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Paper 7
Entered: November 1, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

H&S MANUFACTURING COMPANY, INC.,
Petitioner,

v.

OXBO INTERNATIONAL CORPORATION,
Patent Owner.

Case IPR2016-00960
Patent 8,863,488 B2

Before PHILLIP J. KAUFFMAN, JAMES A. TARTAL, and KEVIN W. CHERRY, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge.*

DECISION

Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Petitioner, H&S Manufacturing Company, Inc., filed a Petition requesting an *inter partes* review of claims 1–11 of U.S. Patent No. 8,863,488 B2 ("the '488 patent"). Paper 2 ("Pet."). Patent Owner, Oxbo International Corporation, filed a Preliminary Response. Paper 6 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Upon consideration of the Petition and the Preliminary Response, we conclude the information presented does not show a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any claim of the '488 patent. Accordingly, the Petition is denied and no trial is instituted.

I. BACKGROUND

A. The '488 Patent (Ex. 1005)

The '488 patent, titled "Windrow Merging Apparatus," issued October 21, 2014, from U.S. Application No. 13/447,079, filed April 13, 2012. Ex. 1005. The '488 patent describes a windrow merger apparatus used "to merge cut hay, and/or windrows into larger windrows for harvesting or baling." *Id*. at 2:44–46. According to Patent Owner, the '488 patent "was a major improvement in windrow merger technology" by providing a windrow merger with "three pickup assemblies each having a pickup head and transverse belt conveyor that can move cut hay to either the left or the right." Prelim. Resp. 4.

Figure 1 of the ’488 patent is reproduced below:

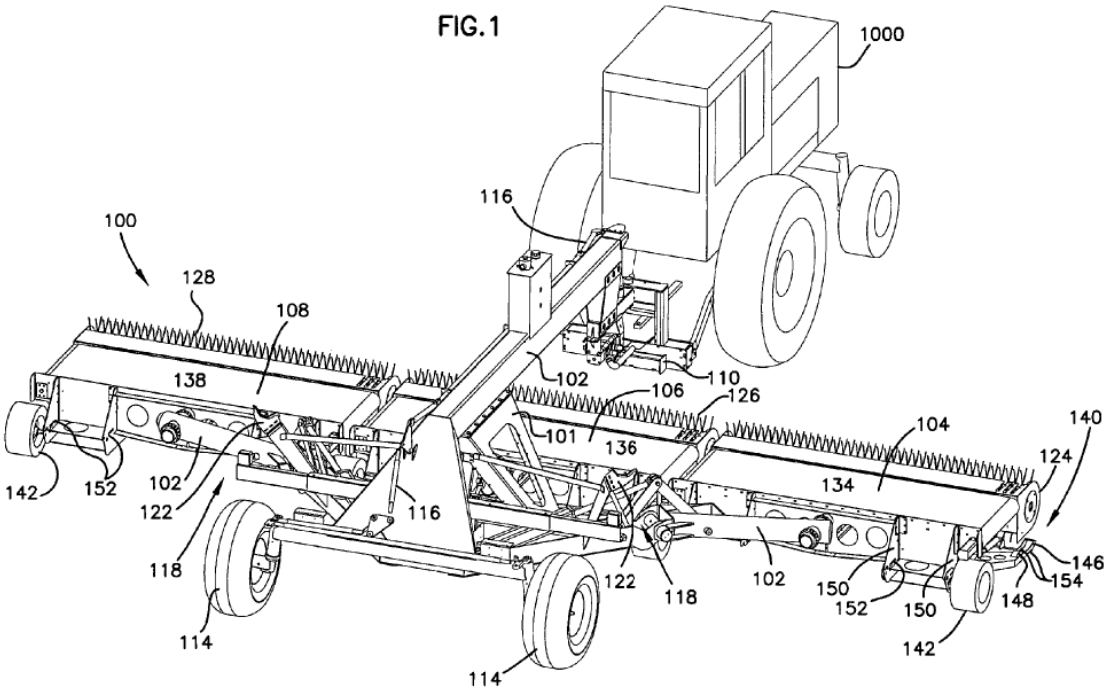


Figure 1 illustrates merger apparatus 100 with three pickup and transfer assemblies (104, 106, and 108) supported on framework 101, including folding arms 102 that provide for movement of outer assemblies 104 and 108. Ex. 1005, 4:43–54. “Each pickup and transfer assembly 104, 106 and 108 includes a head unit, designated 124, 126 and 128 respectively.” *Id.* at 5:3–5. Each “pickup and transfer assembly” is also referred to as a “pickup assembly.” *Id.* at 5:25–28. “The heads 124, 126 and 128 pick up and deliver the crop rearward to corresponding conveyors 134, 136 and 138.” *Id.* at 5:5–7. “The folding arm 102 is actuated by a linkage 118 to facilitate movement of the pivoting assemblies 104, 106 and 108 between a use position to a storage position.” *Id.* at 5:1–3.

