

COMMISSIONER'S DECISION

OBVIOUS: Expedient Dictated by Exigencies and Intended Purpose.

Claims for a construction block comprising "junk cars" sufficiently compressed to have "high tensile and compressive strength" held to be a matter of degree only, dependent upon the capacity of the press, compared to the lesser compressed car bodies shown in the citation (as opposed to a claim which specifies a block of particular shape having a density of "7 cu. feet per ton of car"). It is common knowledge to compress junk material into blocks and protect such blocks from corrosion by applying impervious material as shown in a second citation for compressed blocks of bulk rubbish for disposal in a body of water. The argument that the use of the non-metallic as well as the metallic materials of junk cars had unexpected strength advantages, held to be mere choice and obvious expedient dictated by the intended purpose of the blocks.

FINAL ACTION: Affirmed

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated November 23, 1972 on application 043,363. This application was filed in the name of Warren B. Diederich and refers to "Method Of Utilizing Junk Cars."

In the prosecution terminated by the Final Action the examiner refused claims 1 and 3 in view of common general knowledge and the cited prior art, namely:

Canadian Patent
684,261 Endert April 14, 1964

United States Patent
3,330,088 Dunlea July 11, 1967
(corresponds to French Patent 1,454,793 - August 29, 1966)

In this action the examiner stated in part:

It is maintained that the previously submitted product claims 1 and 3 are held to be for the same invention as the method claim which has been cancelled by the applicant in response to the Final Action dated March 15, 1972. The product claims are based on the same method limitations of having a junk car as is compressed at ambient temperature into a block, and coating the block with an air and moisture impervious material to prevent corrosion.

Applicant argues that the crux of his invention not known in the prior art resides in a superior "construction" block. However the mere use an article is to be put has no patentable significance.

In view of the prior art of record and in view of common general knowledge as set forth in detail in the above Office Action product claims 1 and 3 stand refused as unpatentable for lack of invention.

Claim 2 is still considered to be in a condition for allowance.

The applicant in his response to the Final Action, dated February 22, 1973, stated in part:

The applicant's claims were rejected in view of Endert and Dunlea. However, neither Endert nor Dunlea discloses a construction block. The cited reference to Endert is merely interested in compressing scrap metal so that it can be of a smaller width, making it easily inserted into a machine which compresses the scrap for entrance into an area for engagement by continuous shearing devices. Further, Endert does not disclose the state of dismemberment of the car prior to the compressing and shearing. Thus Endert is of little value in determining the parts of the car which should be crushed, or the method by which the car should be crushed in order to form a stable unitary shaped construction block having a relatively high tensile and compressive strength. Dunlea merely teaches the compression of bulk rubbish and the coating thereof for disposal in a body of water.

It might seem likely that the failure to remove glass and upholstery, and other relatively weak construction materials, would result in a finished block which would pull part, or separate under tensile strength. Tests conclusively show that this is not the case, and that, in fact, a block made in accordance with the applicant's method withstood tensile strength up to the limits of the testing machine, while a block comprising a pre-burned and stripped junk car separated at a tensile strength of about 25,000 pounds. The applicant believes that this is due to the fact that the removal of the relatively massive metallic materials in addition to the non-metallic materials leaves the very ductile sheet metal, which metal, of course, must be ductile in order to be stamped into the exterior shape of an automobile. This ductile sheet metal is very weak under tension or compression. Secondly, the process of heating the automobile in order to burn out the upholstery and other combustible ingredients and to melt any of the glass in the automobile may actually be an annealing process which creates a more soft and ductile material.

This application refers to a solution for the disposal problem of junk automobiles, whereby compressing machines are utilized to compress such automobiles into geometric shapes. The issue to be decided is whether the subject matter of claims 1 and 3 is considered to be a patentable advance in the art. Claims 1 and 3 read:

1. An environmentally stable unitary shaped construction block having a relatively high tensile and compressive strength, which block comprises a junk car compressed at ambient temperatures and includes relatively massive metallic materials and non-metallic materials contained within said junk car, said block including a cover in the form of a continuous layer of an air and moisture impervious material.

