

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MASTERCRAFT BOAT COMPANY, LLC,
Petitioner,

v.

MALIBU BOATS, LLC,
Patent Owner.

Case IPR2016-01057
Patent 8,578,873 B2

Before JOSIAH C. COCKS, WILLIAM V. SAINDON, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Petitioner, MasterCraft Boat Company, LLC (“MasterCraft”), filed a Petition to institute an *inter partes* review of claims 1, 2, 6, 7, 17–20, 22, and 23 of U.S. Patent No. 8,578,873 B2 (Ex. 1001, “the ’873 patent”). Paper 1 (“Pet.”). Patent Owner, Malibu Boats, LLC (“Malibu”), filed a Patent Owner’s Preliminary Response. (Paper 6, “PO Resp.”).

An *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we conclude that the information presented in the Petition does not establish a reasonable likelihood of success with respect to claims 1, 2, 6, 7, 17–20, 22, and 23 of the ’873 patent. We do not institute an *inter partes* review.

B. Related Matters

Both parties describe this *inter partes* review as being the subject of a pending lawsuit styled *Malibu Boats, LLC v. MasterCraft Boat Company, LLC*, Case No. 3:15-CV-276-TAV-HBG. Pet. 1; Paper 5, 1. The ’873 patent is also the subject of another petition for *inter partes* review involving the same parties (IPR2016-01058).

C. The ’873 Patent

The ’873 patent is titled “Surf Wake System for a Watercraft.” Ex. 1001, Title. More specifically, the ’873 patent characterizes its disclosed surf wake system as operating to modify a wake formed by a watercraft to

create a “surf wake.” *Id.* at 2:11–25. By way of background, the ’873 patent explains the following:

To facilitate surfing, a wake should be formed away from the stern of the watercraft, for example, about ten feet away, and with a waist-height peak, for example, about three feet or higher. Generally hundreds, and sometimes thousands, of pounds of additional weight or ballast to a rear corner of the watercraft to make the watercraft tilt to one side, displaces so more water, and hence generates a larger wake on that side. Such additional weight may be in the form of removable ballast bags, installed ballast tanks or bladders, or passengers positioned to one side of the watercraft, which is primarily used to tip the watercraft to that side. Using such additional weight to produce larger wakes, however, poses several disadvantages. For example, such additional weight may take up significant space and capacity that may otherwise reduce the passenger capacity of the watercraft. Also, such additional weight may unbalance the watercraft creating difficulties in control. Moreover, the additional weight generally must be moved from one side of the water craft to the other in order to generate a wake on the other side of the water craft. Shifting such additional weight may require significant time and effort.

Id. at 1:45–65.

In lieu of the use of additional weight or ballast noted above, the surf wake system of the ’873 patent includes a pair of independently moveable upright water diverters operable to create a “starboard surf wake” and a “port surf wake.” *Id.* at 2:11–25. Figure 1 is reproduced below:

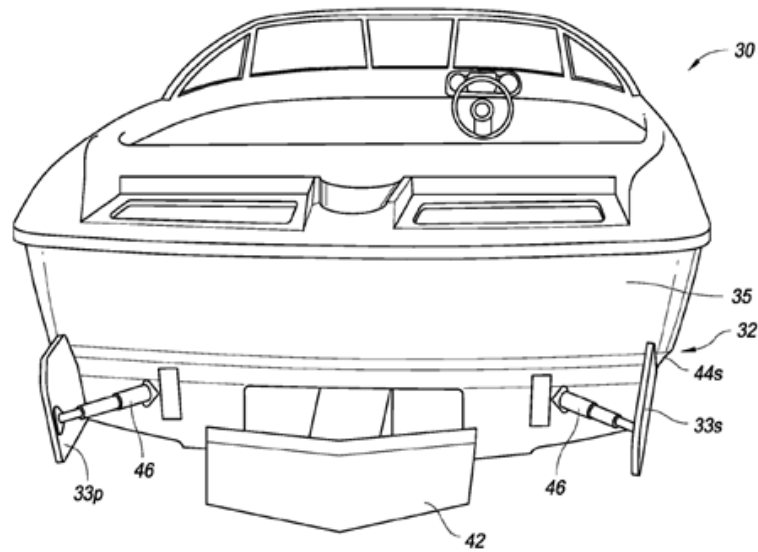


FIG. 1

Figure 1 illustrates “a rear perspective view of an exemplary surf wake system” according to the invention. Ex. 1001, 4:13–15. Watercraft 30 includes actuators 46 connected to flap assemblies 33p and 33s, located respectively, on the port and starboard sides of the watercraft. *Id.* at 6:66–7:12. Figures 5 and 6 are reproduced below:

