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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/000,691	09/14/2012	8221047	191-013	1949

6449 7590 07/03/2013

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
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EXAMINER	
STORMER, RUSSELL D	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
07/03/2013	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Transmittal of Communication to Third Party Requester *Inter Partes* Reexamination	Control No.	Patent Under Reexamination	
	95/000,691	8221047	
	Examiner	Art Unit	
	RUSSELL STORMER	3993	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

BOTKIN & HALL, LLP
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SOUTH BEND, IN 46601

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination prceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

All correspondence relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

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CENTRAL REEXAMINATION UNIT

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(For Patent Owner)

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(For Third Party Requester)

In re Petersen et al.
Inter Partes Reexamination Proceeding
Control No. 95/000,691
Filed: September 14, 2012
For: U.S. Patent No. 8,221,047

: DECISION ON
: PETITION UNDER
: 37 CFR 1.181 &
: 1.927

Third party requester filed a paper on February 2, 2013 entitled "Petition Under 37 CFR § 1.182 for Reconsideration of Reexamination on the Merits." The petition is considered to be filed under 37 CFR §§ 1.181 and 1.927. The petition is before the Director of the Central Reexamination Unit (CRU). Petitioner, the reexamination requester, seeks supervisory review of the order, which was mailed November 7, 2012, denying the request for *Inter Partes* reexamination.

The petition is **DENIED**.

I. REVIEW OF RELEVANT FACTS

1. U.S. Patent No. 8,221,047 ("the '047 patent") issued on July 17, 2012.

2. A request for *inter partes* reexamination was filed September 14, 2012 for all claims (claims 1-34) of the '047 patent. The reexamination proceeding was assigned control no. 95/000,691 ("the '691 proceeding").

3. A determination denying reexamination for claims 1-34 of the '047 patent was mailed on November 7, 2012 in this proceeding.

4. A petition under 37 CFR §§ 1.181 and 1.927 was filed on December 11, 2012.

5. On January 24, 2013, a decision was mailed dismissing the December 11, 2012 petition.

6. On February 2, 2013, the instant petition was filed.

II. **DECISION**

37 CFR § 1.927 states:

> The third party requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is ***timely*** filed or of the decision on petition affirms that a reasonable likelihood that the requester will prevail with respect to at least one of one the claims challenged in the request has not been established, the determination shall be final and nonappealable (emphasis added).

The requester again requests reconsideration of the order denying reexamination. As noted in the January 24, 2013 decision on petition, the first petition requesting reconsideration of the order denying reexamination was received at the USPTO on December 11, 2012, which is more than one month from the mailing date of the order denying reexamination (November 7, 2012). A review of the file indicated that no Certificate of Mailing in compliance with the requirements of 37 CFR § 1.8 was received. A review of the file also indicated that the required petition fee of $1930.00 was also not received at the USPTO and requester did not authorize charging a deposit account.

In the instant petition, requester has provided what appears to be a Certificate of Mailing at pages 3-4 of the petition and alleges that this Certificate of Mailing applies to the December 11, 2012 petition. However, the Office reminds petitioner that any party alleging that a paper was timely filed with the USPTO has the burden of proving the allegation by a preponderance of the evidence. The Office further notes in order for a reply to be considered filed on the date of deposit in the U.S. Postal Service, the reply must be accompanied by a properly executed certificate of mailing under 37 CFR 1.8 or be mailed in compliance with the provisions of "Express Mail" delivery under 37 CFR 1.10. In the absence of a proper certificate of mailing or mailing the reply via Express Mail, the date to be accorded the reply will be the date of actual receipt in the Office.

Pursuant to 37 CFR 1.8:

> (a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
>
> (1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6 (d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); **and**

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

Emphasis added.

Unfortunately, requester's reliance on the Certificate of Mailing provisions of 37 CFR 1.8 is misplaced. In this instance, the December 11, 2012 petition is not entitled to the benefits of 37 CFR 1.8 because the reply does not include a signed certificate of mailing stating the date of deposit in the U.S. Postal Service. Requester's assertion at pages 3-4 of the February 2, 2013 petition is not properly affixed to the papers filed on December 11, 2012. In other words, requester cannot come back later and attest that papers were filed on December 7, 2012 using the Certificate of Mailing procedure when the Certificate of Mailing in question is not affixed to the December 7, 2012 petition and no proof has been provided that it was ever affixed to those papers. A Certificate of Mailing affixed to a February 2, 2013 petition cannot suffice to make the December 11, 2012 timely filed. Thus, as petitioner did not properly utilize the certificate of mailing procedure, the petition cannot be considered timely filed on December 7, 2012. See MPEP 512 (III)(B). Rather, in the absence of a certificate of mailing in compliance with 37 CFR 1.8(a)(1)(ii), the reply is considered filed December 11, 2012, the date the papers were received in the USPTO. See 37 CFR 1.6.

A party is ultimately responsible for ensuring that a complete, proper and timely reply is filed. The showing of record is that requester failed to file a proper and timely reply within the one month time period set in 37 CFR § 1.927. Accordingly, the petition is dismissed.

III. **CONCLUSION**

1. The requester's petition to reconsider the order denying reexamination under 37 CFR § 1.181 is hereby **denied**.

2. Telephone inquiries with regard to this decision should be directed to Andres Kashnikow, Supervisory Patent Reexamination Specialist, at (571) 272-4361, or Eileen Lillis, Supervisory Patent Reexamination Specialist, at (571) 272-6928.

Irem Yücel, Director
Central Reexamination Unit

Application Number Information

Application Number: **95/000691** Assignments	Examiner Number: **62186 / STORMER, RUSSELL**	
Filing or 371(c) Date: **09/14/2012** eDan	Group Art Unit: **3993**	IFW Madras
Effective Date: **09/14/2012**	Class/Subclass: **414/523.000**	
Application Received: **09/14/2012**	Lost Case: **NO**	
Patent Number:	Interference Number:	
Issue Date: **00/00/0000**	Unmatched Petition: **NO**	
Date of Abandonment: **00/00/0000**	L&R Code: Secrecy Code:**1**	
Attorney Docket Number: **191-013**	Third Level Review: **NO**	Secrecy Order: **NO**
Status: **820 /"DECISION ON PETITION DENIED, REEXAM REQUEST DENIED, TERMINATED"**		Status Date: **02/06/2013**
Confirmation Number: **1949**	Oral Hearing: **NO**	

Title of Invention: **SEED CARRIER WITH PIVOTING CONVEYOR**

Bar Code	PALM Location	Location Date	Charge to Loc	Charge to Name	Employee Name	Location

Appln Info | Contents | Petition Info | Atty/Agent Info | Continuity Data | Foreign Data | Inventors | Address | Fees | Post Info | Pre Grant Pub

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"PROCEEDINGS CONCLUDED"

Content Information for 95/000691

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Attorney Docket # [ ] [Search]
Bar Code # [ ] [Search]

[Appln.Info] Contents [Petition.Info] [Atty/Agent.Info] [Continuity.Data] [Foreign.Data] [Inventors] [Address] [Fees] [Post.Info] [Pre.Grant.Pub]

Date	Status	Code	Description
02/06/2013	820	RTRM	RX - TERMINATION OF REEXAM PROCEEDINGS
01/24/2013		MRTDI	RX - MAIL PETITION DECISION - DISMISSED
01/24/2013		RTDI	RX - PETITION DECISION - DISMISSED
12/11/2012		RXC/SR	CERTIFICATE OF SERVICE
12/11/2012	818	RTRD	RX - PETITION RECEIVED RE: DENIAL OF A REQUEST FOR INTER PARTES REEXAMINATION
11/07/2012	816	MIPXD	RX - MAIL INTER PARTES REEXAM ORDER - DENIED
11/05/2012		OAR	OFFICE ACTION REVIEW
11/01/2012		IPXD	RX - INTER PARTES REEXAM ORDER - DENIED
09/14/2012		IDSC	INFORMATION DISCLOSURE STATEMENT CONSIDERED
11/20/2012		NRX.	NOTICE OF REEXAM PUBLISHED IN OFFICIAL GAZETTE
10/02/2012	812	XI.DOCK	CASE DOCKETED TO EXAMINER
10/02/2012		DOCK	CASE DOCKETED TO EXAMINER IN GAU
10/01/2012	810	XI.PCOM	COMPLETION OF PRE-PROCESSING - RELEASED TO TC
10/01/2012		RXNREQFD	NOTICE OF REEXAMINATION REQUEST FILING DATE
10/01/2012		RXNREQAU	NOTICE OF ASSIGNMENT OF REEXAMINATION REQUEST
09/14/2012		RXOSUB.R	REEXAMINATION REQUESTED BY THIRD PARTY REQUESTER
10/01/2012		RXTTLRPT	TITLE REPORT
10/02/2012		MRXN	REEXAMINATION FORMALITIES NOTICE MAILED
10/02/2012		MRXN	REEXAMINATION FORMALITIES NOTICE MAILED
09/14/2012		RXIDS.	INFORMATION DISCLOSURE STATEMENT FILED
09/14/2012		RXC/SR	CERTIFICATE OF SERVICE
09/26/2012		RXRLF	REEXAM LITIGATION FOUND
09/26/2012		RXLITSR	REEXAM LITIGATION SEARCH CONDUCTED
09/24/2012		RXTTLRPT	TITLE REPORT
09/14/2012		WIDS	INFORMATION DISCLOSURE STATEMENT (IDS) FILED
09/14/2012	806	XI.OSUB	RECEIPT OF ORIGINAL INTER PARTES REEXAM REQUEST

[Appln.Info] Contents [Petition.Info] [Atty/Agent.Info] [Continuity.Data] [Foreign.Data] [Inventors] [Address] [Fees] [Post.Info] [Pre.Grant.Pub]

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CENTRAL REEXAMINATION UNIT

IN THE UNITED STATES PATENTAND TRADEMARK OFFICE

Serial No.	95/000,691
Reexamination of:	U.S. Patent No. 8,221,047
Filed:	September 14, 2012
Examiner:	Russell D. Stormer
Art Unit:	3993
Docket No.	191-013
Customer No.	31179

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Inter Partes Reexam, Attn: Central Reexamination Unit, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

February 1, 2013

/Michael D. Marston, Reg. No. 61,432/

Michael D. Marston, Reg. No. 61,432
Attorney for Applicant(s)

Mail Stop *Inter Partes* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.182 FOR RECONSIDERATION OF REEXAMINATION ON THE MERITS

REVIEW OF RELEVANT FACTS

1. U.S. Patent No. 8,21,047 ("the '047 patent") issued on July 17, 2012.
2. A request for *inter partes* reexamination was filed on September 14, 2012, for all claims (claims 1-32) of the '047 patent. The reexamination proceeding was assigned Control No. 95/000,691 ("the '691 proceeding").
3. A determination denying reexamination for claims 1-34 of the '047 patent was mailed on November 7, 2012, in this proceeding.
4. A "Petition for Reconsideration of Reexamination" ("the petition") was received in the USPTO on December 11, 2012.
5. The petition to the USPTO was deposited in first class U.S. Mail on December 7, 2012 with proper postage at the same time as the petition for service on the '047 patent owner.
6. A proper certificate of service was included with the petition and the petition was deposited with the U.S. Postal Service as First-Class Mail on December 7, 2012.

7. A proper Certificate of Mailing in compliance with 37 CFR § 1.8 was not received in the USPTO and as such the petition was considered filed on the date received in the USPTO, December 11, 2012.
8. The petition was dismissed and not considered on the merits as untimely filed in "Decision on Petition Under 37 CFR § 1.181 & 1.972" ("decision on petition") dated January 24, 2012.
9. The petition fee of $1930 under CFR § 1.927 was not included with the petition.

REQUEST FOR RECONSIDERATION OF PETITION

The Requester respectfully requests consideration on the merits with regard to the petition. The decision to consider the petition on the merits would be reasonable in the present case because the papers filed in the USPTO were filed in a timely manner and were timely to put the patent owner on notice of the petition. The lack of the certificate of mailing which would accord a proper filing date is without deceptive intention. Attorney for the applicant attests under penalty of perjury that the petition was deposited in First-Class U.S. Mail on December 7, 2012, with proper postage at the same time as the petition for service on the '047 patent owner. It should be noted that the Certificate of Service on the patent owner was dated December 7, 2012. The petition to the USPTO and the patent owner were concurrently deposited in deposited in First-Class U.S. Mail on December 7, 2012.

In some instances, even if the substance of a submission is complete, the submission can be defective, and MPEP 2666.50 provides for correcting such defects. Defects that are correctable under MPEP 2666.50 include:

(A) The paper filed does not include proof of service;

(B) The paper is unsigned;

(C) The paper filed is signed by a person of record

Although the reasons for dismissal of the petition in this instance is not of the exact kind mentioned in MPEP 2666.50, a similar defect occurred in the present petition. The defect in the case of the present petition is a failure to properly apprise the USPTO that the petition was in fact deposited in First-Class U.S. Mail by the required date of December 7, 2012. At this time the Attorney for the Requestor affirmatively makes this required assertion in the Declaration below on page 3 of this Paper. Also, at this time the fee as required by 37 CFR § 1.927 of $1930.00 is being included for

proper consideration of the petition mailed on December 7, 2012, along with the fee under 37 CFR 1.17(f) of $400 for consideration of this "Petition Under 37 C.F.R. § 1.182 for Reconsideration of the Reexamination on the Merits." ("petition under 37 C.F.R. § 1.182"). Upon consideration of the merits of the petition, there is a reasonable likelihood of prevailing. Failure to consider the petition on the merits would allow an invalid patent to exist based on informalities unrelated to the merits. No undue prejudice would result upon the patent owner because timely notice of the questions of patentability were served upon the patent owner. No undue prejudice would result from allowing the petition under 37 C.F.R. § 1.182 to be granted because the defects are being corrected within three days of the Requestor becoming aware of the defects, which is a reasonable time. Equity favors consideration on the merits since there is no avenue for appeal or review of the filed petition.

CONCLUSION

For all the forgoing reasons the Requestor respectfully requests that the present petition under 37 C.F.R. § 1.182 to be granted, which would lead to consideration of the petition filed on December 7, 2012 to be considered on the merits. The petition filed on December 7, 2012 begins on page 5 of this petition under 37 C.F.R. § 1.182.

DECLARATION OF SERVICE FOR PETITION DATED DECEMBER 7, 2012 ON UNITED STATES PATENT AND TRADEMARK OFFICE

Certificate of Mailing

I hereby certify that the petition was deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Inter Partes Reexam, Attn: Central Reexamination Unit Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

December 7, 2012

/Michael D. Marston, Reg. No. 61,432/

Michael D. Marston, Reg. No. 61,432 Attorney for Applicant(s)

I declare that all statements made herein are my own knowledge and are true and that all statements made herein are on information believed to be true. I further declare that these statements were made with knowledge that willful false statements are punishable by fine, imprisonment, or both under Section 1001. Title 18 of the United States Code.

PETITION FOR RECONSIDERATION OF REEXAMINATION

The Requester in the above identified *Inter Partes* Reexamination of Patent No. 8,221,047 ('047 patent), petitions that the Director review and reverse the Examiner's Order, mailed Novemvber 7, 2012 denying reexamination.

The Request for Reexamination

Requester is petitioning reconsideration for the following grounds brought in the above identified Request for *Inter Partes* Reexamination:

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.
2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville.
3. Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.
4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-all.

These grounds of rejection being listed on Page 3 of the Order mailed 11/7/2012.

Prosecution History of the '047 Patent

The '047 patent contains claims 1-34. Claims 1 and 20 are the only independent claims. Claims 2-19 depend directly or indirectly from Claim 1. Claims 21-34 depend directly or indirectly from Claim 20.

Originally the application for the '047 patent was filed with independent Claim 1 and its directly dependent Claim 3, which are the genesis of the finally issued independent Claims 1 and 20. The original Claim 1 is listed below:

1. A seed or grain tender comprising:
[i] a main hopper coupled with a frame via leg members, said main hopper having a discharge;
[ii] a base plate coupled with said frame;
[iii] a support arm rotatable coupled with said base plate at a first end;
[iv] a conveyor having a conveyor hopper at the first end and a discharge at second end, said conveyor being rotatably coupled with a second end of said support arm at an approximate center of gravity of said conveyor;
[v] a latch mechanism for detachably coupling said first end of said conveyor with said first end of said support arm such that said conveyor hopper is position below said main hopper discharge; and
[vi] a locking mechanism for locking or unlocking said support arm to said base plate.

In the first Office action (September 4, 2009), the Examiner rejected Claim 1 under 35 U.S.C. 103(a) as obvious over Adam (U.S. Pat. No. 6,120,233) in view of Klatt (U.S. Pat. No. 5,484,249) stating it would have been obvious to "detachably couple said first end of said conveyor with said first end of said support arm by the connection member (20)." Page 5, Office action dated 9/4/09.

In this same Office action, the Examiner also rejected Claim 3 which depended directly from Claim 1, under 35 U.S.C. 103(a) in further view of Baskerville (U.S. Pat. No. 5,888,044) Claim 3 was as follows:

3. The seed tender as recited in claim 1, wherein said conveyor is a belt driven tube conveyor.

As can be seen, the only limitation Claim 3 added was that the conveyor is of a belt driven type. Throughout the industry various types of conveyors are used such as, auger, air, or belt may be used

nearly interchangeably. Therefore, this limitation adds little to the substance of the claim and the Examiner's rejection of Claim 3 as obvious could have been made to Claim 1 as well.

In the Applicant's response to the first Office action Claims 1 and 3 were amended as follows:

1. A seed or grain tender comprising:
[i] a main hopper coupled with a frame via leg members, said main hopper having a discharge;
[ii] a base [[plate]] coupled with said frame;
[iii] a support arm ~~rotatable~~ rotatably coupled with said base plate at a first end;
[iv] a conveyor having a conveyor hopper at the first end and a discharge at second end, said conveyor being rotatably coupled with a second end of said support arm at an approximate center of gravity of said conveyor;
[v] a latch mechanism for detachably coupling said first end of said conveyor with said first end of said support arm such that said conveyor hopper is ~~position~~ positioned below said main hopper discharge; and
[vi] a locking mechanism for locking or unlocking said support arm to said base ~~plate~~.

3. The seed tender as recited in claim 1, wherein said conveyor is a [[belt]] motor driven belt, tube conveyor.

As can be readily appreciated, the Applicant was largely correcting typographical errors and broadening the coverage of the claim by eliminating the "plate" limitation.

In the second Office action (March 15, 2010), the Examiner rejects the amended Claims 1 and 3, and all of Claims 1-10 as anticipated by Baskerville. Citing that the base 62/63 of Baskerville is taught as claimed. Page 3, Office action dated 3/15/10.

In response to the second Office action, the Applicant first introduces the limitation that the base must be under the main hopper. This is shown in element [ii] of the amended Claim 1 below:

1. A seed or grain tender comprising:

[i] a main hopper coupled with a frame via leg members, said main hopper having a discharge;
[ii] a base coupled with said frame ,positioned under said main hopper;
[iii] a support arm rotatably coupled with said base plate at a first end of the support arm at a position at least partially below said discharge of said main hopper;
[iv] a conveyor having a conveyor tube portion, a conveyor hopper coupled to the tube portion at the first end, and a discharge coupled to the tube portion at second end~~, said conveyor being rotatably coupled with a second end of said support arm at an approximate center of gravity of said conveyor~~ of the tube portion[[;]] , wherein said conveyor hopper includes sloped, inwardly facing walls for channeling seed or grain to said conveyor;
[v] a conveyor coupling rotatably coupling said conveyor tube portion with a second end of said support arm such that said conveyor can rotate about at least one axis at said coupling;
[vi] a ~~latch~~ mechanism for detachably coupling said ~~first end of said~~ conveyor ~~with said first end of said support arm such that~~ at a position where said conveyor hopper is positioned below said main hopper discharge , and when said conveyor is decoupled from said position, said conveyor can be roated about said axis of said conveyor coupling to a position where the discharge of said conveyor is positioned over said main hopper; and
[vii] a locking mechanism including retaining members fixed to said base and said engaging means for engaging with said retaining members for locking or unlocking said support arm to said base.

Element [v] in amended Claim 1 as listed above was added as well (note that the elements have been renumbered from previously listed amendments shown above this version of Claim 1 due to the addition of Element [v]). Element [v] is the first mention of the conveyor tube rotating about its coupling with the support arm. This is well taught in Baskerville via hinge 54 shown in FIGS. 6 and 7, as well as taught in GPM-2000 on Page 7-1 as was listed in the Request for *Inter Partes*

Reexamination. Part 23 on Page 7-1 of GPM-2000 shows that the conveyor may pivot exactly as claimed in Element [v].

The Examiner correctly rejected amended Claim 1 above in a final, third Office action (August 30, 2010) as obvious in view of Baskerville and Furrer (U.S. Pat. No. 7,500,817). The teaching of Furrer is nearly identical to that of Convey-All, Page 2 of Appendix F in the Request for *Inter Partes* Reexamination. Both of these references teach a horizontal axis of pivoting for the conveyor. Furrer shows what the Examiner correctly calls a support arm P on Page 4, of the third Office action.

In response to the final, third Office action, the Applicant submitted a self-serving Affidavit from the patent assignee Unverferth's marketing director Daniel Fanger in an RCE submitted on February 28, 2011. In his Affidaivt dated February, 1, 2011 Daniel Fanger extols the virtues of the device disclosed in the '047 patent and states it increased the company's market share. No amendments to the claims were made in the RCE.

The Examiner correctly rejected Mr. Fanger's statements and again rejected the claims as obvious over Furrer in view of Baskerville in a first Office action after RCE (April 4, 2011) (first OA after RCE). The Examiner correctly noted that the February 1 Affidavit did not show the success of the invention was due to the claimed invention. The Affidavit also fails to address the merits of the Examiner's rejection, namely, that every part of the claimed invention was taught in the pieces of prior art cited by the Examiner.

In Response to the first OA after RCE (July 5, 2011) the applicant submitted a Second Affidavit of Daniel Fanger. The Examiner again rejected assertions made in the Second Affidavit and reiterated his obviousness rejection of all the claims as obvious over Baskerville in view of Furrer. This Response made no amendments, but merely argued the Second Affidavit as evidence of secondary consideration, again failing to address the substance of the Examiner's rejection that every element of the claimed invention was taught in the aforementioned prior art references.

The Examiner Correctly rejected all of the pending claims reiterating the same obviousness rejection in a final rejection (September 30, 2011).

The Applicant then filed a Notice of Appeal on December 29, 2011. The Applicant conducted an interview on March 30, 2012 to discuss Baskerville and proposed claims. This is disclosed on the Applicant-Initiated Inverview Summary (April 6, 2012). The Examiner agreed to claim amendments that would overcome the obviousness rejecton in the interview. Subsequent to

the March 30, 2012 interview, the Applicant filed an Amendment After Final in a Second RCE on April 5, 2012 that cancelled all of the claims and added new Claims 12-49. The Examiner stated in the Notice of Allowance (5/25/12) that the reasons for allowance were the arguments the Applicant made in the Amendment After Final (4/5/12, Pages 11-12). The arguments the Examiner accepted were as follows:

> New claims 12-49 are submitted to be patentable over the prior art of record because none of the art, alone or in combination, teaches or suggests a seed or grain tender having, among other things, a first coupling connecting a first end of a support arm with a base below the hopper such that the coupling is rotatable in relation to the base about a first vertical axis of rotation and the support arm is rotatable in relation to the first coupling about a first horizontal axis of rotation, and a second coupling connecting a second end of the support arm with a conveyor at an approximate center of gravity of the conveyor such that the conveyor is rotatable about a second vertical axis of rotation that is not parallel to a longitudinal axis of the conveyor, between an unloading position wherein a hopper at one end of the conveyors disposed below a main hopper discharge to receive agricultural product from the main hopper and a loading position wherein a conveyor discharge is disposed above the main hopper to dispense agricultural product into the main hopper. (Amendment After Final (4/5/12, Pages 11-12))

The Examiner's agreement with the Applicant's statement above was due to his lacking knowledge of the prior art contained in the Request for *Inter Partes* Reexamination that was filed by the Requestor on September 14, 2012.

