

COMMISSIONER'S DECISION

OBVIOUS: Amendment Avoided Prior Art of Record.

RULE 46 PROCEDURE: Amendment Modified - Admissable in part.

Amended claims overcome grounds of obviousness but examiner directed to seek amendment to overcome informalities. Applicant obtained extension of time and presented new set of eleven claims. Entry of the amendment permissible except for two claims, and the application referred for prosecution in view of uncited art.

FINAL ACTION: Objection overcome, amendment admissible in part.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated February 2, 1972 on application 999,786. This application was filed in the name of C. Van Der Lely N.V. (Cornelis van der Lely) and refers to "Mowing Machines".

In the prosecution terminated by the Final Action the examiner refused the claim for failing to distinctly and explicitly state the combination regarded as new in view of prior art. The prior art cited is as follows:

United States Patents

3,053,033	Sept. 11, 1962	-	Maguire
3,063,225	Nov. 13, 1962	-	Barrentine

In the Final Action the examiner stated in part:

The patent to Barrentine discloses a mower mounted on the three-point hitch linkage of a tractor. The mower comprises a frame including two parts pivotally interconnected on an axis extending in the direction of travel of the mower. The mower is supported on a ground wheel and includes a rotary cutter mounted on a vertical axis.

The Patent to Barrentine does not disclose a spring on the top link of the three point linkage, however the use of a spring to reduce a load on the ground by the cutter bar of a tractor mounted mower is common general knowledge in the art.

The feature that the applicant uses two mowers mounted on one frame while Barrentine discloses only one mower cannot be considered of any patentable significance, because the duplication of mowers does not produce a new mode of operation or a new unitary result.

The patent to Maguire is cited to show a ground support mounted in front of a circle made by a cutting blade.

The use of rotary mowers with spherical downwardly extending projections is common general knowledge obvious to anyone skilled in the art.

It is pointed out that the addition of a screen to the mower does not improve the combination of the mower and the three point hitch linkage.

The claims are indefinite because they fail to distinctly and correctly state the invention, moreover, the claims require revision to correct the idiom and English and put the claims into acceptable form.

In the applicant's response of May 2, 1972 he submitted an amended set of 14 claims and presented arguments to show that the new set of claims were distinct and explicit, and that the amended claims avoided the prior art.

Following this response the grounds of obviousness were withdrawn in view of the art of record and the Board directed the examiner to seek an acceptable amendment to overcome informalities which still existed in the amended claims.

On August 2, 1972 the applicant, after discussions with the examiner, presented an amended set of eleven claims and stated:

Accompanying this amendment is an Affidavit in support of applicant's request for an extension of time of three months within which to deal with the objections expressed in the official action of February 2nd, 1972. In an interview which was recently courteously granted by the Examiner to a representative of applicant's Canadian agents, it was agreed that further amendments were necessary in order to overcome the objections raised in the official action of February 2nd. The claims now presented with the exception of claim 11, which has been drafted for the sake of reconsideration of this application by the Appeal Board, have been amended to meet all of the Examiner's objections. The applicant needs a claim of this scope in order to protect himself against a potential infringer who may be able to avoid the claims which the Examiner has indicated to be acceptable to the Office. If claim 11 is accepted, applicants would wish to add further dependent claims and permission to add this claim is therefore requested under Rule 46(3)(c).

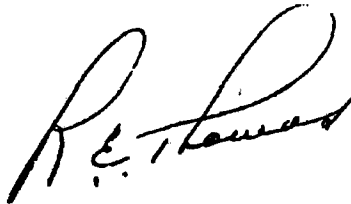
In view of the fact that applicant has only declared interest in the recently filed eleven amended claims the Board will only consider these claims and assumes that the present claims on file are held to be abandoned.

The Board is satisfied that claims 1 and 2 are amended as required in the Final Action. Claim 3 is improperly dependent because it repeats in different terms the subject matter of the preceding claim 1 with

reference to a ground wheel. Claims 4 - 10 inclusive are also amended as required in the Final Action.

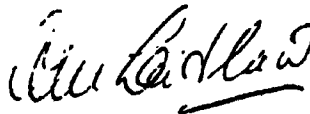
However, claim 11 is indefinite with regard to the critical part of the alleged invention; namely, the mounting of the means for resting pivotal movement of the machine and, moreover, it is not clear whether the applicant is including the tractor as part of his combination or not. For example; in lines 8 etc. the applicant states that: "... second pivot means between the second frame portion and two lower points...." and in lines 15 and 16, he states that: "... the first frame portion extending to one side of the tractor" The claim must make clear the bounds of the intended monopoly which appear to embrace the prior art found in a search against amended claim 11; which art will be considered when prosecution resumes.

The Board, therefore, recommends that amended claims 1, 2 and 4 - 10 inclusive may be entered in the application as overcoming the rejections in the Final Action, and that claims 3 and 11 be refused for reasons stated herein.



R.E. Thomas
Chairman
Patent Appeal Board

I concur with the findings of the Patent Appeal Board and refuse to enter claims 3 and 11 for the reasons stated, and in view of the fact that pertinent art has been found with respect to amended claim 11 the application is returned to the examiner for resumption of prosecution.



A.M. Laidlaw
Commissioner of Patents

Dated at Ottawa, Ontario
this 14th day of September, 1972.

Agent for Applicant

Fetherstonhaugh & Co., Ottawa.