

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte STEPHEN R. CULLEN

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Appeal No. 96-4004  
Application 08/342,603<sup>1</sup>

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ON BRIEF

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Before STONER, Chief Administrative Patent Judge, FRANKFORT,  
STAAB and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 10 through 18, all of the claims pending in the application.

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<sup>1</sup> Application for patent filed November 21, 1994. According to appellant, the application is a continuation of Application, 07/912,873, filed July 13, 1992, now abandoned.

Appeal No. 96-4004  
Application 08/342,603

The invention relates to a machine and method for bagging silage material. A copy of the appealed claims appears in the appendix to the appellant's brief (Paper No. 9).

The references relied upon by the examiner as evidence of obviousness are:

Eggenmuller et al. (Eggenmuller) 1972	3,687,061	Aug. 29,
Cox et al. (Cox) 1987	4,653,553	Mar. 31,

Claims 10 through 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cox in view of Eggenmuller.

Reference is made to the appellant's brief (Paper No. 9) and to the examiner's answer (Paper No. 10) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

Cox discloses a bag loading machine 10 which is designed to form and deliver into an agricultural bag 18 a dense mass of animal feed material such as forage or silage. The machine includes an infeed conveyor 32, a hopper 42, a pair of vertically-disposed, laterally-spaced tine shaft assemblies 34 and 36, a feed material compression and forming chamber 40, and a delivery chamber 44. These components are arranged as

best shown in Figures 1 and 3. As described by Cox,

the infeed conveyor 32 is operationally positioned with the lower receiving end thereof disposed to receive, conveyably elevate, and infeed material from a silage wagon or the like, not shown, but which would be moved into position along the side of said machine 10 and displaced therewith during the operational accomplishment of bag filling operations. Thus, the loose infeed forage material is delivered and directed into the hopper 42 by the infeed conveyor . . . so that it is deposited to the inside forward section of said hopper 42. The loose infeed forage material to be processed by said machine 10 is simultaneously and cooperatively engaged by the vertically disposed laterally spaced tine shaft assemblies 34 and 36 . . . so to coactively engage cooperatively and compressively urge feed material directionally and controllably into and through the compression and forming chamber 40 of said machine 10 and into the delivery chamber 44 thereof for airtight compacted uniform sidewall density self-supporting storage deposit of said feed material into said bag 18 [column 6, lines 33 through 60].

The delivery chamber 44 includes a set of pivot panels 140 which define its effective cross-section. These panels can be selectively positioned via inflatable bladders 136 to vary the interdiction or retardation effect of the chamber so as to control the density of the feed material passing therethrough (see column 8, lines 42 through 60).

As conceded by the examiner (see page 4 in the answer), the feed bagging machine and method disclosed by Cox do not

Appeal No. 96-4004  
Application 08/342,603

meet the limitations in independent claims 10 and 16 relating to the silage density control means. These limitations require, inter alia, that the control means include a plurality of horizontally spaced-apart density bars which are secured to an elongated, horizontally disposed, rotatable shaft for selective movement within the flow of silage material. Although Cox's pivot panels 140 correspond generally to the claimed density control means, they lack the spaced-apart bar configuration specified by claims 10 and 16. As a result of this difference in configuration, Cox's pivot panels 140 also fail to control silage density in the particular manner set forth in these claims.

Eggenmuller discloses a machine and method for pressing loose feed material into a mass having a desired density. The machine 2 includes "a receiving chamber 3 in which pressing tools 4 are arranged which press the feed into a forming channel and consists of a carriage with rollers 6. The forming channel 5 has in cross-section the shape of the mass of material 7 to be produced" (column 5, lines 9 through 13). As depicted in Figures 1 through 3, the pressing tools 4 appear to consist of a plurality of horizontally spaced-apart

Appeal No. 96-4004  
Application 08/342,603

bars.

According to the examiner, it would have been obvious to one of ordinary skill in the art at the time the invention was made

"to substitute a spaced-apart bar configuration as taught by Eggenmuller for the density control panel configuration in the Cox device and method, since this modification would have been to simply select an alternative density control configuration, known in the art" (answer, page 4).

The appellant, on the other hand, contends that

[i]nasmuch as the pressing tools 4 of Eggenmuller are for a completely different purpose than to provide a means for adjusting the density of the material in the storage bag, appellant believes that it would not have been obvious for one having ordinary skill in the art to rely on Eggenmuller, since the pressing tools of Eggenmuller were not designed to have the silage material flow between the bars, but were designed to force the material into the tunnel. It therefore is believed that it would not have been obvious to substitute the structure of Eggenmuller into Cox inasmuch as the panels of Cox are not provided for forcing material into the bag, but are merely provided to narrow the opening in the area where the material is passing therethrough. It is believed that this is especially significant in that Cox designed his

Appeal No. 96-4004  
Application 08/342,603

equipment so that the entire upper surface and sides of the silage would be engaged by panels or bladders. Cox did not desire to control the density by passing the material through spaced-apart bars, as in appellant's apparatus. Inasmuch as Eggenmuller was not concerned with varying the density by permitting silage to pass between adjustable bars, it certainly would not have been obvious to combine the teachings of Cox and Eggenmuller, since the same would have taught away from appellant's invention [brief, page 5].

The essence of the appellant's argument is persuasive. As indicated above, Eggenmuller's pressing tools 4 function to press feed material into forming channel 5. In this regard, they correspond to Cox's tine shaft assemblies 34 and 36 which function to compressively urge feed material into compression and forming chamber 40 and delivery chamber 44. While both of these feed pressing/urging mechanisms play a role in controlling the density of the feed products produced by their respective machines, their purpose differs markedly from that of Cox's pivot panels 140. In this light, the examiner's conclusion that one of ordinary skill in the art would have found the configuration of Eggenmuller's pressing tools 4 to be an obvious alternative to the configuration of Cox's pivot panels 140 is not well taken. In short, the combined teachings of Cox and Eggenmuller would not have suggested an

Appeal No. 96-4004  
Application 08/342,603

agricultural bagging machine or method meeting the particular limitations in independent claims 10 and 16 relating to the silage density control means.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103 rejection of claims 10 and 16, or of claims 11 through 15, 17 and 18 which depend therefrom, as being unpatentable over Cox in view of Eggenmuller.

As a final matter, we note that in a decision on appeal involving parent Application 07/912,873, a different panel of this Board acted pursuant to 37 CFR § 1.196(b) to enter a rejection essentially similar to the rejection involved in the instant appeal against essentially similar claimed subject matter.<sup>2</sup> To the extent that the decision in the instant

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<sup>2</sup> Given this circumstance, the statement on page 1 of the appellant's brief that "[t]here are no appeals or interferences which are related to this case" is somewhat perplexing. 37 CFR § 1.192(c)(2) requires an appeal brief to contain "[a] statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal" (emphasis added). Giving the appellant the benefit of the doubt, we assume that the failure to identify the prior appeal in the appellant's brief was due to an inadvertent oversight rather than any attempt to conceal the result of the earlier appeal.

Appeal No. 96-4004  
Application 08/342,603

appeal may conflict with that in the earlier appeal, we are satisfied that the result reached here is the correct one.

The decision of the examiner is reversed.

REVERSED

BRUCE H. STONER, JR.	)	
Chief Administrative Patent Judge	)	)
	)	
	)	
	)	
CHARLES E. FRANKFORT	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	
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	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

Dennis L. Thomte  
Zarley McKee Thomte Voorhees and Sease  
2120 South 72nd Street Suite 1111  
Omaha, NE 68124