Figure 5 of the ’488 patent is reproduced below:

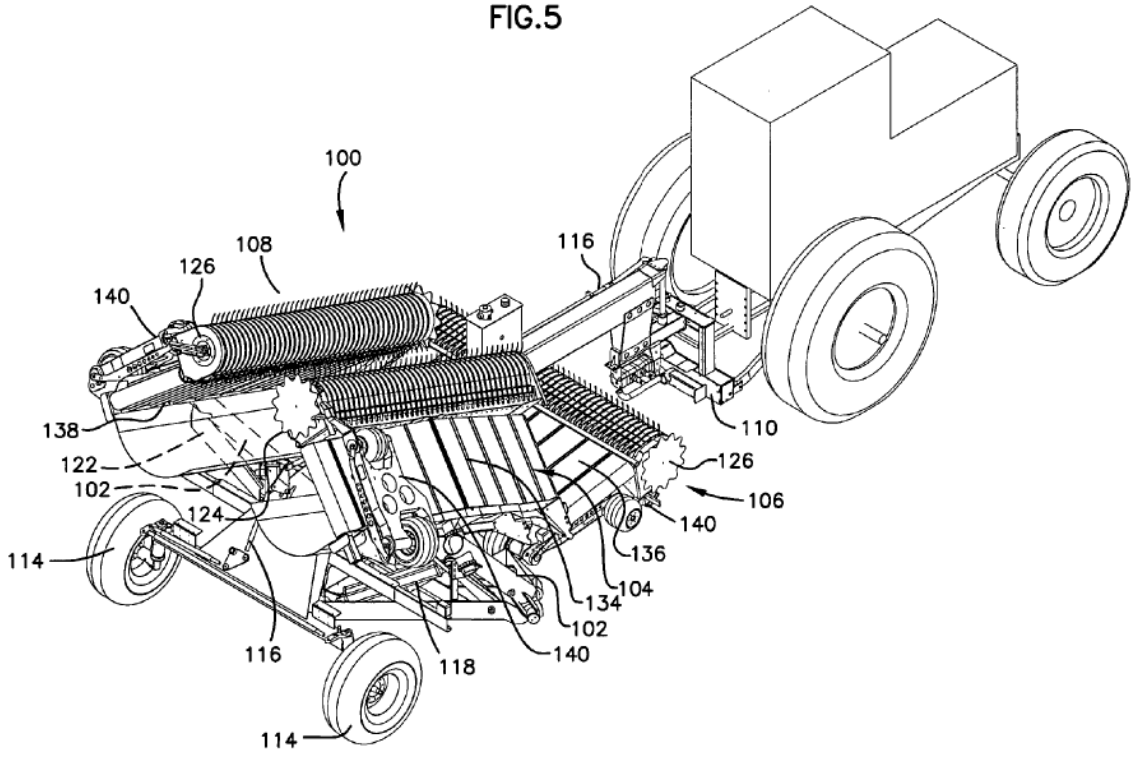


Figure 5 illustrates the merger shown in Figure 1 with two heads in a folded position. Ex. 1003, 4:3–4. “The pickup and transfer assemblies 104 and 108 fold rearward and inward to minimize the overall width and height of the merger 100.” *Id.* at 5:66–6:1. “[T]he merger 100 may have both pickup assemblies 104 and 108 raised simultaneously while the center pickup and transfer assembly 106 remains lowered in an operating position.” *Id.* at 5:49–52. Additionally, all three pickup and transfer assemblies may be raised for transporting the merger on public roads when not operating to collect material. *Id.* at 5:60–66.

B. Challenged Claims

Claims 1, 8, and 10 are independent. Claims 2–7 depend from claim 1, claim 9 depends from claim 8, and claim 11 depends from claim 10. Claim 1 is illustrative of the challenged claims and provides as follows:

> 1. A windrow merger apparatus configured for travel in a first direction, comprising:
>
> a frame;
>
> a first pickup assembly supported by the frame, the first pickup assembly including a first pickup head configured to pick up and transfer material to an associated first belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a first motor;
>
> a second pickup assembly supported by the frame, the second pickup assembly including a second pickup head configured to pick up and transfer material to an associated second belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a second motor; and
>
> a third pickup assembly supported by the frame, the third pickup assembly including a third pickup head configured to pick up and transfer material to an associated third belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a third motor;
>
> wherein at least two of the pickup assemblies are foldable between an extended position and a retracted position, each of the first, second, and third pickup assemblies being aligned side by side when each of the pickup assemblies is positioned in the extended position such that the first, second, and third pickup assemblies provide a laterally aligned unobstructed continuous line of material pickup able to provide transport of all material transferred to the conveyors to either end of the aligned conveyors; and wherein the first pickup assembly and the third pickup assembly are raised in the retracted position.

Ex. 1005, 10:32–64.

1. Related Proceedings

The parties state that the '488 patent is a subject of the following civil action: *Oxbo Int'l Corp. v. H&S Mfgr'g Co.*, No. 15-292-jdp (W.D. Wis. 2015). Pet. 2; Paper 5, 2.

2. Asserted Grounds of Unpatentability

Petitioner contends that claims 1–11 are unpatentable based on the following grounds:

Reference[s]	**Basis**	**Challenged Claim**
Schnittjer[1] and Zhavoronkin[2]	§ 103	1, 3, and 6–11
Zhavoronkin, CA Honey,[3] and US Honey[4]	§ 103	1–4 and 6–11
Dow,[5] van der Lely,[6] and von Allwörden[7]	§ 103	1–11

II. ANALYSIS

A. Claim Construction

The Board interprets a claim using the "broadest reasonable construction in light of the specification of the patent in which it appears." 37 C.F.R. § 42.100(b). We presume a claim term carries its "ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question" at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). A

