

COMMISSIONER'S DECISION

Section 43: Crop Harvesting Machine

The invention is directed to an improved system for suspending a crop material harvesting header on the machine frame. A submission tendered to overcome a Section 43 rejection has failed to overcome the rejection because it was found it was not directed to the same invention as the application.

Final Action. Affirmed.

Re:	237,913
Filed:	October 17, 1975
Applicant:	Sperry Rand Corporation
Title:	Crop Harvesting Machine Header Suspension System

This is in response to the applicant's letter of March 17, 1978 in which he submitted an Affidavit and an Exhibit in an attempt to overcome a reference, United States patent 3,834,142 to Johnson, Sept. 10, 1974. This patent was cited in an examiner's letter, dated Oct. 21, 1977, under the provision of Section 43 of the Patent Act. The patent issued 13 months prior to the Canadian filing date of the present application.

This application relates to a crop harvesting machine and, more particularly, is concerned with an improved system for suspending a crop material harvesting header on the harvesting machine frame. Claims 1 to 15 are essentially directed to a harvesting machine provided with a mobile frame and a header pivotally supported on the frame by upper and lower arms. The upper arms are pivotally mounted on the frame between the ends thereof. The forward ends of the upper arms are connected to the header; the rearward ends are connected by a spring to the frame to floatingly support the header.

The Affidavit, signed by the inventor, suggests that the invention was made prior to the earliest date of record of the cited United States patent. The Exhibit in the form of an "Invention Disclosure" allegedly shows prior disclosure of his invention at least as early as the November 21, 1972 date shown on the exhibit.

On a complete study of the Affidavit and Exhibit it is found that the invention is different in at least one essential structural feature from the invention defined by claims 1 to 15 of the present application. For example, the "Invention Disclosure" describes and shows the structure shown in Figures 1 to 3 where the springs are connected between the upper arms and the wheel arms which are pivotally mounted on the frame and the support ground wheels. The lower arms are connected between the header and the wheel arms. There is no disclosure that the spring is connected between a top arm and a frame. The Exhibit is clearly directed to a different structure, as discussed above, from that covered by present claims 1 to 15.

To summarize, the applicant's submission cannot be considered as sufficient to overcome the reference cited under Section 43 of the Patent Act, because the subject matter described in the applicant's Exhibit is markedly different from the subject matter defined by claims 1 to 15 of the present application. In the examiner's letter, referred to above, it was stated that claim 16 "appears allowable." Claim 16, however, is not supported by the disclosure because it is directed to structure shown in Figure 4 which does not include a flexible floor.

The submission is refused because it fails as a proper response to overcome the Johnson patent under Section 43 of the Patent Act. In the circumstances, however, the applicant is given a further opportunity to amend to avoid, or to present arguments to show how his invention defined in the claims is not anticipated by the reference. The applicant has six months within which to reply to this communication or the application will be deemed to be abandoned.

Yours truly,

Original Signed by
J. H. A. Gariepy
Original Signed per

J.H.A. Gariepy
Commissioner of Patents

JH/1b