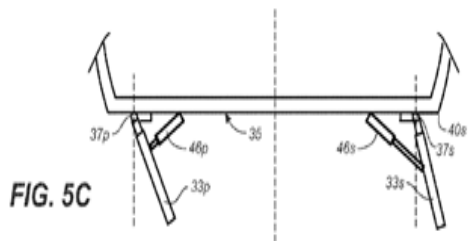
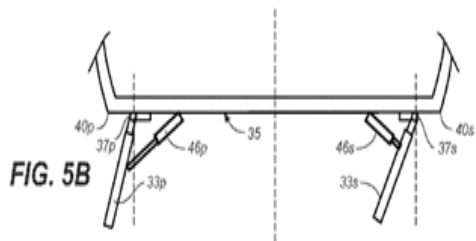
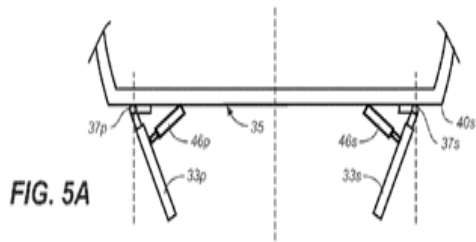


FIG. 6A

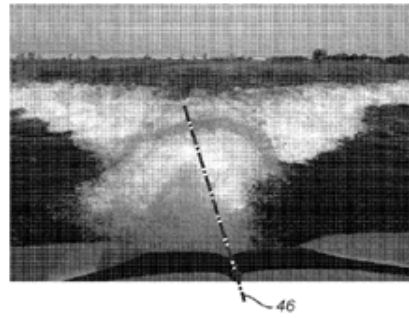


FIG. 6B

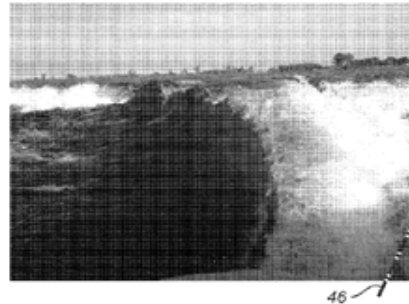
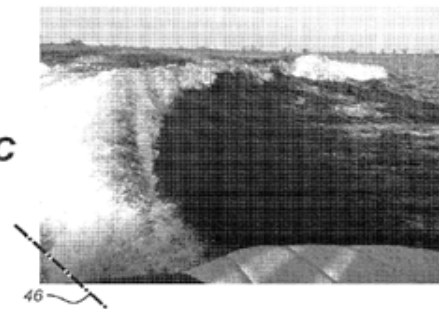


FIG. 6C



Figures 5a–c depict “schematic views of an exemplary surf wake system of FIG. 1 in which the flap assemblies are positioned for cruising, a starboard side surf wake, and a port side surf wake, respectively.” Ex. 1001, 4:23–26. Figures 6a–c depict “conventional, starboard surf, and port surf wakes, respectively, as produced by the surf wake system of FIG. 1.” *Id.* at 4:27–29.

D. Illustrative Claims

Claims 1 and 20 are independent, and are reproduced below.

1. A boat configured to generate a starboard side surf wake for at least right-foot-forward wake surfing and a port side surf

wake for at least left-foot-forward wake surfing, said port side surf wake different from said starboard side surf wake, the boat comprising:

- a port side upright water diverter movable between a first and second position, wherein one of said first and second positions produces said starboard side surf wake;

- a starboard side upright water diverter movable between a first and second position, wherein one of said first and second positions produces said port side surf wake;

- a controller responsive to user input into an input device;
- and

- one or more actuators responsive to said controller to move said port side water diverter from one of said first and second positions to the other of said first and second positions, and move said starboard side water diverter from one of said first and second positions to the other of said first and second positions, wherein when said port side water diverter produces said starboard side surf wake for right-foot-forward wake surfing, a port side wake is substantially unsuitable for left-foot-forward wake surfing and when said starboard side water diverter produces said port side surf wake for left-foot-forward wake surfing, a starboard side wake is substantially unsuitable for right-foot-forward wake surfing.

