

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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GARY J. SECKEL

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Appeal No. 2001-0019  
Application No. 09/240,197

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ON BRIEF

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Before ABRAMS, FRANKFORT, and STAAB, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's final rejection of claims 1-10, 16 and 21-26. Claims 11-15 and 17-20, the only other claims currently pending in the application, have been withdrawn from consideration under 37 CFR § 1.142(b) as not being readable on the elected species.

Appellant's invention pertains to a multi-purpose, trailer mounted, farm apparatus comprising means for forming bales, means for splitting logs, and a hydraulic system for operating the

Appeal No. 2001-0019  
Application No. 09/240,197

aforementioned means. A further understanding of the invention can be derived from a reading of exemplary claims 1, 7 and 24, which are reproduced in the appendix to appellant's brief.

The references applied in the final rejection are:

Balsbaugh	3,779,295	Dec. 18, 1973
Lundahl et al. (Lundahl)	4,163,524	Aug. 7, 1979
Fincham	4,467,712	Aug. 28, 1984

Claims 1-10, 16 and 21-26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fincham in view of Balsbaugh and Lundahl.

Fincham, the examiner's primary reference, is directed to a trailer mounted wood baler. Fincham's apparatus comprises a framework having movable member 36, pressure member 64, bottom frame member 16 and end frame member 20 that collectively define a rectangular area for receiving split pieces of wood. A large rectangular backboard 100 is secured to the framework rearward of the rectangular area to provide a surface against which ends of the wood may be stacked so that they will lie in approximately the same vertical plane (column 3, lines 61-68). When the wood pieces are in position in the rectangular area, hydraulic cylinders 85, 87 are extended to move pressure member 64 to the right (as viewed in Figure 2) to consolidate the wood. Next, strapping from reels 90, 92 is extended around the consolidated

Appeal No. 2001-0019  
Application No. 09/240,197

wood to bind the pieces together, whereupon pressure member 64 is retracted and movable member 36 is pivoted out of the way to release the bundled wood (column 4, lines 1-32). Finally, a forklift or other device may be utilized to remove the wood bundle (column 4, lines 33-36). In addition, the Fincham apparatus can act as a wood splitting device. This is effected by detachably securing wedge member 110 (see Figure 6) over bottom frame member 16 in facing relation to pressure member 64 so that a log can be placed between the wedge and the pressure member for splitting (column 4, lines 37-54).

Balsbaugh discloses a trailer mounted, hydraulically driven, log splitter having a self-contained drive system for actuating the splitter's hydraulic cylinder 40. The log splitter is movable between a horizontal transport position (Figure 2) and a vertical use position (Figure 3), and includes a wedge 30 actuated by cylinder 40 for splitting logs.

Lundahl relates to an apparatus for cutting and feeding foliage material from a stack. With reference to Figures 1 and 2, the Lundahl apparatus 10 includes stack conveyor 16, a traveling cutter unit 20 for slicing a loaded stack 14, and a lateral conveyor 18 for dispensing the sliced foliage from the apparatus. As explained in the abstract:

Appeal No. 2001-0019  
Application No. 09/240,197

a stack of foliage [14] may be loaded onto the bed from a position on the ground . . . and also may be successively advanced along the conveyor bed [16] to provide an overhang beneath and forward of a rotating angularly disposed variable cutter [20] which travels horizontally and then vertically downward in a zig-zag pattern to successively cut slices of foliage from the overhang of the stack. The sliced material is forced out by a shield [92] of the cutter and falls under force of gravity substantially continuously as it is cut onto a transverse foliage conveyor [18] at the front of the vehicle and is thereby deposited upon the ground as a livestock feed windrow [19] while the vehicle is displaced or into feed bins or onto another vehicle for subsequent processing while said stack vehicle is stationary.

In applying the above reference teachings against the appealed claims, the examiner concedes (answer, pages 4-5) that Fincham lacks several of the features set forth in the appealed claims, including a hydraulic system that operates to expel bales from the bale chamber (claim 1), and a baler that includes a first opening for receiving material to be baled and a second distinct opening for expelling a formed bale (claim 7). In addition, it is clear that Fincham lacks many of the features called for in appealed claim 24, including, but not limited to, a second gib assembly having a splitting wedge mounted to the trailer for reciprocating movement, and a hydraulic cylinder and piston rod coupled to both a first gib assembly for compressing material to be baled and the second gib assembly for splitting

Appeal No. 2001-0019  
Application No. 09/240,197

wood to effect reciprocation thereof. It is the examiner's position, however, that it would have been obvious to one of ordinary skill in the art "to combine the baling and log splitting apparatus of Fincham with the vertically pivotable and reciprocatingly movable log splitting wedge and closed loop hydraulic system of Balsbaugh" (answer, page 5), and "to combine the baling chamber of the primary Fincham reference with the hydraulically operable chain of Lundahl, et al., as a means of expelling baled items from a baling chamber" (answer, page 6), and thereby arrive at the subject matter of the appealed claims. We do not agree.

First, the examiner does not adequately explain *how* the teachings of the secondary references are to be applied to the primary references, i.e., how Fincham is to be modified in view of the teachings of the other applied references. Second, the examiner does not adequately explain *how* the subject matter of the claims would result, i.e., how the modified Fincham device would satisfy the terms of the claims. Setting aside in our minds the teachings of the present application, when we collectively consider the teachings of the applied references as a whole, it is apparent to us that the reference teachings would not have suggested the proposed operation of Fincham's hydraulic

Appeal No. 2001-0019  
Application No. 09/240,197

system to expel bales from the bale chamber (as set forth in claim 1), or the addition of a second opening in Fincham to expel formed bales (as set forth in claim 7), or the modification of Fincham's log splitter so that both the log splitter and the baler are powered by the same hydraulic cylinder and piston arrangement (as set forth in claim 24). In effect, a major overhaul and reworking of the apparatus of Fincham would be required, and, as we see it, only impermissible guidance from appellant's own disclosure, and not the evidence of obviousness itself, would have provided the motivation for such a major overhaul. As our reviewing court has announced:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention" [citations omitted.] [*In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).]

Appeal No. 2001-0019  
Application No. 09/240,197

Since the evidence relied upon by the examiner would not have been suggestive of the content of, in particular claims 1, 7 and 24, the examiner's rejection of these claims, as well as claims 2-6, 8-10, 16, 21-23, 25 and 26 that depend therefrom, must be reversed.

The decision of the examiner is reversed.

*REVERSED*

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

LJS:hh

Appeal No. 2001-0019  
Application No. 09/240,197

*MARK F. SMITH  
SMITH, GUTTAG, HASSE & NESBITT, LTD.  
7577 CENTRAL PARK BLVD.  
SUITE 316  
MASON, OH 45040*