

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte STEVEN R. CULLEN

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Appeal No. 97-0180  
Application 08/374,131<sup>1</sup>

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ON BRIEF

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Before McQUADE, NASE and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed January 18, 1995. According to the appellant, this application is a continuation of Application 08/200,765, filed February 23, 1994, now abandoned.

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DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 4-7, which are all the claims pending in the application. Claims 1-3 have been canceled.

The appellant's claimed subject matter is a bagging machine for bagging material into agricultural bags. Claim 4 is exemplary of the subject matter on appeal and recites:

4. A bagging machine for bagging material into agricultural bags comprising:

a frame means having rearward and forward ends;

a tunnel means on said frame means and having an intake end for receiving the material to be bagged and an output end adapted to receive the mouth of an agricultural bag;

a horizontally disposed rotor means at the intake end of said tunnel means for forcing the material to be bagged into said tunnel means and into said bag, and

a hopper means on said frame means for receiving the material to be bagged, said hopper means having an open upper end and a lower end;

said hopper means including a sloped front wall, a sloped rear wall; and side walls extending therebetween;

said walls being fixed and non-movable;

said sloped front wall and said sloped rear wall each having upper and lower ends;

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said rotor means being positioned between the lower end of said sloped front wall and the lower end of said sloped rear wall;

said front and rear walls extending upwardly and forwardly with respect to said rotor means.

REFERENCES

The following prior art references were relied on by the examiner:

Kinnear 21, 1954	2,689,597	Sep.
Komossa et al. (Komossa) Apr. 17, 1979	4,149,547	
Ryan Nov. 11, 1986	4,621,666	

THE REJECTIONS

Claims 4-6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ryan in view of Komossa.

Claim 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ryan in view of Kinnear.

The examiner's answer contains the following new ground of rejection:

Claim 5 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly

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point out and distinctly claim the subject matter which applicant regards as the invention.

Rather than reiterate the examiner's full statement of the above noted rejections and the conflicting view points advanced by the appellant and the examiner regarding the rejections, we make reference to the Office action mailed November 27, 1985 (Paper No. 5) and the examiner's answer (Paper No. 12) for the examiner's complete reasoning in support of the rejections and the appellant's brief (Paper No. 10) for the appellant's arguments thereagainst.

#### OPINION

In reaching our conclusions in this case we have given careful consideration to the appellant's invention as described in the specification, to the appealed claims, to the prior art applied by the examiner and to the respective view points advanced by the appellant in the brief and the examiner in the answer. These considerations lead us to make the following determinations.

We turn first to the examiner's rejection of claims 4-6 under 35 U.S.C. § 103 as being unpatentable over Ryan in view

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of Komossa. Ryan discloses a bagging machine for bagging material in agricultural bags that includes a frame with rearward and forward ends (Fig. 1). There is also a tunnel on the frame that has an intake for receiving the material to be bagged and an output adapted to receive the mouth of an agricultural bag

(Fig. 6). A rotor 92 is disposed at the intake end of the tunnel for forcing the material to be bagged into the tunnel and into the bag. There is a hopper means 64 on the frame for receiving the material to be bagged. This hopper means has an upper and a lower end and includes a front sloped wall, rear unsloped wall and side walls extending between the front sloped wall and the rear wall. The walls are fixed and non-movable. The rotor is disposed between the lower end of the front sloped wall and the lower end of the rear wall. Ryan does not disclose a sloped rear wall.

Komossa discloses a hopper means for receiving tobacco products. The hopper means includes front and rear movable walls that move between sloped and unsloped positions. It is the examiner's position that it would have been obvious to a person of ordinary skill in the art at the time the invention

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was made to have substituted the hopper means of Komossa for the hopper means of Ryan to reduce the possibility of any material build up at the outlet end of the hopper means where the walls merge. [Examiner's Answer at page 5].

We note that it is the burden of the examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the reasonable teachings or suggestions found in the prior art, or by reasonable inference to the artisan contained in such teachings or suggestions. See In re Sernaker, 702 F.2d 989, 994, 217 USPQ 1, 5 (Fed. Cir. 1983). In our view, the examiner has not met this burden. In the examiner's view the motivation for substituting the hopper means of Komossa for the hopper means disclosed in Ryan is to reduce the possibility of any material build up at the outlet end of the hopper where the walls merge. However, there is no disclosure in Ryan to indicate that there is a problem with material build up at the outlet of the hopper means where the walls merge. In addition, Komosa teaches that it is the mobility of the walls rather than the slope of the walls that prevents the likelihood of bridging in the hopper means (Col. 4, lines 6-68). As such,

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we do not find any motivation to modify the device in Ryan so as to substitute the Komossa hopper means therein. In any case, even if there were motivation to substitute the hopper means in Komossa for the hopper means of Ryan, such substitution would result in a device with movable front and rear walls which move from a sloped position to an unsloped position. Therefore this combination would not satisfy the requirement of the claims that the walls are "fixed and non-movable." In view of the foregoing, we will not sustain the examiner's rejection of claims 4-6 under 35 U.S.C. § 103 as being unpatentable over Ryan in view of Komossa.

We turn next the examiner's rejection of claim 5 under 35 U.S.C. § 112, second paragraph. The appellant has not submitted any arguments concerning this rejection. Therefore, we are constrained to sustain this rejection of the examiner.

We turn finally to the examiner's rejection of claim 7 under 35 U.S.C. § 103 as being unpatentable over Ryan in view of Kinnear.

Kinnear discloses an apparatus and process for forming a mat which includes a sleeve that is adapted to receive material that is to be formed into the mat. The sleeve has a

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sloped section 6 and an unsloped section 7. Claim 7 requires that "said sloped front and rear walls being sloped for their entire lengths." We agree with the appellant that the walls of the sleeve or hopper of Kinnear are not sloped for their entire length, but rather include a sloped portion 6 and an unsloped portion 7. In addition we do not agree with the examiner that the motivation for combining the hopper sleeve of Kinnear with the hopper of Ryan is to prevent the likelihood of bridging of agricultural material because as we stated above, Ryan does not disclose that any agricultural material becomes bridged.

In view of the foregoing, we will not sustain the examiner's rejection of claim 7 under 35 U.S.C. § 103 as being unpatentable over Ryan in view of Kinnear.

The examiner's rejections of claims 4-7 under 35 U.S.C. § 103 are not sustained.

The examiner's rejection of claim 5 under 35 U.S.C. § 112, second paragraph is sustained.

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

AFFIRMED-IN-PART

JOHN P. McQUADE )  
Administrative Patent Judge )  
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 ) BOARD OF PATENT  
JEFFREY V. NASE )

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Administrative Patent Judge	)	APPEALS AND
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MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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