

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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROLAND L. HAGEMEYER and KENNETH P. MANON

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Appeal No. 2000-2116  
Application No. 09/246,460

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ON BRIEF

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Before ABRAMS, STAAB, and CRAWFORD, Administrative Patent Judges.  
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 58-83 and 88-100, which are all of the claims pending in this application.<sup>1</sup>

We REVERSE.

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<sup>1</sup> Claims 58, 59, 80, 81, 83 and 94 were amended after the final rejection.

BACKGROUND

The appellants' invention relates to a feedgate for controlling the flow of materials exiting from an opening in the rear wall of a receptacle such as a truck body. An understanding of the invention can be derived from a reading of exemplary claim 58, which appears in the appendix to the Brief.

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

Park	842,238	Jan. 29, 1907
Clark	3,097,771	Jul. 16, 1963
Tobias	3,768,737	Oct. 30, 1973

Claims 58-75 and 88-100 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as the invention.

Claims 76-80, 82, 83 and 88-98 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tobias in view of Park.

Claims 81, 99 and 100 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tobias in view of Park and Clark.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper

No. 18) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 16) and Reply Brief (Paper No. 19) 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 Rejection Under Section 112

The examiner's rejection is, in its entirety, "[r]e claims 58 and 88, it is not understood if the feedgate moves in a rectilinear direction, in a curvilinear direction or in what direction?" (Answer, page 3). Apparently, it is the examiner's view that claims 58 and 88 are indefinite because they do not describe, by structure or otherwise, the direction the feedgate moves between the various operating positions recited therein. The appellants argue in rebuttal that the invention recited in the claims is fully disclosed in the specification, and that one of ordinary skill in the art would have understood the invention from the language of the claims as read in the context of the specification.

We agree with the appellants. While the recitations of the invention as set forth in claims 58 and 88 might be considered to be broad, the claims are not indefinite. The

metes and bounds of the claims can readily be ascertained by one of ordinary skill in the art.

We therefore will not sustain the Section 112 rejection of claims 58-75 and 88-100.

#### The Rejections Under Section 103

Independent claims 76 and 88, along with dependent claims 77-80, 82, 83 and 89-98, stand rejected as being unpatentable over Tobias in view of Park. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

Independent claim 76 is directed to a receptacle that is mounted in a truck. The claimed apparatus comprises, inter alia, a rear wall having a conveyor rear opening and a

feedgate for regulating the flow through the rear opening. The feedgate is required to be rotatably mounted in a fixed axis lying at least closely adjacent to the plane of the base of the receptacle, and to be movable between a closed position substantially preventing material from passing through the opening, a regulation position substantially controlling the flow through the opening, and a non-regulation position allowing material to flow substantially freely through the opening.

The examiner has taken the position that all of the subject matter recited in independent claim 76 is disclosed by Tobias, except for the rotatable mounting of the feedgate and the particular operating positions between which the feedgate moves. However, it is the examiner's opinion that in view of the teachings of Park it would have been obvious to modify the Tobias apparatus so that it conformed to the requirements of the claim because "[t]hat the feedgate conventionally rotate[s] about a fixed axis would have been obvious to one skilled in the art" and "it would have been obvious to have substituted conventional plural positions of the tailgate, if desired" (Answer, page 3).

The Tobias mechanism includes a trough 10 within which is a screw conveyor 44 mounted on the base of a receptacle (truck body). A feedgate 58 is installed in the rear opening of the receptacle, and it moves in a linear path to control, at least to a certain extent, the flow of material carried by the screw conveyor through the opening. As can plainly be seen in the drawings, the screw conveyor shaft 16 extends through the opening

in the rear wall of the receptacle in order to support and cause to operate a rotating spreader element 40. As a consequence of this arrangement, feedgate 58 cannot be moved to a closed position “substantially preventing” material from passing through the opening, as is required by claim 76, for it cannot be lowered beyond the level of screw conveyor shaft 16, and thus leaves an opening equal in height to the radius of the screw.

