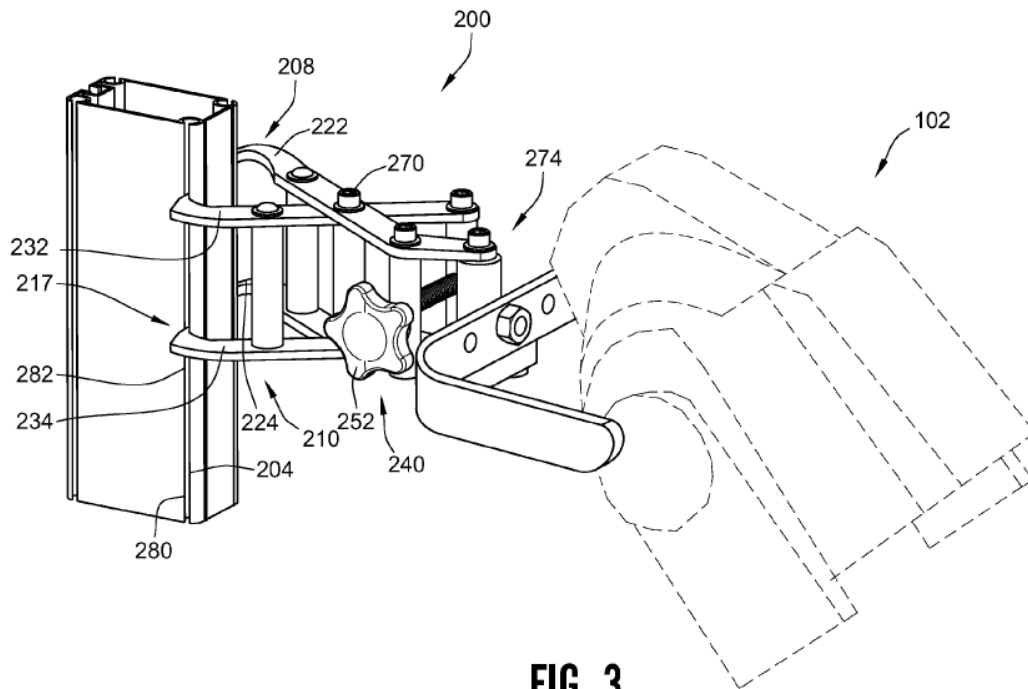
<sup>4</sup> In the Final Action, the Examiner “take[s] official notice that it [was] commonly known in the art to add [a] washer between rotating parts for reducing friction and wear of the two parts.” Final Act. 6. The Examiner cites paragraph 47 of Mallookis in support of the official notice. *Id.* at 7. In the Answer, the Examiner explains that “[t]he Examiner has dropped the official notice and the rejections only use the rationale of Welsh and Mallo[o]kis (both references were provided in the Final rejection mailed on 1/23/2019).” Ans. 16.

of Huboud in view of DeMartine to incorporate the teaching of Welsh as evidence[d] by Mallo[o]kis to add the washer between [the rocker arm and plate] in order to reduce friction between the two parts (paragraph 0047 of Mallo[o]kis).” *Id.* at 8. The Examiner explains that the proposed combination of reference teachings would yield a device having a “rocker arm . . . pivotally mounted at a location between *and spaced apart from* an interior surface of each of the plates about a second axis and is configured to rotate about the second axis.” *Id.* (emphasis added).

Appellant argues that DeMartine fails to disclose a rocker arm, as claimed. Appeal Br. 6. In particular, Appellant asserts that “the alleged rocker arm 232 is not an actual rocker arm, as claimed, if anything the alleged rocker arm 232 is analogous to the claimed plates.” *Id.* We are unpersuaded by this argument. Claim 1 does not specify the structure of the rocker arm, much less recite any limitations that would preclude the rocker arm from having structure analogous to the parallel spaced plates. Claim 1 merely requires the rocker arm to have a first end that defines a contact surface extending towards the elongated railshaped profiled object, a central portion, and a second end journaled on the clamping device (Appeal Br. 10 (Claims App.)), and Appellant does not explain how the Examiner erred in finding that the identified rocker arm in DeMartine includes such structure. Thus, Appellant does not apprise us of error in the Examiner’s interpretation that DeMartine’s jaw profile 232 constitutes a “rocker arm,” as recited in claim 1.

