The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ARSENE ROTH and JEAN VIAUD

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Appeal No. 2004-1211
Application No. 09/945,418

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ON BRIEF

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Before GARRIS, KRATZ and JEFFREY T. SMITH, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-10 which are all of the claims in the application. On page 3 of the answer, the Examiner has indicated that claims 2-10 now stand objected to as being dependent upon rejected claim 1 but otherwise allowable. Therefore, we hereby dismiss the appeal as to claims 2-10, thus leaving independent claim 1 as the sole claim before us.

The subject matter on appeal relates to the combination of a baler and a bale wrapping apparatus wherein the wrapping apparatus

is located entirely behind the baler and wherein the combination further includes a brace structure having a lower end region fixed to the chassis on which the baler and wrapping apparatus are positioned and having front and rear upper regions respectively coupled to the baler and the wrapping apparatus. Further details regarding this appealed subject matter are set forth in independent claim 1 which reads as follows:

> 1. In a combination including a baler, a bale wrapping apparatus for entirely enveloping a bale formed by the baler and a wheeled chassis supporting the baler and the wrapping apparatus in their entirety, the improvement comprising: said wrapping apparatus being located entirely behind said baler; and a brace structure having a lower end region fixed to said chassis at least at a location between said baler and bale wrapping apparatus and having front and rear upper regions respectively coupled to said baler and said bale wrapping apparatus.

The reference set forth below is relied upon by the Examiner in the § 102 rejection before us:

Hood et al. (Hood)	5,822,967	Oct. 20, 1998

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Hood.

We refer to the brief and to the answer for a complete discussion of the opposing viewpoints expressed by the Appellants and by the Examiner concerning the above noted rejection.

OPINION

For the reasons which follow, this rejection cannot be sustained.

We agree with the Appellants' argument that Hood's combination of a baler and a bale wrapping apparatus does not include the here claimed feature wherein the wrapping apparatus is located entirely behind the baler. In response to this argument, the Examiner contends that "Figure 1 of Hood... clearly illustrates a wrapping apparatus located entirely behind a baler" (Answer, page 3). This is incorrect.

On the contrary, Figure 1 of the Hood patent unquestionably shows that the wrapper assembly 40 and the wrapping structure 50 are disposed beneath tailgate 22 which is part of baler 12 (e.g., see lines 34-39 in column 3). Therefore, while Hood's wrapper assembly and wrapping structure may be located behind the front portion 13 of baler 12, they are located beneath rather than behind the rear or tailgate portion of the baler. As such, patentee's wrapper assembly and wrapping structure simply are not located entirely behind the baler as required by the claim before us.[1]

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[1] This claim distinction is graphically illustrated by a comparison of Hoods Figure 1 with the sole Figure of Appellants application wherein the wrapping apparatus 14 is shown as being
(continued...)

For this reason alone, the Examiner's § 102 rejection of claim 1 is being anticipated by Hood cannot be sustained.

The decision of the Examiner is reversed.

REVERSED

BRADLEY R. GARRIS Administrative Patent Judge	)	
PETER F. KRATZ Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY T. SMITH Administrative Patent Judge	)	

BRG/jrg

[1](...continued)
located entirely behind baler 12 including the rear section or discharge gate 20 thereof.

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