[1] U.S. Patent No. 4,932,196 issued Jun. 12, 1990 (Ex. 1011, "Schnittjer").
[2] U.S.S.R. Inventor's Certificate No. SU 835359A1 published June 7, 1981 (Ex. 1012, "Zhavoronkin").
[3] Canadian Patent No. 1151431B (Ex. 1018, "CA Honey").
[4] U.S. Patent No. 5,031,394 issued July 16, 1991 (Ex 1017, "US Honey").
[5] U.S. Patent No. 6,205,757 B1 issued Mar. 27, 2001 (Ex. 1013, "Dow").
[6] U.S. Patent No. 3,468,107 issued Sep. 23, 1969 (Ex. 1014, "van der Lely").
[7] U.S. Patent No. 5,911,625 issued Jun. 15, 1999 (Ex. 1020, "von Allwörden").

patentee may, however, act as their own lexicographer and give a term a particular meaning in the Specification, but must do so with "reasonable clarity, deliberateness, and precision." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

1. "continuous line of material pickup"

Claim 1 recites "each of the pickup assemblies is positioned in the extended position such that the first, second, and third pickup assemblies provide a laterally aligned unobstructed continuous line of material pickup." Petitioner contends that "'a continuous line of material pickup' is: 'a pickup face uninterrupted by gaps.'" Pet. 7–8 (citing Ex. 1009 ¶¶ 34–35). Patent Owner argues that "the claims require the pickup assemblies be aligned such that they pickup material continuously along the width of the merger," and that introducing "gaps" to the meaning of the term "adds unnecessary vagueness to an otherwise definite phrase." Prelim. Resp. 11. We agree with Patent Owner, and, for purposes of this decision, we determine no express construction is necessary for "continuous line of material pickup."

2. "conveyor"

Claim 1 recites "the first pickup assembly including a first pickup head configured to pick up and transfer material to an associated first belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a first motor." Petitioner contends that "conveyor" should be construed to mean "an apparatus that moves material." Pet. 7. Petitioner provides no explanation for its proposed construction and

relies only on the conclusory opinion of Mr. Shirley that "[a] conveyor is understood by a person of ordinary skill in the art to mean an apparatus that moves material." Ex. 1009 ¶ 32. Mr. Shirley further states that conveyors come in various styles including augers and continuous belts. *Id.* at ¶ 33.

Patent Owner argues that Petitioner's proposed construction is unreasonably broad and, given that the claim term is more fully "belt conveyor," unnecessary. Prelim. Resp. 9–10. Patent Owner further contends that the only mechanism described in the specification of the '488 patent as a conveyor is a belt conveyor. *Id.* at 10. We agree that Petitioner's proposed construction, devoid of any discussion of the specification of the '488 patent, is unreasonably broad and unsupported. For purposes of this decision, we determine no express construction is necessary for "conveyor" or any other claim term, and apply the ordinary and customary meaning of each term.

B. Obviousness over Schnittjer and Zhavoronkin

Petitioner contends claims 1, 3, and 6–11 would have been obvious over Schnittjer and Zhavoronkin. Pet. 10–26.

Figures 1 and 2 of Schnittjer are reproduced below.

