

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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARSENE ROTH and JEAN VIAUD

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

ON BRIEF

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.

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

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

BRG/jrg

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 located entirely behind baler 12 including the rear section or discharge gate 20 thereof.

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