Analysis of the Request for *Inter Partes* Reexamination

The Request for *Inter Partes* Reexamination sets forth a reasonable likelihood of prevailing on the following claims for the following reasons listed below:

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.

2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville.
3. Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.
4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-all.

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.

Claim 9 is dependent from Claim 1. Claim 1 is as follows:

1. A seed or grain tender comprising:

[i] a frame;

[ii] a main hopper mounted on said frame and having a main hopper discharge;

[iii] a base mounted on said frame below said main hopper discharge;

[iv] a support arm having first and second ends;

[v] a first coupling connecting said first end of said support arm with said base, said first coupling being rotatable in relation to said base [v-a] about a first vertical axis of rotation, and said first end of said support arm being rotatable in relation to said first coupling [v-b] about a first horizontal axis of rotation;

[vi] a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, a conveyor discharge at said second end, and an internal elevator for moving seed or grain from said conveyor hopper to said conveyor discharge;

[vii] and a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis, and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main

hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper.

Claim 9 listed below adds the following element [viii]

9. The seed or grain tender of claim 1, wherein [viii] said first vertical axis extends through said base.

As mentioned above, it would be obvious to combine GPM-2000 and Baskerville to arrive at the device as claimed in Claim 9. All of the elements of Claim 1 are contained in Claim 9 as it depends directly from Claim 1. Therefore Claim 9 includes elements [i], [ii], [iii], [iv], [v-a], [v-b], [vi], [vii], and [viii]. GPM-2000 teaches elements [i], [ii], [iii], [iv], [v-a], [vi], [vii], and [viii]. (Note: element v contains subpart a [v-a], describing a vertical axis of rotation, and subpart b [v-b], a horizontal axis of rotation) As discussed in the original Request for *Inter Partes* Reexamination, GPM-2000 shows a frame shown in broken lines on Page 7-1 [i], a main hopper 32 shown on Page 2-5 [ii], and a base 23 on Page 7-1 below the main hopper discharge [iii]. Element [v-a] is shown as pin 21 on Page 7-1 of GPM-2000 as it provides a first vertical axis of rotation for the arm with respect to the base. The support arm 15, 20 having first and second ends [iv] and a conveyor 26 [vi]. The second coupling [vii] is also shown on Page 7-1 of GPM-2000 as part 23 and facilitates loading and unloading as explained well in GPSB, although one skilled in the art would recognize this function from GPM-2000 alone. The second coupling 23 [viii] provides pivoting in a horizontal and second vertical axis not parallel to the conveyor 26 [vi]. GPM-2000 shows pin 21 on Page 7-1 as a vertical axis [viii] through the base. GPM-2000 lacks teaching of a first coupling connecting the first end of the support arm so that it may pivot about a horizontal axis; GPM-2000 lacks element [v-b]. FIGS. 4 and 5 of Baskerville teach a support arm 53, or 64 that is pivotable about a horizontal axis [v-b] as well as pivotable about a vertical axis. FIGS. 4 and 5 show the conveyor of Baskerville in two different vertical positions that would not be possible unless the arms 53, 56 pivoted vertically about a horizontal axis [v-a]. The arms 53, 56 each have a pin and clevis connection with the base. In Baskerville FIGS. 3 the support arms 53, 64 and conveyor are shown in different lateral positions. What is also seen is a pin and clevis connection with the base 61, 63 that enables the conveyor of Baskerville to move as shown in FIG. 3. It would be obvious to one skilled in the art to place the horizontal pivoting connection of Baskerville in the base of GPM-2000 to arrive at the device of Claim 9.

One skilled in the art would be motivated to make the combination of Baskerville and GPM-2000. Convey-All as shown on page 2 of Appendix F of the Request for Reexamination teaches element [v-b] of a horizontal pivoting axis in the same manner as Baskerville, only being the base in Convey-All is below the hopper discharge as shown in Page 2. This is the same type of Conveyor as that of Furrer that the Examiner cited in the file history of the '047 patent. Furrer in FIGS. 5 and 7 has a horizontal pivot with respect to a base below the hopper and informs the level of skill in the art and that one of ordinary skill in the art would be motivated to combine the teachings of Baskerville with the teachings of GPM-2000 by moving the horizontally pivoting arm of Baskerville into a base below the hopper to produce the device claimed in Claim 9 of the '047 patent.

2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville.

Claim 20 is as follows:

> 20. A seed or grain tender comprising: [i] a frame; [ii] a main hopper mounted on said frame and having a main hopper discharge; [iii] a base mounted on said frame below said main hopper discharge;
>
> [iv] a support arm having first and second ends; [v] a first coupling connecting said first end of said support arm with said base, said first coupling being rotatable in relation to said base [v-a] about a first vertical axis of rotation, and said first end of said support arm being rotatable in relation to said first coupling [v-b] about a first horizontal axis of rotation; [xi] **a lift device extending from said base to a portion of said support arm between said first and second ends such that said support arm extends upwardly at an acute angle from said base**; [vi] a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, a conveyor discharge at said second end, and a **motor-driven** elevator for moving seed or grain from said conveyor hopper to said conveyor discharge; [vii] and a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis,

> and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper, [xii] **wherein said conveyor is disposed parallel to and above said support arm in said unloading position;** [xiii] **and a locking mechanism for locking and unlocking said support arm in relation to said base.**
>
> (emphasis highlighting the differences between independent Claim 20 and Claim 1)

Claim 20 adds the limitations [xi], [xii], and [xii] to Claim 1 and is substantively the same aside from the mention of "motor-driven" above. The arm in Baskerville pivots horizontally with respect to the base about hinge 54 as mentioned earlier. For the reasons given above with respect to Claim 9, Claim 20 is obvious over GPM-2000 in view of Baskerville. Limitation [xi] simply means that the support arm may be at an acute angle from the base referring to FIG. 5 of Baskerville, the support arm is at an acute angle with respect to the base to which it is attached. With regard to limitation [xii], GPM-2000 shows it is possible to have the conveyor parallel to the arm 20 on Page 7-1. This is because pivot 23 may be used to pivot the conveyor into a position parallel with arm 20. Bolt 25 shown on Page 7-1 is the horizontal axis about which the conveyor 26 may be pivoted into such a parallel position to arm 20. The parts near number 7 on Page 7-1 of GPM-2000 comprise a locking mechanism [xiii]. These teachings of Baskerville and GPM-2000 in addition to the teachings of both of these references as discussed above render Claim 20 obvious.

One skilled in the art would be motivated to make the combination of Baskerville and GPM-2000. Convey-All as shown on page 2 of Appendix F of the Request for Reexamination teaches element [v-b] of a horizontal pivoting axis in the same manner as Baskerville, only being the base in Convey-All is below the hopper discharge as shown in Page 2. This is the same type of Conveyor as that of Furrer that the Examiner cited in the file history of the '047 patent. Furrer in FIGS. 5 and 7 has a horizontal pivot with respect to a base below the hopper and informs the level of skill in the art and that one of ordinary skill in the art would be motivated to combine the teachings of Baskerville with the teachings of GPM-2000 by moving the horizontally pivoting arm of Baskerville into a base below the hopper to produce the device claimed in Claim 20 of the '047 patent. The combination of Convey-All and GPM-2000 would also yield the invention as claimed

in Claim 20. One skilled in the art could take the teaching of Convey-All to modify the arm 20 of GPM-2000 to an arm that has a horizontal pivot with respect its base (the part receiving pin 21) shown on 7-1 in broken lines.

3. Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.

Claim 11 depends directly from Claim 1. Claim 11 is as follows:

> 11. The seed or grain tender of claim 1, [ix] wherein said first end of said support arm is fixed at a first height and said second end of said support arm is pivotable between a range of heights.

Claim 11 adds limitation [ix] above and beyond the limitations in Claim 1. The further limitation that the first end of the support arm is at a fixed height is contained in both GPM-2000 on Page 7-1 and also can be seen in FIG. 2 of Baskerville. Thus, Claim 11 is obvious over GPM-2000 in view of Baskerville.

Claim 12 is as follows:

> 12. The seed or grain tender of claim 1, further comprising a lift device for adjusting a height of said second end of said support arm.

The only limitation added to Claim 1 is that the height of the second end of the arm is adjustable. Baskerville describes a lifting cylinder 64 at Col 4, Ln. 63, and as shown in FIG. 4. The difference in height between FIG. 4 and FIG. 5 show that the end of the arm 53 is adjustable using the cylinder 64. Thus, Claim 12 is obvious over GPM-2000 in view of Baskerville.

Claim 13 is as follows:

> 13. The seed or grain tender of claim 12, wherein said lift device is a pressurized cylinder.

As can be seen in the discussion related to Claim 12 above, Baskerville shows a hydraulic cylinder which may be pressurized. Col 5, Ln. 40 of Baskerville discusses the fact that 64 is a hydraulic cylinder. Thus, Claim 13 is obvious over GPM-2000 in view of Baskerville.

For the reasons stated above, Claim 14 is also obvious as it merely states the pressurized cylinder is hydraulic.

Claim 15 states:

> 15. The seed or grain tender of claim 1, wherein said first coupling is a U-shaped member with a horizontal base portion and a pair of upright portions, and wherein said first horizontal axis extends through said upright portions of said first coupling.

Adams teaches upright members that are U-shaped as shown in FIG. 2A along axis 140 and renders Claim 15 obvious in view of Baskerville and GPM-2000.

Claim 28 is a copy of Claim 11, the only difference being Claim 28 depends from independent Claim 20. The further limitation that the first end of the support arm is at a fixed height is contained in both GPM-2000 on Page 7-1 and also can be seen in FIG. 2 of Baskerville. Thus, Claim 28 is obvious over GPM-2000 in view of Baskerville.

Claims 29 and 30 mention the lifting device is a pressurized cylinder and a hydraulic cylinder respectively and are both dependent from Claim 20. Baskerville as mentioned above teaches a hydraulic cylinder. Therefore these claims are obvious over Baskerville in view of GPM-2000.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-All.

Claim 31 is a copy of Claim 15 the only difference is that Claim 31 depends from Claim 20. As such Claim 31 is obvious for the reasons stated with regard to Claim 20 being obvious over Baskerville and GPM-2000 and the reasons above with regard to the obviousness of

Claim 15 in further view of Adams which shows in FIG. 2A along axis 140 the U-shaped members supporting the conveyor.

Conclusion

For the above reasons, the Requestor asserts there is a reasonable likelihood of prevailing upon multiple claims in the *Inter Partes* Reexamination of the 8,221,047 patent and respectfully requests the Order denying reexamination be reversed.

Respectfully submitted,

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FEB 02 2013
CENTRAL REEXAMINATION UNIT

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Petition Under 37 CFR § 1.182 For Reconsideration of Reexamination of the Merits is being deposited with the U.S. Postal Service as First-Class Mail on the date of the signature below in an envelope addressed to the attorney of record for the Petersen U.S. Patent 8,221,047 as provided for in 37 C.F.R. § 1.33(c):

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February 1, 2013
Date

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/000,691	09/14/2012	8221047	191-013	1949

6449 7590 01/24/2013

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EXAMINER	
STORMER, RUSSELL D	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
01/24/2013	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Transmittal of Communication to Third Party Requester *Inter Partes* Reexamination	Control No.	Patent Under Reexamination	
	95/000,691	8221047	
	Examiner	Art Unit	
	RUSSELL STORMER	3993	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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SOUTH BEND, IN 46601

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination prceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

All correspondence relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

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(For Patent Owner)

MAILED

JAN 24 2013

CENTRAL REEXAMINATION UNIT

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(For Third Party Requester)

In re Petersen et al.
Inter Partes Reexamination Proceeding
Control No. 95/000,691
Filed: September 14, 2012
For: U.S. Patent No. 8,221,047

: DECISION ON
: PETITION UNDER
: 37 CFR 1.181 &
: 1.927

Third party requester filed a paper on December 11, 2012, entitled "Petition for Reconsideration of Reexamination" ("the petition"). The petition is considered to be filed under 37 C.F.R. §§ 1.927 and 1.181. The petition is before the Director of the Central Reexamination Unit (CRU). Petitioner, the reexamination requester, seeks supervisory review of the order, which was mailed November 7, 2012, denying the request for *Inter Partes* Reexamination.

The petition is **DISMISSED** as untimely for the reasons set forth below without consideration of the merits.

I. REVIEW OF RELEVANT FACTS

1. U.S. Patent No. 8,221,047 ("the '047 patent") issued on July 17, 2012.

2. A request for *inter partes* reexamination was filed on September 14, 2012, for all claims (claims 1-34) of the '047 patent. The reexamination proceeding was assigned Control No. 95/000,691 ("the '691 proceeding").

3. A determination denying reexamination for claims 1-34 of the '047 patent was mailed on November 7, 2012, in this proceeding.

4. The instant petition was filed on December 11, 2012.

II. DECISION

37 C.F.R. § 1.927 states:

> The third party requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request has not been established, the determination shall be final and nonappealable.

The Requester requests reconsideration of the order denying reexamination. The petition was received on December 11, 2012, which is more than a month from the mailing date of the order denying reexamination (November 7, 2012). MPEP 2648 provides, in pertinent part:

> The requester may seek review of a denial of request for reexamination only by petitioning the Director of the USPTO under 37 CFR 1.927 and 1.181 within one (1) month of the mailing date of the decision denying the request for reexamination.

A review of the petition shows a Certificate of Service to Patent Owner dated December 7, 2012. However, no Certificate of Mailing in compliance with the requirements of 37 CFR § 1.8 was received. See MPEP 2624 and 37 C.F.R. § 1.8. Thus, the petition is untimely, and is hereby dismissed.

Further, petitions under 37 C.F.R. § 1.927 required a $1930.00 fee under 37 C.F.R. § 1.20(c)(b). See the change to 37 C.F.R. § 1.20(c) in "Changes to Implement Examination Provisions of the Leahy-Smith America Invents Act and To Revise Reexamination Fees," 77 Fed. Reg. 48828, 48851 (August 14, 2012). This fee has not been submitted with the petition nor has the requester authorized charging a deposit account. For this additional reason, the petition is dismissed.

III. CONCLUSION

1. The requester's petition to reconsider the order denying reexamination under 37 CFR § 1.181 proceeding is hereby **dismissed**, as untimely and with no fee, without consideration of the merits.

2. Telephone inquiries with regard to this decision should be directed to Andres Kashnikow, Supervisory Patent Reexamination Specialist, at (571) 272-4361, or Eileen Lillis, Supervisory Patent Reexamination Specialist, at (571) 272-6928.

Irem Yücel, Director
Central Reexamination Unit

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CENTRAL REEXAMINATION UNIT

IN THE UNITED STATES PATENTAND TRADEMARK OFFICE

Serial No.	95/000,691	
Reexamination of:	U.S. Patent No. 8,221,047	
Filed:	September 14, 2012	Dated: December 7, 2012
Examiner:	Russell D. Stormer Art Unit: 3993	
Docket No.	191-013 / Customer No. 31179	

Mail Stop *Inter Partes* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR RECONSIDERATION OF REEXAMINATION

Sir:

The Requester in the above identified *Inter Partes* Reexamination of Patent No. 8,221,047 ('047 patent), petitions that the Director review and reverse the Examiner's Order, mailed Novemvber 7, 2012 denying reexamination.

The Request for Reexamination

Requester is petitioning reconsideration for the following grounds brought in the above identified Request for *Inter Partes* Reexamination:

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.
2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville.
3. Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-all.

These grounds of rejection being listed on Page 3 of the Order mailed 11/7/2012.

Prosecution History of the '047 Patent

The '047 patent contains claims 1-34. Claims 1 and 20 are the only independent claims. Claims 2-19 depend directly or indirectly from Claim 1. Claims 21-34 depend directly or indirectly from Claim 20.

Originally the application for the '047 patent was filed with independent Claim 1 and its directly dependent Claim 3, which are the genesis of the finally issued independent Claims 1 and 20. The original Claim 1 is listed below:

1. A seed or grain tender comprising:
   [i] a main hopper coupled with a frame via leg members, said main hopper having a discharge;
   [ii] a base plate coupled with said frame;
   [iii] a support arm rotatable coupled with said base plate at a first end;
   [iv] a conveyor having a conveyor hopper at the first end and a discharge at second end, said conveyor being rotatably coupled with a second end of said support arm at an approximate center of gravity of said conveyor;
   [v] a latch mechanism for detachably coupling said first end of said conveyor with said first end of said support arm such that said conveyor hopper is position below said main hopper discharge; and
   [vi] a locking mechanism for locking or unlocking said support arm to said base plate.

In the first Office action (September 4, 2009), the Examiner rejected Claim 1 under 35 U.S.C. 103(a) as obvious over Adam (U.S. Pat. No. 6,120,233) in view of Klatt (U.S. Pat. No.

5,484,249) stating it would have been obvious to "detachably couple said first end of said conveyor with said first end of said support arm by the connection member (20)." Page 5, Office action dated 9/4/09.

In this same Office action, the Examiner also rejected Claim 3 which depended directly from Claim 1, under 35 U.S.C. 103(a) in further view of Baskerville (U.S. Pat. No. 5,888,044) Claim 3 was as follows:

> 3. The seed tender as recited in claim 1, wherein said conveyor is a belt driven tube conveyor.

As can be seen, the only limitation Claim 3 added was that the conveyor is of a belt driven type. Throughout the industry various types of conveyors are used such as, auger, air, or belt may be used nearly interchangeably. Therefore, this limitation adds little to the substance of the claim and the Examiner's rejection of Claim 3 as obvious could have been made to Claim 1 as well.

In the Applicant's response to the first Office action Claims 1 and 3 were amended as follows:

1. A seed or grain tender comprising:
   [i] a main hopper coupled with a frame via leg members, said main hopper having a discharge;
   [ii] a base [[plate]] coupled with said frame;
   [iii] a support arm ~~rotatable~~ rotatably coupled with said base plate at a first end;
   [iv] a conveyor having a conveyor hopper at the first end and a discharge at second end, said conveyor being rotatably coupled with a second end of said support arm at an approximate center of gravity of said conveyor;
   [v] a latch mechanism for detachably coupling said first end of said conveyor with said first end of said support arm such that said conveyor hopper is ~~position~~ positioned below said main hopper discharge; and
   [vi] a locking mechanism for locking or unlocking said support arm to said base ~~plate~~.

3. The seed tender as recited in claim 1, wherein said conveyor is a [[belt]] motor driven belt, tube conveyor.

As can be readily appreciated, the Applicant was largely correcting typographical errors and broadening the coverage of the claim by eliminating the "plate" limitation.

In the second Office action (March 15, 2010), the Examiner rejects the amended Claims 1 and 3, and all of Claims 1-10 as anticipated by Baskerville. Citing that the base 62/63 of Baskerville is taught as claimed. Page 3, Office action dated 3/15/10.

In response to the second Office action, the Applicant first introduces the limitation that the base must be under the main hopper. This is shown in element [ii] of the amended Claim 1 below:

1. A seed or grain tender comprising:

[i] a main hopper coupled with a frame via leg members, said main hopper having a discharge;

[ii] a base coupled with said frame ,positioned under said main hopper;

[iii] a support arm rotatably coupled with said base plate at a first end of the support arm at a position at least partially below said discharge of said main hopper;

[iv] a conveyor having a conveyor tube portion, a conveyor hopper coupled to the tube portion at the first end, and a discharge coupled to the tube portion at second end~~, said conveyor being rotatably coupled with a second end of said support arm at an approximate center of gravity of said conveyor~~ of the tube portion[[;]] , wherein said conveyor hopper includes sloped, inwardly facing walls for channeling seed or grain to said conveyor;

[v] a conveyor coupling rotatably coupling said conveyor tube portion with a second end of said support arm such that said conveyor can rotate about at least one axis at said coupling;

[vi] a ~~latch~~ mechanism for detachably coupling said ~~first end of said~~ conveyor ~~with said first end of said support arm such that~~ at a position where said conveyor hopper is positioned below said main hopper discharge , and when said conveyor is decoupled from said position, said conveyor can be roated about said

> axis of said conveyor coupling to a position where the discharge of said conveyor is positioned over said main hopper; and
> [vii] a locking mechanism including retaining members fixed to said base and said engaging means for engaging with said retaining members for locking or unlocking said support arm to said base.

Element [v] in amended Claim 1 as listed above was added as well (note that the elements have been renumbered from previously listed amendments shown above this version of Claim 1 due to the addition of Element [v]). Element [v] is the first mention of the conveyor tube rotating about its coupling with the support arm. This is well taught in Baskerville via hinge 54 shown in FIGS. 6 and 7, as well as taught in GPM-2000 on Page 7-1 as was listed in the Request for *Inter Partes* Reexamination. Part 23 on Page 7-1 of GPM-2000 shows that the conveyor may pivot exactly as claimed in Element [v].

The Examiner correctly rejected amended Claim 1 above in a final, third Office action (August 30, 2010) as obvious in view of Baskerville and Furrer (U.S. Pat. No. 7,500,817). The teaching of Furrer is nearly identical to that of Convey-All, Page 2 of Appendix F in the Request for *Inter Partes* Reexamination. Both of these references teach a horizontal axis of pivoting for the conveyor. Furrer shows what the Examiner correctly calls a support arm P on Page 4, of the third Office action.

In response to the final, third Office action, the Applicant submitted a self-serving Affidavit from the patent assignee Unverferth's marketing director Daniel Fanger in an RCE submitted on February 28, 2011. In his Affidaivt dated February, 1, 2011 Daniel Fanger extols the virtues of the device disclosed in the '047 patent and states it increased the company's market share. No amendments to the claims were made in the RCE.

The Examiner correctly rejected Mr. Fanger's statements and again rejected the claims as obvious over Furrer in view of Baskerville in a first Office action after RCE (April 4, 2011) (first OA after RCE). The Examiner correctly noted that the February 1 Affidavit did not show the success of the invention was due to the claimed invention. The Affidavit also fails to address the merits of the Examiner's rejection, namely, that every part of the claimed invention was taught in the pieces of prior art cited by the Examiner.

In Response to the first OA after RCE (July 5, 2011) the applicant submitted a Second Affidavit of Daniel Fanger. The Examiner again rejected assertions made in the Second Affidavit and reiterated his obviousness rejection of all the claims as obvious over Baskerville in view of Furrer. This Response made no amendments, but merely argued the Second Affidavit as evidence of secondary consideration, again failing to address the substance of the Examiner's rejection that every element of the claimed invention was taught in the aforementioned prior art references.

The Examiner Correctly rejected all of the pending claims reiterating the same obviousness rejection in a final rejection (September 30, 2011).