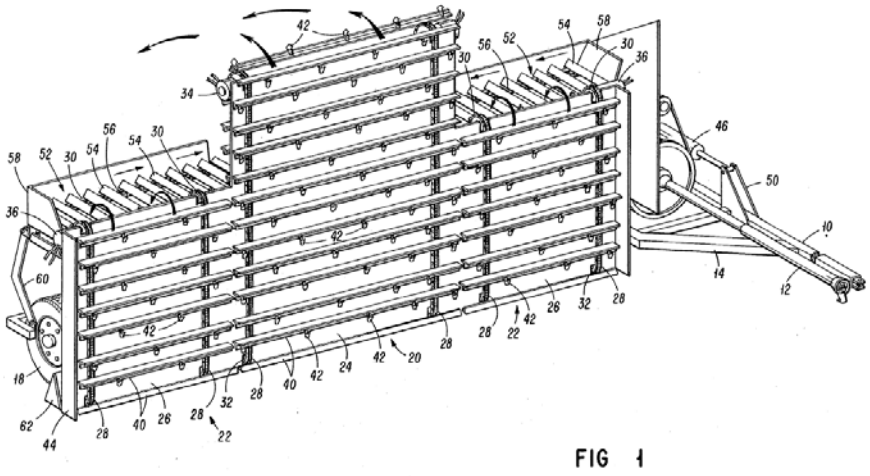


FIG 1

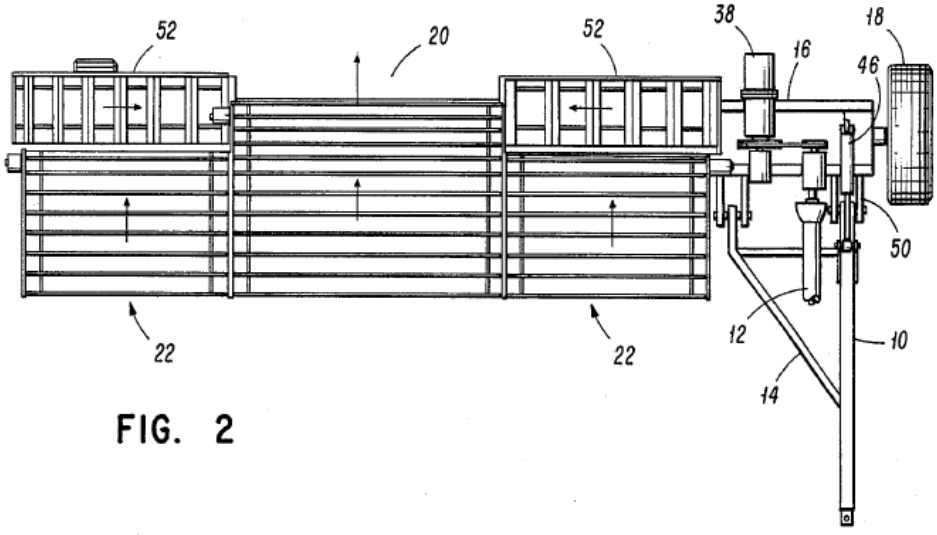


FIG. 2

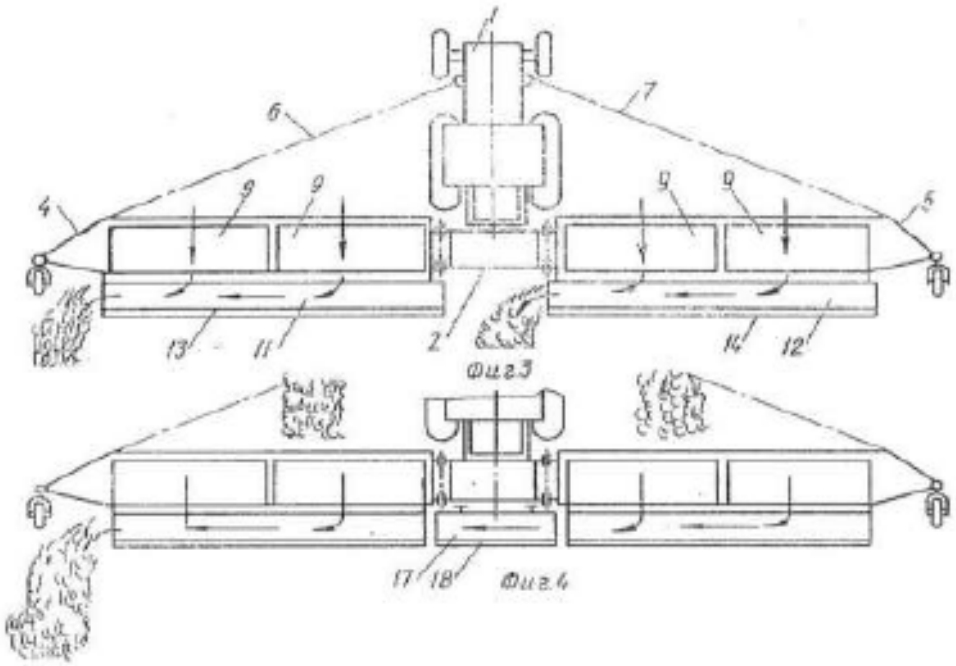
Schnittjer Figures 1 and 2 illustrate an "apparatus for turning, mixing and aerating windrows of compost to convert the waste material comprising the compost into a useable material." Ex. 1011, Abstract, 2:5–9. The apparatus includes center elevating conveyor 20 and table 24, and side elevating

conveyors 22 with tables 26. *Id.* at 2:34–40. "[T]he table 24 for the center conveyor 20 is higher than the tables 26 for the side conveyors 22." *Id.* at 2:41–43. Positioned directly behind and slightly below side conveyors 22 are transverse conveyors 52. *Id.* at 3:36–46. "[C]onveyors 52 are driven so as to carry material inwardly where it is discharged in the area directly behind the center conveyor 20." *Id.* at 3:43–45. "The material at the outside edges of the windrow will be carried upwardly by the side conveyors 22 and deposited on the transverse conveyors 52 which will carry the material[] inwardly toward the center and deposit it on the ground forming the lower part of the core for the new window." *Id.* at 4:18–23. "The material carried upwardly by the center conveyor 20 will then be deposited directly on top of the material already deposited by the side conveyors." *Id.* at 4:24–26. "The apparatus thus provides maximum mixing, reduction of particle size and aeration while providing positive control of the material by moving outside edges of the existing windrow inwardly and on the bottom of the new windrow while the core of the existing windrow is then deposited on top." *Id.* at 4:44–49.

With regard to claims 1, 8, and 11 of the '488 patent, Petitioner contends that the two side conveyors 22 and transverse conveyors 52 of Schnittjer correspond to two of the three recited pickup assemblies, including belt conveyors. Pet. 11–21. Petitioner also contends that center conveyor 20 of Schnittjer corresponds to a portion of an additional pickup assembly, but acknowledges that Schnittjer does not disclose a transverse belt conveyor associated with center conveyor 20. Pet. 12, 15–16, 20–21. For the transverse belt conveyor missing from Schnittjer Petitioner relies on

Zhavoronkin as disclosing an intermediate conveyor 17 as part of a hay making machine. *Id.* (citing Ex. 1012, 3:3–4, Fig. 4).[8]

Figures 3 and 4 of Zhavoronkin are reproduced below.