20. A boat configured to produce a right side surf wake and a left side surf wake different from said right side surf wake, both said right side surf wake and left side surf wake different from a wake of said boat moving through water without water diverters engaged, said boat comprising:

- a memory storing information including a plurality of wake surf settings;

- a controller responsive to said information stored in said memory;

- one or more actuators responsive to said controller;

- a right side upright water diverter operably connected to at least one of said actuators to move between a first and second position, wherein one of said first and second positions produces said left side surf wake; and

- a left side upright water diverter operably connected to at

least one of said actuators to move between a first and second position, wherein one of said first and second positions produces said right side surf wake, wherein when said right side upright water diverter produces said left side surf wake, a right side wake is not said right side surf wake, and when said left side upright water diverter produces said right side surf wake, a left side wake is not said left side surf wake.

E. References Relied Upon

Reference	Date	Exhibit No.
U.S. Patent No. 6,520, 104 B1 to Svensson (“Svensson”)	Feb. 18, 2003	1003
U.S. Patent No. 3,159,134 to Winnen (“Winnen”)	Dec. 1, 1964	1004
Eugene P. Clement & Donald L. Blount, <i>Resistance Tests of a Systematic Series of Planing Hull Forms</i> , 71 TRANSACTIONS 491 (“Clement”)	1964	1005
U.S. Patent No. 7,617,026 B2 to Gee et al. (“Gee”)	Nov. 10, 2009	1006
U.S. Patent 6,006,689 to Olofsson (“Olofsson”)	Dec. 28, 1999	1007

F. The Alleged Grounds of Unpatentability

MasterCraft contends that claims 1, 2, 6, 7, 17–20, 22, and 23 are unpatentable under 35 U.S.C. on the following grounds:

Reference(s)	Basis	Claims Challenged
Svensson	§ 102	1, 2, 6, 7, and 17–19

Reference(s)	Basis	Claims Challenged
Svensson and Clement	§ 103	1, 2, 6, 7, and 17–19
Svensson and Gee	§ 103	20, 22, and 23
Svensson, Gee, and Clement	§ 103	20, 22, and 23
Winnen	§ 102	1, 2, 17, and 19
Winnen and Clement	§ 103	1, 2, 17, and 19
Gee	§ 102	20
Gee, Clement, and Olofsson	§ 103	20

In support of the above-noted grounds, MasterCraft relies on the declaration testimony of Dr. Brant R. Savander (Ex. 1002).

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Here, MasterCraft proposes construction of a single claim term—“surf wake.” According to MasterCraft, that term should be construed to mean either: (1) “a modified wake produced by a watercraft travelling through water,” or (2) “a wake whose size, shape, or other characteristics have been enhanced to make it more suitable for surfing than it otherwise would be.” Pet. 9.

Malibu does not agree with either of MasterCraft’s proposed constructions. As is urged by Malibu, a surf wake “must be a wake that is suitable for surfing.” PO Resp. 17. Pointing to content of the ’873 patent, as also to its declarant, Dr. Kevin J. Maki, Malibu contends that a “surf wake” is “a wake whose size shape, or other characteristics have been enhanced to make it suitable for surfing.” *Id.* (citing Ex. 1001, 5:46–51; Ex. 2001 ¶¶42–49.) On the record before, and for the reasons below, we construe “surf wake” in the manner proposed by Malibu.

At the outset, we observe that the ’873 patent describes that “[o]ne aspect of the present invention is directed to a surf wake system for modifying a wake formed by a watercraft travelling through water.” Ex. 1001, 2:11–13. We, however, do not share MasterCraft’s view that such description establishes the meaning of “surf wake.” We agree with Malibu that, at its core, a surf wake must be a wake that is suitable for surfing. MasterCraft’s proposal that simply any wake that has been “modified” amounts to a “surf wake” is not correct as that meaning would encompass wakes that, although modified, are not suitable for surfing.

The alternative meaning that MasterCraft offers also has deficiencies, as it too includes within its ambit wakes that are unsuitable for surfing. We do not conclude that a wake that is “more suitable for surfing

than it otherwise would be” amounts to a wake that would be regarded as a surf wake. Indeed, a wake that is “more suitable for surfing than it otherwise would be” is not necessarily suitable for surfing.

The ’873 patent describes the following:

Generally, the present invention relates to a surf wake system for a watercraft that is concerned with flow management of water passing the stern as the water craft is moving forward through a body of water, so that water is directed in such a manner to enhance size, shape and/or other characteristics [of] the resulting wake of the watercraft.

