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KRATZ, QUINTOS & HANSON, LLP 1420 K Street, N.W. 4th Floor WASHINGTON, DC 20005			MCGOWAN, JAMIE LOUISE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SHOUKAN TAKEDA, KOUJI OKAZAWA, and  
HIROSHI NAKAGAMI

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Appeal 2010-006204  
Application 11/007,793  
Technology Center 3600

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Before: EDWARD A. BROWN, BART A. GERSTENBLITH, and  
MITCHELL G. WEATHERLY, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the decision of the  
Examiner rejecting claims 1-4. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to a digging roller. Sole independent claim 1, reproduced below, is representative of the claimed subject matter:

1. A digging roller comprising:

a single roller main body having an outer peripheral surface rotating around an axis in an approximately horizontal direction; and

a plurality of digging bits disposed upon said outer peripheral surface of the roller main body, said digging bits each having a base portion protruding from said outer peripheral surface and a bit main body attached to the base portion, having a leading end digging portion arranged so as to be directed to a rotating direction of the digging roller,

wherein the digging bits at end portions of the single roller main body are arranged so as to have a first arrangement pattern moving the dug soil to an inner side of the single roller main body in an axial direction, wherein the digging bits between the end portions of the single roller main body are arranged so as to have a second arrangement pattern moving the dug soil to an outer side of the single roller main body in the axial direction, and wherein the first arrangement pattern is distinguishable from the second arrangement pattern, whereby dug soil is carried to a rear side of the digging roller in accordance with the rotation of the digging roller, by the arrangement of the digging bits, and an accumulated portion of the dug soil is dispersed into at least two sections and disturbing of the rotation by the dug soil is avoided and digging resistance is reduced.

#### REJECTION

Appellants seek our review of the rejection of claims 1-4 under 35 U.S.C. § 102(b) as being anticipated by US 4,755,001, issued July 5, 1988 (“Gilbert”). Ans. 4-5.

OPINION

Appellants argue that Gilbert fails to describe the recited “single roller main body” with “an outer peripheral surface” on which “a plurality of digging bits” are disposed. Reply Br. 6-7. Claim 1 requires that each of the digging bits has “a base portion protruding from said outer peripheral surface.” The digging bits at the end portions of the “outer peripheral surface of the roller main body” are arranged in a first pattern that moves soil inward toward the center of the main body. The digging bits in the medial portion of the main body are arranged in a second pattern that moves soil outward toward the lateral edges of the main body. Thus, the first and second patterns of digging bits on the “single roller main body” move the “dug soil” so that it “is dispersed into at least two sections.” App. Br. 11.

The Examiner cites Gilbert’s Figures 5 and 12 as describing alternate configurations of Gilbert’s central digging member 38. Ans. 7. However, the Examiner relies on Figure 12 as describing the claimed arrangement of digging bits on a “single roller main body.” *Id.* The Examiner finds: “Gilbert, Figure 12 discloses that the tines (54) move material outwardly. Further, Gilbert discloses that the flights (44, 48) move the material inwardly (column 5 lines 23-25). Therefore, the flights are moving material inward while the tines (54) are moving material outward.” *Id.* at 8. Tines 54 are located directly on the surface of Gilbert’s digging member 38 and also on the “flights” 44, 48 which protrude from drums 46, 50 respectively. Gilbert, Figures 5 and 12. However, the Examiner does not find that tines 54 located on flights 44, 48 move dirt inwardly or outwardly.

We agree with Appellants that Gilbert does not describe a “single roller main body” having digging bits arranged in the claimed first and

second “arrangement patterns.” Appellants’ Specification describes the “single roller main body” as being the “drum-like roller main body 6” shown in Figures 3 and 4. Spec., Figs. 3, 4; pp. 9-10. Claim 1 requires that these “digging bits” protrude from the surface of the “single roller main body,” which is also illustrated in these same figures. In the rejection, the Examiner equates the claimed “single roller main body” with Gilbert’s digging member 38 (Ans. 4), but in response to Appellants’ arguments, the Examiner relies upon “flights 44, 48” on drums 46, 50, respectively, of left and right digging members 40, 42 (Ans. 8).

Gilbert, however, is explicitly clear that these digging members are three distinct structures—“a central digging member 38,” “a right hand digging member 40[,] and a left hand digging member 42,” Gilbert, col. 5, ll. 10-15, with digging member 38 alone being a multi-segmented belt that is not a “roller.” Gilbert’s complex multi-digging member structure is not the “single roller main body” having “a plurality of digging bits disposed upon [the] outer peripheral surface” in a “first arrangement pattern” and a “second arrangement pattern” as required by claim 1.<sup>1</sup> Therefore, we reverse the Examiner’s rejection of claim 1 under 35 U.S.C. § 102(b) as anticipated by Gilbert. Because claims 2-4 depend either directly or indirectly upon independent claim 1, we also reverse the rejection of those claims.

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<sup>1</sup> We note that the Examiner did not identify any disclosure in Gilbert that supports the finding that digging member 38 moves soil inward or outward. We further note that Gilbert describes its digging member 38 as moving soil upward and rearward toward lateral conveyor 26. Gilbert, Figs. 4, 10, 13, and 17; col. 5, ll. 5-25; col. 6, ll. 57-62; col. 9, ll. 40-48.

Appeal 2010-006204  
Application 11/007,793

DECISION

For the reasons stated above, we reverse the Examiner's rejection of claims 1-4 under 35 U.S.C. § 102(b).

JRG