Zhavoronkin Figures 3 and 4 illustrate a hay making machine with two sections mounted to a tractor at hitch (or hinge) 2. Ex. 1012, 1:14–18. Pickup devices 9 are made in the form of longitudinal conveyors with teeth,

[8] After acknowledging, for example, that Zhavoronkin does not disclose the first belt conveyor driven by a first motor feature of the '488 patent in its claim chart, Petitioner then includes a "but see" citation to a paragraph of Mr. Shirley's declaration with no explanation in the chart. Pet 12. Such efforts to incorporate arguments by reference from one document (the declaration) to another document (the Petition) constitute an improper circumvention of the limit on the length of a petition and are expressly prohibited by rule. 37 C.F.R. § 42.6; *see also* 37 C.F.R. § 42.24 (regarding word count and page limits). Accordingly, we give such implicit arguments no weight.

behind which are transverse conveyors 11 and 12. *Id.* at 1:21–22. Figure 3 shows the machine raking two hay swaths with conveyors 11 and 12 operating from right to left. *Id.* at 1:14–15. Conveyors 11 and 12 may also be operated in directions opposite to one another to form a single hay swath behind the tractor. *Id.* at 2:13–14. Figure 4 shows the machine with an additional intermediate short conveyor 17 behind hitch (hinge) 2 such that a single hay swath is formed on the left. *Id.* at 1:15–16, 2:3–4. The intermediate short conveyor 17 is operated without a corresponding pickup device. According to Patent Owner, "Zhavoronkin discloses precisely the alignment problem the inventors sought to overcome of prior windrow mergers with multiple heads spaced apart and with obstructions between the heads." Prelim. Resp. 63.

In support of the asserted combination Petitioner argues that:

> One of ordinary skill in the art would have been capable of, and motivated to, modify the second (center) pickup assembly of Schnittjer to include a transverse belt conveyor as taught by Zhavoronkin, and further modify the center pickup assembly to match the size of the adjoining side pickup assemblies so as to configure the belt conveyors to provide transport of material from the pickup assemblies to either end of the conveyors, to increase the operating capabilities of the device such as to provide the device with additional options for discharging the material being picked up and moved as taught by Zhavoronkin, to arrive at claims 1, 8 and 10 of the '488 Patent.

Pet. 23–24 (citing Ex. 1009 ¶¶ 61–71, 96–105, 122–132). Petitioner offers no additional explanation for this asserted rationale, which we find not sufficient to support the asserted combination of Schnittjer and

Zhavoronkin.[9] As explained above, the apparatus of Schnittjer operates to mix and combine material into a windrow behind its center conveyor 20. On its face, adding a transverse conveyor behind center conveyor 20 of Schnittjer, as Petitioner proposes, would preclude the apparatus from operating as intended. Petitioner provides no sufficient explanation for why Schnittjer would be modified as proposed for the purported benefit of "provid[ing] the device with additional options for discharging the material being picked up and moved," when the modification would prevent the apparatus from discharging the material as intended. *See also* Prelim. Resp. 33–34 (arguing that "adding a middle conveyor would eliminate the device's ability to invert the compost core on top of that side material, thereby rendering the combined apparatus inoperable for its intended purpose.").

Petitioner further argues that the asserted combination "would merely involve combining prior art elements according to known methods to yield predictable results," "would have been predictable because Schnittjer already discloses pickup assemblies having transverse conveyors," and "would merely involve the use of a known technique to improve a similar device in the same way." Pet. 24–25. We are not persuaded that the additional arguments offered by Petitioner in support of the asserted

[9] As noted above, Petitioner may not incorporate arguments from Mr. Shirley's declaration into the Petition. Nevertheless, we have reviewed the opinions expressed by Mr. Shirley cited in the Petition and are not persuaded that they sufficiently support Petitioner's rationale for including a transverse belt conveyor between the first and third pickup assemblies because they do not adequately address the disruption in the intended operation of Schnittjer. *See*, *e.g.* Ex. 1009 ¶¶ 65–69.

combination are sufficient in this case because Petitioner has not shown that its proposed modification of Schnittjer would still permit Schnittjer to operate as intended. Moreover, Petitioner has identified no persuasive predictable result or improvement corresponding to its asserted combination. Accordingly, the information presented by Petitioner does not show a reasonable likelihood that Petitioner would prevail in showing independent claims 1, 8, and 10, or dependent claims 3, 6, 7, 9, and 11, of the '488 patent would have been obvious over Schnittjer and Zhavoronkin.

C. Obviousness over Zhavoronkin, CA Honey, and US Honey

Petitioner contends that claims 1–4 and 6–11 would have been obvious over Zhavoronkin, CA Honey, and US Honey. Pet. 45–59. CA Honey describes a "self-propelled swather having a tractor unit with a central cutting head and two side cutting heads." Ex. 1018, Abstract.

Figure 1 of CA Honey is reproduced below.

