

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID C. CUMMINGS

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Appeal No. 2002-0847  
Application No. 09/139,607

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ON BRIEF

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Before COHEN, STAAB, and McQUADE, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 21. These claims constitute all of the claims in the application.

Appellant's invention pertains to an attachment to a machine having a handle, operable to perform groundworking functions. A

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basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the Appendix to the main brief (Paper No. 10).

As evidence of obviousness, the examiner has applied the documents listed below:

Hunger et al (Hunger)	3,250,028	May 10, 1966
Livesay	4,278,368	Jul. 14, 1981
Townsend	5,553,408	Sep. 10, 1996
Hawkins	5,678,332	Oct. 21, 1997

The following rejections are before us for review.

Claims 1, 2 through 12, 15 through 18, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins in view of Hunger.

Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins in view of Hunger, as applied to claim 1 above, further in view of Livesay.

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Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins in view of Hunger, as applied to claim 1 above, further in view of Townsend.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 11), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 10 and 12).

#### OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,<sup>1</sup> and the respective viewpoints of appellant and the examiner. As a

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<sup>1</sup> In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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consequence of our review, we make the determination which follows.

We cannot sustain any of the obviousness rejections on appeal, for the reasons given below.

Independent claim 1 sets forth an attachment to a machine having a handle, operable to perform groundworking functions, comprising; inter alia, a fluid actuated extendible strut with an accumulator pivotally connected to said arm member and pivotally connectable to a handle when an arm member is connected to the handle.<sup>2</sup>

As we see it, the claim recitation of an extendible strut "with" an accumulator pivotally connected to an arm member and pivotally connectable to a handle is fairly well understood to denote that the strut and accumulator are pivotally connected to

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<sup>2</sup> A reading of claim 1, in light of the underlying disclosure, reveals to us that language in the claim is indefinite in meaning and appears to lack descriptive support in the original specification. We address the above matters in a remand to the examiner below. Notwithstanding the above, we do understand claim 1 to the extent that we are able to assess the applied prior art relative thereto in the obviousness rejections on appeal.

the arm member and the handle since the accumulator is mounted on the strut, as originally disclosed (specification, page 4; Fig. 1).

With the above understanding of claim 1 in mind, it is at once apparent to this panel of the Board that, while the combined teachings of the applied prior art would have motivated one having ordinary skill in the art to utilize an accumulator with the hydraulic system of Hawkins (Fig. 8; column 5, lines 17 through 24) following the hydraulic system teaching of Hunger (Fig. 6; column 5, lines 37 through 61), those teachings would not have been suggestive of an extendible strut "with" an accumulator pivotally connected to an arm member and pivotally connectable to a handle, as set forth in claim 1. Since the evidence before us does not support a conclusion of obviousness, the rejection of claims 1, 2 through 12, 15 through 18, 20, and 21 cannot be sustained.

As to the respective obviousness rejections of claims 13 and 14 and claim 9, which likewise rely upon the combined teachings of Hawkins and Hunger, with the addition of Livesay and Townsend, we readily perceive that the latter teachings do not overcome the

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stated deficiency of the Hawkins and Hunger combination. It is for this reason that we do not sustain the rejections of claims 13 and 14 and claim 9, respectively.

REMAND TO THE EXAMINER

The application is remanded for consideration of the following matter.

The examiner should determine whether the language "fluid actuated" extendible strut, added to claim 1 subsequent to the filing of the application (Paper No. 4), (1) renders the claim inaccurate and/or indefinite (35 U.S.C. § 112, second paragraph) and (2) lacks descriptive support in the original disclosure (35 U.S.C. § 112, first paragraph). As disclosed (specification, page 4), a hydraulic cylinder assembly 24 consists of a cylinder member 27. The cylinder member, as disclosed, is not itself a cylinder that is responsive to fluid pressure (as in Hawkins and Hunger) to actuate or move the arm member; instead, pivotal movement of the arm member is responsive to control valve

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operation and flow between base and rod ends of the cylinder (cylinder length adjustment) with operator maneuvering of the boom and handle (specification, page 5).

In summary, this panel of the board has not sustained the obviousness rejections on appeal, and has remanded the application to the examiner to address the matter discussed above.

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The decision of the examiner is reversed.

REVERSED AND REMANDED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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