

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(2) is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHAZELLE HUBERT¹

Appeal No. 97-3754
Application 08/302,504²

ON BRIEF

Before CALVERT, COHEN and STAAB, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

¹ We note that there is some discrepancy in the file as to appellant's name. In the original declaration and in the heading of papers, his name is given as "Chazelle Hubert," but in the supplemental declaration (Paper No. 9, filed January 17, 1996) and in the "Real Party in Interest" section of the brief it is given as "Hubert Chazelle."

² Application for patent filed September 8, 1994.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 13, all the claims in the application.

In the examiner's answer, the examiner made a new ground of rejection, in response to which appellant filed, on November 13, 1997, a Supplemental Reply Brief on Appeal (Paper No. 23), and an Amendment Under 37 CFR § 1.193(b) (Paper No. 24), amending independent claims 1 and 10. Claim 10 is illustrative of the subject matter in issue; as amended, it reads:

10. An apparatus for compacting and cutting voluminous objects of strong elasticity, the apparatus comprising:

(a) means for cutting;

(b) a rectangular tunnel having a substantially horizontally aligned top wall, a substantially horizontally aligned bottom wall, the bottom wall parallel to the top wall, and two substantially vertically aligned side walls, each of the two side walls extending between the top wall and the bottom wall, the tunnel further including an entrance and an extremity, the tunnel being wider at the entrance than at the extremity, the extremity of the tunnel in communication with the means for cutting;

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(c) a corresponding plurality of rollers disposed on and parallel to each of the top wall, the bottom wall and each of the two side walls; and

wherein the plurality of rollers direct material fed into the entrance of the tunnel towards the extremity thereof and wherein the material is compressed within the tunnel and then cut by the means for cutting.

The references relied upon by the examiner in rejecting the appealed claims are:

Kisielewski	3,911,772	Oct. 14,
1975 Baikoff	3,991,944	Nov.
16, 1976		
Barclay	4,976,178	Dec. 11,
1990		

The appealed claims stand rejected as follows:

(1) Claims 1, 4 to 6 and 8 to 10, unpatentable over Barclay, under 35 U.S.C. § 103;

(2) Claims 2, 3 and 7, unpatentable over Barclay in view of Baikoff, under 35 U.S.C. § 103;

(3) Claims 11 to 13, unpatentable over Barclay in view of Kisielewski, under 35 U.S.C. § 103.

The Barclay patent discloses a tire shearing machine in which the tire carcasses are delivered to the cutting means 13 through a tunnel (conveyor) 39. The converging upper and

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lower sides of the tunnel consist of rollers 41 which compress the tire 11 as it is conveyed toward the cutter, while the vertical, parallel sides of the tunnel consist of gripper rollers 53 which move the tire and center it on the conveyor 39.

Appellant argues on page 5 of the brief³ and on page 3 of the supplemental reply brief that Barclay does not disclose or

teach, inter alia, a tunnel having walls, as claimed. The examiner takes the position, however, that (answer, pp. 5 to 6):

Appellant must be reading the term "wall" too narrowly. Barclay's sets of rollers and roller drives clearly define four walls in that they create a barrier that does not permit the workpiece to pass thru, but instead forces the workpiece down the tunnel.

³ Amended Brief on Appeal (Paper No. 18, filed March 3, 1997).

We do not consider this position to be well taken. While Barclay's arrays of rollers 41, 53 might, in some contexts, be considered "walls," they cannot be in the present case because the claims recite the walls and rollers as separate elements. Thus, independent claims 1 and 10 call for a tunnel having various walls in part (b) and a plurality of rollers "disposed on and parallel to" each of the walls in part (c). These limitations are not met by the rollers 41, 53 of Barclay, because Barclay's rollers clearly cannot at the same time both constitute the walls and be "disposed on and parallel to" the walls. The frames 51, 57, 59 on which Barclay's rollers are mounted are themselves not "walls."⁴

In view of the foregoing, we conclude that Barclay does not disclose or suggest the apparatus recited in claims 1

⁴ The American College Dictionary (Random House, 1970) defines "wall" as:

1. an upright work or structure of stone, brick, or similar material, serving for enclosure, division, support, protection, etc., as one of the upright enclosing sides of a building or a room, or a solid fence of masonry . . .
3. anything which resembles or suggests a wall . . .
4. a wall-like enclosing part, thing, mass, etc.

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and 10, and will not sustain the rejection of those claims, or of claims 4 to 6, 8 and 9 dependent thereon. Also, since the Baikoff and Kisielewski references do not supply the deficiencies noted with regard to Barclay, we will not sustain the rejections of claims 2, 3, 7 and 11 to 13.

Conclusion

The examiner's decision to reject claims 1 to 13 is reversed.

REVERSED

	IAN A. CALVERT)	
	Administrative Patent Judge)	
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)	
)	BOARD OF
PATENT)	
	IRWIN CHARLES COHEN)	APPEALS AND
	Administrative Patent Judge)	
INTERFERENCES)	
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)	
	LAWRENCE J. STAAB)	
	Administrative Patent Judge)	

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Arnold S. Weintraub
Weintraub Duross & Brady
3020 Telegraph Road Suite 444
Bingham Farms, MI 48025-4505