Ex. 1001, 5:46–51. The ’873 also provides context for to the types of characteristics that make a wake suitable for surfing. In that regard, the ’873 explains that “[t]o facilitate surfing, a wake should be formed away from the stern of the watercraft, for example about ten feet away, and with a waist-height peak, for example about three feet or higher.” *Id.* at 1:45–48.

In light of the record before us, we construe “surf wake” as “a wake whose size shape, or other characteristics have been enhanced to make it suitable for surfing.” We observe also that the challenged claims in this proceeding require that a surf wake is created by a structure termed an “upright water diverter” (*see, e.g.*, claims 1 and 20). We regard an “upright water diverter” as a component that is structured and configured to create a surf wake.¹

¹ In connection with this proceeding, we have applied the claim interpretation standard generally understood as the broadest reasonable interpretation, including for the construction of “surf wake” and “upright water diverter.” *See* 37 C.F.R. § 42.100(b). Although we observe that in connection with the meaning of certain terms, such as “upright water diverter,” arguments of Malibu’s counsel at district court are diametrically opposed to arguments presented here (*compare* Ex. 1020, 17:19–24 and

We have given all claim terms their ordinary and customary meaning and discern that it is not necessary to make explicit that meaning for any terms other than those discussed above. *Cf. Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed.Cir.1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

B. Grounds based on Svensson

MasterCraft offers the following grounds based on Svensson: (1) anticipation of claims 1, 2, 6, 7, and 17–19 by Svensson; (2) obviousness of claims 1, 2, 6, 7, and 17–19 over Svensson and Clement; (3) obviousness of claims 1, 2, 6, 7, and 17–19 over Svensson and Gee; and (4) obviousness of claims 1, 2, 6, 7, and 17–19 over Svensson, Gee, and Clement.

1. Overview of Svensson

Svensson is titled “Arrangement and Method for Dynamic Control of the Movements and Course of a High-speed Ship Hull.” Ex. 1003, Title. In particular, Svensson describes the following in connection with an object of its invention:

[T]o provide an arrangement for dynamic control of the movements and course of a high-speed vessel hull, which arrangement improves both the course stability and the manoeuvrability and also counteracts pitching and rolling tendencies of a high-speed vessel hull without resulting in any losses in speed.

Id. at 1:40–46.

18:13–20:6, *with* PO Resp. 46:12–47:20), we do not alter the claim construction standard employed in this proceeding.

Svensson's Figure 3 is reproduced below:

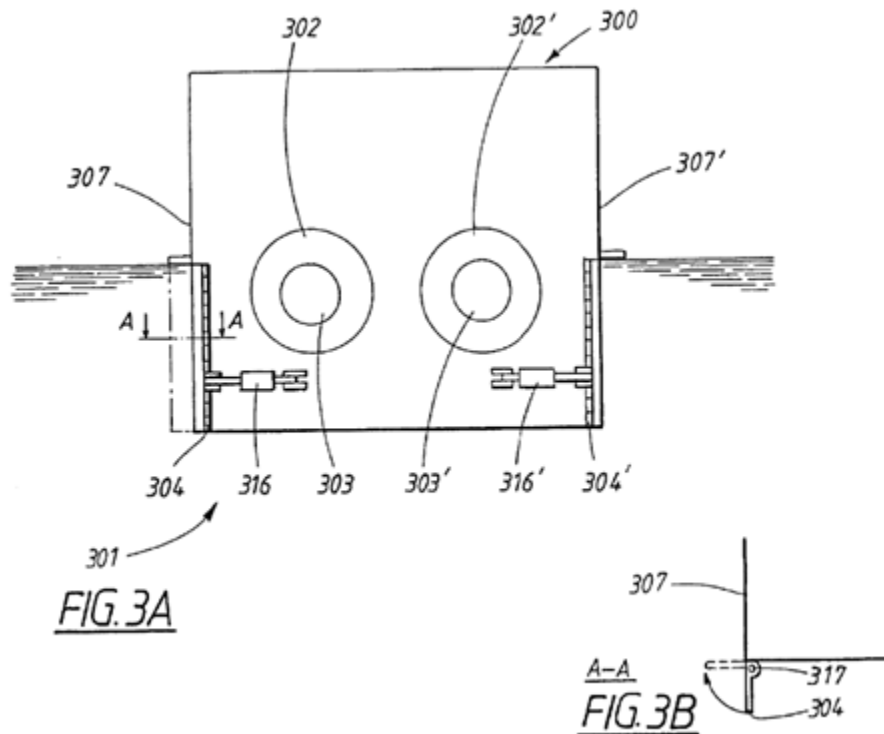


Figure 3A shows a plan view from the rear of a high-speed vessel hull equipped with an arrangement according to the invention. Ex. 1003, 4:61–64. Figure 3B “shows diagrammatically one rear corner of the vessel shown in FIG. 3A, seen from above along the section A—A in FIG. 3A.” *Id.* at 4:65–67. As illustrated, single-hull vessel 300 includes propulsion members 302, 302', and flap members 304, 304' that are rotatable about vertical bearing point 317. *Id.* at 6:12–30. Adjustment of Svensson's flap members allows for changes in movement and course of the vessel. *Id.* at 2:47–54.

2. Anticipation by Svensson

Anticipation is established only when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990). Here, MasterCraft contends that all of the features of

claims 1, 2, 6, 7, and 17–19 of the '873 patent are disclosed in Svensson. In particular, according to MasterCraft, Svensson's flap members, such as flap members 304 and 304', constitute the required port side upright water diverter and starboard side upright water diverter. Pet. 26. MasterCraft also takes the view that those flaps when deployed "inherently" produce a port and a starboard surf wake. *Id.* Malibu does not agree that any of Svensson's disclosed flaps produce a surf wake or are structured so as to produce such a wake. PO Resp. 39. We share Malibu's disagreement.

Svensson is silent as to the characteristics of any wake produced by its flaps. Those flaps serve a particular purpose in controlling vessel movement that is unconcerned with the generation of any particular wake. MasterCraft evidently basis its anticipation position here on the theory that a surf wake is generally any modified wake produced by a watercraft travelling through water. *See, e.g.*, Pet. 21–22 ("the deployed port flap member [of Svensson] inherently produces a starboard surf (modified) wake."). As discussed above, however, that is not the correct construction of "surf wake."

We have considered the record, including the content of Svensson and the testimony of Dr. Savander (Ex. 1002). We are unpersuaded that Svensson's flap members, whose purpose is distinct in controlling vessel maneuvering and course as Dr. Savander points out, are structured or configured to produce surf wakes. *See* Ex. 1002 ¶ 18. Indeed, it is clear from Svensson that the arrangement for such vessel control, of which the flaps are a part, operates "without resulting in any losses in speed [of a vessel]." Ex. 1003, 2:45–46. Yet, the types of upright water diverters called for by the claims are structured to deliberately create constructive interference (i.e., a surf wake) that would seemingly impose speed loss on a

vessel. Ex. 1001, 8:21–25. We credit Dr. Maki’s testimony that the surf wake system of the ’873 patent is one understood as “inefficient” in that respect. Ex. 2001 ¶ 68. We are not satisfied that Svensson’s flaps are structured or configured as upright water diverters that create surf wakes.

We determine that Svensson does not disclose all the features required by claims 1, 2, 6, 7, and 17–19 of the ’873 patent. Accordingly, we are not persuaded that MasterCraft has shown a reasonable likelihood of success in its challenge to those claims as anticipated by Svensson.

3. *Obviousness over Svensson*

MasterCraft proposes three grounds of unpatentability to claims of the ’873 patent based on obviousness over Svensson taken with one or more of Clement and Gee. Clement is an article titled “Resistance Tests of a Systematic Series of Planing Hull Forms.” Ex. 1005, 3. Gee is a U.S. Patent titled “Programmable Trim Controls System for Marine Applications.” Ex. 1006, Title. MasterCraft relies on Clement for its disclosure of vessel hulls, and contends that a person of ordinary skill in the art would have implemented Svensson’s flap arrangements onto Clement’s vessel hulls.² See, e.g., Pet. 30–39. MasterCraft relies on Gee for its disclosure in connection with a memory responsive to a controller in connection with control of boat movement. See, e.g., *id.* at 39–46.

² The assessments by the parties’ declarants concerning the level of ordinary skill in the art do not align. Compare Ex. 1002 ¶ 9 with Ex. 2001 ¶¶ 18–22. In essence, the parties disagree as to the level and type of education possessed by a person of ordinary skill in the art. For purposes of this Decision, we credit MasterCraft’s declarant, Dr. Savander (Ex. 1002) as to the level of ordinary skill in the art.

