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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEROY F. KOEHN

Appeal 2007-0788
Application 10/434,804
Technology Center 3600

Decided: May 29, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and ROBERT E. NAPPI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This appeal involves claims 2-9, 11-14, 17-19, 23-30 and 32. Claims 10, 15, 20-22, and 33 are objected to and claim 35 is allowed. Claims 1, 16, and 34 have been cancelled.[1] We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The claims are directed to a mower including means for selectively permitting and prohibiting movement of the mower deck from a use position to a storage/servicing position. Claim 2 is illustrative:

2. A mower comprising:

a vehicle having a front and a rear;

a mower deck for selective attachment to the front of the vehicle, wherein the deck is selectively movable between a generally horizontal use position and a generally vertical storage/servicing position when attached to the vehicle; and

means for selectively permitting and prohibiting movement of the deck from the use position to the storage/servicing position, said means including a mowing height adjustment lever, wherein movement of the deck from the use position toward the storage/servicing position is permitted when the mowing height adjustment lever is in a collapsed position.

The Examiner relies on the following prior art reference to show unpatentability:

Esau	US 6,347,503 B1	Feb. 19, 2002

[1] Claim 31 was not included in the list of rejections and therefore we will not address claim 31.

The rejection as presented by the Examiner is as follows:

Claims 2-9, 11-14, 17-19, 23-30 and 32 stand rejected under 35 U.S.C. § 102 as being anticipated by Esau.

The Appellant contends that Esau does not disclose a mower having a deck wherein movement of the deck from the use position toward the storage/servicing position is permitted when the height adjustment lever is in a collapsed position as required by claim 2.

Appellant also contends that Esau does not disclose a mower in which the movement of the deck from a use position toward the storage/servicing position is prevented when the mowing height adjustment lever is in an upright position as recited in claim 3 and as similarly recited in claims 5, 26, and 32

The Appellant further contends that Esau does not disclose a mower having a deck and (1) means for selectively permitting and prohibiting movement of the deck from the use position to the storage/servicing position in one step or in four steps, as recited in claims 13 and 14 respectively, (2) means for automatically locking the deck in the storage/servicing position, as recited in claim 17, and (3) wherein the length of the wheel adjustment arm is automatically altered as the deck is moved between the use and storage/servicing position as recited in claim 23.

ISSUES

The first issue is whether the Appellant has shown that the Examiner erred in finding that Esau discloses a mower having a deck wherein movement of the deck from the use position toward the storage/servicing position is permitted when the mowing height adjustment lever is in a collapsed position as required by claim 2.

The second issue is whether the Appellant has shown that the examiner erred in finding that Esau discloses a mower in which the movement of the deck from a use position toward the storage/servicing position is prevented when the mowing height adjustment lever is in an upright position as recited in claim 3 and as similarly recited in claims 5, 26, and 32.

The third issue is whether the Appellant has shown that the Examiner erred in finding that Esau discloses a mower having a deck and a means for selectively permitting and prohibiting movement of the deck from the use position to the storage/servicing position in one or less than four steps, as recited in claims 13 and 14.

The fourth issue is whether the Appellant has shown that the Examiner erred in finding that Esau discloses a mower having a deck and means for selectively permitting and prohibiting movement of the deck between a storage/servicing position and a use position in which the mower deck which automatically locks the mower deck in the storage/servicing position as recited in claim 17.

The fifth issue is whether Appellant has shown that the Examiner erred in finding that Esau discloses a mower having a height adjustment arm which automatically alters in length as the deck is moved between the use position and the storage/servicing position as recited in claim 23.

FINDINGS OF FACT

Appellant invented a mower that comprises a vehicle and a mower deck attached to the vehicle. The mower deck is selectively movable between a generally horizontal use position and a generally vertical storage/servicing position. There is a means which includes a mower height

adjustment lever that selectively permits and prohibits movement of the deck from the use position toward the storage/servicing position. This movement from the use position to the storage/servicing position is permitted when the mower height adjustment lever is in a collapsed position and is prevented when the mower height adjustment lever is in the upright position. As recited in claims 13 and 14 respectively, the movement from the use to storage/servicing position is accomplished in less than four steps and one step respectively.

Esau discloses a mower that comprises a vehicle and a mower deck 20 attached to the vehicle. The mower deck is selectively movable between a generally horizontal use position and a generally vertical storage/servicing position (Figures 3 and 4). There is a means which includes a mower height adjustment lever 118 that selectively permits movement of the deck from the use position toward the storage/servicing position. This movement from the use position to the storage/servicing position is permitted when the mower height adjustment lever 118 is in a collapsed position. The height adjustment lever 118 does not permit the mower deck to be placed in the storage/servicing position when it is in the upright position. However, the height adjustment lever 118 does not prevent movement *toward* the storage/servicing position when it is in the upright position. In addition, the height adjustment lever 118 does not automatically alter its length as the deck is moved between the use position and the storage/servicing position.

Esau discloses that in order to move the mower deck from the use position to the storage/servicing position, an operator must (1) install a deck stand 150, (2) collapse the height adjustment lever 118 downward, (3) disconnect the power take off, rotate the height adjustment lever 118 so that it lies generally upon the upper surface of housing 22, (3) configure the

mechanism 66 from the locked to the unlocked position and (4) lift the front of the deck (Esau, col. 8, ll. 29-65).

Esau discloses a hook end 162 that can be positioned in any suitable aperture or ledge of tractor 24 to secure the mower deck 20 in the storage/servicing position. Hook end 162 is not automatically positioned to secure the mower deck in the storage/servicing position.

ANALYSIS

Esau discloses that the means which includes a height adjustment lever permits movement of the mower deck from a use position to a storage/servicing position. In this regard, the term “permitted” as recited in claim 2 is interpreted to allow additional steps between the collapsing of the height adjustment lever and the movement of the deck. Therefore, Esau discloses each and every element of claim 2.

However, as Esau does not disclose a means which includes a height adjustment lever that prevents movement of the mower deck from a use position toward the storage/servicing position when the height adjustment lever is in an upright position, Esau does not disclose the subject matter recited in claims 3, 5, 26-30 and 32 and dependent claims 6-9, 11, and 12. Esau likewise does not disclose means for selectively permitting and prohibiting movement of the deck from a use position to a storage/servicing position in one step or in less than four steps and therefore does not disclose the subject matter of claims 13 and 14 respectively. In addition, as Esau does not describe a means which automatically locks the mower deck in the storage/servicing position, Esau does not disclose the subject matter of claims 17 and claims 18 and 19 dependent thereon. Esau does not disclose a height adjustment arm which automatically alters its length as the deck is

moved between the use position and the storage/servicing position as required by claim 23 and dependent claims 24, and 25.

ORDER

In view of the foregoing, we will sustain the Examiner's rejection of claim 2. We will also sustain the Examiner's rejection of claim 4 because the Appellant has not argued the separate patentability of this claim.

We will not sustain the rejection as it is directed to the remaining claims because as we stated above, Esau does not disclose the subject matter of these claims.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED-IN-PART

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