The Applicant then filed a Notice of Appeal on December 29, 2011. The Applicant conducted an interview on March 30, 2012 to discuss Baskerville and proposed claims. This is disclosed on the Applicant-Initiated Inverview Summary (April 6, 2012). The Examiner agreed to claim amendments that would overcome the obviousness rejecton in the interview. Subsequent to the March 30, 2012 interview, the Applicant filed an Amendment After Final in a Second RCE on April 5, 2012 that cancelled all of the claims and added new Claims 12-49. The Examiner stated in the Notice of Allowance (5/25/12) that the reasons for allowance were the arguments the Applicant made in the Amendment After Final (4/5/12, Pages 11-12). The arguments the Examiner accepted were as follows:

> New claims 12-49 are submitted to be patentable over the prior art of record because none of the art, alone or in combination, teaches or suggests a seed or grain tender having, among other things, a first coupling connecting a first end of a support arm with a base below the hopper such that the coupling is rotatable in relation to the base about a first vertical axis of rotation and the support arm is rotatable in relation to the first coupling about a first horizontal axis of rotation, and a second coupling connecting a second end of the support arm with a conveyor at an approximate center of gravity of the conveyor such that the conveyor is rotatable about a second vertical axis of rotation that is not parallel to a longitudinal axis of the conveyor, between an unloading position wherein a hopper at one end of the conveyors disposed below a main hopper discharge to receive agricultural product from the main hopper and a loading position wherein a conveyor discharge is disposed above the main hopper to dispense agricultural product into the main hopper. (Amendment After Final (4/5/12, Pages 11-12))

The Examiner's agreement with the Applicant's statement above was due to his lacking knowledge of the prior art contained in the Request for *Inter Partes* Reexamination that was filed by the Requestor on September 14, 2012.

Analysis of the Request for *Inter Partes* Reexamination

The Request for *Inter Partes* Reexamination sets forth a reasonable likelihood of prevailing on the following claims for the following reasons listed below:

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.
2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville.
3. Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.
4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-all.

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.

Claim 9 is dependent from Claim 1. Claim 1 is as follows:

1. A seed or grain tender comprising:

[i] a frame;

[ii] a main hopper mounted on said frame and having a main hopper discharge;

[iii] a base mounted on said frame below said main hopper discharge;

[iv] a support arm having first and second ends;

[v] a first coupling connecting said first end of said support arm with said base, said first coupling being rotatable in relation to said base [v-a] about a first vertical axis of rotation, and said first end of said support arm being rotatable in relation to said first coupling [v-b] about a first horizontal axis of rotation;

[vi] a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, a conveyor discharge at said second end, and an internal elevator for moving seed or grain from said conveyor hopper to said conveyor discharge;

[vii] and a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis, and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper.

Claim 9 listed below adds the following element [viii]

9. The seed or grain tender of claim 1, wherein [viii] said first vertical axis extends through said base.

As mentioned above, it would be obvious to combine GPM-2000 and Baskerville to arrive at the device as claimed in Claim 9. All of the elements of Claim 1 are contained in Claim 9 as it depends directly from Claim 1. Therefore Claim 9 includes elements [i], [ii], [iii], [iv], [v-a], [v-b], [vi], [vii], and [viii]. GPM-2000 teaches elements [i], [ii], [iii], [iv], [v-a], [vi], [vii], and [viii]. (Note: element v contains subpart a [v-a], describing a vertical axis of rotation, and subpart b [v-b], a horizontal axis of rotation) As discussed in the original Request for *Inter Partes* Reexamination, GPM-2000 shows a frame shown in broken lines on Page 7-1 [i], a main hopper 32 shown on Page 2-5 [ii], and a base 23 on Page 7-1 below the main hopper discharge [iii]. Element [v-a] is shown as pin 21 on Page 7-1 of GPM-2000 as it provides a first vertical axis of rotation for the arm with respect to the base. The support arm 15, 20 having first and second ends [iv] and a conveyor 26 [vi]. The second coupling [vii] is also shown on Page 7-1 of GPM-2000 as part 23 and facilitates loading and unloading as explained well in GPSB, although one skilled in the art would recognize this function from GPM-2000 alone. The second coupling 23 [viii] provides pivoting in a horizontal and second vertical axis not parallel to the conveyor 26 [vi]. GPM-2000 shows pin 21 on

Page 7-1 as a vertical axis [viii] through the base. GPM-2000 lacks teaching of a first coupling connecting the first end of the support arm so that it may pivot about a horizontal axis; GPM-2000 lacks element [v-b]. FIGS. 4 and 5 of Baskerville teach a support arm 53, or 64 that is pivotable about a horizontal axis [v-b] as well as pivotable about a vertical axis. FIGS. 4 and 5 show the conveyor of Baskerville in two different vertical positions that would not be possible unless the arms 53, 56 pivoted vertically about a horizontal axis [v-a]. The arms 53, 56 each have a pin and clevis connection with the base. In Baskerville FIGS. 3 the support arms 53, 64 and conveyor are shown in different lateral positions. What is also seen is a pin and clevis connection with the base 61, 63 that enables the conveyor of Baskerville to move as shown in FIG. 3. It would be obvious to one skilled in the art to place the horizontal pivoting connection of Baskerville in the base of GPM-2000 to arrive at the device of Claim 9.

One skilled in the art would be motivated to make the combination of Baskerville and GPM-2000. Convey-All as shown on page 2 of Appendix F of the Request for Reexamination teaches element [v-b] of a horizontal pivoting axis in the same manner as Baskerville, only being the base in Convey-All is below the hopper discharge as shown in Page 2. This is the same type of Conveyor as that of Furrer that the Examiner cited in the file history of the '047 patent. Furrer in FIGS. 5 and 7 has a horizontal pivot with respect to a base below the hopper and informs the level of skill in the art and that one of ordinary skill in the art would be motivated to combine the teachings of Baskerville with the teachings of GPM-2000 by moving the horizontally pivoting arm of Baskerville into a base below the hopper to produce the device claimed in Claim 9 of the '047 patent.

2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville.

Claim 20 is as follows:

> 20. A seed or grain tender comprising: [i] a frame; [ii] a main hopper mounted on said frame and having a main hopper discharge; [iii] a base mounted on said frame below said main hopper discharge;
>
> [iv] a support arm having first and second ends; [v] a first coupling connecting said first end of said support arm with said base, said first coupling being rotatable in

relation to said base [v-a] about a first vertical axis of rotation, and said first end of said support arm being rotatable in relation to said first coupling [v-b] about a first horizontal axis of rotation; [xi] **a lift device extending from said base to a portion of said support arm between said first and second ends such that said support arm extends upwardly at an acute angle from said base**; [vi] a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, a conveyor discharge at said second end, and a **motor-driven** elevator for moving seed or grain from said conveyor hopper to said conveyor discharge; [vii] and a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis, and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper, [xii] **wherein said conveyor is disposed parallel to and above said support arm in said unloading position;** [xiii] **and a locking mechanism for locking and unlocking said support arm in relation to said base.**

(emphasis highlighting the differences between independent Claim 20 and Claim 1)

Claim 20 adds the limitations [xi], [xii], and [xii] to Claim 1 and is substantively the same aside from the mention of "motor-driven" above. The arm in Baskerville pivots horizontally with respect to the base about hinge 54 as mentioned earlier. For the reasons given above with respect to Claim 9, Claim 20 is obvious over GPM-2000 in view of Baskerville. Limitation [xi] simply means that the support arm may be at an acute angle from the base referring to FIG. 5 of Baskerville, the support arm is at an acute angle with respect to the base to which it is attached. With regard to limitation [xii], GPM-2000 shows it is possible to have the conveyor parallel to the arm 20 on Page 7-1. This is because pivot 23 may be used to pivot the conveyor into a position parallel with arm 20. Bolt 25 shown on Page 7-1 is the horizontal axis about which the conveyor 26 may be pivoted into such a parallel position to arm 20. The parts near number 7 on Page 7-1 of GPM-2000

comprise a locking mechanism [xiii]. These teachings of Baskerville and GPM-2000 in addition to the teachings of both of these references as discussed above render Claim 20 obvious.

One skilled in the art would be motivated to make the combination of Baskerville and GPM-2000. Convey-All as shown on page 2 of Appendix F of the Request for Reexamination teaches element [v-b] of a horizontal pivoting axis in the same manner as Baskerville, only being the base in Convey-All is below the hopper discharge as shown in Page 2. This is the same type of Conveyor as that of Furrer that the Examiner cited in the file history of the '047 patent. Furrer in FIGS. 5 and 7 has a horizontal pivot with respect to a base below the hopper and informs the level of skill in the art and that one of ordinary skill in the art would be motivated to combine the teachings of Baskerville with the teachings of GPM-2000 by moving the horizontally pivoting arm of Baskerville into a base below the hopper to produce the device claimed in Claim 20 of the '047 patent. The combination of Convey-All and GPM-2000 would also yield the invention as claimed in Claim 20. One skilled in the art could take the teaching of Convey-All to modify the arm 20 of GPM-2000 to an arm that has a horizontal pivot with respect its base (the part receiving pin 21) shown on 7-1 in broken lines.

3. Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.

Claim 11 depends directly from Claim 1. Claim 11 is as follows:

> 11. The seed or grain tender of claim 1, [ix] wherein said first end of said support arm is fixed at a first height and said second end of said support arm is pivotable between a range of heights.

Claim 11 adds limitation [ix] above and beyond the limitations in Claim 1. The further limitation that the first end of the support arm is at a fixed height is contained in both GPM-2000 on Page 7-1 and also can be seen in FIG. 2 of Baskerville. Thus, Claim 11 is obvious over GPM-2000 in view of Baskerville.

Claim 12 is as follows:

12. The seed or grain tender of claim 1, further comprising a lift device for adjusting a height of said second end of said support arm.

The only limitation added to Claim 1 is that the height of the second end of the arm is adjustable. Baskerville describes a lifting cylinder 64 at Col 4, Ln. 63, and as shown in FIG. 4. The difference in height between FIG. 4 and FIG. 5 show that the end of the arm 53 is adjustable using the cylinder 64. Thus, Claim 12 is obvious over GPM-2000 in view of Baskerville.

Claim 13 is as follows:

13. The seed or grain tender of claim 12, wherein said lift device is a pressurized cylinder.

As can be seen in the discussion related to Claim 12 above, Baskerville shows a hydraulic cylinder which may be pressurized. Col 5, Ln. 40 of Baskerville discusses the fact that 64 is a hydraulic cylinder. Thus, Claim 13 is obvious over GPM-2000 in view of Baskerville.

For the reasons stated above, Claim 14 is also obvious as it merely states the pressurized cylinder is hydraulic.

Claim 15 states:

15. The seed or grain tender of claim 1, wherein said first coupling is a U-shaped member with a horizontal base portion and a pair of upright portions, and wherein said first horizontal axis extends through said upright portions of said first coupling.

Adams teaches upright members that are U-shaped as shown in FIG. 2A along axis 140 and renders Claim 15 obvious in view of Baskerville and GPM-2000.

Claim 28 is a copy of Claim 11, the only difference being Claim 28 depends from independent Claim 20. The further limitation that the first end of the support arm is at a fixed height is contained in both GPM-2000 on Page 7-1 and also can be seen in FIG. 2 of Baskerville. Thus, Claim 28 is obvious over GPM-2000 in view of Baskerville.

Claims 29 and 30 mention the lifting device is a pressurized cylinder and a hydraulic cylinder respectively and are both dependent from Claim 20. Baskerville as mentioned above teaches a hydraulic cylinder. Therefore these claims are obvious over Baskerville in view of GPM-2000.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-All.

Claim 31 is a copy of Claim 15 the only difference is that Claim 31 depends from Claim 20. As such Claim 31 is obvious for the reasons stated with regard to Claim 20 being obvious over Baskerville and GPM-2000 and the reasons above with regard to the obviousness of Claim 15 in further view of Adams which shows in FIG. 2A along axis 140 the U-shaped members supporting the conveyor.

Conclusion

For the above reasons, the Requestor asserts there is a reasonable likelihood of prevailing upon multiple claims in the *Inter Partes* Reexamination of the 8,221,047 patent and respectfully requests the Order denying reexamination be reversed.

Respectfully submitted,

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CENTRAL REEXAMINATION UNIT

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Petition for Reconsideration of Reexamination is being deposited with the U.S. Postal Service as First-Class Mail on the date of the signature below in an envelope addressed to the attorney of record for the Petersen U.S. Patent 8,221,047 as provided for in 37 C.F.R. § 1.33(c):

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December 7, 2012
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EXAMINER	
STORMER, RUSSELL D	
ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Transmittal of Communication to Third Party Requester *Inter Partes* Reexamination	Control No. 95/000,691	Patent Under Reexamination 8221047	
	Examiner RUSSELL STORMER	Art Unit 3993	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination prceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

All correspondence relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

ORDER GRANTING/DENYING REQUEST FOR* INTER PARTES *REEXAMINATION	**Control No.** 95/000,691	**Patent Under Reexamination** 8221047
	Examiner RUSSELL STORMER	**Art Unit** 3993

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

The request for *inter partes* reexamination has been considered. Identification of the claims, the references relied on, and the rationale supporting the determination are attached.

Attachment(s): ☐ PTO-892 ☒ PTO/SB/08 ☐ Other: _____

1. ☐ The request for *inter partes* reexamination is GRANTED.

☐ An Office action is attached with this order.

☐ An Office action will follow in due course.

2. ☒ The request for *inter partes* reexamination is DENIED.

This decision is not appealable. 35 U.S.C. 312(c). Requester may seek review of a denial by petition to the Director of the USPTO within ONE MONTH from the mailing date hereof. 37 CFR 1.927. EXTENSIONS OF TIME ONLY UNDER 37 CFR 1.183. In due course, a refund under 37 CFR 1.26(c) will be made to requester.

All correspondence relating to this *inter partes* reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Order.

Decision Denying Inter Partes Reexamination

The instant request for *inter* partes reexamination fails to establish a reasonable likelihood that Requestor will prevail with respect to at least one of claims 1-34 of United States Patent Number 8,221,047 to Petersen et al.

Prior Art Cited in the Request

1. Great Plains Manual dated 3/1/2000 - Appendix B (hereafter: "**GPM-2000**")
2. Great Plains Photo - Appendix C (hereafter: "**GP Photo**")
3. Great Plains Sales Brochure - Appendix D (hereafter: "**GPSB**")
4. Photos of Great Plains Unit Inspected - Appendix E (hereafter: "**GPU**")
5. Photos of Convey-all Unit Inspected - Appendix F (hereafter: "**Convey-All**")
6. Affidavit of Erick Flinn - Appendix G (hereafter: "the **Flinn** Declaration")
7. Great Plains Manual dated 5/1/97 - Appendix H (hereafter: "**GPM-1997**")
8. Affidavit of Michael D. Marston - Appendix I (hereafter: "the **Marston** Declaration")
9. U.S. Patent No. 5,888,044 (Baskerville) - Appendix J (hereafter: "**Baskerville**")
10. U.S. Patent No. 6,113,339 (Adams) - Appendix K (hereafter: "**Adams**")

Basis for Request for Inter Partes Reexamination

The Third Party Requestor requests reexamination of claims 1-34 of U.S. Patent No. 8,221,047 (hereafter: "the '047 patent") based upon proposed rejections. The separate grounds rejections are not numbered: instead the Request presents a claim chart detailing the rejections for each claim individually.

Claims 1-10, 16, 17, and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by GPM-2000.

Claims 1-10, 16, 17, and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by GPSB.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Convey-All.

Claims 11-15 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Baskerville or Adams.

Claims 17, 18, 26, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Convey-All.

Claims 17, 18, 26, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-1997 in view of Convey-All.

Claims 19 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Convey-All in view of the Flinn Declaration.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 or GPSB in view of Adams or Baskerville. While not set forth in the statement of the rejection at the top of page 14 of the Request, Adams and Baskerville are apparently cited for teachings that may be missing from GPM-2000 or GPSB as shown on page 15.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over GPM-2000 in view of Adams, and further in view of Baskerville or Convey-All.

Standard for Granting Request for Inter Partes Reexamination

The Leahy-Smith America Invents Act (AIA) replaces inter partes reexamination with a new inter partes review process effective one year after the date of enactment of the AIA (i.e., September 16, 2012), and provides that any request for inter partes reexamination filed on or after September 16, 2011, will not be granted unless the information presented in the request establishes a Reasonable Likelihood of Prevailing (RLP), i.e., that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request. This replaces the prior standard for granting a request for inter partes reexamination, which required the request to raise a substantial new question of patentability (SNQ) affecting any claim of the patent.

It is noted that the instant Request does not expressly assert an RLP, and instead raises "substantial new questions of patentability" on page 1. However, the claim charts on pages 3-21 provide details of how the Requestor considers the prior art references to meet the limitations of claims 1-34, and therefore the claim charts sufficiently explain the RPL showings.

Failure to Establish a Reasonable Likelihood of Prevailing (RLP)

The Request proposes that claims 1-10, 16, 17, and 20-27 are anticipated by GPM-2000 or GPSB, and that claim 20 is obvious over either GPM-2000 or GPSB in view of Baskerville or Adams.

GPM-2000 The Third Party Requestor asserts that claims 1-10, 16, 17, and 20-27 are anticipated under 35 U.S.C. 102(b) by GPM-2000. It is ***not*** agreed that the Request has made an RLP showing that independent claims 1 and 20 are unpatentable based upon the teachings of GPM-2000.

The proposed rejection of **claim 1** of the '047 patent, as set forth on pages 3-5 of the Request, is relied upon to show a reasonable likelihood that the Requestor will prevail with respect to at least one of the claims of the patent. The Examiner does not deem that the Request has made an RLP showing that GPM-2000 meets all of the limitations of claim 1.

As pointed out in the Request, GPM-2000 is a parts manual for the Model ADC2220 Air Drill Cart. The cart includes a frame, a main hopper, a base, a support arm 15, 20 supporting a conveyor 26, and a conveyor hopper. A first coupling 21 connects a first end of the support arm to the base such that the first coupling is rotatable about a first vertical axis.

The claim chart on page 4 omits a substantial portion of lines 19-23 of claim 1 which read:

> "a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis".

However, the conveyor is shown to be coupled to a second end of the support arm at 18 to be rotatable about a second vertical axis. See page 7-1 of GPM-2000.

The claim chart on page 4 further omits lines 11-13 of claim 1 which read:

> "and said first end of said support arm being rotatable in relation to said first coupling about a first horizontal axis of rotation."

In figure 7-1 of GPM-2000, the support arm 15, 20 is not shown to be rotatable in relation to the first coupling about a first horizontal axis. As shown, an inner arm portion 20 is pivotally coupled to an outer arm portion 15 to comprise the support arm. The end of the inner arm 20 which includes a tube (unlabelled) to receive shaft 21 and couple the arm to the base (unlabelled bracket) about a first vertical axis corresponds to the first end of the support arm set forth in claim 1 of the '047 patent. The end of the outer arm 15 which receives swivel support 18 and defines a second vertical axis corresponds to the second end of the support arm set forth in claim 1.

Returning to the first end of the support arm, the shaft allows the support arm to pivot about a vertical axis with respect to the unlabelled bracket, which in turn is fixedly mounted to the frame. The first end of the support arm is not pivotable or rotatable about a *horizontal* axis with respect to the base, the frame, or any part of the cart or the ground.

The Examiner has reviewed the entire GPM-2000 manual and cannot find any suggestion that the first end of the support arm 15, 20 rotates or pivots about a horizontal axis or is capable of being raised and lowered. The conveyor 26 is coupled to the second end of the support arm by the pin 25 to pivot about a horizontal axis to raise and lower its hopper and discharge ends. As such, there is no need for the support arm to be capable of being raised and lowered.

The Examiner has also reviewed the Request and can find no assertion that the support arm of GPM-2000 is capable of rotation about a *horizontal* axis at its first end. As noted above, this limitation is omitted from the claim chart on pages 3-5.

Therefore, the Request fails to establish that GPM-2000 teaches each and every limitation of claim 1 of the '047 patent.

With respect to **claim 20**, the claim chart presented on pages 14-16 of the Request omits lines 11-13 of claim 1 of the '047 patent which read:

> "and said first end of said support arm being rotatable in relation to said first coupling about a first horizontal axis of rotation."

As noted above, this same limitation is not taught by GPM-2000. Therefore, the Request fails to establish that GPM-2000 teaches each and every limitation of claim 20 of the '047 patent for the same reasons as set forth for claim 1.

GPM-2000 is also asserted to anticipate depending claims 2-10, 16, 17, and 21-27.

For these reasons, the Request has ***not*** made an RLP showing that claims 1-10, 16, 17, and 20-27 are anticipated by GPM-2000.

GPSB The Third Party Requestor asserts that 1-10, 16, 17, and 20-27 are anticipated under 35 U.S.C. 102(b) by GPSB. It is ***not*** agreed that the Request has made an RLP showing that independent claims 1 and 20 are unpatentable based upon the teachings of GPSB.

The proposed rejection of **claims 1 and 20** of the '047 patent, as set forth on pages 3-5 and 14-16 of the Request, is relied upon to show a reasonable likelihood that

the Requestor will prevail with respect to at least one of the claims of the patent. The Examiner does not deem that the Request has made an RLP showing that GPSB meets all of the limitations of claims 1 and 20.

The GPSB reference comprises pages 14 and 15 from a sales brochure, and shows photographs of the Model ADC2220 Air Drill Cart. The photographs show the cart to include a frame, a main hopper, a support arm, a conveyor, and a conveyor hopper. On page 14, the conveyor appears to be mounted on a support arm, and is shown in stored and operating positions. The support arm is arguably shown to be mounted on a base.

Although the photographs may show some other features of the cart, they do not suggest that the cart has structure which meets the limitations of the first end of the support arm being rotatable in relation to a first coupling *about a first horizontal axis of rotation* as set forth in lines 11-13 of each of claims 1 and 20 of the '047 patent.

The Request does ***not*** detail how GPSB meets most of the limitations of claims 1 and 20, but does state that this reference "teaches the same feature" as GPM-2000 (claim chart, pages 5 and 16) with respect to limitations drawn to the second vertical axis in those claims. Moreover, the Request does not assert that the support arm of GPSB is capable of rotation about a horizontal axis at its first end. As noted above, this limitation is omitted from the claim chart on pages 3-5 and 14-16.

Further, as with the GPM-2000 manual, the Examiner cannot find any suggestion in GPSB that a first end of the support arm rotates about a horizontal axis or is capable of being raised and lowered.

Therefore, the Request fails to establish that GPSB teaches each and every limitation of claims 1 and 20 of the '047 patent.

GPSB serves as the basis for the proposed rejections of depending claims 2-10, 16, 17, and 21-27.

For these reasons, the Request has ***not*** made an RLP showing that claims 1-10, 16, 17, and 20-27 are anticipated by GPSB.

GPM-2000 or GPSB in view of Adams of Baskerville The Third Party Requestor asserts that claim 20 is obvious over GPM-2000 or GPSB in view of Adams and/or Baskerville under 35 U.S.C. 103.* It is ***not*** agreed that the Request has made an RLP showing that claim 20 is unpatentable based upon the teachings of GPM-2000 or GPSB in view of Adams and/or Baskerville.

As noted above, GPM-2000 and GPSB fail to meet all of the limitations of claim 20 because they lack the teaching of the support arm being pivotable about a horizontal axis. As also noted above, the Request fails to discuss the "horizontal axis" limitation.

On page 15, the Request appears to assert that Adams and Baskerville provide teachings of a support arm that can be raised and lowered.

Specifically, the Request states that **Adams** "shows a lift device that may be used to raise and lower an auger support auger [*sic*, arm]." The Request does not

*The rejection set forth at the top of page 14 proposes only a rejection using GPM-2000 or GPSB under 35 U.S.C. 102(b). However, on page 15 Adams and Baskerville are discussed as teaching a lift device and an arm that can be positioned at an acute angle, respectively. The Request is not clear if Adams and Baskerville are to be used alternatively, or together, to modify GPM-2000 and GPSB. It will be presumed that the Requestor intended to propose an obviousness rejection for claim 20 under 35 U.S.C. 103 using Adams or Baskerville, and the Request will be treated as such.

describe any specific structure, but Adams does show a cylindrical sleeve 110 which supports an auger 62. The sleeve is pivotably coupled to a base or frame member 22 using a pivot pin 138, and a hydraulic cylinder 120 is used to raise and lower the sleeve 110 and the auger 62. It appears that the Request considers the sleeve 110 to be a support arm and the cylinder 120 is the lift device set forth in claim 20, but does not explain how or why it would have been obvious to provide the support arm of GPM-2000 or GPSB with a lift device. As noted above, the arm 15, 20 of GPM-2000 (and the arm of GPSB) is swingable about the vertical axis of the inner support arm shaft 21, and it is the conveyor 26 which may be raised and lowered about the horizontal pivot of pin 25. There would be no reason to modify the support arm to include a lift device to raise and lower the arm, and the first end of the inner arm would have to be substantially modified, and the Request does not address either of these issues.