We observe that neither Clement nor Gee describes an intent or an objective of forming any particular type of wake. The primary thrust of MasterCraft's obviousness assertions is that Svensson's flaps would "inherently" produce a surf wake when employed on a vessel hull, such as those of Clement. *Id.* at 39. In making those assertions, MasterCraft relies in large part on the testimony of Dr. Savander. According to MasterCraft, Dr. Savander developed a "3-D computer assisted design ('CAD') model of a particular 'Clement Model 4666 hull' receiving flap members, and that based on the output of "computational fluid dynamics ('CFD') simulations" the required wake allegedly results. *Id.* at 31. We observe that Dr. Savander testifies as follows:

The geometric definition for the four different flaps used are given in Figures 16 through 19. Svensson provides no geometric guidance as to the height and width of the flaps. Accordingly, a POSA would have reasonably estimated, the flap height to be approximately 50% of the hull side height, or 18.2 inches, in order for the flap to start at the lower chine and extend above the water surface. Similarly a POSA would have explored a range of flap widths that would reasonably fall into the range of 2, 3, and 4 inches, as also shown in Figures 16 through 18. A POSA would reasonably conclude that flaps larger than 4 inches in width would be excessive in size, and similarly, that a flap width less than 2 inches may not be large enough to be effective. Svensson Figure 2, found herein for convenience in Figure 1, style flap is an extension of upright diverter 3, but now wrapping around the chine as shown in Figure 19.

Ex. 1002 ¶ 34.

In light of that testimony, we understand that Dr. Savander's computer modeling is based on specific assumptions as to sizing and positioning of flaps when placed on a vessel hull so as to allegedly produce a surf wake. Dr. Savander provides no persuasive reasoning as to why those assumptions

are derived appropriately from the teachings of the prior art. Indeed, while noting that Svensson, itself, provides “no geometric guidance as to the height and width of the flaps,” as noted above, Dr. Savander proceeds to “estimate[]” without adequate reasoning that a flap height of “approximately 50% of the hull side height, or 18.2 inches” would be used “in order for the flap to start at the lower chine and extend above the water surface.” *Id.* Dr. Savander also theorizes that flap width would “fall into the range of 2, 3, and 4 inches.” *Id.* It simply does not follow on the record before us that the particular flap dimensions and positioning would have been derived from the teachings of the prior art. Yet, those parameters are crucial to MasterCraft’s position that claims of the ’873 patent would have been obvious based on Svensson. We are not satisfied that those obviousness challenges are guided by the teachings of the prior art rather than formulated, in-part, from hindsight with the intention of creating the upright water diverters disclosed in the ’873 patent.

We also find lacking in the Petition suitable articulated reasoning as to why a skilled artisan would have adequate reason to combine the teachings of the prior art. In particular, MasterCraft simply concludes that Svensson’s teachings have “broad applicability” and on that basis a person of ordinary skill in the art generally would have been motivated to apply those teachings to any given boat hull, such as that disclosed in Clement. Pet. 31. That is not, in our view, sufficiently articulated reasoning with rational evidentiary underpinnings that is necessary to demonstrate an adequate reason to combine prior art teachings. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

We have considered the Petition and Malibu's Patent Owner Response. On the record before us, we are not satisfied that MasterCraft has accounted for the upright water diverters structured to produce surf wakes that are required by claims 1, 2, 6, 7, 17–19, 20, 22, and 23. Accordingly, we are not persuaded that MasterCraft has shown a reasonable likelihood in any of its obviousness challenges based on Svensson. We do not institute an *inter partes* review based on any of those challenges.

C. Grounds based on Winnen

MasterCraft contends that claims 1, 2, 17, and 19 are anticipated by Winnen, or alternatively would have been obvious based on Winnen and Clement. Similar to Svensson, Winnen describes speed steering control for jet propelled power boats. Ex. 1004, 1:10–11. That steering control is accomplished by rudder assembly 30 which includes rudders 39 positioned at the rear of a boat hull. *Id.* at 2:48–72. According to MasterCraft, “[t]he deployment of Winnen’s port or starboard rudder while the other rudder remains retracted inherently produces a surf (modified) wake.” Pet. 49. As with Svensson, Winnen does not disclose that any particular wake is produced by its rudders. For essentially the same reasons discussed above with respect to alleged anticipation by Svensson, we are not persuaded that Winnen’s steering control rudders are structured or configured as upright water diverters that create surf wakes.