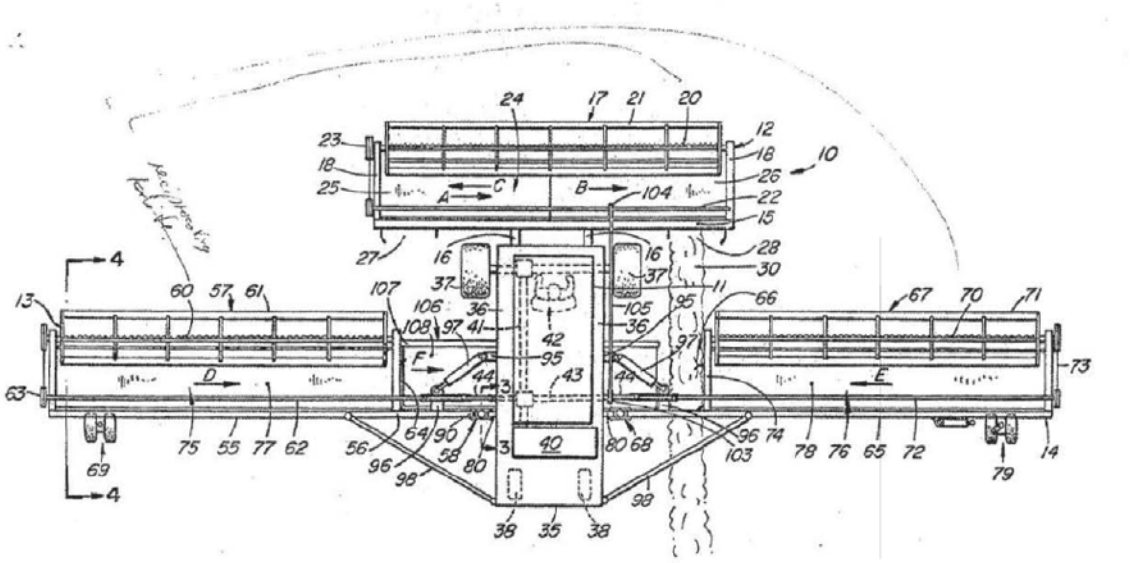


FIG. 1

CA Honey Figure 1 illustrates swather 10 with central head 12 and conveying means 24 behind cutting means 17. *Id.* at 3:6–7, 3:26–30, 4:8–12.[10] The swather also includes side heads 13 and 14 with conveyor means 75 and 76 immediately behind the front edge cutting means 57 and 67. *Id.* at 5:2–16.

US Honey relates to a swather mounting structure for attaching an elongated swather head to a tractor. Ex. 1017, 1:7–9. Figure 1 of US Honey is reproduced below.

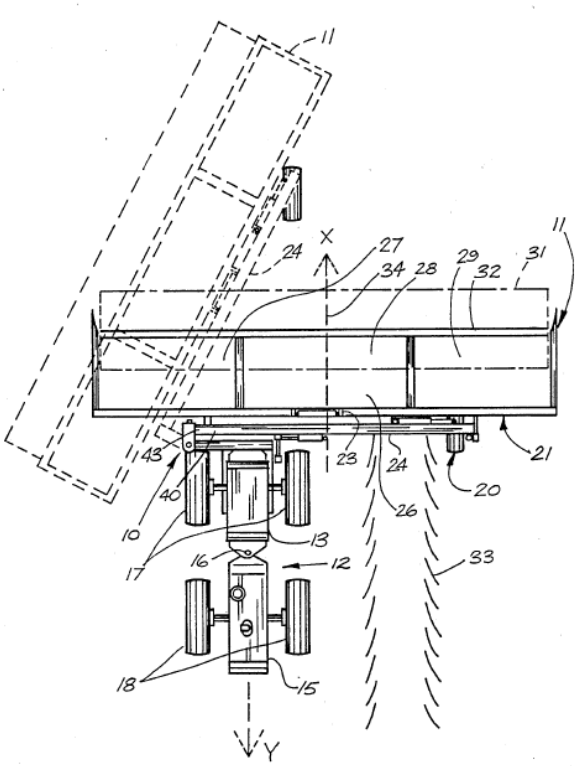


FIG.1

US Honey Figure 1 illustrates a structure 10 which mounts a swather 11 on a tractor 12. Ex. 1017, 3:43–45. "A power driven sickle bar 32 extends the

[10] Citations to CA Honey are to the original pagination and line number.

full length of the head 20 along the front edge of the table 26 so that the standing crop is engaged and directed against the sickle bar and after being cut by the sickle bar, the crop falls unto the table 26." *Id.* at 4:33–37. Swather table 26 is "formed by the upper flights of three belt conveyors 27, 28 and 29 having individual drives." *Id.* at 4:26–27. The three conveyors may be set to all move to the right or to the left to form a windrow on either side. *Id.* at 37–45. "By running conveyor 27 towards the left, conveyor 29 towards the right, and conveyor 28 in either direction, say towards the left, two windrows can be formed behind the head just inside opposite ends of the head, the one at the left being larger because it is fed from two conveyors, namely conveyors 27 and 28." *Id.* at 45–50.

Claims 1, 8, and 10 all require a first, second, and third (or left, center, and right) "pickup assembly" (or "pickup and transfer assembly"), including a first, second, and third (or left, center, and right) "pickup head" and a first, second, and third "belt conveyor" (or "conveyor . . . having a conveyor belt"). Petitioner argues that "[b]ecause Zhavoronkin discloses four pickup assemblies, Zhavoronkin discloses first, second and third pickup assemblies." Pet. 52. We are not persuaded by Petitioner's argument because a pickup assembly must have a pickup head "configured to pick up and transfer material" to an associated (first, second, or third) belt conveyor. Zhavoronkin discloses four pickup heads associated with two belt conveyors. *See* Pet. 51; Ex. 1012, Fig. 4. Accordingly, Zhavoronkin may disclose, at most, two pickup assemblies as described in the '488 patent.

