

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte NORBERT WOLTERS and RICHARD WÜBBELS

Appeal No. 2005-0352
Application No. 09/727,134

ON BRIEF

Before COHEN, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed June 27, 2002) of claims 1 to 7, 20 and 21. Claims 8 to 13, 15 and 17 to 19, which are the only other claims pending in this application, have been objected to as depending from a non-allowed claim.

We AFFIRM-IN-PART and REMAND.

BACKGROUND

The appellants' invention is directed to a feeding and picking device for an agricultural crop having a feeding element that has a vertical axis of rotation (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Thompson	2,777,267	Jan. 15, 1957
Pottinger et al. (Pottinger)	GB 2 012 154 A	July 25, 1979
Wiegert ¹	WO 99/03323	Jan. 28, 1999

Claims 1 to 4, 20 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wiegert.

Claims 5 to 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wiegert in view of Thompson and Pottinger.

¹ In determining the teachings of Wiegert, we will rely on the translation of record provided by the USPTO.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed July 26, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed November 13, 2002) for the appellants' arguments thereagainst.

OPINION

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

The anticipation rejection

We will not sustain the rejection of claims 1 to 4, 20 and 21 under 35 U.S.C. § 102(b) as being anticipated by Wiegert.

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713

F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellants argue (brief, pp. 3-4) that Wiegert does not disclose a rotating feeding element that grasps plant stalks and directs the plant stalks to a picking device which separates useable parts from plant stalks as recited in claims 1 to 4, 20 and 21. We agree. In that regard, the chopping unit 21 of Wiegert does not **grasp** plant stalks and direct the plant stalks **to a picking device**. Likewise, the feed chains 18, 19 of Wiegert do not **grasp** plant stalks and direct the plant stalks to a picking device. Accordingly, claims 1 to 4, 20 and 21 are not met by Wiegert.

For the reasons set forth above, the decision of the examiner to reject claims 1 to 4, 20 and 21 under 35 U.S.C. § 102(b) is reversed.

The obviousness rejection

We sustain the rejection of claims 5 to 7 under 35 U.S.C. § 103 as being unpatentable over Wiegert in view of Thompson and Pottinger.

In the final rejection (pp. 4-5) and the answer (pp. 4-5), the examiner set forth his rationale as to why dependent claims 5 to 7 were unpatentable over the applied prior art.

The appellants have not specifically contested this rejection in the brief apart from these claims' dependency from claim 1. In the obviousness rejection before us in this appeal, the examiner determined that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have replaced Wiegert's feed chains 18, 19 with tined wheels as taught by Pottinger and Thompson. The appellants have not pointed out how the claimed subject matter distinguishes from the so-modified device of Wiegert. Accordingly, we summarily sustain the rejection of claims 5 to 7 under 35 U.S.C. § 103.

REMAND

We remand the application to the examiner to consider if the combination of Wiegert in view of Thompson and Pottinger as applied in the affirmed rejection of dependent claims 5 to 7 is applicable to claims 1 to 4, 20 and 21.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4, 20 and 21 under 35 U.S.C. § 102(b) is reversed; and the decision of the examiner to reject claims 5 to 7 under 35 U.S.C. § 103 is affirmed. In addition, we have remanded the application to the examiner for further consideration.

This application, by virtue of its "special" status, requires immediate action, see MPEP § 708.01.

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

AFFIRMED-IN-PART; REMANDED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JENNIFER D. BAHR)	
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