Finally, Adams does not provide a teaching of a support arm rotatable about a *horizontal* axis, the limitation which has already been shown to be missing in GPM-2000 and GPSB. Figures 2, 2A, 3, 4, and 5 of Adams show the pivot axis of the pin 138 to be at a substantial angle to the horizontal (in figure 4 this angle appears to be about 45 degrees).

With respect to **Baskerville**, the Request states on page 15 that Baskerville "shows an arm 53 that can be positioned in an acute relative a base [*sic*, at an acute angle relative to a base]." Indeed, Baskerville does show a conveyor 31 that is supported by an arm 53, and the arm may be raised and lowered by a hydraulic lifting cylinder 64. The Request, however, does not provide a suggestion as to how the arm

53 and lift device 64 would be incorporated into the assembly of GPM-2000 or GPSB, or an explanation of how the support arm of GPM-2000 or GPSB could be modified to pivot include a lift device to raise and lower the arm. As noted above, the arm 15, 20 of GPM-2000 is swingable about the vertical axis of the inner support arm shaft 21, and the conveyor 26 may be raised and lowered about the horizontal pivot of pin 25. The Request is silent as to how the structure of the inner arm 20 and the tubular member which receives the shaft 21 would be modified, or how a lift device would be added to this structure, in light of Baskerville to allow the support arm to be positioned at an acute angle relative to the base. Even if the assembly of GPM-2000 could be modified in this way, the Request is still silent as to where a teaching to make the support arm rotatable in relation to the first coupling about a horizontal axis may be found in the references. Finally, the Request fails to propose any motivation for modifying GPM-2000 or GPSB, and does not assert any benefits to be gained from such a modification.

For these reasons, the Request has ***not*** made an RLP showing that claim 20 is obvious over GPM-2000 or GPSB, in view of Adams or Baskerville.

With respect to the **GP Photo**, **GPU**, **Convey-All**, **GPM-1997** references, and the Declarations of **Flinn** and **Marston**, the Request uses these to show limitations of depending claims, and does not assert that any of these teaches the limitation of a support arm rotatable about a *horizontal* axis, which is the limitation shown to be missing in GPM-2000 and GPSB.

Conclusion

For the reasons given above, the information presented in the Request for *inter partes* reexamination fails to show that there is a reasonable likelihood that the Requestor would prevail with respect to the following proposed rejections of claims 1-34 of the '047 patent.

Accordingly, the request for reexamination is DENIED.

Notice of Concurrent Proceedings or Litigation

The patent owner is reminded of the continuing responsibility under 37 CFR 1.985 to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 8,221,047 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2686 and 2686.06.

Service of Papers

Any paper filed by either the patent owner or the third party requester ***must be served*** on the other party in the reexamination proceeding in the manner provided by 37 CFR 1.248. See 37 CFR 1.903 and MPEP 2666.06.

Correspondence

All correspondence relating to this *inter partes* reexamination proceeding should be directed:

By EFS: Registered users may submit via the electronic filing system EFS-Web, at https://efs.uspto.gov/efile/myportal/efs-registered

By Mail to: Mail Stop *Inter Partes* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

For EFS-Web transmissions, 37 CFR 1.8(a)(1)(i) (C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the Office's electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the date of transmission, which is prior to the expiration of the set period of time in the Office action.

Any inquiry concerning this communication or earlier communications from the Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/Russell D. Stormer/

Russell D. Stormer
Primary Examiner
Central Reexamination Unit
Art Unit 3993
(571) 272-6687

Conferee: /SC/

Conferee: /AK/

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	95000691	8221047
	Examiner	Art Unit
	RUSSELL STORMER	3993

SEARCHED			
Class	Subclass	Date	Examiner
None		10/19/2012	rds

SEARCH NOTES		
Search Notes	Date	Examiner
Inspected IFW file of 12/031867	10/19/2012	rds

INTERFERENCE SEARCH			
Class	Subclass	Date	Examiner

PTO/SB/08a (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Substitute for form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 1

Complete if Known	
Application Number	95/
Filing Date	
First Named Inventor	Peterson
Art Unit	
Examiner Name	Joshua Rudawitz
Attorney Docket Number	191-013

U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US- 5,888,044	03-30-1999	Baskerville	
		US- 6,113,339	04-05-2000	Adams	
		US-			
		US-			
		US-			
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FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3]-Number[4]-Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T[6]

Examiner Signature	/Russell Stormer/ (10/26/2012)	Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. [1] Applicant's unique citation designation number (optional). [2] See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. [3] Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). [4] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [5] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [6] Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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PTO/SB/08b (07-09)
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 1

	Complete if Known
Application Number	95
Filing Date	
First Named Inventor	Peterson, et al.
Art Unit	
Examiner Name	Joshua Rudawitz
Attorney Docket Number	191-013

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T[2]
		Parts Manual, Great Plains Mfg., Inc., Salina, Kansas; Copyright 2000 Printed 3/1/2000	
		Photograph of 1997 Great Plains ADC2220 seed cart,attached to NT A3510 seed drill; www.tractorhouse.com/listingsdetail/printdetail.aspx?OHID=6818813	
		Great Plains Mfg., Inc. Sales Brochure pages ADC2220 Seed Cart; 220 Bushel Air Cart; www.greatplainsmfg.com	
		Photographs of Great Plains unit inspected	
		Photographs of 2005 Convey-All unit inspected	
		Affidavit of Erick Flinn	
		Great Plains Parts Manual dated 5/1/197	
		Affidavit of Michael D. Marston	

Examiner Signature	/Russell Stormer/ (10/26/2012)	Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /RDS/

Reexamination	**Application/Control No.** 95000691	**Applicant(s)/Patent Under Reexamination** 8221047
	Certificate Date	**Certificate Number**

Requester Correspondence Address: ☐ **Patent Owner** ☒ **Third Party**
BOTKIN & HALL, LLP 105 E. JEFFERSON BLVD. SUITE 400 SOUTH BEND, IN 46601

LITIGATION REVIEW ☒	rds (examiner initials)	10/26/2012 (date)
Case Name		Director Initials
3:12cv2248 Unverferth Manufacturing Company, Inc v.		AK for IY
Meridian Manufacturing Group, Inc		

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	**NUMBER**
1. None	

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UNITED STATES DEPARTMENT OF COMMERCE
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Alexandria, Virginia 22313-1450
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BIB DATA SHEET

CONFIRMATION NO. 1949

SERIAL NUMBER	FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
95/000,691	09/14/2012 RULE	414	3993	191-013

APPLICANTS

8221047, Residence Not Provided;
UNVERFERTH MANUFACTURING COMPANY INC.(OWNER), KALIDA, OH;
PAR-KAN COMPANY(3RD.PTY.REQ.), SILVER LAKE, IN;
PAR-KAN COMPANY(REAL PTY IN INTEREST), SILVER LAKE, IN;
BOTKIN & HALL, LLP, SOUTH BEND, IN

**** CONTINUING DATA ***************************

This application is a REX of 12/031,867 02/15/2008 PAT 8,221,047
which claims benefit of 60/901,321 02/15/2007

**** FOREIGN APPLICATIONS ***************************

**** IF REQUIRED, FOREIGN FILING LICENSE GRANTED ****

Foreign Priority claimed ☐ Yes ☑ No 35 USC 119(a-d) conditions met ☐ Yes ☑ No Verified and Acknowledged /RUSSELL D STORMER/ Examiner's Signature	☐ Met after Allowance Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS

ADDRESS

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SUITE 800
WASHINGTON, DC 20005
UNITED STATES

TITLE

SEED CARRIER WITH PIVOTING CONVEYOR

FILING FEE RECEIVED	FEES: Authority has been given in Paper No._____ to charge/credit DEPOSIT ACCOUNT No._____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

BIB (Rev. 05/07).

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CENTRAL REEXAMINATION UNIT

PATENT
Atty. Docket No. 191-013

IN THE UNITED STATES PATENTAND TRADEMARK OFFICE

Control No.	95/000,691
Filed:	September 14, 2012
For:	8,221,047
Art Unit:	3993
Atty. Docket No.	191-013
Customer No.	31179

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Inter Partes Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

October 9, 2012

Michael D. Marston
Registration No. 61,432
Attorney for Requester

Mail Stop Inter Partes Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

We have become aware of litigation regarding U.S. Patent No. 8,221,047. Case Number 3:2012cv02248 was filed in the Northern District of Ohio on September 5, 2012.

Respectfully submitted,

BOTKIN & HALL LLP

Michael D. Marston, Reg. No. 61,432
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Attorney for Requester

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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
95/000,691	09/14/2012	8221047

CONFIRMATION NO. 1949

ASSIGNMENT NOTICE

6449
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
607 14th Street, N.W.
SUITE 800
WASHINGTON, DC 20005

OC000000056867985

Date Mailed: 10/02/2012

NOTICE OF ASSIGNMENT OF *INTER PARTES* REEXAMINATION REQUEST

The above-identified request for *inter partes* reexamination has been assigned to Art Unit 3993. All future correspondence in this proceeding should be identified by the control number listed above and directed to: Mail Stop Inter Partes Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

A copy of this Notice is being sent to the latest attorney or agent of record in the patent file or, if none is of record, to all owners of record. (See 37 CFR 1.33(c).) If the addressee is not, or does not represent, the current owner, he or she is required to forward all communications regarding this proceeding to the current owner(s)

(MPEP 2222). An attorney or agent receiving this communication who does not represent the current owner(s) may wish to seek to withdraw pursuant to 37 CFR 1.36 in order to avoid receiving future communications. If the address of the current owner(s) is unknown, this communication should be returned with the request to withdraw pursuant to Section 1.36.

cc: Third Party Requester
BOTKIN & HALL, LLP
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/sdstevenson/

Legal Instruments Examiner
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
95/000,691	09/14/2012	8221047

CONFIRMATION NO. 1949

REEXAM ASSIGNMENT NOTICE

BOTKIN & HALL, LLP
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SOUTH BEND, IN 46601

OC000000056867984

Date Mailed: 10/02/2012

NOTICE OF *INTER PARTES* REEXAMINATION REQUEST FILING DATE

Requester is hereby notified that the filing date of the request for *inter partes* reexamination is 09/14/2012, the date that the filing requirements of 37 CFR § 1.915 were received.

A decision on the request for *inter partes* reexamination will be mailed within three months from the filing date of the request for *inter partes* reexamination. (See 37 CFR 1.923.)

A copy of this Notice is being sent to the person identified by the requestor as the patent owner. Further patent owner correspondence will be with the latest attorney or agent of record in the patent file. (See 37 CFR 1.33.) Any paper filed should include a reference to the present request for *inter partes* reexamination (by Reexamination Control Number) and should be addressed to: Mail Stop Inter Partes Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

cc: Patent Owner
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WASHINGTON, DC 20005

/sdstevenson/

Legal Instruments Examiner
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

Patent Assignment Abstract of Title

Total Assignments: 1

Application #: 12031867 **Filing Dt:** 02/15/2008 **Patent #:** 8221047 **Issue Dt:** 07/17/2012
PCT #: NONE **Publication #:** US20080210145 **Pub Dt:** 09/04/2008
Inventors: David Richard SMITH, Brian James Petersen
Title: SEED CARRIER WITH PIVOTING CONVEYOR

Assignment: 1

Reel/Frame: 020977 / 0564 **Received:** 05/21/2008 **Recorded:** 05/21/2008 **Mailed:** 05/21/2008 **Pages:** 2
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignors: PETERSON, BRIAN JAMES **Exec Dt:** 05/05/2008
SMITH, DAVID RICHARD **Exec Dt:** 05/05/2008
Assignee: UNVERFERTH MANUFACTURING COMPANY INC.
18107 US 224 WEST
KALIDA, OHIO 45853
Correspondent: ROTHWELL, FIGG, ERNST & MANBECK, PC
1425 K STREET NW
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WASHINGTON, DC 20005

Search Results as of: 10/01/2012 03:29 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2.1
Web interface last modified: Jan 25, 2012

Litigation Search Report CRU 3999

Reexam Control No. 95/000,691

TO: Examiner **Location: CRU** **Art Unit: 3999** **Date: 9/26/2012**	**From: Patricia Volpe** **Location: CRU 3999** **MDE 5D30** **Phone: (571) 272-6825** **Patricia.volpe@uspto.gov**

Search Notes

Litigation search for U.S. Patent Number: **8,221,047**

Status (**OPEN**) 3:12cv2248 *Unverferth Manufacturing Company, Inc v. Meridian Manufacturing Group, Inc*

1) I performed a KeyCite Search in Westlaw, which retrieves all history on the patent including any litigation.

2) I performed a search on the patent in Lexis CourtLink for any open dockets or closed cases.

3) I performed a search in Lexis in the Federal Courts and Administrative Materials databases for any cases found.

4) I performed a search in Lexis in the IP Journal and Periodicals database for any articles on the patent.

5) I performed a search in Lexis in the news databases for any articles about the patent or any articles about litigation on this patent.

Westlaw.

Date of Printing: Sep 26, 2012

KEYCITE

C US PAT 8221047 SEED CARRIER WITH PIVOTING CONVEYOR, Assignee: Unverferth Manufacturing Company, Inc. (Jul 17, 2012)

History

Direct History

=> 1 **SEED CARRIER WITH PIVOTING CONVEYOR,** US PAT 8221047 (U.S. PTO Utility Jul 17, 2012)

Patent Family

2 SEED CARRIER HAS A LATCH MECHANISM THAT COUPLES ONE END OF THE CONVEYOR WITH ONE END OF THE SUPPORT ARM SO THAT A CONVEYOR HOPPER IS POSITIONED BELOW THE DISCHARGE OF A MAIN HOPPER, Derwent World Patents Legal 2008-K18080

Assignments

3 Action: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS). Number of Pages: 002, (DATE RECORDED: May 21, 2008)

Docket Summaries

4 UNVERFERTH MANUFACTURING COMPANY, INC. v. MERIDIAN MANUFACTURING GROUP, INC, (N.D.OHIO. Sep 05, 2012) (NO. 3:12CV02248), (15 USC 1126)

Prior Art (Coverage Begins 1976)

C 5 AGRICULTURAL SEED TENDER WITH MODULAR STORAGE CONTAINERS, US PAT 7500817Assignee: KSI Conveyors, Inc., (U.S. PTO Utility 2009)

C 6 APPARATUS FOR REMOTELY OPERATING AN AUGER, US PAT 6325588Assignee: Pride Products, Inc., (U.S. PTO Utility 2001)

C 7 AUGER ASSEMBLY FOR CONVEYING GRANULAR MATERIAL, US PAT 5800116Assignee: Unverferth Manufacturing Co., Inc., (U.S. PTO Utility 1998)

C 8 AUGER HOPPER SEAL, US PAT 6209880Assignee: Unverferth Manufacturing Company, Inc., (U.S. PTO Utility 2001)

C 9 COMBINATION AUGER ARRANGEMENT AND GRAVITY BED, US PAT 3498483Assignee: JAMES L MEHARRY, (U.S. PTO Utility 1970)

C 10 COMBINE GRAIN TANK UNLOADING MECHANISM, US PAT 4037745Assignee: Deere & Company, (U.S. PTO Utility 1977)

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C 11 GRAIN BIN OUTER UNLOADING CONVEYOR SECTION SEPARATION AND CATCH BASIN, US PAT 7393275Assignee: AGCO Corporation, (U.S. PTO Utility 2008)
C 12 GRANULAR MATERIAL TRANSPORT APPARATUS, US PAT 5718556 (U.S. PTO Utility 1998)
C 13 GRAVITY BOX AND AUGER POSITIONING MECHANISM, US PAT 4742938 (U.S. PTO Utility 1988)
C 14 KIT FOR ATTACHING A PORTABLE CONVEYOR TO AN ALL TERRAIN VEHICLE OR THE LIKE, US PAT 6604620 (U.S. PTO Utility 2003)
C 15 MEANS FOR LOADING AND DISCHARGING BULK LOADS, US PAT 3090515 (U.S. PTO Utility 1963)
C 16 METHOD AND MEANS FOR FILLING FIELD PLANTERS FROM BULK SEED CONTAINERS, US PAT 5520495Assignee: Sukup Manufacturing Company, (U.S. PTO Utility 1996)
C 17 MOVABLE CONVEYOR FOR LOADING A CONTAINER, US PAT 7488149Assignee: Decker Colony Farms Ltd., (U.S. PTO Utility 2009)
C 18 PIVOTING UNLOADING AUGER, US PAT 6767174Assignee: Bourgault Industries, Inc., (U.S. PTO Utility 2004)
C 19 PROCESS AND APPARATUS FOR APPLYING PESTICIDES TO GRANULAR MATERIALS, US PAT 3968771Assignee: Chevron Research Company, (U.S. PTO Utility 1976)
C 20 SEED CARRIER WITH PIVOTING CONVEYOR, US PAT APP 20080210145Assignee: UNVERFERTH MANUFACTURING COMPANY INC., (U.S. PTO Application 2008)
C 21 SEED CART WITH LOADING/UNLOADING CONVEYOR SYSTEM, US PAT 5888044Assignee: DewEze Manufacturing, Inc., (U.S. PTO Utility 1999)
C 22 SEED DRILL FEED AUGER MOUNTING ASSEMBLY, US PAT 5529455Assignee: Kasco Mfg. Co., Inc., (U.S. PTO Utility 1996)
C 23 SEED TREATER AND CONVEYING APPARATUS, US PAT 4503803 (U.S. PTO Utility 1985)
C 24 TRANSPORT CONVEYOR FOR PARTICULATE MATERIAL, US PAT APP 20030057055 (U.S. PTO Application 2003)
C 25 TRUCK AUGER-HOPPER CONSTRUCTIONS, US PAT 4411581 (U.S. PTO Utility 1983)
C 26 VEHICLE MOUNTED CONVEYOR, US PAT 3493136Assignee: SPELLMAN HYDRAVEYOR, INC., (U.S. PTO Utility 1970)

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US District Court Civil Docket

U.S. District - Ohio Northern
(Toledo)

3:12cv2248

Unverferth Manufacturing Company, Inc v. Meridian Manufacturing Group, Inc

This case was retrieved from the court on Wednesday, September 05, 2012

Date Filed:	**09/05/2012**	**Class Code:**	**OPEN**
Assigned To:		**Closed:**	**No**
Referred To:		**Statute:**	**15:1126**
Nature of suit:	**Patent (830)**	**Jury Demand:**	**Plaintiff**
Cause:	**Patent Infringement**	**Demand Amount:**	**$0**
Lead Docket:	**None**	**NOS Description:**	**Patent**
Other Docket:	**None**		
Jurisdiction:	**Federal Question**		

Litigants	Attorneys
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Meridian Manufacturing Group, Inc Defendant	

Date	#	Proceeding Text	Source
09/05/2012	1	Complaint with jury demand against Meridian Manufacturing Group, Inc.. Filing fee paid $ 350, Receipt number 0647-5564384. Filed by Unverferth Manufacturing Company, Inc.. (Attachments: # 1 Exhibit A - 047 Patent, # 2 Civil Cover Sheet) (Lavalette, Peter) (Entered: 09/05/2012)	
09/05/2012	2	Corporate Disclosure Statement filed by Unverferth Manufacturing Company, Inc.. (Lavalette, Peter) (Entered: 09/05/2012)	Events since last full update
09/05/2012	--	Judge James G. Carr assigned to case. Recused pursuant to General Order No. 2012-11. (M,L) (Entered: 09/05/2012)	Events since last full update
09/05/2012	--	Judge Jeffrey J. Helmick assigned to case. Judge James G. Carr terminated. (M,L) (Entered: 09/05/2012)	Events since last full update
09/05/2012	--	Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the	Events

		event of a referral, case will be assigned to Magistrate Judge James R. Knepp, II. (M,L) (Entered: 09/05/2012)	 since last full update
09/05/2012	3	Magistrate Consent Form issued. Summons were not provided and were not issued. (M,L) (Entered: 09/05/2012)	Events since last full update
09/05/2012	--	This action has been identified as a Patent Case that is subject to the Local Patent Rules. Link to Local Patent Rules. (M,L) (Entered: 09/05/2012)	Events since last full update
09/25/2012	4	Motion for attorney Joseph A. Hynds to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-5601929, filed by Plaintiff Unverferth Manufacturing Company, Inc.. (Attachments: # 1 Affidavit of Joseph A. Hynds in Support of Motion For Admission Pro Hac Vice, # 2 Exhibit Certificate of Good Standing for Joseph A. Hynds from Supreme Court of Virginia)(Lavalette, Peter) (Entered: 09/25/2012)	Events since last full update
09/25/2012	5	Motion for attorney Brian A. Tollefson to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0647-5601941, filed by Plaintiff Unverferth Manufacturing Company, Inc.. (Attachments: # 1 Affidavit of Brian A. Tollefson in Support of Motion For Admission Pro Hac Vice, # 2 Exhibit Certificate of Good Standing of Brian A. Tollefson from Court of Appeals of Maryland)(Lavalette, Peter) (Entered: 09/25/2012)	Events since last full update

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031867 (12) 8221047 July 17, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

8221047

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July 17, 2012

Seed carrier with pivoting conveyor

REEXAM-LITIGATE:

NOTICE OF LITIGATION

Unverferth Manufacturing Company, Inc v. Meridian Manufacturing Group, Inc, Filed September 5, 2012, D.C. N.D. Ohio, Doc. No. 3:12cv2248

INVENTOR: Petersen, Brian James - Ottawa, Ohio, United States of America (US), United States of America () ; Smith, David Richard - Fort Jennings, Ohio, United States of America (US), United States of America ()

APPL-NO: 031867 (12)

FILED-DATE: February 15, 2008

GRANTED-DATE: July 17, 2012

ASSIGNEE-PRE-ISSUE:
May 21, 2008 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., UNVERFERTH MANUFACTURING COMPANY INC., 18107 US 224 WEST, KALIDA, OHIO, UNITED STATES OF AMERICA (US), 45853, Reel and Frame Number: 020977/0564

ASSIGNEE-AT-ISSUE:
Unverferth Manufacturing Company, Inc., Kalida, Ohio, United States of America (US), United States company or corporation (02)

PRIM-EXMR: Rudawitz, Joshua

CORE TERMS: conveyor, hopper, seed, arm, coupled, belt, roller, carrier, coupling, pivot, pin, unloading, grain, hydraulic, pivoting, gravity, loading, rotate, hole, rotated, belt driven, channeling, transport, handle, lever, tube, near, seal, side view, implemented

ENGLISH-ABST:

A seed carrier includes a main hopper coupled with a frame via leg members. The main hopper has a discharge. A base plate is coupled with the frame. A support arm is rotatably coupled with the base plate at a first end. A belt driven conveyor having a conveyor hopper at a first end and a discharge at a second end is rotatably coupled with a second end of said support arm at an approximate center of gravity thereof. A latch mechanism is provided for detachably coupling the first end of the conveyor with the first end of the support arm such that the conveyor

hopper is position below the main hopper discharge. When the conveyor is uncoupled from the first end of the support arm, the conveyor can rotate to a loading position wherein the discharge thereof can be positioned over the main hopper.