Claims 1 and 10 also require, *inter alia*, that each of the three pickup assemblies be "aligned side by side when each of the pickup assemblies is

positioned in the extended" to "provide a laterally aligned unobstructed continuous line of material pickup." Ex. 1005, 10:55–60, 12:28–32.[11] Petitioner concedes that Zhavoronkin "does not expressly disclose the pickup assemblies being aligned sided by side." Pet. 52–53. Petitioner does not contend that CA Honey discloses pickup assemblies aligned side by side, and Figure 1 of CA Honey makes clear its assemblies are not aligned side by side. *See* Pet. 46–51. Petitioner also does not rely on US Honey as disclosing the "aligned side by side" feature. Having failed to identify any reference that teaches or suggests the "aligned side by side" feature of the '488 patent, Petitioner's obviousness analysis based on Zhavoronkin, CA Honey, and US Honey is fundamentally flawed. Petitioner identifies a variety of reasons why the "aligned side by side" arrangement of the '488 patent is beneficial. It increases the amount of crops picked up, speeds up the harvest process, improves visibility and operability "by placing the three pickup assemblies aligned side by side," allows for bigger windrows, and reduces the amount of time required. Pet. 54–55.

Identifying all of the benefits of the '488 patent does not make it obvious, nor does it support a modification in a manner undisclosed by any of the asserted references. Counter to its contentions with respect to Zhavoronkin, CA Honey, and US Honey, Petitioner has not shown that the challenged claim of the '488 patent would have been obvious on any of the

[11] Claim 8 varies from claims 1 and 10 in that claim 8 recites "wherein the first conveyor, the second conveyor and the third conveyor are aligned side by side." Petitioner, however, treats the "aligned side by side" features of claims 1, 8, and 10 as "common elements." Pet. 51–58.

asserted generic bases, including that it "would have been predictable" or would "merely involve the use of a known technique to improve a similar device in the same way." Pet. 53–57. First, we agree with Patent Owner that Petitioner has not clearly identified the known technique to which it refers or to any known modification. *See* Prelim. Resp. 69–70. Suggesting that a person of ordinary skill would simply add "a pickup assembly to Zhavoronkin as taught by CA Honey and associating the added pickup assembly with the existing middle conveyor disclosed by Zhavoronkin such that the pickup assemblies were aligned side by side," is the epitome of a hindsight analysis. Pet. 54; s*ee also In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991) ("It is impermissible [to use] applicant's structure as a template and select[] elements from references to fill the gaps."). Mr. Shirley's conclusory statement that aligning the pickup assemblies "would be within the grasp of a person of ordinary skill in the art" does not persuade us because Petitioner has not identified any disclosure of the "aligned side by side" feature in any of the asserted references. *See* Ex. 1009 ¶ 383.[12] The only apparent source of the missing disclosure of the "aligned side by side" feature is the '488 patent itself.

[12] Although Mr. Shirley addresses combinations of Zhavoronkin, CA Honey, and von Allwörden in his declaration (as well as Declementi, US Honey, and Lohrentz), those combinations were not asserted in the Petition and will not be considered for purposes of this decision. *See, e.g.*, Ex. 1009 ¶255–366, 370; *see generally Cisco Systems, Inc. v. C-Cation Techs.*, LLC, IPR2014-00454, slip op. 7–10 (PTAB Aug. 29, 2014) (Paper 12) (informative, expanded panel) (Information contained in exhibits or portions of exhibits, but not discussed in the Petition, is not incorporated into the Petition merely by the exhibits' presence in the record.).

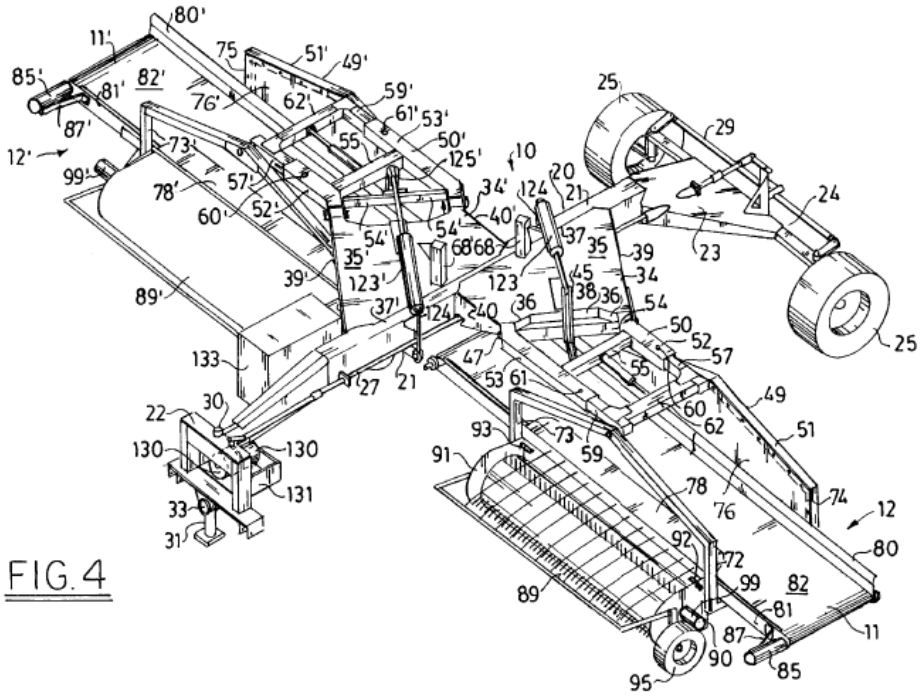
Petitioner has not sufficiently identified either how each of the elements of independent claims 1, 8, and 10 was disclosed in Zhavoronkin, CA Honey, and US Honey or a persuasive rationale in support of the combination of the three references. Accordingly, the information presented by Petitioner does not show a reasonable likelihood that Petitioner would prevail in showing independent claims 1, 8, and 10, or dependent claims 2–4, 6, 7, 9, and 11, of the '488 patent would have been obvious over Zhavoronkin, CA Honey, and US Honey.

