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STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			POLAY, ANDREW	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CECIL C. HOGE JR.

Appeal 2020-001098
Application 15/851,006
Technology Center 3600

Before JENNIFER D. BAHR, CHARLES N. GREENHUT, and
MICHAEL J. FITZPATRICK, *Administrative Patent Judges*.

GREENHUT, *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 1–14. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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 Sea Eagle Boats, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a fish skiff. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A fish skiff comprising:
 - an inflatable floor made of high pressure drop stitch material;
 - inflatable sides made of high-pressure drop stitch material attached to a top surface of the inflatable floor at port and starboard sides of the inflatable floor, respectively; and
 - a rigid transom formed at a rear portion of the fish skiff, the rigid transom being formed between the inflatable sides configured to have an outboard motor mounted thereon.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Horan	US 4,090,270	May 23, 1978
Hoge	US 7,240,634 B1	July 10, 2007
Czarnowski	US 8,082,871 B2	Dec. 27, 2011
Shimozono	US 8,800,466 B1	Aug. 12, 2014
Mayer	US 9,198,518 B1	Dec. 1, 2015
Gonzales	US 9,434,453 B2	Sep. 6, 2016
Wundt	US 2014/0150705 A1	June 5, 2014
Klare	US 2015/0147925 A1	May 28, 2015
Pepper	US 2017 /0197691 A1	Jul. 13, 2017

REJECTIONS²

Claim(s)	35 U.S.C. §	Basis/Reference(s)
1, 2, 7, 8, 11	103	Wundt, Mayer
4	103	Wundt, Mayer, Czarnowski
5	103	Wundt, Mayer, Hope
6	103	Wundt, Mayer, Pepper
9	103	Wundt, Mayer, Horan
10	103	Wundt, Mayer, Klare
12, 14	103	Wundt, Mayer, Shimiozo
3 ³ , 13 ⁴	103	Wundt, Mayer, Gonzales

OPINION

Wundt in view of Mayer

All arguments in this appeal are premised on the supposed shortcoming of the Examiner’s proposed combination of Wundt and Mayer. App. Br. 4–12. The issue of precisely what constitutes a “top” or “side” of a circle notwithstanding (Ans. 5–6), the Examiner and Appellant generally agree that Wundt’s inflatable sides 102, 104 made of drop-stitch material (Final Act. 4 (citing Wundt para. 42)) are not, or may not be, reasonably regarded as “attached to a top surface” of Wundt’s inflatable floor comprised of bottom tubes 110, as is required by claim 1. App. Br. 4; Final Act. 4.

² The rejection under 35 U.S.C. § 112(b) has been withdrawn. Ans. 3.

³ It is noted that the Examiner mistakenly refers to claim 4 when addressing the language of claim 3. *See* Final Act. 8.

⁴ Presently, claim 13 lacks antecedent basis for “the at least one seat” because claim 13 depends from claim 1 as opposed to claim 3. Appellant attempted to correct this in the non-entered amendment of Jan. 22, 2019.

Appellant does persuasively argue that Mayer's float chamber 309 having drop stitch construction 310 depicted in Figure 9 (cited at Final Act. 4) is attached to what is more likely to be regarded as a *bottom* surface as opposed to "a top surface" of deck chamber 111 having drop stitch 112. App. Br. 5–7; See Mayer col. 8, ll. 50–54; col. 9, ll. 9–18. However, as the Examiner points out, a careful reading of the appealed action reveals that the Examiner never took a position to the contrary. See Ans. 10 ([Appellant's argument] "does not contradict Examiner's statement discussing an observation made at a higher level of generalization 'Mayer discloses wherein drop-stitch layers are stacked such that are attached to a top surface of the lower surface' which does not mention the deck." (quoting Final Act. 4)). Accordingly, from the Final Action and the Answer it is clear that the Examiner never relied on Mayer as disclosing the precise subject matter of attaching a watercraft side to a *top* surface of that watercraft's floor. Rather, Mayer was relied upon by the Examiner to illustrate that the more general technique of stacking inflatable drop-stitch layers was known in the art. It is from this determination that the Examiner concludes that the *combined teachings* of the references would yield the subject matter claimed, including sides "attached to a top surface of" a floor.

"[An obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a [decision maker] can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418–21 (2007). The Examiner reasons that it would have been obvious to use Mayer's layering technique to arrive at the claimed skiff having drop-stitched sides attached to its top surface so as to "align the principal axes of the load bearing threads of the different layers." Appellant

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does not address the Examiner's actual findings concerning Mayer; nor does Appellant address the Examiner's reasoning in support of the proposed combination. Arguments must address the Examiner's action. 37 C.F.R. § 41.37(c)(1)(iv) ("The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant").

In effect, the only relevant argument presented in this appeal is that Wundt supposedly teaches away from the combination proposed by the Examiner. App. Br. 8. The statement in paragraph 3 of Wundt that Appellant relies on for this assertion is: "[o]ne undesirable characteristic of prior inflatable boats is that they provide a relatively unstable and low performance hull structure." This statement makes no reference to, and therefore includes no criticism of, any specific types of hull structures to which Wundt considers instability and low performance attributable. Ans. 12. At most, the cited portion of Wundt identifies generally undesirable hull characteristics. Merely identifying undesirable characteristics with a high level of generality is not the same as "teaching away" from a proposed combination, particularly where, as here, there is no showing that the proposed combination would necessarily result in those characteristics. "[T]he prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed . . ." *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Just because "better alternatives" may exist in the prior art that "does not mean that an inferior combination is inapt for obviousness purposes." *In re Mouttet*, 686 F.3d 1322, 1334 (Fed. Cir. 2012) (citation omitted).

CONCLUSION

The Examiner's rejections are AFFIRMED.

DECISION SUMMARY

Claim(s)	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1, 2, 7, 8, 11	103	Wundt, Mayer	1, 2, 7, 8, 11	
4	103	Wundt, Mayer, Czarnowski	4	
5	103	Wundt, Mayer, Hope	5	
6	103	Wundt, Mayer, Pepper	6	
9	103	Wundt, Mayer, Horan	9	
10	103	Wundt, Mayer, Klare	10	
12, 14	103	Wundt, Mayer, Shimiozo	12, 14	
3, 13	103	Wundt, Mayer, Gonzales	3, 13	
Overall Outcome			1-14	

TIME PERIOD FOR RESPONSE

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