NO-OF-CLAIMS: 34

Source: **Legal > / . . . / > Utility, Design and Plant Patents** i
Terms: **PATNO=8221047** (Suggest Terms for My Search)
View: Custom
Segments: Abst, Appl-no, Assignee, Exmr, Inventor, Lit-reex, No-of-claims, Patno, Reexam-litigate, Reissue
Date/Time: Wednesday, September 26, 2012 - 2:17 PM EDT

In

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1. U.S. Patents Awarded to Inventors in Ohio (July 23), Targeted News Service, July 23, 2012 Monday 2:03 PM EST, , 6348 words, Targeted News Service Targeted News Service, Alexandria, VA.

2. Unverferth Manufacturing Assigned Patent, Targeted News Service, July 23, 2012 Monday 1:58 AM EST, , 277 words, Targeted News Service, Alexandria, Va.

3. US Patent Issued to Unverferth Manufacturing on July 17 for "Seed Carrier with Pivoting Conveyor" (Ohio Inventors), US Fed News, July 18, 2012 Wednesday 4:24 AM EST, , 262 words, ALEXANDRIA, Va.

Source: **Combined Source Set 3 [i] - News, Most Recent Two Years (English, Full Text)**
Terms: **8221047 OR 8,221,047** (Suggest Terms for My Search)
View: Cite
Date/Time: Wednesday, September 26, 2012 - 2:18 PM EDT

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Patent Assignment Abstract of Title

Total Assignments: 1

Application #: 12031867 **Filing Dt:** 02/15/2008 **Patent #:** 8221047 **Issue Dt:** 07/17/2012
PCT #: NONE **Publication #:** US20080210145 **Pub Dt:** 09/04/2008
Inventors: David Richard SMITH, Brian James Petersen
Title: SEED CARRIER WITH PIVOTING CONVEYOR

Assignment: 1

Reel/Frame: 020977 / 0564 **Received:** 05/21/2008 **Recorded:** 05/21/2008 **Mailed:** 05/21/2008 **Pages:** 2
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignors: PETERSON, BRIAN JAMES **Exec Dt:** 05/05/2008
SMITH, DAVID RICHARD **Exec Dt:** 05/05/2008
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Search Results as of: 09/24/2012 11:44 AM

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Web interface last modified: Jan 26, 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE 68354 U.S. P

PATENT NO.: 8,221,047

ISSUED: July 17, 2012

TO: Peterson et al.

FOR: SEED CARRIER WITH PIVOTING CONVEYOR

REQUEST FOR *INTER PARTES* REEXAMIATION

Sir:

On behalf of Par-Kan Company, organized under the laws of the State of Indiana, Botkin & Hall, LLP respectfully requests *inter partes* reexamination under 35 U.S.C. §§ 311-318 and 37 C.F.R. § 1.913 of every claim of the United States Patent No. 8,221,047 ("the '047 patent") issued July 17, 2012 to Peterson et al. because they are invalid under 35 U.S.C. § 102 and 35 U.S.C. § 103. Par-Kan Company is the real party in interest and hereby certifies that the estoppel provisions of 37 C.F.R § 1.907 do not prohibit this request for *inter partes* reexamination.

THE SUBSTANTIAL NEW QUESTIONS OF PATENTABILITY

The substantial new questions of patentability raised by this request are whether all of the Claims 1-34 of the '047 patent are invalid over prior art. The prior art in the attached Appendixes being:

1. Great Plains Manual dated 3/1/2000 – Appendix B
2. Great Plains Photo – Appendix C
3. Great Plains Sales Brochure – Appendix D

4. Photos of Great Plains Unit Inspected – Appendix E

5. Photos of Convey-all Unit Inspected – Appendix F

6. Affidavit of Erick Flinn – Appendix G

7. Great Plains Manual dated 5/1/97 – Appendix H

8. Affidavit of Michael D. Marston – Appendix I

9. U.S. Patent No. 5,888,044 (Baskerville) – Appendix J

10. U.S. Patent No. 6,113,339 (Adams) – Appendix K

Claims 1-19 are anticipated under 35 U.S.C. § 102 by Great Plains Manual, Great Plains Photo and Great Plains Sales Brochure. Also, Claims 11-15, 18, 19 are obvious under 35 U.S.C. 103 in addition to the anticipation of Claim 1, from which these claims depend, for the reasons stated below in the detailed explanation. Another question of patentability is whether claims 20-34 are obvious over the Great Plains references mentioned above in view of Adams (U.S. Pat. No. 6,113,339) and/or other references contained herein that were not of record in the prosecution of the '047 patent. The detailed reasons for the lack of patentability are listed in the detailed explanation below.

The above prior art references in the Appendixes that, aside from Baskerville, were not considered clearly show that the '047 patent should not have been granted. The Great Plains Manual dated 3/1/2000, which was readily purchased on the internet, and the Great Plains Manual dated 5/1/97, obtained from Great Plains Manufacturing Company, anticipates under 35 U.S.C. § 102 every one of claims 1-19. The Great Plains Manuals of Appendixes B and H were published well before the 2006 filing date of the provisional application from which the '047 patent claims priority and show the details of an ADC2220 seed tender. The Great Plains Photo of Appendix D is a sales listing for a used ADC2220 seed tender that shows the ADC2220 that was described in both manuals and describes the functionality that is shown in the Great Plains Manuals of Appendixes B and H. The affidavit of Michael D. Marston also confirms that Great Plains Manufacturing Company verifies that the ADC2220 unit in the sales listing shown, in Appendix C, was manufactured in 1997. Erick Flinn, an engineer skilled in the art of designing

seed tenders, also testifies in his affidavit of Appendix G, that he personally saw the ADC2220 and how it functions. The functionality informs to the skill in the art and to the fact that the ADC2220 shown in the Great Plains Manual was well known from printed publications describing it accurately, at least as early as 1997. Photos shown in Appendix E were taken during Mr. Flinn's inspection of the Great Plains ADC2220. Additionally, Mr. Flinn inspected a Convey-all BTS-405 seed tender that shows the use of a spring pin as a locking mechanism into holes to lock the position of a belt driven conveyor. He also verifies that this unit was manufactured in 2005. Additionally, Adams, which was filed on Dec, 31, 1997 and issued on September 5, 2000, illustrates that using a hydraulic cylinder attached to a base of a seed wagon was common knowledge well before the filing of the '047 patent. Baskerville was cited by the Examiner in the original prosecution history of the '047 patent, however, could not be combined with the other prior art references in the Appendixes due to those references not being before the Examiner at the time of examination.

Detailed Explanation Under 37 CFR 1.915(b)

1. Claim 1 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

U.S. Patent 8,221,047	Great Plains Manual dated 3/1/2000
Claim 1. A seed or grain tender comprising: a frame...	teaches a frame as shown on page 7-1, which is dated 3/16/1998. The frame supports wheel hubs shown on the same page. The frame is also taught on page 2-1, which shows the components of the frame. The frame is below the hopper.
... a main hopper mounted on said frame and having a main hopper discharge...	Great Plains Manual dated 3/1/2000 teaches hoppers shown on the cover page. Page 2-13 shows how the hopper assembles on top of the frame.

a base mounted on said frame below said main hopper discharge	Great Plains Manual dated 3/1/2000 teaches a base on Pages 2-13, and 7-1.
a support arm having first and second ends	Great Plains Manual dated 3/1/2000 teaches on page 7-1 a support arm numbered 15, this support arm has a first end that pivots about pivot spacer tube 12 (described on page 7-2), the support arm also has a second end that receives auger swivel support 18 (described on page 7-2)
a first coupling connecting said first end of said support arm with said base	Great Plains Manual dated 3/1/2000 teaches an arm pivotally connected on page 7-1.
said first coupling being rotatable in relation to said base about a first vertical axis of rotation	Great Plains Manual dated 3/1/2000 teaches the first coupling is spacer pivot tube 12 on page 7-1 that is mated with bolt 24 that forms a first vertical axis of rotation
a conveyor having a longitudinal axis and first and second ends	Great Plains Manual dated 3/1/2000 teaches conveyor 26 has first and second ends on page 7-1.
a conveyor hopper at said first end, a conveyor discharge at said second end	Great Plains Manual dated 3/1/2000 teaches on page 7-1 the conveyor 26 has a hopper 43 at a first end and a discharge near the end proximate the number 26.
and an internal elevator for moving seed or grain from said conveyor hopper to said	Great Plains Manual dated 3/1/2000 teaches that the conveyor is an auger type

conveyor discharge	conveyor as known to those skilled in the art and as described on page 7-2.
...said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper	Great Plains Manual dated 3/1/2000 on the cover page shows the auger in a stowed position along side the hoppers. It also shows the auger on 6-1. Page 7-1 shows that it is pivotally connected in two places that would allow it to pivot into the positions called for in Claim 1 as would be known to one of basic skill in the art. Great Plains Sales Brochure teaches the same feature by explicitly stating the positions of the same which pertain to the same ADC2220 model shown in the Great Plains Manual dated 3/1/2000.

2. Claim 2 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000.

Claim 2. The seed or grain tender of claim 1, wherein said support arm extends upwardly at an acute angle from said base	Great Plains Manual dated 3/1/2000 teaches on page 7-1 the same acute angle as Claim 2.

3. Claim 3 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 3. The seed or grain tender of claim 2, wherein said conveyor is parallel to said support arm in said unloading position wherein said conveyor is parallel to said support arm in said unloading position.	Great Plains Manual dated 3/1/2000 teaches one skilled in the art that the auger would be substantially parallel to the arm when the auger is positioned to be below the discharge of the hopper. The relationships leading to this are shown on page 7-1. Great Plains Sales Brochure the great plains sales brochure teaches the same.

4. Claim 4 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 4. The seed or grain tender of claim 3, wherein said conveyor is disposed above said support arm in said unloading position.	Great Plains Manual dated 3/1/2000 teaches one of ordinary skill in the art that this would necessarily be true due to the pivot points provided as shown on page 7-1.

5. Claim 5 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000.

Claim 5. The seed or grain tender of claim 1, wherein said conveyor is rotatable in relation to said second coupling about a second horizontal axis of rotation.	Great Plains Manual dated 3/1/2000 teaches one of ordinary skill in the art that this would necessarily be true due to the pivot points within part 18 (auger swivel support as named on page 7-2 and shown on page 7-1).

6. Claim 6 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000.

Claim 6. The seed or grain tender of claim 5, wherein said second horizontal axis of rotation extends through said second coupling	Great Plains Manual dated 3/1/2000 shows the pivot points within part 18 (auger swivel support as named on page 7-2 and shown on page 7-1) which serves as the second coupler.

7. Claim 7 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 7. The seed or grain tender of claim 1, further comprising a stand coupled with said first end of said conveyor and movable between a stowed position allowing said conveyor hopper to be positioned below said main hopper discharge when said conveyor is in said unloading position and an extended	Great Plains Manual dated 3/1/2000 shows a stand in the upper right corner near number 44 on which the auger rests when it is upon the ground.

position supporting said conveyor hopper above the ground when said conveyor is in said loading position.	

8. Claim 8 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000.

Claim 8. The seed or grain tender of claim 1, wherein said first vertical axis extends through said first end of said support arm.	Great Plains Manual dated 3/1/2000 shows the vertical axis being about the pivot spacer tube 12 in the first end of the arm 15 as shown on page 7-1.

9. Claim 9 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000. Claim 9 of U.S. Patent 8,221,047 is also unpatentable under 35 U.S.C. 103 as obvious over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Photos of Convey-all Unit inspected.

Claim 9. The seed or grain tender of claim 1, wherein said first vertical axis extends through said base.	Great Plains Manual dated 3/1/2000 shows the vertical axis being about the pivot spacer tube 12 in the first end of the arm 15 as shown on page 7-1. Also, the inner arm 20 pivots about shaft 21 as shown on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a vertical axis about which the first axis of the arm pivots, as shown in FIGS. 1 and 2. Photos of 2005 Convey-all Unit Inspected show a vertical pivot axis on pages 3 and 4 of Appendix F.

10. Claim 10 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000.

Claim 10. The seed or grain tender of claim 1, wherein said second end of said support arm terminates at or near said approximate center of gravity of said conveyor.	Great Plains Manual dated 3/1/2000 shows the auger swivel support 18 connected at the approximate center of gravity of the conveyor.

11. Claim 11 is unpantable as obvious under 35 U.S.C. 103 over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 11. The seed or grain tender of claim 1, wherein said first end of said support arm is fixed at a first height and said second end of said support arm is pivotable between a range of heights.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

12. Claim 12 is unpantable as obvious under 35 U.S.C. 103 over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 12. The seed or grain tender of claim 1, further comprising a lift device for adjusting a height of said second end of said support arm.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

13. Claim 13 is unpantable as obvious under 35 U.S.C. 103 over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 13. The seed or grain tender of claim 12, wherein said lift device is a pressurized cylinder.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

14. Claim 14 is unpantable as obvious under 35 U.S.C. 103 over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 14. The seed or grain tender of claim 12, wherein said lift device is a hydraulic cylinder.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

15. Claim 15 of U.S. Patent 8,221,047 is unpantable as obvious under 35 U.S.C. 103 over the Great Plains Manual dated 3/1/2000 in view of Adams, U.S. Pat. No. 6,113,339 and in further view of Baskerville, U.S. Pat. No. 5,888,044.

Claim 15. The seed or grain tender of claim 1, wherein said first coupling is a U-shaped member with a horizontal base portion and a pair of upright portions, and wherein said first horizontal axis extends through said upright portions of said first coupling.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Adams, U.S. Pat. No. 6,113,339 shows in FIG. 2A a pair of upright members through which axis 140 passes to form a U-shaped member. Baskerville, U.S. Pat. No. 5,888,044 shows a pin and clevis U-shaped connection at the first end of arm 53 in FIG. 4 which is well known to those skilled in the art. The sides of this clevis being substantially vertical as would be necessary to raise and lower the arm 53 as shown in FIG. 4. Photos of 2005 Convey-all Unit Inspected show a pin and clevis connection on page 3 of Appendix F.

16. Claim 16 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000.

Claim 16. The seed or grain tender of claim 1, further comprising a locking mechanism for locking or unlocking said support arm in relation to said base.	Great Plains Manual dated 3/1/2000 shows a locking mechanism numbered 1 on page 7-1. The mechanism includes parts 2-8.

17. Claim 17 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000. Claim 17 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 103 as obvious over Great Plains Manual dated 3/1/200 or Great Plains Manual dated 5/1/97 in view of Photos of 2005 Convey-all Unit Inspected.

Claim 17. The seed or grain tender of claim 16, wherein said locking mechanism includes a pin releasably engageable with one of a plurality of holes formed in said base.	Great Plains Manual dated 3/1/2000 pages 7-1 and 7-2 dated 3/16/1998 show that pin 46 and cotter pin 47 may be used to lock the arms 15 and 20 due to pin 46 being inserted into at least one mating hole on the frame. Photos of 2005 Convey-all Unit Inspected show a spring pin engaging a plurality of holes to a rail welded to a fame below the hopper on page 4 of Appendix F.

18. Claim 18 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 103 as obvious over Great Plains Manual dated 3/1/2000 or Great Plains Manual dated 5/1/97 in view Photos of 2005 Convey-all Unit Inspected.

Claim 18. The seed or grain tender of claim 17, wherein said pin is spring-biased toward said holes in said base.	Photos of 2005 Convey-all Unit Inspected show a spring pin engaging a plurality of holes to a rail welded to a fame below the hopper on page 4 of Appendix F.

19. Claim 19 is obvious under 35 U.S.C. 103 to those skilled in the art of seed tenders as stated in Affidavit of Erick Flinn and shown in Photos of 2005 Convey-all Unit Inspected.

Claim 19. The seed or grain tender of claim 17, wherein said internal elevator includes a motor-driven belt.	Photos of 2005 Convey-all Unit Inspected show a belt driven conveyor on pages 3 and 4 of Appendix F. Affidavit of Erick Flinn states in paragraph 5 that using a belt on a conveyor is well known to those skilled in the art.

20. Claim 20 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

U.S. Patent 8,221,047	Great Plains Manual dated 3/1/2000
Claim 20. A seed or grain tender comprising: a frame...	teaches a frame as shown on page 7-1, which is dated 3/16/1998. The frame supports wheel hubs shown on the same page. The frame is also taught on page 2-1, which shows the components of the frame. The frame is below the hopper.
a main hopper mounted on said frame and having a main hopper discharge	Great Plains Manual dated 3/1/2000 teaches hoppers shown on the cover page. Page 2-13 shows how the hopper assembles on top of the frame.
a base mounted on said frame below said main hopper discharge	Great Plains Manual dated 3/1/2000 teaches a base on Pages 2-13, and 7-1.
a support arm having first and second ends	Great Plains Manual dated 3/1/2000 teaches on page 7-1 a support arm numbered 15, this support arm has a first end that pivots about pivot spacer tube 12 (described on page 7-2), the support arm also has a second end that receives auger swivel support 18 (described on page 7-2)
a first coupling connecting said first end of said support arm with said base	Great Plains Manual dated 3/1/2000 teaches an arm pivotally connected on page 7-1.

said first coupling being rotatable in relation to said base about a first vertical axis of rotation	Great Plains Manual dated 3/1/2000 teaches the first coupling is spacer pivot tube 12 on page 7-1 that is mated with bolt 24 that forms a first vertical axis of rotation.
a lift device extending from said base to a portion of said support arm between said first and second ends such that said support arm extends upwardly at an acute angle from said base	Adams, U.S. Pat. No. 6,113,339 shows a lift device that may be used to raise and lower an auger support auger in FIG. 3 Baskerville, U.S. Pat. No. 5,888,044 shows an arm 53 that can be positioned in an acute relative a base
a conveyor having a longitudinal axis and first and second ends	Great Plains Manual dated 3/1/2000 teaches conveyor 26 has first and second ends on page 7-1.
a conveyor hopper at said first end, a conveyor discharge at said second end	Great Plains Manual dated 3/1/2000 teaches on page 7-1 the conveyor 26 has a hopper 43 at a first end and a discharge near the end proximate the number 26.
motor-driven elevator for moving seed or grain from said conveyor hopper to said conveyor discharge	Great Plains Manual dated 3/1/2000 teaches that the conveyor is an auger type conveyor as known to those skilled in the art and as described on page 7-2.

a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis, and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper, wherein said conveyor is disposed parallel to and above said support arm in said unloading position; and a locking mechanism for locking and unlocking said support arm in relation to said base.	Great Plains Manual dated 3/1/2000 on the cover page shows the auger in a stowed position along side the hoppers. It also shows the auger on 6-1. Page 7-1 shows that it is pivotally connected in two places that would allow it to pivot into the positions called for in Claim 1 as would be known to one of basic skill in the art. Great Plains Sales Brochure teaches the same feature by explicitly stating the positions of the same which pertain to the same ADC2220 model shown in the Great Plains Manual dated 3/1/2000.

21. Claim 21 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 21. The seed or grain tender of claim 20, wherein said conveyor is disposed above said support arm in said unloading position.	Great Plains Manual dated 3/1/2000 shows the conveyor as described on Page 7-1.

22. Claim 22 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 22. The seed or grain tender of claim 20, wherein said conveyor is rotatable in relation to said second coupling about a second horizontal axis of rotation.	Great Plains Manual dated 3/1/2000 teaches one of ordinary skill in the art that this would necessarily be true due to the pivot points within part 18 (auger swivel support as named on page 7-2 and shown on page 7-1).

23. Claim 23 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 23. The seed or grain tender of claim 22, wherein said second horizontal axis of rotation extends through said second coupling.	Great Plains Manual dated 3/1/2000 teaches one of ordinary skill in the art that this would necessarily be true due to the pivot points within part 18 (auger swivel support as named on page 7-2 and shown on page 7-1).

24. Claim 24 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 24. The seed or grain tender of claim 20, further comprising a stand coupled with said first end of said conveyor and movable between a stowed position allowing said conveyor hopper to be positioned below said main hopper discharge when said conveyor is in said unloading position and an extended position supporting said conveyor hopper above the ground when said conveyor is in said loading position.	Great Plains Manual dated 3/1/2000 shows a stand in the upper right corner near number 44 on which the auger rests when it is upon the ground.

25. Claim 25 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 25. The seed or grain tender of claim 20, wherein said first vertical axis extends through said first end of said support arm.	Great Plains Manual dated 3/1/2000 shows the first axis extending through the first end of the support arm on page 7-1.

26. Claim 26 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure. Claim 26 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 103 as obvious over Great Plains Manual dated 3/1/2000 or Great Plains Manual dated 5/1/97 in view of Photos of 2005 Convey-all Unit Inspected.

Claim 26. The seed or grain tender of claim 20, wherein said first vertical axis extends through said base.	Great Plains Manual dated 3/1/2000 shows the vertical axis extending through a base. Photos of 2005 Convey-all Unit Inspected show a vertical pivot axis on pages 3 and 4 of Appendix F.

27. Claim 27 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000, also being anticipated by the Great Plains sales brochure.

Claim 28. The seed or grain tender of claim 20, wherein said second end of said support arm terminates at or near said approximate center of gravity of said conveyor.	Great Plains Manual dated 3/1/2000 shows the auger swivel support 18 connected at the approximate center of gravity of the conveyor.

28. Claim 28 of U.S. Patent 8,221,047 is unpantable as obvious over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 28. The seed or grain tender of claim 20, wherein said first end of said support arm is fixed at a first height and said second end of said support arm is pivotable between a range of heights.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

29. Claim 29 of U.S. Patent 8,221,047 is unpantable as obvious over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 29. The seed or grain tender of claim 20, wherein said lift device is a pressurized cylinder.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

30. Claim 30 of U.S. Patent 8,221,047 is unpantable as obvious over the Great Plains Manual dated 3/1/2000 in view of Baskerville, U.S. Pat. No. 5,888,044 or Adams, U.S. Pat. No. 6,113,339.

Claim 30. The seed or grain tender of claim 20, wherein said lift device is a hydraulic cylinder.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1.

	Baskerville, U.S. Pat. No. 5,888,044 shows a hydraulic cylinder 64 in FIG. 1 that may be used to raise and lower the arm 53. Adams, U.S. Pat. No. 6,113,339 shows a hydraulic cylinder 122 acting as an arm that may be used to raise and lower the auger in FIG. 3.

31. Claim 31 of U.S. Patent 8,221,047 is unpantable as obvious under 35 U.S.C. 103 over the Great Plains Manual dated 3/1/2000 in view of Adams, U.S. Pat. No. 6,113,339 and in further view of Baskerville, U.S. Pat. No. 5,888,044 or Photos of 2005 Convey-all Unit Inspected.

Claim 31. The seed or grain tender of claim 20, wherein said first coupling is a U-shaped member with a horizontal base portion and a pair of upright portions, and wherein said first horizontal axis extends through said upright portions of said first coupling.	Great Plains Manual dated 3/1/2000 shows the support arm 15 on page 7-1. Adams, U.S. Pat. No. 6,113,339 shows in FIG. 2A a pair of upright members through which axis 140 passes to form a U-shaped member. Baskerville, U.S. Pat. No. 5,888,044 shows a pin and clevis U-shaped connection at the first end of arm 53 in FIG. 4 which is well known to those skilled in the art. The sides of this clevis being substantially vertical as would be necessary to raise and lower the arm 53 as shown in FIG. 4. Photos of 2005 Convey-all Unit Inspected show a pin and clevis connection on page 3 of Appendix F.

32. Claim 32 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 102(b) as being anticipated by Great Plains Manual dated 3/1/2000. Claim 32 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 103 as obvious over Great Plains Manual dated 3/1/200 or Great Plains Manual dated 5/1/97 in view of Photos of 2005 Convey-all Unit Inspected.

Claim 32. The seed or grain tender of claim 20, wherein said locking mechanism includes a pin releasably engageable with one of a plurality of holes formed in said base.	Great Plains Manual dated 3/1/2000 pages 7-1 and 7-2 dated 3/16/1998 show that pin 46 and cotter pin 47 may be used to lock the arms 15 and 20 due to pin 46 being inserted into at least one mating hole on the frame. Photos of 2005 Convey-all Unit Inspected show a spring pin engaging a plurality of holes to a rail welded to a fame below the hopper on page 4 of Appendix F.