Appellant argues that “DeMartine does not teach a rocker arm spaced between two parallel, spaced plates, as claimed.” Appeal Br. 7. In particular, Appellant asserts that “alleged rocker arm 232 is not mounted

between the alleged plates 222 and 224,” but instead “the alleged rocker arm 232 extends from or is defined by alleged plate 222.” *Id.* at 6 (citing DeMartine, Fig. 3). This argument is unpersuasive. Figure 3 of DeMartine, which shows a mounting apparatus according to one embodiment, is reproduced below.



**FIG. 3**

Figure 3 of DeMartine, above, depicts mounting apparatus 200 having jaws 208 and 210. DeMartine, 5:53–56. Jaw 208 is formed from jaw profiles 222 and 224, and jaw 210 is formed of jaw profiles 232 and 234. *Id.* at 5:58–60. DeMartine teaches that “jaws 208, 210 pivot about a central hinge 270 using scissoring action.” *Id.* at 6:13–14 (boldface omitted). In other words, as clearly shown in Figure 3 of DeMartine, jaw profiles 232 and 234 are positioned on the interior sides of jaw profiles 222 and 224, which are spaced apart along the axis of central hinge 270. Thus, the Examiner’s finding that DeMartine teaches a rocker arm (jaw profile 232) *between*



parallel spaced plates (jaw profiles 222 and 224) is supported by a preponderance of the evidence.

Appellant argues that,

[t]o the extent the alleged rocker 232 is spaced between plates 222 and 224 (which Applicant denies), the alleged rocker arm is only spaced apart from the interior surface of 224. In this respect, alleged rocker arm 232 is immediately adjacent to the interior surface of plate 222. In other words, the rocker arm 232 sits directly across from alleged plate 222 in order to clamp an object, not between and spaced apart from each of the plates 222 and 224.

Appeal Br. 6. This argument is unpersuasive because it attacks DeMartine individually, rather than the combination of reference teachings relied on by the Examiner in the rejection. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (one cannot show nonobviousness by attacking references individually when the rejection is based on a combination of the references). As discussed above, the Examiner relies on DeMartine for teaching a “rocker arm pivotally mounted about a second axis and . . . configured to rotate about the second axis.” Ans. 6. The Examiner explains that the rejection “is only relying on DeMartine for the teaching that the location of the rocker arm is ‘between’ plates (222 and 224).” *Id.* at 14. In other words, the Examiner does not find that DeMartine teaches that the rocker arm (jaw profile 232) is spaced *apart* from the interior surface of each of the parallel spaced plates (jaw profiles 222 and 224). Rather, the Examiner determines that “the modified device of Huboud in view of DeMartine and in further view of Welsh as evidence[d] by Mallo[o]kis would include [a] rocker arm [that] is pivotally mounted at a location between and spaced apart from an interior surface of each of the plates.” *Id.* at 8. Thus, Appellant’s argument

against DeMartine individually does not apprise us of error in the Examiner's rejection.

Appellant argues that the Examiner's rejection "rel[ies] on Welsh as teaching the recitation that the rocker arm is pivotally mounted at a location **between and spaced apart from an interior surface of each of the plates about a second axis.** However, Appellant respectfully submits that it is inappropriate to apply Official Notice in this instance." Appeal Br. 7. Appellant asserts that it

is uncertain how a reference that is alleged to teach "a washer (84W) between two rotatable mounted parts (84 and 83, see Figures 20B–C)" is being used to support Official Notice in this case. Even if Examiner is correct as to what Welsh teaches, Appellant is unclear how a teaching related to a washer has anything to do with a placement of a rocker arm.

*Id.* According to Appellant, "the specific placement of a rocker arm on an apparatus arranged to secure a portable cutting machine on an elongated railshaped profiled object is not common knowledge, of notorious character, nor instantly and unquestionably demonstrable." *Id.* at 8; *see also id.*

(asserting that the Examiner "failed to provide sound technical reasoning to support the conclusion that the claimed feature is common knowledge").

We are not persuaded by Appellant's argument because it is not responsive to the rejection as presented. As an initial matter, "[t]he Examiner has dropped the official notice and the rejections only use the rationale of Welsh and Mallo[o]kis." Ans. 16. Moreover, when considering the application of official notice in the Final Action, Appellant's argument misunderstands the fact asserted by the Examiner to be well-known or common knowledge in the art. As discussed above, the Examiner relies on Welsh for teaching the use of a washer between two rotatable parts. Final Act. 6. The Examiner

takes official notice in the Final Action that it was known in the art to use a washer between rotating parts to reduce friction and wear. *Id.* The Examiner cites Mallookis as evidentiary support for the official notice. *Id.* at 7 (citing Mallookis ¶ 47<sup>5</sup>). In other words, contrary to Appellant’s argument, the Examiner’s rejection in the Final Action does not conclude that the claimed feature of a rocker arm mounted between and spaced apart from an interior surface of parallel spaced plates was common knowledge. Rather, the Examiner concludes that this feature would have been obvious in view of the combined teachings of the cited references and in view of the officially noticed fact that washers are used between rotating parts to reduce friction, which is supported by the disclosure of Mallookis. In this regard, Appellant does not identify error in the fact officially noticed by the Examiner in the Final Action.

