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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER KOHL, BRUNO HÄUSSLER, KARIN SCHAFFER,
GERHARD STREITFERDT, and SIEGFRIED RAU

Appeal 2020-003068
Application 15/500,158
Technology Center 3600

Before LYNNE H. BROWNE, ANNETTE R. REIMERS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE^{1,2}

Appellant³ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision to reject claims 1 and 2 under 35 U.S.C. § 102(a)(1) as anticipated by Hall (US 1,632,597, issued June 14, 1927). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The claimed subject matter “is directed to a fruit collector, a retaining bracket, and a collecting container of and for such a fruit collector.” Spec. 1:3–5, Figs. 1–3.

Claim 1, the sole independent claim on appeal, is representative of the claimed subject matter and recites:⁴

1. A retaining bracket for a fruit collector, the retaining bracket being arranged to pivotably retain a fruit collecting container, and comprising a hub which is arranged to pivotably

¹ The subject application was previously before the Patent Trial and Appeal Board in Appeal No. 2018-006884. *See* Decision dated Oct. 2, 2018. In that Decision, the adverse decision of the Examiner was REVERSED. Following that Decision, Appellant reopened prosecution and further amended the claims.

² The Examiner indicates that “[c]laims 3-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims” and “[c]laims 8-13, 15 and 17-18 are allowed.” Final Office Action (“Final Act.”) 4, dated May 17, 2019; *see also id.* at 1 (Office Action Summary).

³ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Husqvarna AB. Appeal Brief (“Appeal Br.”) 1, filed Oct. 16, 2019.

⁴ We refer to the Claims Appendix submitted in the Supplemental Appeal Brief (“Supp. Appeal Br.”), filed Nov. 8, 2019.

retain a stub axle section of the collecting container projecting from an axial end of the collecting container,

wherein the hub comprises an inner, central hole configured and sized to enable fruits collected in the collecting container to pass through, and arranged to communicate via a container opening at the stub axle section with a container inner volume once the collecting container is coupled to the hub.

ANALYSIS

Independent claim 1 is directed to a retaining bracket including a hub “compris[ing] an inner, central hole . . . arranged to communicate via a container opening . . . with a container inner volume once the . . . container is coupled to the hub.” Supp. Appeal Br. 2, Claims App. The Examiner finds that Hall discloses a hub B “comprising an inner, central hole (the hole inside of B, Fig. 6),” the central hole being

arranged to communicate via a container opening (the open right end of tube A supported by and at the right hub B as seen in Fig. 3) at the stub axle section (the open right end of A supported in right B, seen best in Fig. 3, page 1, lines 69-71) with a container inner volume (the interior of A) once the collecting container (A) is coupled to the hub (B).

Ans. 4;⁵ *see also id.* (The Examiner’s annotated versions of Figures 2 and 3 of the subject invention and Figures 3 and 6 of Hall); Final Act. 3; Hall 1:69–71, Figs. 3, 6.

As an initial matter, Appellant acknowledges that “[t]he Examiner is correct in that Appellant inadvertently referred to the alleged collecting container of Hall as ‘C’ in the Appeal Brief but should have referred to it as ‘A’.” Reply Br. 2.⁶ Appellant further states that “[i]n this regard, the

⁵ Examiner’s Answer (“Ans.”), dated Jan. 16, 2020.