33. Claim 33 of U.S. Patent 8,221,047 is unpatentable under 35 U.S.C. 103 as obvious over Great Plains Manual dated 3/1/2000 or Great Plains Manual dated 5/1/97 in view Photos of 2005 Convey-all Unit Inspected.

Claim 33. The seed or grain tender of claim 32, wherein said pin is spring-biased toward said holes in said base.	Photos of 2005 Convey-all Unit Inspected show a spring pin engaging a plurality of holes to a rail welded to a fame below the hopper on page 4 of Appendix F.

34. Claim 34 is obvious under 35 U.S.C. 103 to those skilled in the art of seed tenders as stated in Affidavit of Erick Flinn and shown in Photos of 2005 Convey-all Unit Inspected.

Claim 34. The seed or grain tender of claim 20, wherein said internal elevator includes a motor-driven belt.	Photos of 2005 Convey-all Unit Inspected show a belt driven conveyor on pages 3 and 4 of Appendix F. Affidavit of Erick Flinn states in paragraph 5 that using a belt on a conveyor is well known to those skilled in the art.

CONCLUSION

For the reasons given above, each of the claims of the '047 patent are invalid for being anticipated and/or obvious in light of the prior art provided. Only the Baskerville reference was cited in the examination of the '047 patent, and absent Baskerville, the claims of the '047 patent would be invalid in light of the additional prior art brought forth that was not before the Examiner at the time of the examination of the '047 patent. In the original prosecution of the '047 patent, Baskerville could not be combined with the other references due to the fact that the Examiner did not consider them at that time. As such, we respectfully request that all of the claims of the '047 patent be reexamined *inter partes* and ultimately cancelled.

9/14/12

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PTO/SB/81 (01-09)
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Application Number	
Filing Date	
First Named Inventor	Petersen
Title	Seed Carrier With Pivoting...
Art Unit	
Examiner Name	
Attorney Docket Number	191-013

I hereby revoke all previous powers of attorney given in the above-identified application.

☐ A Power of Attorney is submitted herewith.

OR

☒ I hereby appoint Practitioner(s) associated with the following Customer Number as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

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☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Email			

I am the:

☒ Applicant/Inventor. Person requesting inter partes reexamination of U.S. Patent 8,221,047

OR

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) (Form PTO/SB/96) submitted herewith or filed on _____.

SIGNATURE of Applicant or Assignee of Record

Signature	Michael D. Marston	Date	9/14/12
Name	Michael D. Marston	Telephone	(574) 234-3900
Title and Company	Attorney for Requester		

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The undersigned certifies that a copy of this Request for *Inter Partes* Reexamination in its entirety, including all accompanying documents, is being deposited with the U.S. Postal Service as Express Mail delivery on the date of the signature below in an envelope addressed to the attorney of record for the Petersen U.S. Patent 8,221,047 as provided for in 37 C.F.R. § 1.33(c):

ROTHWELL, FIGG, ERNST & MANBECK P.C.
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 1

Complete if Known	
Application Number	95/
Filing Date	
First Named Inventor	Peterson
Art Unit	
Examiner Name	Joshua Rudawitz
Attorney Docket Number	191-013

U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US- 5,888,044	03-30-1999	Baskerville	
		US- 6,113,339	04-05-2000	Adams	
		US-			
		US-			
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FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3]-Number[4]-Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T[6]

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. [1] Applicant's unique citation designation number (optional). [2] See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. [3] Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). [4] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [5] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [6] Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 1

Complete if Known	
Application Number	95
Filing Date	
First Named Inventor	Peterson, et al.
Art Unit	
Examiner Name	Joshua Rudawitz
Attorney Docket Number	191-013

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T[2]
		Parts Manual, Great Plains Mfg., Inc., Salina, Kansas; Copyright 2000 Printed 3/1/2000	
		Photograph of 1997 Great Plains ADC2220 seed cart,attached to NT A3510 seed drill; www.tractorhouse.com/listingsdetail/printdetail.aspx?OHID=6818813	
		Great Plains Mfg., Inc. Sales Brochure pages ADC2220 Seed Cart; 220 Bushel Air Cart; www.greatplainsmfg.com	
		Photographs of Great Plains unit inspected	
		Photographs of 2005 Convey-All unit inspected	
		Affidavit of Erick Flinn	
		Great Plains Parts Manual dated 5/1/197	
		Affidavit of Michael D. Marston	

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached.

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APPENDIX A

U.S. Patent No. 8,221,047

US008221047B2

(12) **United States Patent**
Petersen et al.

(10) **Patent No.: US 8,221,047 B2**
(45) **Date of Patent: Jul. 17, 2012**

(54) **SEED CARRIER WITH PIVOTING CONVEYOR**

(75) Inventors: **Brian James Petersen**, Ottawa, OH (US); **David Richard Smith**, Fort Jennings, OH (US)

(73) Assignee: **Unverferth Manufacturing Company, Inc.**, Kalida, OH (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 56 days.

(21) Appl. No.: **12/031,867**

(22) Filed: **Feb. 15, 2008**

(65) **Prior Publication Data**

US 2008/0210145 A1 Sep. 4, 2008

Related U.S. Application Data

(60) Provisional application No. 60/901,321, filed on Feb. 15, 2007.

(51) **Int. Cl.**
B60P 1/00 (2006.01)

(52) **U.S. Cl.** **414/523**; 198/312

(58) **Field of Classification Search** 414/523; 111/11; 198/312, 315, 316.1, 317, 318
See application file for complete search history.

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Model 2300 Air System and the Model 4800 Air Drill, both made and sold by Concord, as illustrated in the Concord brochure, 12 pages.

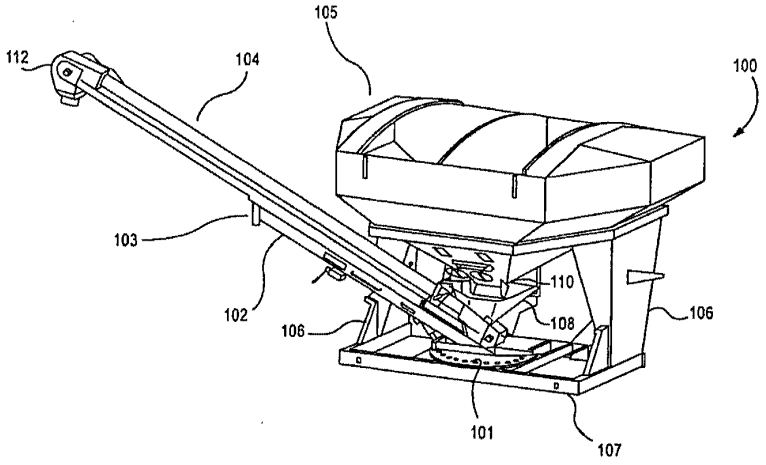
* cited by examiner

Primary Examiner — Joshua Rudawitz
(74) *Attorney, Agent, or Firm* — Rothwell, Figg, Ernst & Manbeck, P.C.

(57) **ABSTRACT**

A seed carrier includes a main hopper coupled with a frame via leg members. The main hopper has a discharge. A base plate is coupled with the frame. A support arm is rotatably coupled with the base plate at a first end. A belt driven conveyor having a conveyor hopper at a first end and a discharge at a second end is rotatably coupled with a second end of said support arm at an approximate center of gravity thereof. A latch mechanism is provided for detachably coupling the first end of the conveyor with the first end of the support arm such that the conveyor hopper is position below the main hopper discharge. When the conveyor is uncoupled from the first end of the support arm, the conveyor can rotate to a loading position wherein the discharge thereof can be positioned over the main hopper.

