

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARWIN McNEILUS, RONALD E. CHRISTENSON
and WILBUR R. HARRIS

Appeal No. 1999-0711
Application No. 08/876,869

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11, 48, 49, 52, 53 and 55-57, which are all of the claims pending in this application.

BACKGROUND

The appellants' invention relates to vehicles equipped with refuse collection systems which incorporate side-loading lift and dump bucket systems which cooperate with corresponding offset or recessed receiving hoppers having packing devices to load refuse materials into truck bodies (specification, page 1). With particular reference to Figures 9-13, the vehicle of the invention comprises a truck body having upper and lower storage compartments (202, 204) and a charging hopper (208) which is narrower than the truck body and has a flared sidewall (300) which is recessed relative to the maximum width of the truck body, as seen in Figures 10 and 11 so as to accommodate a loading bin or bucket (218). The bucket is provided with rollers (292, 294) which ride in angled candy cane shaped guide channels (264, 266) for movement between a lower rest position, as shown in Figure 10, and a raised dump position, as shown in Figure 11. The upper rollers (294) are laterally offset relative to the lower rollers (292) when the bucket is in the lower rest position. This offset, which maintains the bucket in an upright orientation when the rollers are disposed in the lower outwardly angled portion of the guide channels, helps enhance the tipping of the bucket for dumping as the rollers travel in the upper arcuate portions of the guide channels (specification, page 22). The claims on appeal are reproduced in the appendix to the appellants' Reply Brief.

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

Stragier et al. (Stragier)	4,219,298	Aug. 26, 1980
Matsumoto	5,035,564	Jul. 30, 1991
Horning et al. (Horning)	5,316,430	May 31, 1994
Ratledge (published international application)	WO 94/05570	Mar. 17, 1994

The following rejections are before us for review.

Claims 48, 49, 52 and 53 stand rejected under 35 U.S.C. § 103 as being unpatentable over Matsumoto in view of Horning.

Claim 11 stands rejected under 35 U.S.C. § 103 as being unpatentable over Matsumoto in view of Horning, as applied to claims 48, 49, 52 and 53 above, and further in view of Ratledge.

Claims 55-57 stand rejected under 35 U.S.C. § 103 as being unpatentable over Matsumoto in view of Horning, as applied to claims 48, 49, 52 and 53 above, and further in view of Stragier.

Claims 48, 49, 52, 53 and 55-57 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 4, 9 and 13-16 of Application No. 08/963,541.¹

¹ The examiner's inclusion of claim 3 of application No. 08/963,541 in the statement of this rejection on page 4 of the answer is presumed to have been an inadvertent error, as claim 3 was canceled in Paper No. 17, filed (continued...)

Reference is made to the Brief and Reply Brief (Paper Nos. 24 and 26) and the answer (Paper No. 25) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.

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 obviousness-type double patenting rejection

The appellants have not contested the examiner's rejection of claims 48, 49, 52, 53 and 55-57 under the judicially created doctrine of obviousness-type double patenting. Rather, the appellants have indicated that they "stand ready and willing to supply any necessary Terminal Disclaimer in a timely fashion should the claims of this Appeal otherwise be held allowable" (see Brief, page 6). Therefore, we shall summarily sustain the examiner's rejection of claims 48, 49, 52, 53 and 55-57 under the judicially created doctrine of obviousness-type double patenting.

¹(...continued)

April 17, 1998 in that application. Further, we note that the provisional rejection set forth in the final rejection (Paper No. 20, page 4) is no longer provisional, as claims 2, 4, 9 and 13-16 of Application No. 08/963,541 on which the provisional rejection was based were subsequently patented as claims 2, 3, 5, 11, 12, 1 and 13, respectively, in U.S. Patent No. 5,813,818, issued September 29, 1998.