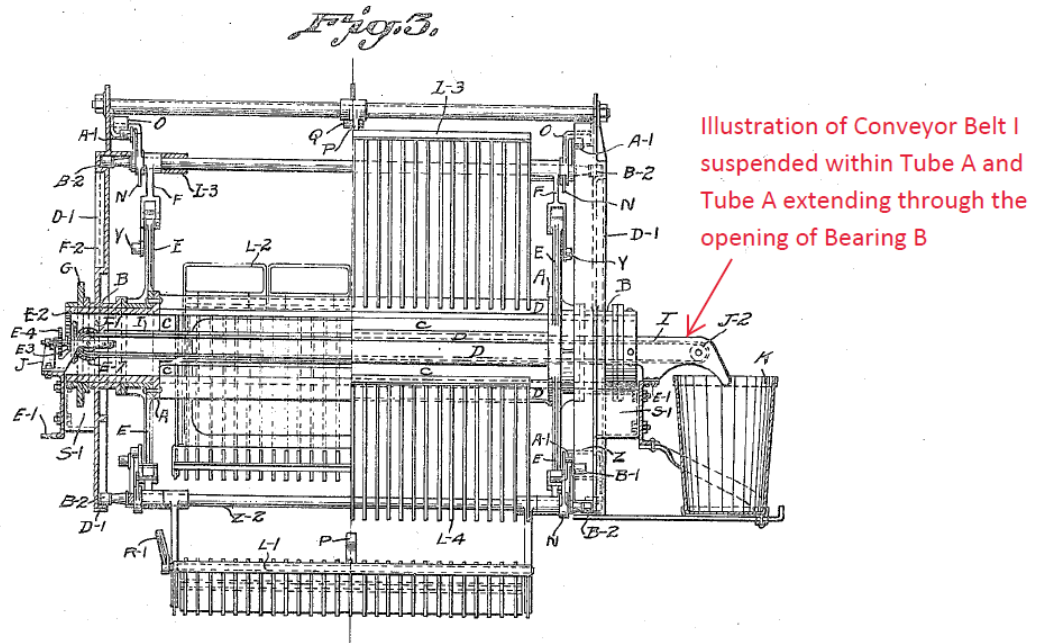
⁶ Reply Brief (“Reply Br.”), filed Mar. 16, 2020.

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inadvertent[] labelling of the alleged collecting container as ‘C’ rather than ‘A’ does not change Appellant’s assertion that Hall does not anticipate the claimed subject matter of independent claim 1.” Reply Br. 2; *see also* Appeal Br. 4; Ans. 3–4.

Appellant contends that Hall “discloses only that reference numeral ‘B’ is a bearing that supports a revolvable, hollow cylindrical tube” and “[i]n this regard, the alleged hub ‘B’ of Hall is not in any way related to the claimed hub that is **arranged to communicate via a container opening at a stub axle section with a container inner volume.**” Reply Br. 2; *see also* Appeal Br. 4. In other words, according to Appellant, “Hall does not disclose anything in relation to the alleged hub B being arranged to communicate via the container opening with a container inner volume (the interior of A).” Reply Br. 2. Instead, “the alleged hub ‘B’ of Hall is nothing more than a bearing that is **only** configured to support a tube A.” *Id.* (citing Hall Fig. 3).

Appellant has the better position here. First, Appellant correctly points out that “Hall provides no disclosure regarding communication of the opening of ‘B’ with the inner volume of ‘A’.” Reply Br. 3; *see also* Hall, *passim*. To Appellant’s point, Hall merely discloses that “A is a revolvable, hollow, cylindrical tube supported by bearings B at each end, shown best in Figures 3 and 6.” Hall 1:60–62, Figs. 3, 6; *see also* Appeal Br. 4; Reply Br. 2. Second, Appellant also correctly points out that “Hall clarifies that the berry conveyor belt I is *suspended within* the tube A.” Reply Br. 3 (emphasis added); *see also* Hall 1:82–83 (“I is a berry conveyor belt *suspended within* said tube ‘A’.” (emphasis added)). Figure 3 of Hall, as annotated by the Board, is presented below.



The Board’s annotated version of Figure 3 of Hall above “is an elevation—through line 3—3 looking forward in direction shown by arrows on Figure 2.” Hall 1:19–21. Based on Hall’s disclosure and Figure 3, we agree with Appellant that “the alleged collecting container A extends through the hole or openings of the alleged hub ‘B’ in order to house conveyor belt I.” Reply Br. 3. Stated differently, “the alleged collecting container A extends through and is only supported by the alleged hub ‘B’ of Hall,” such that “[t]here is *no communication* between the *opening* of B and the *inner volume* of the collecting container A,” as required by claim 1. *Id.* (emphases added). Consequently, we further agree with Appellant that Hall fails to teach or suggest a hub “compris[ing] an inner, central hole . . . arranged to communicate via a container opening . . . with a container inner volume once the . . . container is coupled to the hub,” as recited in claim 1. *Id.* at 2–3.

Accordingly, for the above reasons, we do not sustain the Examiner’s rejection of claims 1 and 2 as anticipated by Hall.

CONCLUSION

In summary:

Claims	35 U.S.C. §	Basis/References	Affirmed	Reversed
1, 2	102(a)(1)	Hall		1, 2

REVERSED