MasterCraft’s obviousness ground based on Winnen and Clement has largely the same defects noted above in connection with MasterCraft’s ground based on Svensson and Clement. MasterCraft relies extensively on computer modeling proposed by Dr. Savander based on a theoretical combination of Winnen and Clement. Once again, although Dr. Savander

notes that “Winnen provides no specific geometric guidance as to the height and width of the rudders,” other than a single illustration of the rudders in its Figure 1, Dr. Savander employs “estimated” dimensions as a part of the modeling without appropriate explanation as to how those dimensions were derived from the teachings of the prior art. Ex. 1002 ¶ 53. Also, as was the case with the Svensson grounds, we are not persuaded on the record before us that MasterCraft has articulated suitable reasoning as to why a person of ordinary skill in the art would have combined the teachings of Winnen and Clement.

Correspondingly, we have considered the record before us but are not persuaded that MasterCraft accounted for the claimed upright water diverters structured to produce surf wakes as a part of any of the grounds based on Winnen. We do not institute *inter partes* review based on those grounds.

D. Grounds based on Gee

MasterCraft proposes that claim 20 is anticipated by Gee, or alternatively, would have been obvious based on Gee, Clement, and Olofsson. Those grounds fare no better than the grounds discussed above concerning disclosure of the upright water diverters configured to produce surf wakes.

As discussed above, Gee is directed to a programmable trim control system for use in marine applications. Ex. 1006, Abstract. Gee describes trim control devices 22 that may include “interceptor plates.” *Id.* at 3:9–11. MasterCraft generally urges that a skilled artisan would have understood Gee’s reference to those interceptor plates “to include vertical plates attached at left and right sides of the boat’s transom, which can be alternately deployed below the transom to roll the boat toward the side

opposite the deployed interceptor plate.” Pet. 58. MasterCraft also asserts that the interceptor plates would “inherently produce wakes resembling the surf wakes shown in FIGS. 6B and 6C of the ’873 patent.” *Id.* at 60. We are not persuaded that record evidence supports a finding that Gee’s interceptor plates constitute upright water diverters that would “inherently” produce surf wakes.

MasterCraft’s grounds based on Gee, Clement, and Olofsson carries similar defects to the other above-discussed grounds involving Clement. Olofsson describes an “arrangement for dynamic control of running trim and list of a boat, having at least one hull with a stern.” Ex. 1007, Abstract. Like Gee, Olofsson discloses “an interceptor member” as a part of its arrangement. *Id.* MasterCraft contends that implementing interceptor members/plates of either Gee or Olofsson onto a vessel hull disclosed in Clement, results in a boat with upright water diverters that produce surf wakes. Pet. 63–64. Here, too, MasterCraft relies on the Declaration testimony of Dr. Savander that presents computer modeling allegedly of wakes produces from a combination of Gee, Clement, and Olofsson. Similar to the discussion above with respect to both Svensson and Winnen, although Dr. Savander observes that Gee does not “provide any geometric guidance on the size or shape of the interceptors” (Ex. 1002 ¶ 71), and Olofsson “provides no geometric guidance as to the height and width of the interceptors” (*id.* at ¶ 74), Dr. Savander provides “estimate[s]” as to those dimensions to accomplish his proposed modeling (*id.*). Dr. Savander does not explain suitably how those estimates would have been derived from the teachings of the prior art. We also are not persuaded that MasterCraft

provides appropriate explanation as to why a person of ordinary skill in the art would have combined the teachings of Gee, Clement, and Olofsson.

We, therefore, are not persuaded that MasterCraft has shown a reasonable likelihood of success in any of its grounds premised on Gee.

III. CONCLUSION

Having evaluated the Petition and Malibu's Preliminary Response, we determine that MasterCraft has not shown a reasonable likelihood of success in any of its challenges to claims 1, 2, 6, 7, 17–20, 22, and 23 of the '873 patent.

IV. ORDERS

It is ORDERED that the Petition is *denied*, and no trial is instituted.

Case IPR2016-01057

Patent 8,578,873 B2

PETITIONER:

Edmund J. Haughey

Justin J. Oliver

ITZPATRICK, CELLA, HARPER & SCINTO

MasterCraftIPR@fchs.com

joliver@fchs.com

PATENT OWNER:

Brian Berliner

Laura A. Bayne

O'MELVENY & MYERS LLP

bberliner@omm.com

lbayne@omm.com