The obviousness rejections under 35 U.S.C. § 103

Matsumoto discloses a recyclable refuse handling truck comprising a truck body (22) having lateral sides (28) formed at the front of the body with an inset (39) which accommodates a hoisting apparatus² for a bin (84). The body is separated into three longitudinally extending compartments (57, 59 and 73) separated by partitions (29, 41), as shown in Figure 5. The bin (84) is divided into three parts for separate types of refuse by bin partitions (110) and is pivotally mounted at a pivot shaft (83) to a frame comprising upper and lower horizontal frame members (166, 167) and vertical members (168). Rollers (102) are rotatably connected to the member (168) and slide in channels (81), which include a vertical portion and an inward/downward slanted portion (82) to guide the bin from a position (Figure 17) wherein it is tucked under the truck body to a dumping position wherein the pivot shaft (83) is disposed at the top of the channels (81). When the bin reaches the dumping position, a cylinder (121) is actuated to pivot the bin to a dumping orientation, as shown in Figure 7A. The upper front region of the truck body is provided with a plurality of downwardly and inwardly extending chutes (56, 58, 71) separated by chute partitions (48, 51) for directing refuse dumped from the respective parts of the bin (84) into the various compartments (see column 4, line 21, to column 5, line 12). When the truck is proceeding along a highway, the overall width of the truck body

² The hoisting apparatus used to lift the bin comprises side channels (86), chains (92) anchored to a crosshead (91), a hydraulic cylinder (88) operatively connected to the crosshead (91) via a rod (89) and lower sheaves (94) around which the chains run.

is not increased by the bin (84) and thus is not extended over highway limits because the bin (84) is tucked under the body (column 2, lines 12-17, and column 8, lines 37-40).

Horning discloses an apparatus for concurrently collecting and segregating diverse waste materials such as bottles, cans and newspapers. In contrast to Matsumoto's truck body, Horning's truck body is divided into upper and lower compartments (18, 20), each extending the entire width of the body, which receive trash through associated openings (22, 24) formed in the top of the truck body. The truck body has a narrow front section (16a) in the operator loading region and an enlarged rear section (16b) so that a recess is formed in a sidewall near the front of the vehicle. A bucket assembly, including a bucket (26) divided into bins (26a, 26b) and provided with upper and lower rollers (44 and 46, respectively) guided in support tracks (48, 49), operates within the recess and as a result does not extend beyond the side walls of the vehicle for at least most of its travel. This arrangement reduces the clearance necessary for operating the apparatus and enables the vehicle to be operated in relatively close quarters (column 3, lines 14-27). As best seen in Figure 5, each of the guide tracks includes a substantially vertical portion (48a) and a portion near the top thereof which veers inwardly and defines a 90 degree curve connected to a transverse section (48b). As the upper support rollers (44) travel from the vertical section to the transverse section of the tracks, the bucket rotates or tilts inwardly (column 8, lines 54-64).

Ratledge discloses an apparatus for collecting separated refuse material comprising a refuse receiving container (12) divided into upper and lower compartments and a refuse-receiving trough (50) which is lifted from its curbside position and tipped by a lifting means (60) to dump trash into upper loading openings (25, 26) of the container. The lifting means comprises a pair of lift cylinders (62) pivotally mounted to each side of a roof (28) overlying the openings (25, 26). The roof, in turn, is connected to the trough (50) via a connecting link (66) such that, upon actuation of the cylinders, the trough is elevated.

Stragier discloses a refuse collection truck comprising a storage compartment (13), a narrower loading compartment (17) and a vertical rail assembly (37) for guiding an apparatus (29) having a pair of arms (31, 33) designed to engage and lift refuse containers (27). The upper portion of the side wall of the loading compartment (17) facing the rail assembly is outwardly flared, as seen in Figures 1 and 4a-8a.

In rejecting claims 48, 49, 52 and 53, the examiner finds that Matsumoto, the jumping off point for the examiner's conclusion of obviousness, lacks a charging hopper having an offset side recessed a sufficient amount to accommodate the full width of the loading bucket (bin 84)³ and the path of the bucket having "an arcuate upper dumping portion" as required by the claims. However, according to the examiner, it would have been obvious to modify the

³ While the side (28) of the truck body (22) of Matsumoto is formed at the front thereof with an inset (39), the inset accommodates only the hoisting apparatus and not the full width of the bin. As seen, for example, in Figure 7, the bin (84) extends outwardly beyond the maximum width of the truck body (22) even when tucked under the truck body.

Matsumoto apparatus so as to offset the charging hopper (the front portion of the truck body including the chutes) and to provide the bucket path with an arcuate upper portion in view of the teachings of Horning as it would facilitate maneuvering of the vehicle and emptying of the bucket (Answer, page 3).

The appellants argue (Brief, pages 13-14) that "the basic combination of [Matsumoto and Horning] cannot properly be applied as suggested to render claim 48 and the remaining claims depending from it obvious." For the reasons which follow, we agree with this statement.

Matsumoto discloses an arrangement wherein the overall width of the truck is reduced during travel on a highway by providing an inwardly and downwardly slanted channel portion (82) which enables the bin (84) to be tucked under the truck body. Horning, on the other hand, discloses a different arrangement for reducing the overall width of the truck not only during highway travel but during operation at a collection site, wherein the front section of the truck body is narrower than the rear section to form a recess in which the bucket assembly is accommodated throughout at least most of its travel. The bucket assembly travels from its lowermost position along a substantially vertical path up to the top of the truck body and then veers inwardly to assume a dumping position over the top of the truck body. The guide tracks do not include "lower segments that are outwardly directed" so as to define "an initially outward extending path" as required by claim 48.

From our perspective, even accepting the examiner's position that it would have been obvious to one of ordinary skill in the art in view of the teachings of Horning to modify Matsumoto by recessing the front loading portion of Matsumoto's truck body sufficiently to accommodate the full width of the loading bin or bucket within the maximum width of the truck body and providing the channels (81) with an arcuate upper dumping portion, Horning would have taught one of ordinary skill in the art to provide on such an apparatus guide channels having a substantially vertical section followed by a curved upper section leading to a short horizontal section. Specifically, a skilled artisan would have appreciated from the teachings of Horning that the need to provide inwardly and downwardly directed lower portions on the guide channels to permit the bucket to be tucked under the truck body during highway travel is obviated in an arrangement wherein the front loading section of the body is sufficiently recessed relative to the rear section to accommodate the full width of the loading bucket. Therefore, we conclude that the reference combination proposed by the examiner would not have suggested an apparatus comprising both a charging hopper having an offset side recessed a sufficient amount to accommodate the full width of the loading bucket within the maximum width of the truck body and "an initially outward extending path" of the bucket including recesses having "lower segments that are outwardly directed" as required by claim 48.

Accordingly, we shall not sustain the examiner's rejection of independent claim 48, or claims 49, 52 and 53 which depend from claim 48, under 35 U.S.C. § 103 as being unpatentable over Matsumoto in view of Horning.⁴

As to the examiner's rejections of claims 11 and 55-57, which also depend from claim 48, we have reviewed the teachings of Ratledge and Stragier, but find nothing therein which overcomes the above-noted deficiency of the combination of Matsumoto and Horning. Accordingly, we also shall not sustain the examiner's 35 U.S.C. § 103 rejections of claim 11 as being unpatentable over Matsumoto in view of Horning and Ratledge and of claims 55-57 as being unpatentable over Matsumoto in view of Horning and Stragier.

CONCLUSION

To summarize, the decision of the examiner to reject claims 48, 49, 52, 53 and 55-57 under the judicially created doctrine of obviousness-type double patenting is affirmed. The examiner's decision to reject claims 11, 48, 49, 52, 53 and 55-57 under 35 U.S.C. § 103 is reversed. The examiner's decision is affirmed-in-part.

⁴ It is elementary that to support an obviousness rejection, all of the claim limitations must be taught or suggested by the prior art applied (see In re Royka, 490 F.2d 981, 984, 180 USPQ 580, 582 (CCPA 1974)) and that all words in a claim must be considered in judging the patentability of that claim against the prior art (In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

JOHN P. McQUADE)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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