Appellant argues that “neither Welsh nor Mallo[o]kis teach[es] that the rocker arm is spaced apart from the plates.” Reply Br. 2. Appellant asserts that “Welsh relates to a portable work bench, and Mallo[o]kis relates to a collapsible truss assembly. Neither Welsh nor Mall[o]okis actually teach[es] or suggest[s] anything regarding a rocker arm much less the placement of the rocker arm being spaced apart from plates.” *Id.* at 3. This argument is unpersuasive because it attacks Welsh and Mallookis individually, rather than the combination of reference teachings relied on by the Examiner in the rejection. *See Keller*, 642 F.2d at 425. As discussed

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<sup>5</sup> Mallookis teaches that “one or more washers, e.g., washers 480-1 and 480-2, placed between the truss members 406-1B and 406-2B at the pivotal x-joint 408-B can be formed of a lightweight material that allows the members to pivot with relatively little friction, e.g., nylon.” Mallookis ¶ 47 (boldface omitted).

above, the Examiner does not rely on either Welsh or Mallookis alone for teaching a *rocker arm* spaced apart from the plates. *See* Ans. 16 (explaining that “Welsh was not relied upon for providing the feature of the location of the rocker arm, but only for the teaching that you can space the rocker arm from the plates with washers, as this is commonly done to reduce friction”); *see also id.* (explaining that “[n]either Welsh nor Mallo[o]kis w[as] relied upon for teaching the structure of the plates and their location with respect to the rocker arm, as this structure is taught by DeMartine”). Instead, the Examiner explains that

the combination of Huboud as taught by DeMartine, places the rocker arm in between the two parallel plates. The further modification of Welsh adds a washer between the rocker arm and the plates in order to reduce friction cause[d] by two parts touching each other during pivoting as is well known in the art as evidenced by Mallo[o]kis (for friction reduction). As a result, the modified device includes the rocker arm being pivotally mounted at a location “between and spaced apart” from an interior surface of each of the plates (at least spaced apart by the thickness of the washer added).

*Id.* at 17. In other words, the Examiner relies on the combined teachings of Huboud, DeMartine, Welsh, and Mallookis. The Examiner takes the position that “spaced apart,” as recited in claim 1, only requires that the rocker arm does not directly touch the interior surface of the parallel spaced plates. *Id.* at 16; *see also id.* (explaining that the “limitation does not require [that] the space between the interior surface and the rocker arm be void of any additional structure. The washer causes the two plates to not directly touch, therefore they are ‘spaced apart’”). Here, Appellant does not persuasively refute the Examiner’s position.

For the foregoing reasons, Appellant does not apprise us of error in the Examiner's conclusion of obviousness with respect to claim 1. Accordingly, we sustain the rejection of claim 1, and claims 2–6, 9, and 11–13 falling therewith, under 35 U.S.C. § 103 as unpatentable over Huboud, DeMartine, and Welsh, as evidenced by Mallookis.

### *Rejection II*

In contesting the rejection of independent claim 14, Appellant relies on the arguments presented for patentability of independent claim 1, and does not separately argue its dependent claims 15–22. Appeal Br. 9. For the reasons discussed above, Appellant's arguments do not apprise us of error in the rejection of claim 1, and likewise do not apprise us of error with respect to the rejection of claim 14. Accordingly, we sustain the rejection of claim 14, and its dependent claims 15–22, for which Appellant does not present separate patentability arguments (*see id.*), under 35 U.S.C. § 103 as unpatentable over Larsson, DeMartine, and Welsh, as evidenced by Mallookis.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–6, 9, 11–13	103	Huboud, DeMartine, Welsh, Mallookis	1–6, 9, 11–13	
14–22	103	Larsson, DeMartine, Welsh, Mallookis	14–22	
<b>Overall Outcome</b>			<b>1–6, 9, 11–22</b>	

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Application 14/888,565

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