Park discloses a manure spreader having a rear wall (tailgate) that is rotatable between a closed position and an open position. While the rear wall does not have an opening through which material flows, the examiner apparently is of the view that the tailgate constitutes a rotatable “feedgate,” to use the language of the appellants’ claims. The base of the receptacle is provided with a conveyor to move the manure to a rotating spreading device at the rear of the receptacle. The tailgate is mounted on the same axis as the spreading device, which is spaced above the base of the receptacle. The tailgate is movable between a closed position in which it prevents material from exiting the receptacle and a non-regulation (open) position where the material is allowed to substantially freely flow from the receptacle. While not preferred, it would appear that the tailgate also can be placed in an intermediate position where it would regulate the flow of material from the receptacle (see page 2, lines 54-61, and note the unnumbered securing notches on rack 75 in Figure 4).

We find the examiner's rejection to be defective. The mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In the present case, the examiner has not set out, and we fail to perceive on our own, any teaching, suggestion or incentive which would have led one of ordinary skill in the art to modify the Tobias apparatus in the manner proposed by the examiner. In fact, there is a disincentive to do so, for the Tobias system does not include a closed tailgate position and to change this not only would run contra to Tobias' teachings, but would require that additional modifications be made that would substantially alter the structure and operation of the Tobias invention. Even assuming, arguendo, that suggestion exists for combining the references, since the screw conveyor shaft in the Tobias truck body must extend through the rear opening in the receptacle to operate the spreader device, merely substituting another type of feedgate, such as a rotatable one, would not result in achieving the closed position required by claim 76. Combining the references also would fail to result in an apparatus that meets the requirement that the axis of rotation for the feedgate be "at least closely adjacent to" the base plane of the receptacle, for the axis of rotation of the tailgate in Park is well above the base of the receptacle.

For these reasons, we conclude that the combined teachings of Tobias and Park fail to establish a prima facie case of obviousness with regard to the subject matter recited in independent claim 76, and we will not sustain the Section 103 rejection of this claim or of claims 77-80, 82 and 83, which depend therefrom.

Independent claim 88 also contains the requirement that the feedgate be movable to a closed position, and with regard to that limitation much of the reasoning set forth above with regard to claim 76 also applies. In addition, claim 88 requires that there be a lock mechanism "to fix said feedgate in at least one position between the closed position and the fully open position." Tobias discloses a threaded adjustment rod 50 that is secured to the tailgate by a bracket 54. It is provided with a collar 51 which prevents vertical downward movement of the shaft in the bracket, however, there appears to be no mechanism that precludes upward movement, and therefore the feedgate is not lockable in an intermediate position. Even if it were considered that Park teaches locking the tailgate in an intermediate position, the examiner has provided no rationale for concluding that it would have been obvious to so modify the Tobias apparatus.

The combined teachings of Tobias and Parker fail to establish a prima facie case of obviousness with regard to the subject matter recited in claim 88. The Section 103 rejection of independent claim 88 and dependent claims 89-98 therefore is not sustained.

Dependent claim 81, which is dependent from claim 76, and dependent claims 99 and 100, which are dependent from claim 88, stand rejected on the basis of Tobias and Parker, taken further with Clark, which was added for its teaching of using side sections to regulate flow. Be that as it may, the teachings of Clark do not alleviate the shortcomings set forth above with regard to the rejection of independent claims 76 and 88. This being the case, the Section 103 rejection of claims 81, 99 and 100 is not sustained.

SUMMARY

None of the rejections are sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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APPEAL NO. 2000-2116 - JUDGE ABRAMS  
APPLICATION NO. 09/246,460

APJ ABRAMS

APJ STAAB

APJ CRAWFORD

**DECISION: REVERSED**

Prepared By:

**DRAFT TYPED:** 03 May 02

**FINAL TYPED:**