3. An environmentally stable unitary shaped construction block having a relatively high tensile and compressive

strength, which block comprises a junk car compressed at ambient temperature and includes all of the parts of the car which are usually removed prior to compression, such as the transmission, axles, upholstery and windows, said block including a cover in the form of a continuous layer of an air and moisture impervious material.

The reference to Endert discloses the use of a charging box for a "Scrap Baling Press", and especially for receiving oversize scrap such as, "automobile bodies." The automobile body is placed in the jaws of the machine and compressed to a pre-determined size.

The reference to Dunlea discloses a method of bulk rubbish disposal by compacting the raw rubbish into bundle form and applying an impervious coating to the surface of such forms.

It is noted that no objection has been made to claim 2, it then follows that the applicant is considered to have made an advance in the art; notwithstanding, in considering other claims the applicant must not claim broader than the invention made. Of interest in the many decisions on this point, vide the statement of Thorson P. in the frequently applied case of Mineral Separation v. Noranda Mines Ltd. (1947) Ex. C.R. 306

The inventor may make his claims as narrow as he pleases within the limits of his invention but he must not make them too broad. He must not claim what he has not invented for thereby he would be fencing off property which does not belong to him. It follows that a claim must fail if, in addition to claiming what is new and useful, it also claims something that is old or something that is useless. (emphasis added).

The fact that the block has a relatively high tensile and compressive strength is a matter of degree only in comparison with the product of the patent to Endert; a compressed "automobile body". This factor is of course dependent on the design and capacity of the press, and is not considered to be a patentable feature.


It is therefore held to be old, a matter of common general knowledge and of conventional practice to compact scraps of metal, containers, textiles, paper, machines, appliances, automobiles, etc. no longer in servicable condition into a block of substantially

less volume and greater density in any particular shape (Endert and Dunlea). It is also conventional practice to protect the final product against corrosion, rust etc. with the application of an impervious substance (Dunlea).

The applicant has advanced the argument that the glass, upholstery and other weak construction materials are not removed from the automobile before the step of compressing; however, there is no indication in the reference to Endert that there is any dismemberment of the automobile prior to the step of compressing. It is held, however, that the particular use of the end product will dictate what parts should be removed. For example, if the compressed automobile is used in the recovery and refining of scrap metal, it would appear obvious to eliminate unwanted materials, such as: upholstery and glass. In the situation at hand the presence of materials other than metal is not critical as noted in the disclosure, page 4 line 8: "There is no need to burn out all non-metal or to remove the glass."

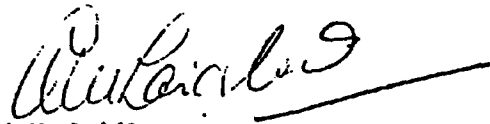
Accordingly, it is held that the selection of the type, condition and composition of the rubbish to be compressed is a mere matter of choice and an obvious expedient dictated only by exigencies and the subsequent intended use of the compressed scrap.

The Board is therefore satisfied that the subject matter of claims 1 and 3 do not teach a patentable advance in the art over the cited references and common general knowledge, and recommends that the decision of the examiner, to refuse claims 1 and 3, be affirmed.


J.F. Hughes
Assistant Chairman
Patent Appeal Board

I concur with the findings of the Patent Appeal Board and refuse to grant a patent with respect to claims 1 and 3. The applicant has six months in which to appeal this decision in accordance with Section 44 of the Patent Act.

Decision accordingly,

A handwritten signature in dark ink, appearing to read "A.M. Laidlaw", with a long horizontal flourish extending to the right.

A.M. Laidlaw
Commissioner of Patents.

Dated at Ottawa, Ontario,
this 14th day of May, 1973.

Agent for Applicant

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