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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* CALVIN THOMPSON

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Appeal 2011-000604  
Application 11/400,508  
Technology Center 3600

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Before JAMES P. CALVE, SCOTT A. DANIELS, and NEIL T. POWELL,  
*Administrative Patent Judges.*

CALVE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the rejection of claims 35-41 under 35 U.S.C. § 103(a) as unpatentable over Sphar (US 4,193,457; iss. Mar. 18, 1980) and Tarbell (US 1,548,395; iss. Aug. 4, 1925). App. Br. 2, 3. Claims 1-34 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

### CLAIMED SUBJECT MATTER

Claim 35, the sole independent claim on appeal, is reproduced below:

35. An implement mountable on a machine operable to maneuver said implement along a tract of ground to compact and condition said ground, comprising:

- a drum rotatably mountable on said machine;
- a plurality of cleats disposed transversely and spaced circumferentially on said drum; and
- a plurality of segments comprised of loosely connected components, each loosely, transversely disposed between a successive pair of said cleats.

### ANALYSIS

#### Claims 35 and 36

Regarding claim 35, the Examiner found that Sphar discloses an implement that is mountable on a machine for compacting and conditioning ground and comprises a drum 5 that is rotatably mounted on the machine with a plurality of cleats 13 disposed transversely on the drum 5. Ans. 3. The Examiner also found that Sphar lacks segments of loosely connected components transversely disposed between successive pairs of cleats, but found that Tarbell discloses an implement for conditioning a tract of ground with chains 5 that are loosely and transversely disposed on a drum D to be drawn over the ground. Ans. 3-4. The Examiner determined that it would have been obvious to use such chains on Sphar based on Tarbell's teaching that it is old and well known in the art to provide transverse chains on a drum to condition a tract of ground for predictable results of adding a plant or soil tearing functionality to Sphar. Ans. 4, 8. The Examiner also found that Sphar and Tarbell disclose the claimed structure and teach devices that compact and condition the ground. Ans. 5-8.

Appellant argues that Sphar and Tarbell do not disclose implements that are intended to be operated to compact the ground. App. Br. 4-5. In particular, Appellant argues that Sphar discloses a roller that crushes and reduces debris in a reforestation operation and not to forcefully compact a surface of soil. App. Br. 3-4. Appellant argues that Tarbell is dragged along the ground and oscillated to tear and loosen plants lying along the ground, crush the plants, and not to use a set of chains to form depressions in the soil that is being compacted. App. Br. 4-5; Reply Br. 2-3. These arguments are not persuasive because the preamble of claim 35 recites an intended use of the claimed implement (*i.e.*, the implement is maneuvered along a tract of ground to compact and condition the soil). This intended use does not distinguish the structure of the claimed implement from Sphar and Tarbell. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (“It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable”). Nor do these arguments persuade us of error in the Examiner’s findings that Sphar and Tarbell disclose devices that condition and compact soil and also disclose the claimed structure and thus are capable of compacting ground. *See* Ans. 5, 7-8 (citations omitted).

Appellant also argues that Tarbell does not teach the addition of a set of chains between the ribs of the roller of Sphar for forming depressions in the soil being compacted and dislodging soil that is lodged between the ribs of the roller, because Tarbell’s chains are not mounted on a roller and are not intended to form depressions in the ground being rolled or to dislodge soil compacted between a set of ribs on a roller, but simply crush and pulverize plants disposed along the ground surface as the drum causes the chains to be dragged along a line of travel and oscillated vertically. App. Br. 5. These

arguments are a piecemeal attack on the references where the Examiner has relied on the combined teachings of Sphar and Tarbell to render obvious the subject matter of claim 35. These arguments do not persuade us of error in the Examiner's determination that it would have been obvious to include Tarbell's chains on Sphar as a means to condition the soil based on Tarbell's teaching that chains provide this functionality. Ans. 4. We sustain the rejection of claims 35 and 36.

Claims 37-41

Claims 37-41 depend from claim 35 and recite that the implement includes a pair of connecting segments disposed circumferentially on the drum and connected to the ends of the first segments that comprise chains. The Examiner found that Sphar and Tarbell do not disclose the claimed specific mounting arrangement but determined that it would be well within the skill of a person in the art to provide sufficient mounting structure to mechanically support chains on a drum wherein the mounting arrangement comprises a plurality of connecting segments trained about the ends of the cleats to support the chains during use. Ans. 4-5, 8-9.

We agree with Appellant that Sphar and Tarbell fail to disclose the features recited in claims 37-41. App. Br. 5. The Examiner's finding that it would have been within the skill of a person in the art to provide the claimed mounting arrangement does not explain why it would have been obvious to do so, particularly in the absence of any disclosure of such features in Sphar and Tarbell. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (a prima facie case of obviousness is not established "merely by demonstrating that each of its elements was, independently, known in the prior art"). We cannot sustain the rejection of claims 37-41.

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DECISION

We AFFIRM the rejection of claims 35 and 36 and REVERSE the rejection of claims 37-41.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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