34 Claims, 11 Drawing Sheets



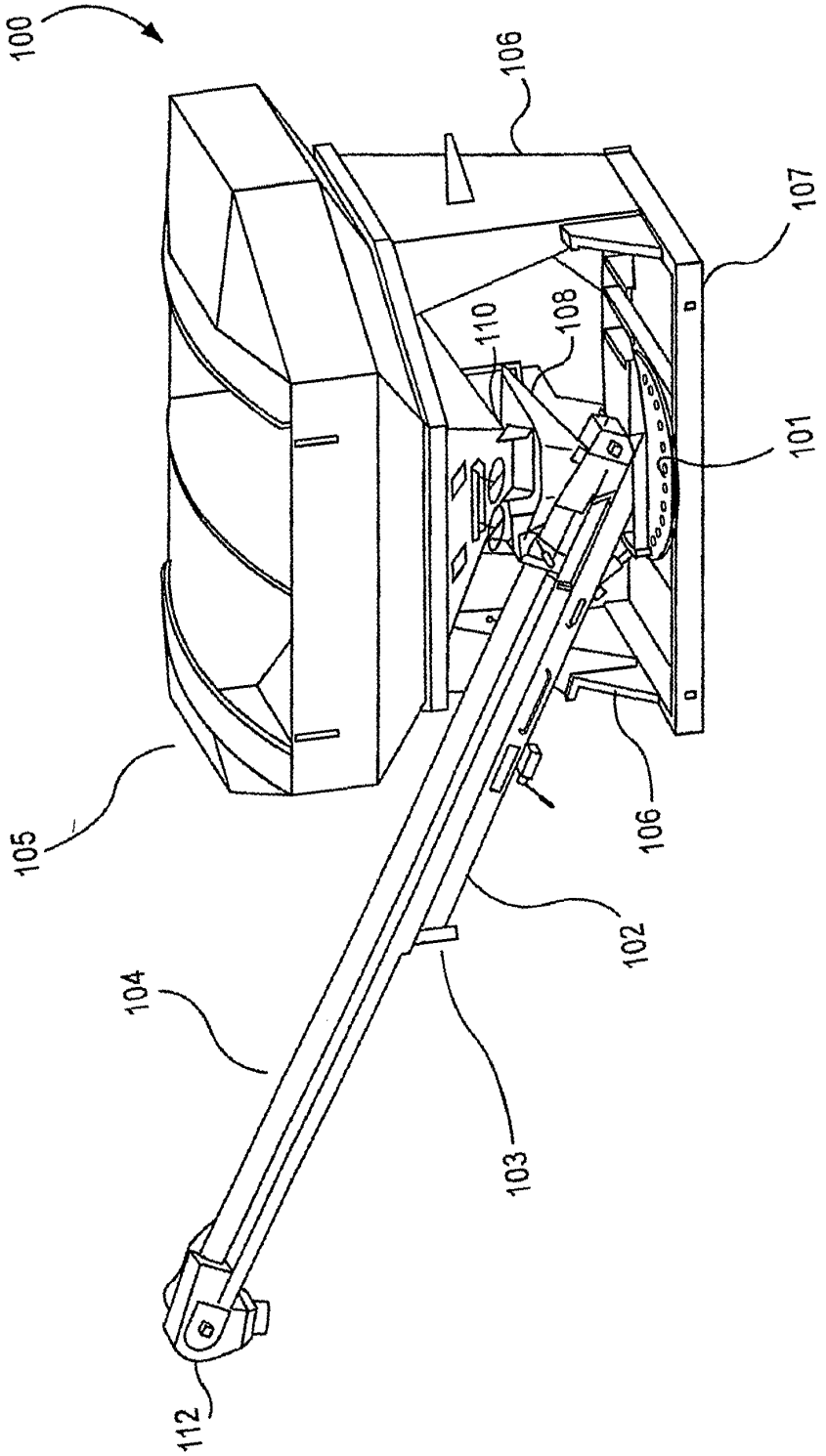


FIG.1

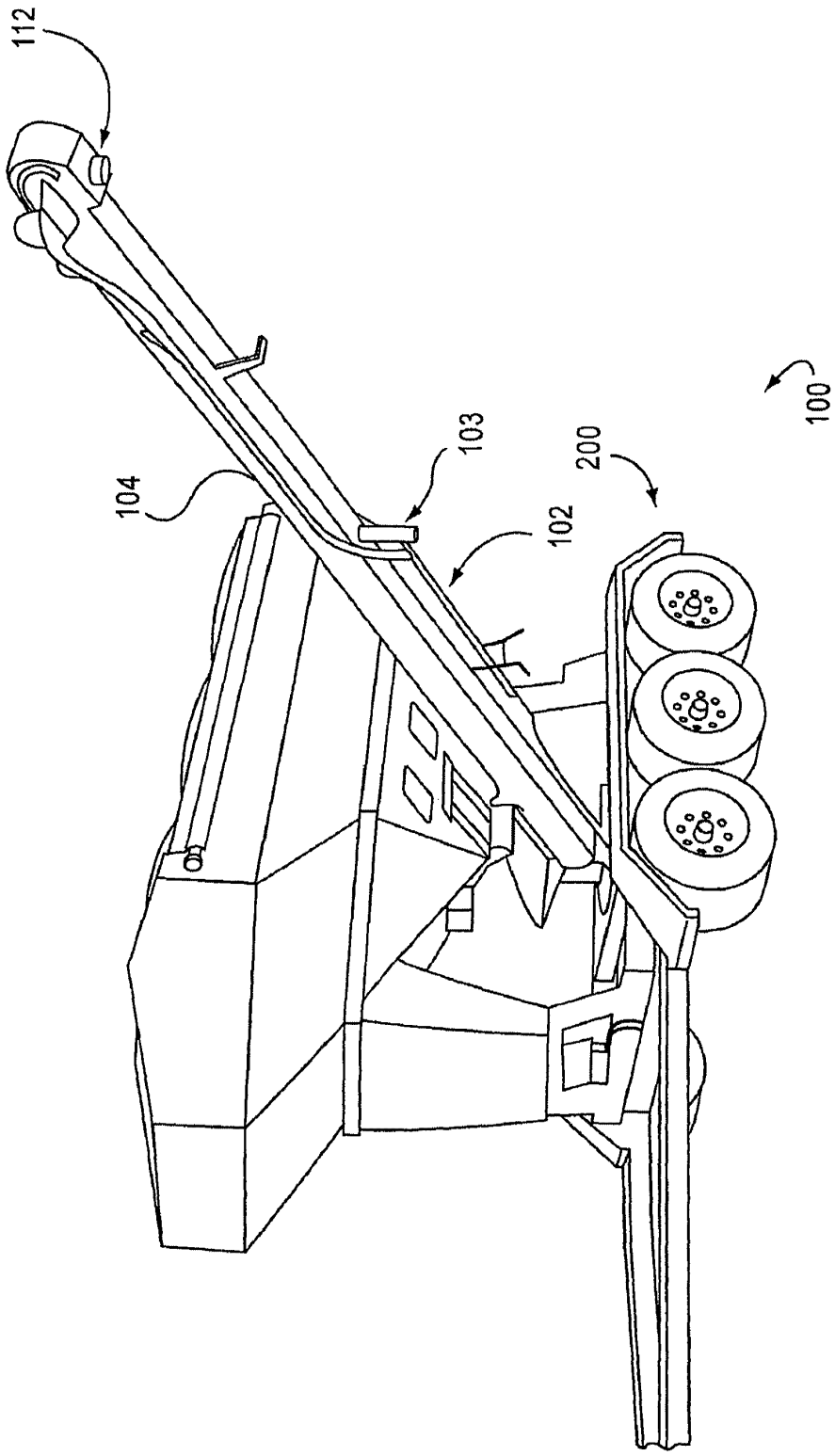


FIG.2

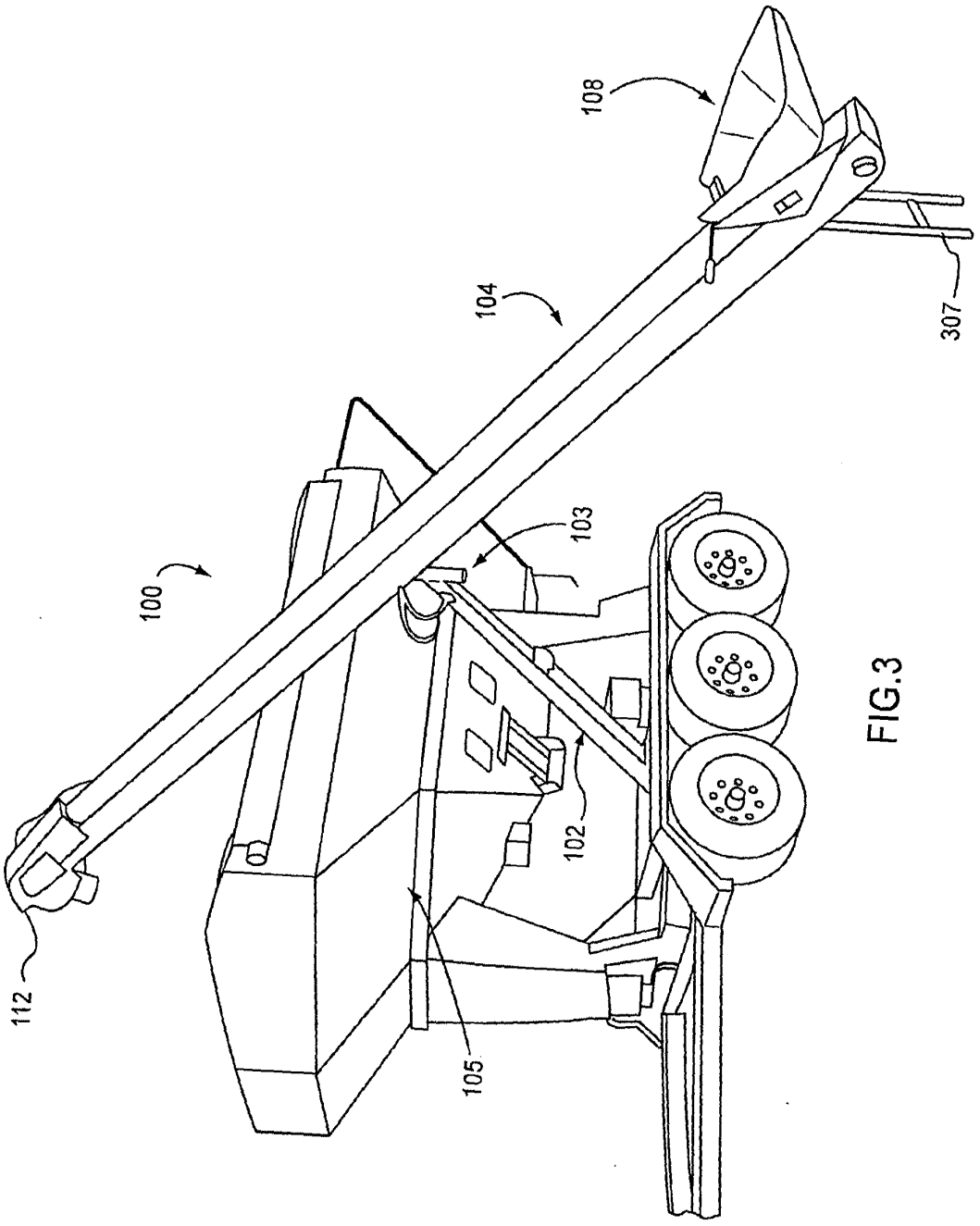


FIG.3

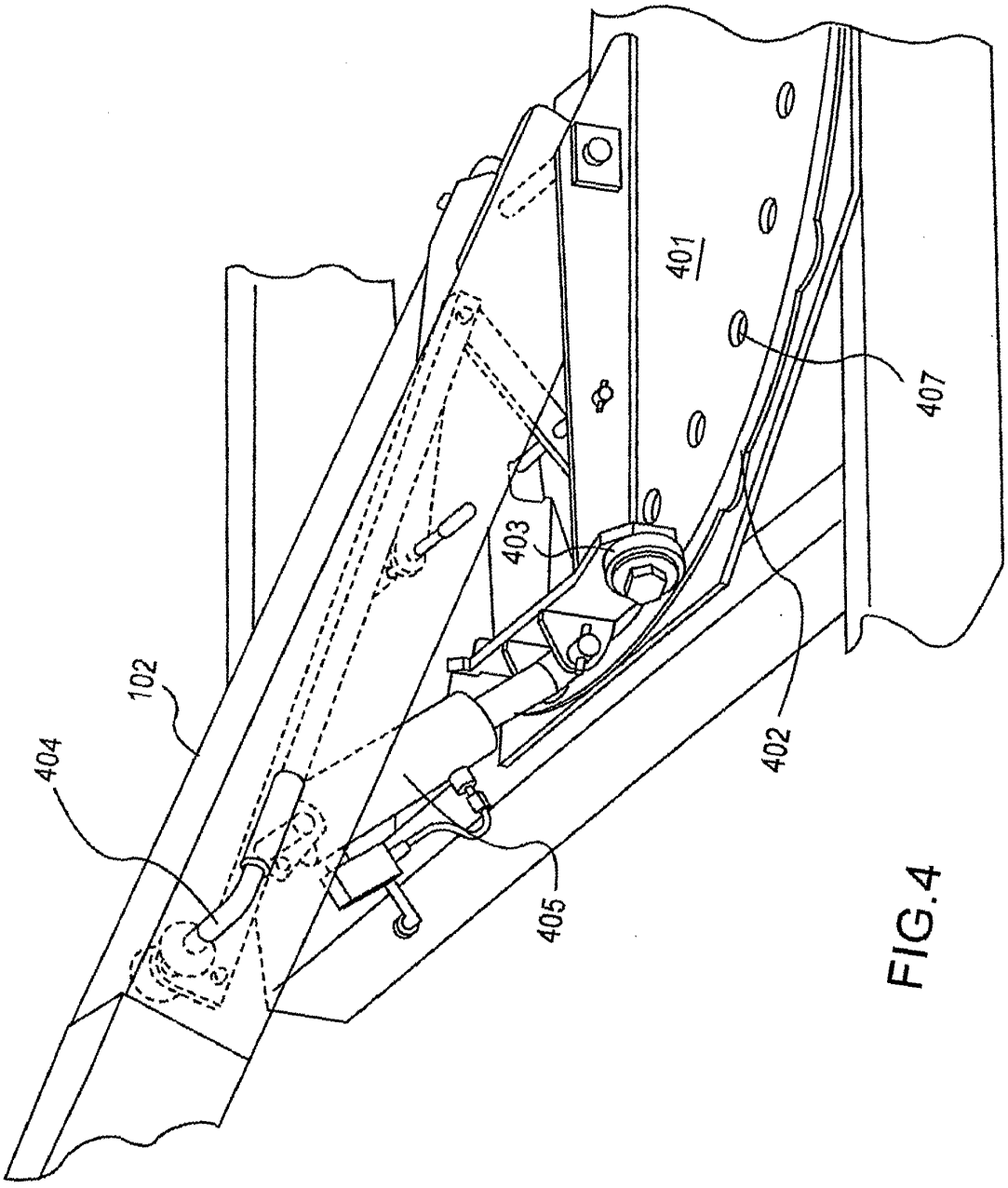


FIG.4

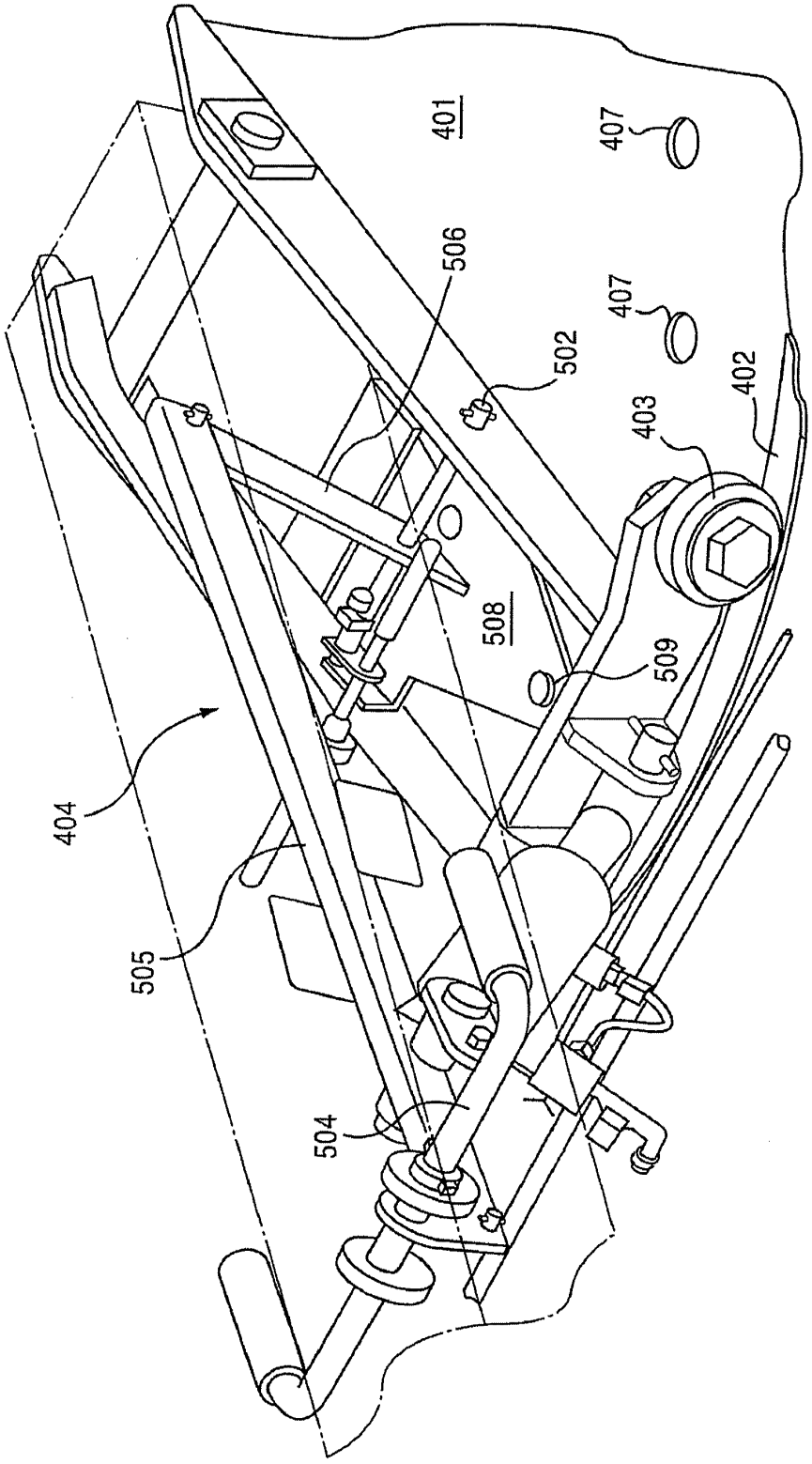


FIG.5

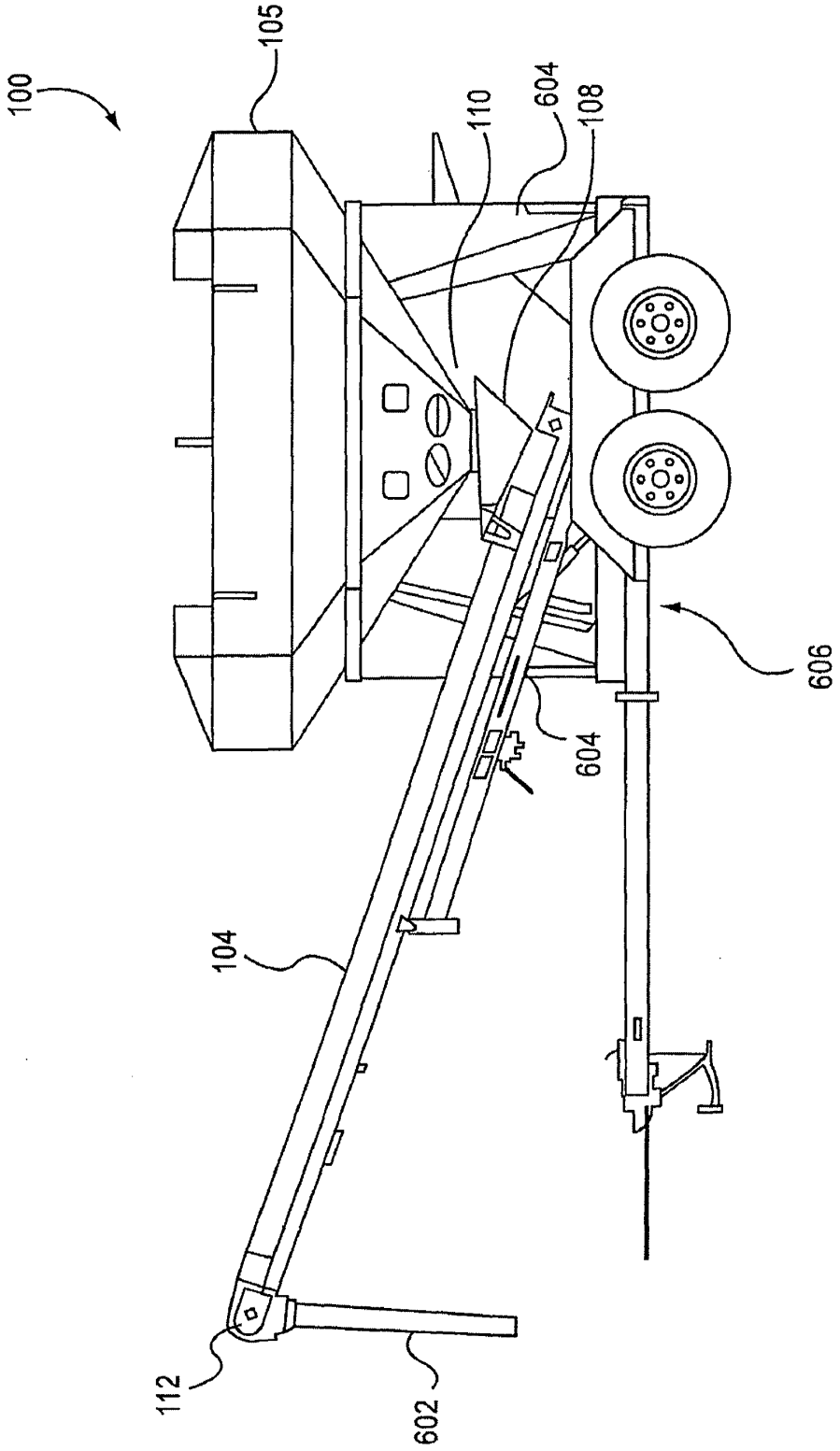


FIG.6

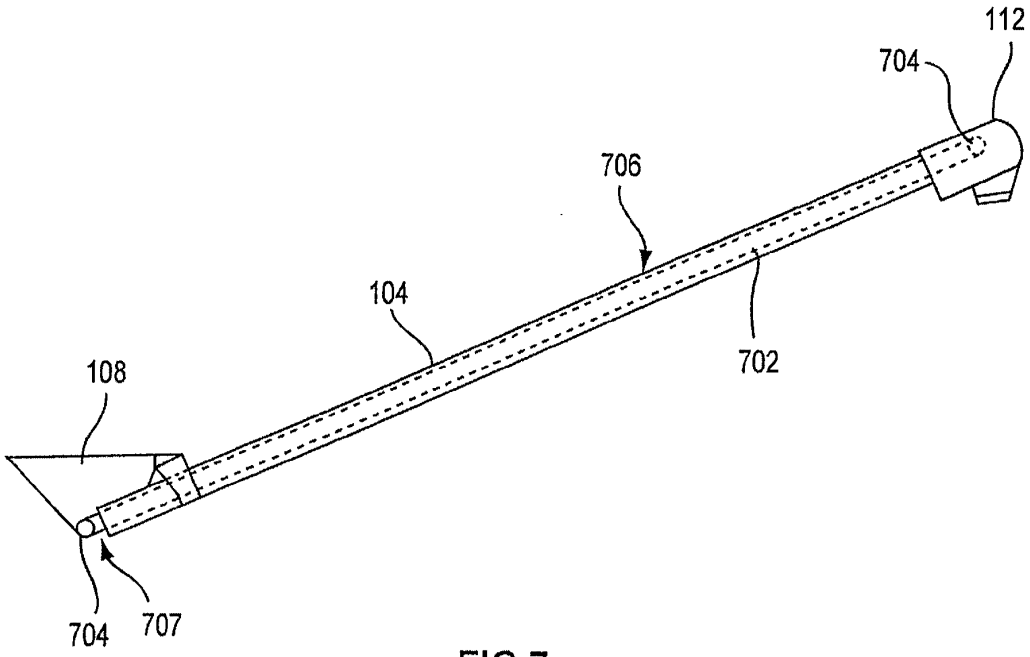


FIG.7

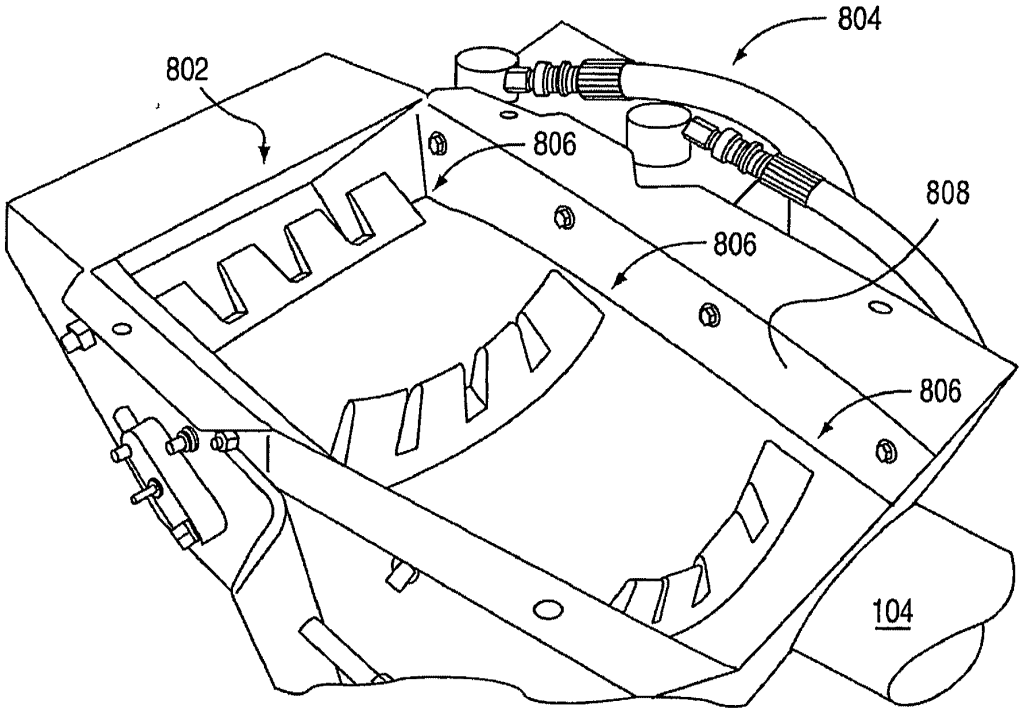


FIG.8

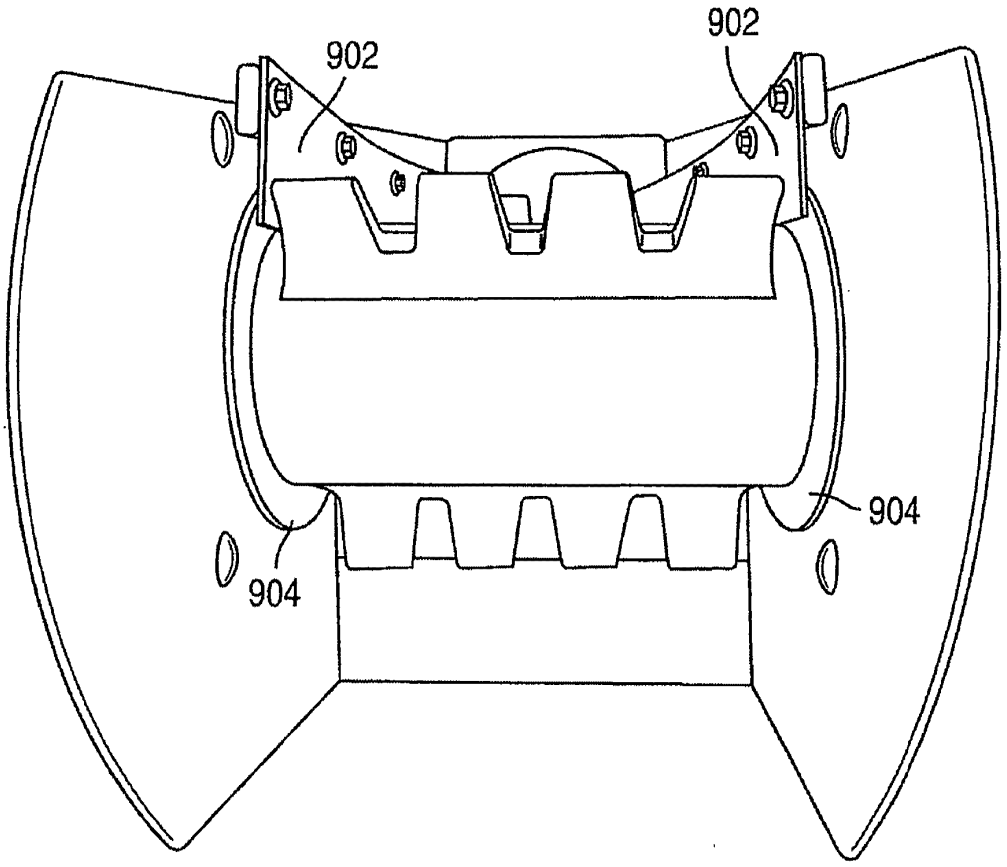


FIG.9

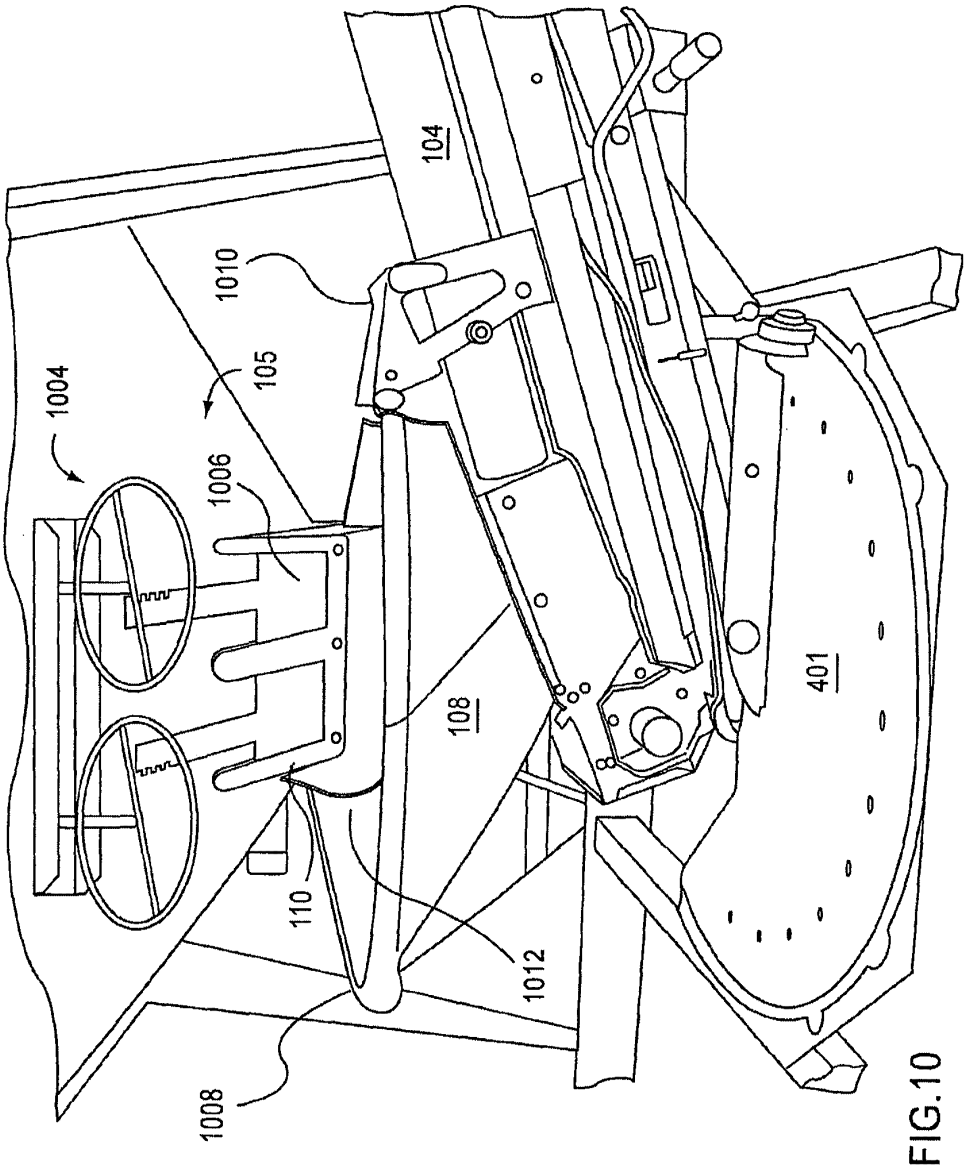


FIG.10

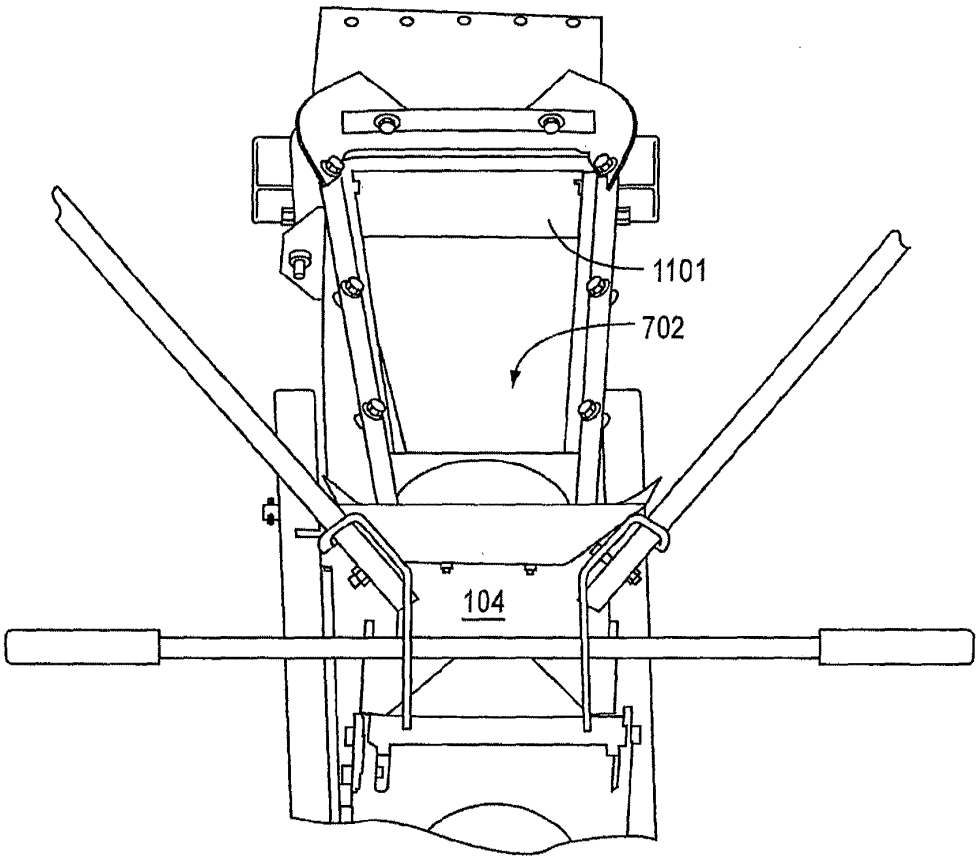


FIG.11

SEED CARRIER WITH PIVOTING CONVEYOR

CROSS-REFERENCE TO RELATED APPLICATION

The present application claims priority to Provisional Patent Application Ser. No. 60/901,321 filed on Feb. 15, 2007, the entire disclosure of which is incorporated herein by reference.

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates generally to a conveyor system for a grain or seed carrier. The conveyor system includes a novel pivot system that allows it to either load or unload a container by pivoting it into a loading or unloading position.

2. Description of the Related Art

Conveyor systems for moving grain, seed, etc. are well known. Auger systems are used to rapidly move grain such as feed or the like, while belt driven conveyors are often used for moving more expensive payload, such as seed.

One belt driven conveyor system includes a generally flat belt constructed from a flexible, sturdy material such as rubber or nylon. The conveyor is housed in a tube with rollers on both ends so that the belt may rotate in order to transmit material from one end to the other. Such conveyors are used for unloading seed carriers or the like. However, current conveyors have several problems.

First, current conveyors have the problem that the material being moved can be damaged by the rollers. Second, current conveyors do not have a full range of motion as implemented in seed carries. Third, current conveyors are only implemented for unloading.

There is a need for new and improved conveyor systems that allow a wagon to be unloaded and loaded using a single mechanism.

SUMMARY OF THE INVENTION

According to an embodiment of the present invention, a seed tender or carrier is provided that includes a main hopper for holding seed and a conveyor for transferring seed to and from the main hopper.

According to an embodiment of the present invention, in an unloading position, one end of the conveyor may be positioned under the discharge of the main hopper and coupled with a pivoting support arm. In the unload position, the conveyor can be used to transfer seed from the main hopper to another location, such as to a planter, seeding unit, or the like. A pivot mechanism allows the conveyor to be rotated from under the box into a loading position in which the conveyor intake can rest on the ground or on a stand while the conveyor discharge is positioned to allow conveyed material to be discharged into the main hopper. In this loading position, the conveyor can be used to fill the main hopper.

According to an embodiment of the present invention, a conveyor hopper is provided on the intake side of the conveyor.

According to an embodiment of the present invention, the pivot mechanism allows the conveyor to swing from side to side to simplify unloading of the main hopper and the filling of planters, etc. The pivot mechanism can include a hydraulic cylinder that adjusts the vertical height of the conveyor discharge relative for different filling applications.

According to an embodiment of the present invention, a pivot single pivot point can be provided at one end of the support arm to allow the conveyor to be rotated between the loading and unloading position. The conveyor may be balanced on the pivot point at a location near or at the center of gravity, thereby permitting the conveyor to be rotated with minimal effort on the part of the operator.

According to an embodiment of the present invention, the conveyor can be rotated through at least 180 degrees about a vertical axis and so that it may be positioned in either a forward or rearward transport position. This feature enables the tender to be pulled by different vehicles such as by a pick-up truck with the conveyor forward or by a grain truck with the conveyor rearward.

Further applications and advantages of various aspects and embodiments of the present invention are discussed below with reference to the drawing figures.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1** illustrates a seed carrier according to an embodiment of the present invention.

FIG. **2** is a view of a seed carrier in an unloading position according to an embodiment of the present invention.

FIG. **3** is a view of a seed carrier in a loading position according to an embodiment of the present invention.

FIG. **4** is a view of a base system for the seed carrier according to an embodiment of the present invention.

FIG. **5** is a view of a lever mechanism for the base system according to an embodiment of the present invention.

FIG. **6** is a view of a seed carrier in a transport position according to an embodiment of the present invention.

FIG. **7** is a view of a belt conveyor for the seed carrier according to an embodiment of the present invention.

