

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN VIAUD

Appeal 2008-1706
Application 11/039,168
Technology Center 3600

Decided: August 22, 2008

Before MURRIEL E. CRAWFORD, LINDA E. HORNER, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Jean Viaud (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-6. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

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SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellant's claimed invention is directed to an improved large round baler construction built in a modular configuration (Spec. 1:¶0005). Claim 1, reproduced below, is representative of the subject matter on appeal (some paragraphing added).

1. In a large round baler including a chassis, a baling assembly and at least one of a crop receiving or a crop processing assembly, the improvement comprising:

said chassis being formed as a first unit and including a tongue, wheels and a carrying structure; and

said baling assembly being formed as a second unit and including a bale chamber and

said at least one of said crop receiving or processing assembly being formed as a third unit; and

a first connection structure cooperating for releasably connecting said baling assembly to said carrying structure and

a second connecting structure for releasably connecting said at least one of said crop receiving or crop processing assembly to said chassis.

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THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

McClure	US 6,651,418 B1	Nov. 25, 2003
Gunther	EP 0 258 528 A1	Mar. 9, 1988

The following rejections are before us for review:

1. Claims 1-3 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by McClure.
2. Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over McClure and Gunther.

ISSUES

The issues before us are whether the Appellant has shown that the Examiner erred in rejecting claims 1-3 and 6 as anticipated by McClure and claims 4 and 5 as unpatentable over McClure and Gunther. These issues turn, in part, on whether McClure discloses a second baling assembly formed as a second unit and including a bale chamber.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

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1. The customary meaning of “chamber” is an enclosed space or compartment: *the chamber of a pump; a compression chamber. The American Heritage Dictionary of the English Language* (4th ed. 2000), definition 9a.
2. The Appellant’s Specification discloses bale chamber 50 formed entirely within the baling assembly 14 (Spec: Fig. 1).
3. McClure discloses a baler 10 having a main frame 11 supported by a pair of wheels 12, a tongue 13 attached to the forward portion of the frame 11, a tailgate 14 pivotally connected to the frame 11 by stub shafts 15, and a pickup apparatus 50 mounted on the main frame 11 (McClure, col. 4, l. 65 – col. 5, l. 7; Fig. 1).
4. McClure discloses that a bale forming chamber is defined by sidewalls 5 of frame 11, sidewalls 6 of tailgate 14, apron 30, floor roll 18, and starter roll 27 (McClure, col. 5, ll. 10-13).

PRINCIPLES OF LAW

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims “their broadest reasonable interpretation consistent with the specification” and “in light of

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the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

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ANALYSIS

Independent claim 1 recites “a baling assembly formed as a second unit including a baling chamber.” The customary meaning of “chamber” is an enclosed space or compartment (Fact 1). The Appellant’s Specification discloses bale chamber 50 formed entirely within the baling assembly 14 (Fact 2). As such, we construe the baling assembly claim limitation, in view of the Specification and the common meaning of “chamber” as it would be understood by one having ordinary skill in the art, to require that the enclosed space forming the baling chamber must be included in the baling assembly.

McClure discloses a baler 10 having a main frame 11 supported by a pair of wheels 12, a tongue 13 attached to the forward portion of the frame 11, a tailgate 14 pivotally connected to the frame 11 by stub shafts 15, and a pickup apparatus 50 mounted on the main frame 11 (Fact 3).

The Examiner found that McClure’s tailgate 14 meets the claim limitation of a baling assembly formed as a second unit including a baling chamber B, as shown below in the Examiner’s annotated version of Figure 1 from McClure.

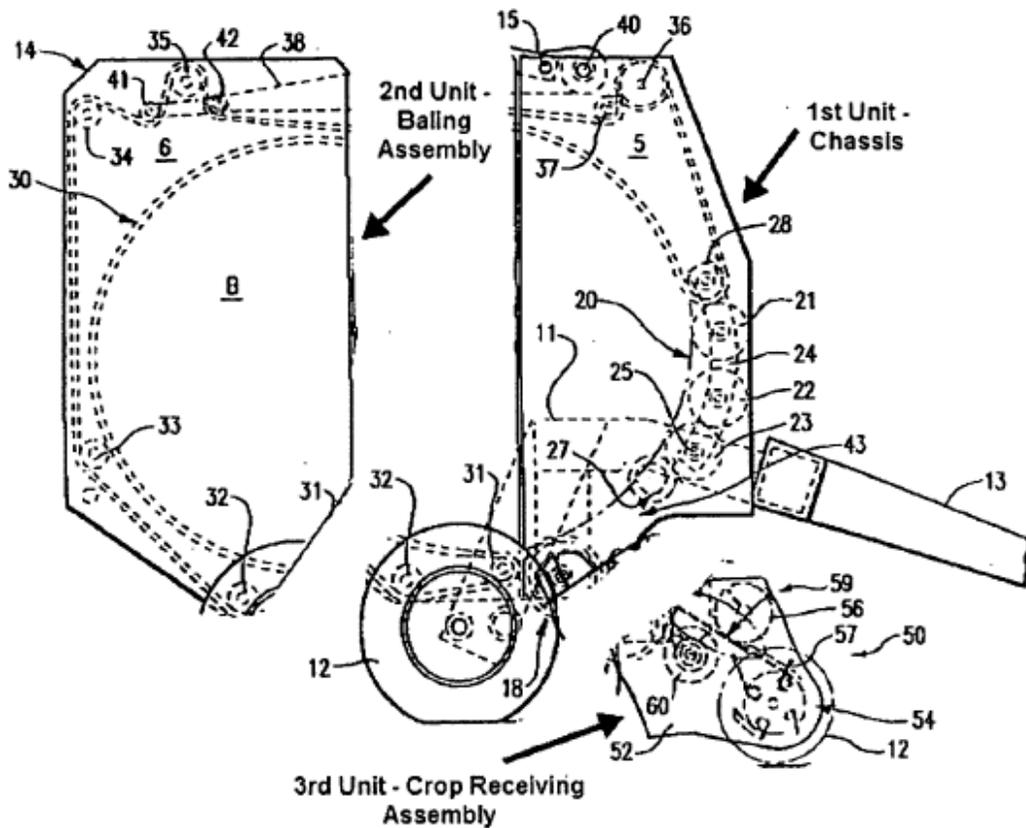


Figure 1 of McClure annotated by the Examiner to show McClure's disclosure of the claimed second unit

McClure discloses that a bale forming chamber is defined by sidewalls 5 of frame 11, sidewalls 6 of tailgate 14, apron 30, floor roll 18, and starter roll 27 (Fact 4). The tailgate 14 of McClure includes sidewalls 6 that form a portion of the baling chamber; however, the tailgate 14 does not include the entire enclosed space forming the baling chamber. Thus, the tailgate 14 of McClure does not anticipate the claimed baling assembly. As

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such, we do not sustain the Examiner's rejection of claim 1, or claims 2, 3, and 6, which depend therefrom.

The Examiner relied on Gunther in the rejection of claims 4 and 5 to disclose an unloading means releasably attached to a chassis (Ans. 4), and not to disclose the claimed baling assembly. As such, the Examiner has not set forth a prima facie case of obviousness of claims 4 and 5.

CONCLUSIONS

We conclude the Appellant has shown that the Examiner erred in rejecting claims 1-3 and 6 under 35 U.S.C. § 102(b) as anticipated by McClure and claims 4 and 5 under 35 U.S.C. § 103(a) as unpatentable over McClure and Gunther.

DECISION

The decision of the Examiner to reject claims 1-6 is reversed.

REVERSED

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