D. Obviousness over Dow, van der Lely, and von Allwörden

Petitioner contends claim 1–11 would have been obvious over Dow, van der Lely, and von Allwörden. Pet. 27–44. Petitioner provides a claim chart identifying how it contends Dow, van der Lely, and von Allwörden, in combination, disclose each of the features of claims 1–11. Pet. 28–36. Petitioner also contends that "[v]on Allwörden demonstrates that modifying a windrow merger having left and right pickup assemblies spaced apart (Dow) to include a center pickup assembly between the left and right assemblies (as taught by van der Lely) is predictable and known to person of ordinary skill in the art." *Id.* at 40.

Dow discloses a windrow gathering machine, including first and second combined pickup and conveyor units pivotally mounted on skewed axes on opposite sides of the main frame. Ex. 1013, Abstract.

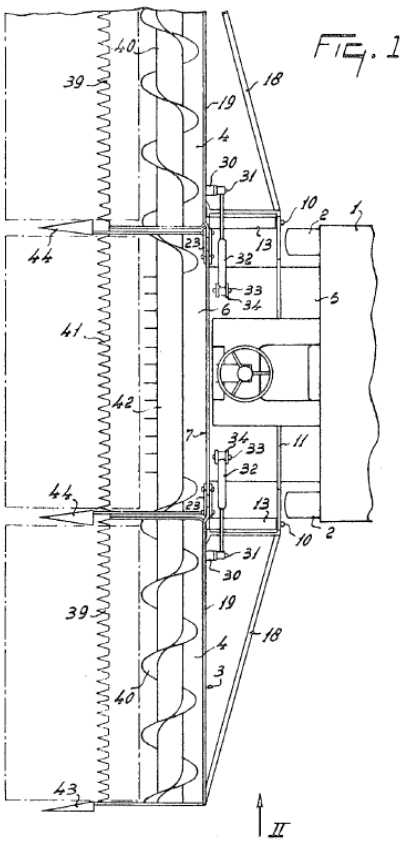
Figure 4 of Dow is reproduced below.



Dow Figure 4 illustrates merging machine 10, including combined pickup and conveyor units 12 and 12´ with conveyors 11 and 11´. *See* Ex. 1013, 3:56–59. "[T]he combined pickup and conveyor units 12 and 12´ are mounted on main frame 20 so that they can be positioned in an aligned substantially mirror image horizontal positions for merging windrows or they can be mounted in inclined vertical stowed positions for transporting the machine 10 to its operating locations." *Id.* at 4:23–28.

Van der Lely describes a "harvester having a mowing table with a central and two side portions, each having a forward cutter bar and an auger to move out crop, the two side portions being foldable to a transport portion above the central portion by a pair of pivots." Ex. 1014, Abstract.

Figure 1 of van der Lely is reproduced below.



Van der Lely Figure 1 illustrates the forward part of a harvesting machine, including mowing table 3 with three adjacent portions consisting of a central portion 6 and two identical portions 4. Ex. 1014, 1:67–71. "The central portion 6 is provided with a cutter bar 41 and a tined auger 42 which is located behind the cutter bar 41, both the cutter bar 41 and the auger 42 extending perpendicular to the intended direction of operative travel." *Id.* at 3:21–25.

Claims 1 and 10 recite, *inter alia*, a second pickup assembly including "a second belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a second motor." Claim 8 requires the same feature (recited as a center pickup and transfer

assembly including a first conveyor having a conveyor belt being generally transverse to a direction of travel). Petitioner concedes that "Dow does not disclose a second pickup assembly." Pet. 29, 34. Petitioner instead contends that a second pickup assembly is disclosed as van der Lely central portion 6. *Id.* The second pickup assembly, however, must have a conveyor. Petitioner then suggests that the conveyor for the second pickup assembly corresponds to van der Lely auger 40 which is found not behind portion 6, but behind side portion 4. *Id.* at 30, 32. As shown in Figure 1 of van der Lely, the auger behind central portion 6 is tinged auger 42. As Patent Owner notes, the center portion of the van der Lely head assembly has a tined auger to move material rearward to the elevator housing, not a conveyor for moving material transversely. Prelim. Resp. 43 (citing Ex. 1014, 3:56–57).

Thus, Petitioner has failed to show that center portion 6 of van der Lely corresponds to "a second pickup assembly" of claims 1 and 10 (or "a center pickup and transfer assembly" of claim 8) because (1) the auger 40 behind side portion 4 is not a part of central portion 6, and (2) central portion 6 does not disclose a "conveyor arranged to convey material in a direction transverse the first direction of travel," as claimed. Petitioner does not otherwise argue Dow or von Allwörden disclose the claimed second pickup assembly. Accordingly, the information presented by Petitioner does not show a reasonable likelihood that Petitioner would prevail in showing claims 1, 8, and 10, or dependent claims 2–7, 9, and 11, of the '488 patent would have been obvious over Dow, van der Lely, and von Allwörden.

III. CONCLUSION

For the foregoing reasons, the information presented in the Petition and accompanying evidence does not establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any claim of the ’488 patent.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is denied and no trial is instituted.

PETITIONER

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