FIG. **8** is a view of the discharge end of a conveyor according to an embodiment of the present invention.

FIG. **9** is a forward view of a conveyor belt wrapping around a roller according to an embodiment of the present invention.

FIG. **10** is a view of the conveyor hopper in an unloading position according to an embodiment of the present invention.

FIG. **11** illustrates the receiving end of the conveyor according to one embodiment of the present invention.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

While the present invention may be embodied in many different forms, a number of illustrative embodiments are described herein with the understanding that the present disclosure is to be considered as providing examples of the principles of the invention and such examples are not intended to limit the invention to preferred embodiments described herein and/or illustrated herein.

In embodiments of the present invention, the novel conveyor pivot system can be implemented with seed carrier or seeding machines. The following section describes non-limiting examples of illustrative seeding equipment according to embodiments of the present invention. It should be appreciated that the following examples are provided for illustration and the present invention is not intended to be limited to the embodiments described herein.

FIG. **1** is a diagram depicting a seed carrier having a tube conveyor according to an embodiment of the present invention. The seed carrier **100** includes a main hopper **105** coupled to a frame **107** by legs **106**. A conveyor **104** is supported by a support arm **102** coupled with a pivoting mechanism **101**

fixed to the frame **107**. The conveyor **104** is pivotably coupled with the support arm by a coupling **103** at a point that is preferably near or at the center of gravity of the conveyor **104**. The conveyor **104** is also coupled to the support arm **102** by a latch (not shown) at the bottom of the conveyor. The latch allows the conveyor **104** to be uncoupled from the support arm **102** at the bottom so that the conveyor is free to rotate about the coupling **103**. By positioning the coupling **103** at or near the center of gravity of the conveyor **104**, the conveyor **104** balances on the pivoting coupling **103** such that little effort is required to rotate the conveyor **104**.

The conveyor **104** includes a conveyor hopper **108** at its base, which is shown in the unloading position below the gravity discharge **110** of the main hopper **105**. At the other end of the conveyor **104** is the discharge **112**. Seed can be gravity feed from the main hopper **105** into the conveyor hopper **108**, which can then be moved to the discharge **112** of the conveyor **104** by an internal elevator (not shown). In one embodiment, the elevator is a motor-driven belt type elevator coupled onto rollers at both ends of the conveyor.

The seed carrier **100** may be transported by conventional means such as on a trailer. FIG. **2** illustrates the seed carrier **100** on a three axle trailer **200** according to an embodiment of the present invention. As shown, the conveyor **104** is in the unloading position.

FIG. **3** illustrates the seed carrier **100** in the loading position. As shown, the conveyor **104** is uncoupled from the support arm **102** at its base and rotated 180 degrees about pivot coupling **103** so that the conveyor hopper **108** is positioned at a convenient location away from the carrier while the discharge **112** of the conveyor **104** is located over the main hopper **105**. A stand **307** is provided for holding the conveyor hopper **108** in place. The stand **307** may be integrated with the conveyor **104**.

Accordingly, in the loading position, grain, seed or like can be feed into the conveyor hopper **108** to be moved to the discharge **112** for filling the main hopper **105**.

FIG. **4** is a view of the pivoting base of the support arm **102**. As shown, the support arm **102** can be pivotably coupled to a base **401** at a center point so that the support arm **102** is rotatable about a vertical axis. Wheels **403** provide support and can run along a track **402** to facilitate the support arm's **102** motion about the perimeter of the base **401**. The support arm **102** can be locked into a selected position of the base **401** by engaging a pin (not shown) with one of a plurality of the holes **407** distributed around the base **401**. The pin is disengaged with a hole by actuating a lever mechanism **404**, which lifts the pin out of a hole. The lever mechanism **404** may be spring actuated to bias the pin toward the holes, so that simply releasing the lever will allow the pin to engage with one of the holes **407**. Also shown, a hydraulic piston **405** is coupled with the support arm **102** for adjusting the height of the support arm **102**.

FIG. **5** is an alternative view of the support arm base. As shown, lever mechanism **404** includes a handle **504** coupled with a cross-bars **505** and **506**. Cross-bar **506** is coupled to cross-bar **505** on one end and to a plate **508** having a pin **509** on the other end, and with a pivoting coupling **502** at a point near the plate. Rotating the handle **504** applies a downward force to crossbar **506** causing it to rotate about the coupling **502** to raise the plate **508** to disengage the pin **509**. While disengaged, the base **401** is free to rotate about its vertical axis. Springs may be provided for biasing the pin **509** toward the holes **407** for engaging therewith, or the pin **509** can be engaged by gravity.

FIG. **6** is a side view of a seed carrier **100** according to an embodiment of the present invention. As shown in FIG. **6**, the conveyor **104** includes an elongated discharge spout **602** and is positioned in a transport position. Support members **604** may be mounted on or integral with the legs **106** for holding the conveyor **104** in a forward transport position as shown, or a rearward transport position. As shown, the carrier **100** is fixed to a dual axle trailer **606**.

FIG. **7** illustrates a basic belt driven conveyor according to an embodiment of the present invention. The conveyor **104** comprises a belt **702** that winds about a pair of rollers **704**. The rollers are positioned outside a tube section **706**, a first roller being positioned in the discharge **112** and a second roller being positioned below the conveyor hopper **108**. A motor (not shown) or other means for turning the rollers may be provided at either end of the conveyor. A void **707** exists below the rollers **704** to allow the belt **702** to travel on its return path.

FIG. **8** is a view of a conveyor belt according to an embodiment of the present invention. The discharge end of a conveyor is shown where a conveyor belt wraps around a motor driven roller **802**. The motor may be a hydraulic motor and therefore, hydraulic hoses **804** provide hydraulic fluid flow to and from the motor. Teeth **806** are provided to push grain or seed up the conveyor. As shown, the conveyor belt is cupped in the tube section but flattens out as it reaches the roller **802**. Channeling members (seals) **808** are provided on each side of the belt to form a seal and prevent grain or seed from falling off the edges of the belt as the belt begins to conform to the tubular portion of the conveyor **104**.

FIG. **9** is a front view of the belt as it travels over the roller **802**. Channeling members (seals) **902** are provided on each side of the belt to form a seal and prevent grain or seed from falling off the edges of the belt as the belt flattens at the roller. As shown, the channeling members **902** are fixed to the conveyor discharge **112** with bolts, but can be fixed by other means or can be integral with the discharge.

Discs **904** are provided at the rollers at the edge of the belt to provide additional channeling/sealing means. The discs **904** are preferably integral with the rollers or coupled therewith so that they may rotate.

FIG. **10** is a side view of the hopper end of the conveyor **104**. As shown, conveyor hopper **108** sits above in ingress **1003** to the conveyor **104**. When coupled to the support arm **102**, as shown, the conveyor hopper **108** is positioned below a discharge of the main hopper **106**. The discharge **110** may be opened by conventional means. As showed, a wheel handle mechanism **1004** is provided for opening the discharge doors **1006**.

The conveyor hopper **108** is preferably manufactured from light weight materials such as plastic, canvas, rubber or vinyl. As shown, the hopper **108** may include a mechanism for opening and closing the hopper. In this embodiment, flexible coupling or hinge is provided at one end **1008** of the hopper **108** and a mechanism **1010** is provided at the end of the hopper **108** and is coupled with the conveyor **104**, such that the hopper **108** may be made to have an appropriate fit with the discharge **110** of the main hopper **105**. A flap **1012** can be provided at the bottom of the discharge **110**.

FIG. **10** is a side view of the hopper end of the conveyor **104**. As shown, conveyor hopper **108** sits above in ingress to the conveyor **104**. When coupled to the support arm **102**, as shown, the conveyor hopper **108** is positioned below a discharge of the main hopper **106**. The discharge **110** may be opened by conventional means. As showed, a wheel handle mechanism **1004** is provided for opening the discharge doors **1006**.

One will understand that hydraulic power can be provided by a towing vehicle, such as a tractor or the like or alterna-

tively, hydraulic power can be provided on the tender and driving electrically from the towing vehicle, such as a truck.

Thus, a number of preferred embodiments have been fully described above with reference to the drawing figures. Although the invention has been described based upon these preferred embodiments, it would be apparent to those of skill in the art that certain modifications, variations, and alternative constructions could be made to the described embodiments within the spirit and scope of the invention

We claim:

1. A seed or grain tender comprising:

a frame;

a main hopper mounted on said frame and having a main hopper discharge;

a base mounted on said frame below said main hopper discharge;

a support arm having first and second ends;

a first coupling connecting said first end of said support arm with said base, said first coupling being rotatable in relation to said base about a first vertical axis of rotation, and said first end of said support arm being rotatable in relation to said first coupling about a first horizontal axis of rotation;

a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, a conveyor discharge at said second end, and an internal elevator for moving seed or grain from said conveyor hopper to said conveyor discharge; and

a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis, and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper.

2. The seed or grain tender of claim 1, wherein said support arm extends upwardly at an acute angle from said base.

3. The seed or grain tender of claim 2, wherein said conveyor is parallel to said support arm in said unloading position.

4. The seed or grain tender of claim 3, wherein said conveyor is disposed above said support arm in said unloading position.

5. The seed or grain tender of claim 1, wherein said conveyor is rotatable in relation to said second coupling about a second horizontal axis of rotation.

6. The seed or grain tender of claim 5, wherein said second horizontal axis of rotation extends through said second coupling.

7. The seed or grain tender of claim 1, further comprising a stand coupled with said first end of said conveyor and movable between a stowed position allowing said conveyor hopper to be positioned below said main hopper discharge when said conveyor is in said unloading position and an extended position supporting said conveyor hopper above the ground when said conveyor is in said loading position.

8. The seed or grain tender of claim 1, wherein said first vertical axis extends through said first end of said support arm.

9. The seed or grain tender of claim 1, wherein said first vertical axis extends through said base.

10. The seed or grain tender of claim 1, wherein said second end of said support arm terminates at or near said approximate center of gravity of said conveyor.

11. The seed or grain tender of claim 1, wherein said first end of said support arm is fixed at a first height and said second end of said support arm is pivotable between a range of heights.

12. The seed or grain tender of claim 1, further comprising a lift device for adjusting a height of said second end of said support arm.

13. The seed or grain tender of claim 12, wherein said lift device is a pressurized cylinder.

14. The seed or grain tender of claim 12, wherein said lift device is a hydraulic cylinder.

15. The seed or grain tender of claim 1, wherein said first coupling is a U-shaped member with a horizontal base portion and a pair of upright portions, and wherein said first horizontal axis extends through said upright portions of said first coupling.

16. The seed or grain tender of claim 1, further comprising a locking mechanism for locking or unlocking said support arm in relation to said base.

17. The seed or grain tender of claim 16, wherein said locking mechanism includes a pin releasably engageable with one of a plurality of holes formed in said base.

18. The seed or grain tender of claim 17, wherein said pin is spring-biased toward said holes in said base.

19. The seed or grain tender of claim 17, wherein said internal elevator includes a motor-driven belt.

20. A seed or grain tender comprising:

a frame;

a main hopper mounted on said frame and having a main hopper discharge;

a base mounted on said frame below said main hopper discharge;

a support arm having first and second ends;

a first coupling connecting said first end of said support arm with said base, said first coupling being rotatable in relation to said base about a first vertical axis of rotation, and said first end of said support arm being rotatable in relation to said first coupling about a first horizontal axis of rotation;

a lift device extending from said base to a portion of said support arm between said first and second ends such that said support arm extends upwardly at an acute angle from said base;

a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, a conveyor discharge at said second end, and a motor-driven elevator for moving seed or grain from said conveyor hopper to said conveyor discharge; and

a second coupling connecting said second end of said support arm with said conveyor at an approximate center of gravity of said conveyor, said second coupling defining a second vertical axis of rotation that is not parallel to said conveyor longitudinal axis, and said conveyor being rotatable in relation to said second end of said support arm about said second vertical axis of rotation between an unloading position wherein said conveyor hopper is disposed below said main hopper discharge to receive agricultural product from said main hopper and a loading position wherein said conveyor discharge is disposed above said main hopper to dispense agricultural product into said main hopper, wherein said conveyor is disposed parallel to and above said support arm in said unloading position; and

a locking mechanism for locking and unlocking said support arm in relation to said base.

21. The seed or grain tender of claim **20**, wherein said conveyor is disposed above said support arm in said unloading position.

22. The seed or grain tender of claim **20**, wherein said conveyor is rotatable in relation to said second coupling about a second horizontal axis of rotation.

23. The seed or grain tender of claim **22**, wherein said second horizontal axis of rotation extends through said second coupling.

24. The seed or grain tender of claim **20**, further comprising a stand coupled with said first end of said conveyor and movable between a stowed position allowing said conveyor hopper to be positioned below said main hopper discharge when said conveyor is in said unloading position and an extended position supporting said conveyor hopper above the ground when said conveyor is in said loading position.

25. The seed or grain tender of claim **20**, wherein said first vertical axis extends through said first end of said support arm.

26. The seed or grain tender of claim **20**, wherein said first vertical axis extends through said base.

27. The seed or grain tender of claim **20**, wherein said second end of said support arm terminates at or near said approximate center of gravity of said conveyor.

28. The seed or grain tender of claim **20**, wherein said first end of said support arm is fixed at a first height and said second end of said support arm is pivotable between a range of heights.

29. The seed or grain tender of claim **20**, wherein said lift device is a pressurized cylinder.

30. The seed or grain tender of claim **20**, wherein said lift device is a hydraulic cylinder.

31. The seed or grain tender of claim **20**, wherein said first coupling is a U-shaped member with a horizontal base portion and a pair of upright portions, and

wherein said first horizontal axis extends through said upright portions of said first coupling.

32. The seed or grain tender of claim **20**, wherein said locking mechanism includes a pin releasably engageable with one of a plurality of holes formed in said base.

33. The seed or grain tender of claim **32**, wherein said pin is spring-biased toward said holes in said base.

34. The seed or grain tender of claim **20**, wherein said internal elevator includes a motor-driven belt.

* * * * *

APPENDIX G

AFFIDAVIT OF ERICK FLINN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT NO.: 8,221,047

ISSUED: July 17, 2012

FOR: Seed Carrier with Pivoting Conveyor

DECLARATION OF ERICK FLINN

SIR:

I, Erick Flinn, do declare and state:

1. I am an engineer at Par-Kan Company.
2. I have worked at Par-Kan for over 6 years.
3. During my time at Par-Kan I have worked on seed carts, grain wagons, seed tenders, and similar agricultural implements.
4. We have designed seed tenders having supports for a conveyors where the support for the conveyor is above the conveyor, and also in other cases where the support for the conveyor is below the conveyor.
5. Generally in the art of seed and grain carts either auger or belt driven conveyors may be used interchangeably to convey agricultural product through the conveyor effectively.
6. I thoroughly reviewed the service manual for the Great Plains ADC2220 seed cart dated 5/1/1997 and it accurately describes the ADC2220 I personally inspected on September 10, 2012.
7. Additionally, I have reviewed a later edition the Great Plains ADC2220 manual dated 3/1/2000 including pages dated 3/16/1998 provided by Michael Marston and it accurately describes the ADC2220 I personally inspected on September 10, 2012.
8. The ADC2220 has a frame as shown on page 2-1 of the ADC2220 manual dated 5/1/1997.
9. The ADC2220 has an inner support arm 20, and an outer support arm 15.
10. The outer support arm 15 pivots near a first end about a vertical axis defined by outer pivot spacer tube 12.

11. The outer support arm 15 is connected to inner support arm 20 with a U-shaped member, or a pin and clevis with the pin being bolt 24.
12. The outer support arm 15 also includes an auger swivel support 18 that allows the auger 26 to pivot about a second vertical axis near the second end of the outer support arm 15.
13. Support arm 15 forms an acute angle with the frame.
14. The auger 26 shown in the ADC2220 manual dated 5/1/1997 may be pivoted so that the hopper 43 of the auger 26 may be below the discharge chute of the main hopper for receiving product dispensed from the main hopper discharge so that the auger 26 may be used to unload the ADC2220.
15. The auger 26 may also be positioned so that the auger discharge end is above the main hopper to dispense agricultural product into the main hopper. This is a loading position.
16. Part numbered 4 in the ADC2220 manual dated 5/1/1997 is a mechanism for locking the auger from pivoting during travel.
17. Part numbered 16 in the ADC2220 manual dated 5/1/1997 is designed for supporting the auger in a locked position during travel.
18. The auger includes a stand shown on page 7-1 of the ADC2220 manual dated 5/1/1997 for supporting the hopper 43 of the auger when it is positioned on the ground in a loading position. This stand is located on the bottom of the hopper 43.
19. Referring to the ADC2220 manual dated 3/1/2000 pages 7-1 and 7-2 dated 3/16/1998 show that pin 46 and cotter pin 47 may be used to lock the arms 15 and 20 due to pin 46 being inserted into at least one mating hole on the frame.
20. I have inspected a Convey-all seed tender on September 11, 2012 and took photographs of the same.
21. After consulting with Convey-all the maker of the seed tender shown in the photographs in Appendix F, Convey-all has informed me that the first two digits of the serial number on the unit indicate the year of manufacture.
22. The seed tender I inspected was manufactured in 2005.
23. The seed tender has a spring pin that extends into one of several holes in an arc shaped rail to lock the conveyor into a desired position.

25. The arc shaped rail is welded to the frame below the main hopper.
26. I declare that all statements made herein are my own knowledge and are true and that all statements made herein are on information believed to be true. I further declare that these statements were made with knowledge that willful false statements are punishable by fine, imprisonment, or both under Section 1001. Title 18 of the United States Code.

9/12/2012
Date

Erick Flinn
Erick Flinn

APPENDIX I

AFFIDAVIT OF MICHAEL D. MARSTON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT NO.: 8,221,047

ISSUED: July 17, 2012

FOR: Seed Carrier with Pivoting Conveyor

DECLARATION OF MICHAEL D. MARSTON

SIR:

I, Michael D. Marston, do declare and state:

1. I am a licensed mechanical engineer in the state of Michigan.
2. I thoroughly reviewed the Great Plains Manual dated 3/1/2000 that is Appendix B of this Request for Reexamination.
3. I thoroughly reviewed the Great Plains Manual dated 5/1/1997 that is Appendix H of this Request for Reexamination.
4. I have reviewed the Great Plains Photo that is Appendix C of this Request for Reexamination which is a listing for sale of a used ADC2220.
5. I have verified with Great Plains Manufacturing Company that the serial number on the unit shown in the Great Plains Photo of Appendix C is for an ADC2220 unit manufactured in 1997.
6. The ADC2220 shown in the Great Plains Photo conforms to the description provided in the Great Plains Manual dated 5/1/1997.
7. I declare that all statements made herein are my own knowledge and are true and that all statements made herein are on information believed to be true. I further declare that these statements were made with knowledge that willful false statements are punishable by fine, imprisonment, or both under Section 1001. Title 18 of the United States Code.

9/12/2012

Date

Michael D. Marston

Michael D. Marston

PTO/SB/58 (02-12)
Approved for use through 02/28/2013. OMB 0651-0064
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

(Also referred to as FORM PTO-1465)

REQUEST FOR *INTER PARTES* REEXAMINATION TRANSMITTAL FORM

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CENTRAL REEXAMINATION UNIT

58354 U.S. P

Address to:
Mail Stop *Inter Partes* Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attorney Docket No.: 191-013

Date: 9/14/2012

9500691

1. [✓] This is a request for *inter partes* reexamination pursuant to 37 CFR 1.913 of patent number 8,221,047 issued July 17, 2012. The request is made by a third party requester, identified herein below.

2. [✓] a. The name and address of the person requesting reexamination is:

Par-Kan Company
2915 W 900 S
Silver Lake, IN 46982

b. The real party in interest (37 CFR 1.915(b)(8)) is: Par-Kan Company

3. [ ] a. A check in the amount of $ _____ is enclosed to cover the reexamination fee, 37 CFR 1.20(c)(2);

[ ] b. The Director is hereby authorized to charge the fee as set forth in 37 CFR 1.20(c)(2) to Deposit Account No. _____; **or**

[✓] c. Payment by credit card. Form PTO-2038 is attached.

4. [✓] Any refund should be made by [ ] check or [ ] credit to Deposit Account No. _____. 37 CFR 1.26(c). If payment is made by credit card, refund must be made to credit card account.

5. [✓] A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.915(b)(5)

6. [ ] CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table
[ ] Landscape Table on CD

7. [ ] Nucleotide and/or Amino Acid Sequence Submission
If applicable, items a. – c. are required.
a. [ ] Computer Readable Form (CRF)
b. Specification Sequence Listing on:
i. [ ] CD-ROM (2 copies) or CD-R (2 copies); **or**
ii. [ ] paper
c. [ ] Statements verifying identity of above copies

8. [✓] A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is included.

9. [✓] Reexamination of claim(s) 1-34 is requested.

10. [✓] A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO/SB/08, PTO-1449, or an equivalent.

11. [ ] An English language translation of all necessary and pertinent non-English language patents and/or printed publications is included.

This collection of information is required by 37 CFR 1.915. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop *Inter Partes* Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

12. [✓] The attached detailed request includes at least the following items:
   a. A listing of the grounds that the requester asserts to raise a showing of a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request. 37 CFR 1.915(b)(3).
   b. For each ground listed, an identification of every claim to which the showing applies, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim which is identified for that ground. 37 CFR 1.915(b)(3).

13. [✓] It is certified that the estoppel provisions of 37 CFR 1.907 do not prohibit this reexamination. 37 CFR 1.915(b)(7).

14. [✓] a. It is certified that a copy of this request has been served in its entirety on the patent owner as provided in 37 CFR 1.33(c).
The name and address of the party served and the date of service are:

Rothwell, Figg, Ernst & Manbeck P.C.

607 14th Street, N.W., Suite 800, Washington, D.C. 20005

Date of Service: September 14, 2012; **or**

[ ] b. A duplicate copy is enclosed because service on patent owner was not possible. An explanation of the efforts made to serve patent owner **is attached**. See MPEP 2620.

15. Third Party Requester Correspondence Address: Direct all communications about the reexamination to:

[✓] The address associated with Customer Number: 31179

OR

[ ] Firm or Individual Name

Address

City	State	Zip
Country		
Telephone	Email	

16. [ ] The patent is currently the subject of the following concurrent proceeding(s):
   [ ] a. Copending reissue Application No.
   [ ] b. Copending reexamination Control No.
   [ ] c. Copending Interference No.
   d. Copending litigation styled:

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Michael D. Marston — Authorized Signature

9/19/12 — Date

Michael D. Marston — Typed/Printed Name

61,432 — Registration No., if applicable

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Bib Data Sheet

CONFIRMATION NO. 1949

SERIAL NUMBER	FILING OR 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
95/000,691	09/14/2012 RULE	414	3993	191-013

APPLICANTS

8221047, Residence Not Provided;
UNVERFERTH MANUFACTURING COMPANY INC.(OWNER), KALIDA, OH;
PAR-KAN COMPANY(3RD.PTY.REQ.), SILVER LAKE, IN;
PAR-KAN COMPANY(REAL PTY IN INTEREST), SILVER LAKE, IN;
BOTKIN & HALL, LLP, SOUTH BEND, IN

**** CONTINUING DATA ***************************

This application is a REX of 12/031,867 02/15/2008 PAT 8221047
which claims benefit of 60/901,321 02/15/2007

**** FOREIGN APPLICATIONS *********************

Foreign Priority claimed	STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
☐ yes ☐ no				
35 USC 119 (a-d) conditions met ☐ yes ☐ no ☐ Met after Allowance				
Verified and Acknowledged Examiner's Signature Initials				

ADDRESS
6449

TITLE
SEED CARRIER WITH PIVOTING CONVEYOR

FILING FEE RECEIVED	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit