

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN R. SCHOESSOW

Appeal No. 96-0079
Application No. 08/114,391¹

ON BRIEF

Before LYDDANE, FRANKFORT, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1, 4 and 5. Subsequent to the final rejection, claims 2 through 4 were amended, resulting in the allowance of claims 2 and 3, the withdrawal of the 35 U.S.C. § 112, second paragraph,

¹ Application for patent filed August 31, 1993.

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rejection of claims 4 through 6 and the objection to claim 6 as depending from a rejected claim.

We REVERSE.

BACKGROUND

The appellant's invention relates to a livestock feeding structure. Claims 1 and 4 are representative of the subject matter on appeal and a copy of claims 1 and 4 is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Schoessow	4,258,663	Mar. 31, 1981
Harton	4,930,449	June 5, 1990

Claims 1, 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Harton in view of Schoessow.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 12, mailed

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June 27, 1995) for the examiner's complete reasoning in support of the rejection, and to the appellant's brief (Paper No. 11, filed May 5, 1995) for the appellant's arguments thereagainst.

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OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Before addressing the examiner's rejection based upon prior art, it is an essential prerequisite that the claimed subject matter be fully understood. Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 103 begins with a determination of the scope of the claim. The properly interpreted claim must then be compared with the prior art. Claim interpretation must begin with the language of the claim itself. See Smithkline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988).

The general rule is that terms in claims are to be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently. See Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed. Cir.

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1984) and Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1578, 38 USPQ2d 1126, 1129 (Fed. Cir. 1996). Furthermore, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

In this case we find it necessary to construe the meaning of the terminology "permanently affixed" as recited in claim 1 with regard to the mounting of the feed hopper in the livestock feeding structure. In the background of the invention (specification, p. 1), the appellant describes the livestock feeder wagon of his prior patent (Schoessow 4,258,663) as including removable panels which can be secured to an inner framework to provide a feed bunker. In the summary of the invention (specification, p. 1), the appellant states that his livestock feeding bunker in the present invention is constructed with permanently mounted panels carried on a framework grating to form a hopper. In the description of the invention (specification, p. 4), the appellant explains that plates 16 form

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a feed hopper and that the plates 16 are preferably rigidly welded in place. The American Heritage Dictionary, Second College Edition (1982), defines "permanent" as "Fixed and changeless; lasting or meant to last indefinitely."

Our review of the specification, as originally filed, and the dictionary definition leads us to conclude that one of ordinary skill in the art would understand the terminology "permanently affixed" as recited in claim 1 to mean that the hopper is nonremovably affixed (such as by welding) in the livestock feeding structure.

Additionally, we find it necessary to construe the terminology "one side of the structure" recited in claims 1 and 4. In the description of the invention (specification, p. 3), the appellant explains that gates, such as gate 12 in Figures 1 and 2, may be provided along one or both sides of the wagon. Thus, the appellant's specification clearly distinguishes the sides of the wagon 10 from the ends of the wagon (i.e., end frames 15 and 26 seen in Figures 1 and 2). Our review of the specification, as originally filed, thus leads us to conclude that one of ordinary skill in the art would understand that the

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terminology "one side of the structure" as recited in claims 1 and 4 refers to the long sides of the wagon (structure), not the short ends of the wagon (structure).

Next, we turn to the issue of whether the limitations in claims 1 and 4 relative to the size of the "openings" are entitled to be given weight. We agree with the appellant's argument (brief, pp. 8-11) that the examiner inappropriately ignored the limitations in claims 1 and 4 relative to the size of the "openings." The limitations in claims 1 and 4 relative to the size of the "openings" limit the size of the "openings" in the structure being claimed and therefore must be given weight. See In re Stencel, 828 F.2d 751, 754, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987).

Having interpreted the claims on appeal in the manner explained above, we find ourselves in agreement with the appellant that the claimed invention would not have been obvious to one of ordinary skill in the art at the time of the appellant's invention based on the combined teachings of Harton and Schoessow. While we agree with the examiner that it would have been obvious to provide the feeder of Harton with a

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hopper/bin in view of Schoessow, we do not see that the applied prior art suggests a feed hopper that is permanently affixed in the livestock feeding structure, or wherein at least a portion of one side of the feed hopper is permanently affixed to the hinged portion of one upright framework side so as to rotate therewith, as required in claim 1 on appeal. In our opinion, a combination of the applied prior art would have provided a removable hopper/bin in the feeder of Harton, not a hopper/bin that is permanently affixed in the feeder of Harton. Since all the limitations of claim 1 are not met or rendered obvious by the prior art applied by the examiner, we will not sustain the 35 U.S.C. § 103 rejection of claim 1.

We agree with the appellant's argument (brief, p. 7) regarding claim 4 that Harton's feeder, even when modified by Schoessow in the manner set forth by the examiner, does not provide unobstructed access into the structure above the level of the floor. In that regard, we note that Harton's crossbar 9, reinforcing structure 4 and roof 3 would obstruct access into the feeder above the level of the floor 7 as shown in Figures 1 and 2. Since all the limitations of claim 4 are not met by the prior art applied by the examiner, we will not sustain the 35 U.S.C.

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§ 103 rejection of claim 4 and its dependent claim 5.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 4 and 5 under 35 U.S.C. § 103 is reversed.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

WILLIAM E. LYDDANE)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
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JEFFREY V. NASE)	
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APPENDIX

1. In a livestock feeding structure embodying a floor and at least one upright framework side provided with openings for livestock to reach with their heads and necks into the structure for the purpose of feeding, an improvement comprising:

a) at least a portion of at least one upright framework side being hinged to rotate about a substantially vertical axis for providing unobstructed access into said structure through at least a portion of one side of said structure above the level of said floor to facilitate loading large round bales into said structure in side by side disposition,

b) a feed hopper having an open bottom elevated above said floor wherein said hopper is permanently affixed in said structure with at least a portion of one side of said hopper being carried by said portion of at least one upright framework side.

4. A livestock feeding structure which is universally applicable for dispersing substantially all forms of solid feed, including large round bales and fine feed, said structure comprising:

a) a manger configured floor,

b) a framework rising, substantially vertically from the peripheral portion of the floor, wherein at least a portion of said framework is provided with openings for livestock to

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reach with their heads and necks into the structure for the purpose of feeding,

c) a feed hopper carried on said framework above said floor, said feed hopper being configured with side plates with a smaller opening dimension at the bottom of said plates than at the top thereof, a lesser dimension of said opening between said plates at the bottom of said hopper being sufficient to receive therein a hay bale,

d) at least one portion of said framework on at least one side of said structure being hinged about a substantially vertical axis at one end to swing open carrying one said side plate of said hopper attached thereto to provide at least a portion of said side of said structure unobstructed above the level of said floor to facilitate loading of bales into said structure from said side,

e) latch means for securing said at least one portion of said framework.

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APJ NASE

APJ FRANKFORT

APJ LYDDANE

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

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FINAL TYPED: