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VanOphem IP Law PLC
1585 S Hickory Ridge Rd
Milford, MI 48380-1519

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD S. BARON

Appeal 2015-000551
Application 12/917,886¹
Technology Center 3600

Before JAMES A WORTH, CYNTHIA L. MURPHY, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 1–17. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

BACKGROUND

According to Appellant, “[t]he present invention relates to a plant-growing method and more particularly, to a new method for growing grape

¹ According to Appellant, the real party in interest is Richard S. Baron. Appeal Br. 3.

vines in root control containers permanently planted in previously existing solid waste landfills.” Spec. ¶ 4.

CLAIMS

Claims 1–17 are on appeal. Claim 1 is illustrative of the appealed claims and recites:

1. A method of growing a grapevine in a cover layer of a landfill to produce grapes for direct human consumption, said method comprising the steps of:

excavating at least one hole in said cover layer of said landfill;

providing at least one porous root growth control vessel resistant to degradation;

inserting said at least one porous root growth control vessel into a respective one of said at least one excavated hole;

filling said at least one porous root growth control vessel with a soil media; and

permanently planting and growing a grapevine seedling within each of said at least one porous root growth control vessel planted in said cover of said landfill for safely producing grapes from the grapevine grown on by preventing root penetration of the grapevine into buried materials in the landfill thereby preventing uptake of any bio-accumulative chemicals that could be passed along to the grapes which may be detrimental to the health of the vine or to the human.

Appeal Br. 26.

REJECTIONS

1. The Examiner rejects claims 1–5, 7–11, and 17 under 35 U.S.C. § 103(a) as unpatentable over Woodley² in view of Ploeger,³ and Reiger.⁴
2. The Examiner rejects claims 6 and 12 under 35 U.S.C. § 103(a) as unpatentable over Woodley in view of Ploeger, Reiger, and Siebol.⁵
3. The Examiner rejects claims 13–16 under 35 U.S.C. § 103(a) as unpatentable over Woodley in view of Ploeger, Reiger, and Single.⁶

DISCUSSION

With respect to independent claim 1, the Examiner finds:

In re to claim 1, Woodley discloses growing plants in a landfill (page 38, col. 1, lines 2-7, and page 39, col. 2, lines 8-9) and excavating holes (pg. 38, lines 15-18) in said cover layer (top soil), but fails to disclose providing a porous vessel, inserting the vessel into the hole, filling the vessel with a soil media and planting and growing a grapevine seedling within the vessel. However, Ploeger teaches inserting a plant vessel 20 into a hole (col. 2, line 13) and filling the vessel with a soil media (24, col. 2, lines 20-22) and planting and growing a grapevine seedling (26, col. 2, lines 22-23) within the vessel; Reiger teaches a porous root growth control vessel resistant to degradation (col. 3, lines 35-40). It would have been obvious to one of ordinary skill in the

² Laurel Woodley, *The South Coast Botanic Garden: From Landfill to Jewel of the Peninsula*, PACIFIC HORTICULTURE, 35–40 (2009) (hereinafter “Woodley”).

³ Ploeger, Jr., US 4,457,102, iss. July 3, 1984.

⁴ Reiger et al., US 4,574,522, iss. Mar. 11, 1986.

⁵ Siebol, US 3,526,993, iss. Sept. 8, 1970.

⁶ Single, US 6,862,840 B1, iss. Mar. 8, 2005.

art at the time the invention was made to modify the landfill of Woodley with Ploeger's grapevines to increase the variety of plants used to improve land conservation and Reiger's porous root growth control vessel to allow the plants to be easily removed if the land is deemed unsuitable due to gases produced during decomposition within the landfill (Woodley, page 38, Challenges of a Landfill), thus preventing the need to replace plants and lowering costs.

Final Act. 2–3. The Examiner relies on substantially similar findings with respect to independent claim 7, the only other independent claim on appeal. *See id.* at 3.

We are persuaded by Appellant's argument that the Examiner has failed to show how the art of record renders obvious a method including the "permanently planting and growing" step required by both independent claims. *See* Appeal Br. 21–22. Specifically, independent claim 1 requires, *inter alia*, the step of "permanently planting and growing a grapevine" within a vessel such that "root penetration of the grapevine into buried materials in the landfill" is prevented. *See id.* at 26–28. The rejection, as quoted above, fails to address this claim requirement.

Further, the Examiner's response does not correct this deficiency. In the rejection, the Examiner finds only that the prior art structure is capable of performing the intended use of growing plants "for human consumption." Final Act. 4. However, this does not specifically address the "permanently planting and growing" step as claimed or explain how the proposed combination would be capable of performing any functions provided in this method step. The Examiner also does not specifically address these limitations in the Answer. *See* Ans. 1–2.

Based on the foregoing, we are persuaded that the Examiner erred in rejecting claims 1 and 7 as obvious over Woodley, Ploeger, and Reiger.

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Accordingly, we do not sustain the rejection of claims 1 and 7. We also do not sustain the rejection of dependent claims 2–5, 8–11, and 17 for the same reasons. Regarding the remaining rejections, the Examiner does not identify anything in the art of record, including Siebol and Single, that would correct the deficiency in the rejection of the independent claims, as discussed above. Thus, we also do not sustain the rejections of claims 6 and 12–16.

CONCLUSION

For the reasons set forth above, we reverse the rejections of claims 1–17.

REVERSED