

DECISION OF THE COMMISSIONER

OBVIOUS: Difference Dictated By Design Consideration. Applicant's argument that the structure of the citation is inoperative not accepted. The different positions of the analogous parts of the citation and this application are dictated by design considerations only, and does not make a new combination.

FINAL ACTION: Affirmed.

IN THE MATTER OF a request for a review by the Commissioner of Patents of the Examiner's Final Action under Section 46 of the Patent Rules.

AND

IN THE MATTER OF a patent application serial number 964,734 filed July 6, 1966 for an invention entitled:

HARROW DRAW BAR

Agent for Applicant

Messrs. Cecil C. Kent & Associates,  
Winnipeg, Manitoba.

This decision deals with a request for a review by the Commissioner of Patents of the Examiner's Final Action of April 30, 1971 rejecting the application.

Since the applicant did not request a hearing before the Patent Appeal Board, the prosecution of the application has been reviewed and the facts are as follows:

Application 964,734 was filed July 6, 1966 in the name of Abraham W. Hiebert and refers to a Harrow Draw Bar.

In the prosecution which terminated in the Final Action the Examiner refused to allow the application for lack of invention in view of the disclosures of two references:

Canadian Patent 671,719, Oct. 8/63 to Marvin  
U.S. Patent 2,944,615, July 12/60 to Clark

Applicant's device is a drag harrow which has a draw bar with a center section and two pivoted wing sections provided with a wheel at the outer end of each wing. The center section is mounted on a towing section with the wings extended in line when in working position. When it is desired to tow the harrow from one location to another the draw bar is rotated around pivots on the towing frame. This both elevates the harrow sections clear of the ground and also raises the draw bar relative to the ground. The wing sections are then pivoted to a trailing position and their wheels are pivoted to an in-line position.

During the prosecution the examiner held that the Marvin reference disclosed the same arrangement for rotating and raising the draw bar. Marvin discloses the arrangement in connection with a cultivator whereas applicant uses the arrangement in a drag harrow, however I consider these two implements analogous in this instance since the specific earth working tool is not a vital part of the invention.

The applicant repeatedly argued that the Marvin reference was improper because in his opinion Figure 5 shows an incorrect positioning of the parts and the arrangement is thus inoperative.

In my view the applicant does not understand the geometry of Marvin's arrangement. Referring to the patent, Figure 1 shows wheel 18, stub shaft 19 and arm 20 supporting wing beam 11 in line with center beam 8 (see also page 4 lines 21 to 23). Figure 5 is an accurate partial elevation of Figure 1 and it should be obvious that the outer end of wing beam 11 is at the same elevation above ground as center beam 8. When beam 8 through bracket 9 is rotated 90° around pivot 10, wing beam 11 and arm 20 are also rotated 90°, but, and this is the point which applicant has failed to grasp, arm 20 will assume a position which is at a small trailing angle to the vertical and the wing beam 11 is thereby maintained in line with center beam 8 prior to being folded into towing position. This may be readily seen by making a tracing of parts 8, 9, 10, 18 and 20 as shown in Figure 5 and superimposing the tracing on Figure 6 with 8, 9 and 10 coinciding.

Furthermore when Marvin's beam 8 is rotated into raised position his stub shafts 19 act as "fulcrum means" in the same manner as applicant's wheel shafts 32.

In my view the only difference between applicant's arrangement and that of Marvin is that applicant's wheel shafts are offset upwardly from the wing beam whereas Marvin's wheel shafts are offset downwardly from the wing beam. Such a structural difference is obviously dictated by design considerations. Marvin's three part beam is located in a position above the axles of the wheels 18 because the towing frame is suspended above the axle of the main wheels. Applicant's draw bar is located in a position below the axles of the wheels 34 because his towing frame is suspended below the axle of the main wheels.

It is noted that applicant has incorrectly shown the axle below the towing frame in Figure 1 and Figure 2. It is clear to me that applicant's positioning of the wheel shafts offset upwardly constitutes a mere alteration of the relative position of parts that have been used before in combination for a purpose analogous to that claimed and is therefore not a new combination.

I have studied the Clark reference cited by the examiner and although it is pertinent I do not consider that it adds much to the rejection.

As a result of my review of the examiner's rejection and the applicant's arguments I find that the rejection is well founded and that the applicant has not disclosed or claimed subject matter that is inventive over the reference, particularly the Marvin patent.

I therefore recommend that the decision of the examiner, rejecting the application, be upheld.

R. E. Thomas,  
Chairman, Patent Appeal Board.

I concur with the finding of the Patent Appeal Board and refuse the grant of a patent. The applicant has six months in which to appeal this decision in accordance with Section 44 of the Patent Act.

Decision accordingly,

A.M. Laidlaw,  
Commissioner of Patents.

Dated at Ottawa, Ontario,  
this 18th. day of August, 1971.