IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	Brian James Petersen et al.	
U.S. Patent No.:	8,967,940	Attorney Docket No.: 56436-0002IP1
Issue Date:	March 3, 2015	
Appl. Serial No.:	13/541,553	
Filing Date:	July 3, 2012	
Title:	SEED CARRIER WITH PIVOTING CONVEYOR	

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PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 8,967,940 PURSUANT TO 35 U.S.C. §§ 311–319, 37 C.F.R. § 42

TABLE OF CONTENTS

I. REQUIREMENTS FOR IPR (37 C.F.R. § 42.104) 1
A. Grounds for Standing (37 C.F.R. § 42.104(a)) 1
B. Challenge and Relief Requested (37 C.F.R. § 42.104(b)) 1
II. SUMMARY OF THE '940 PATENT 3
III. CLAIM CONSTRUCTION 4
IV. LEVEL OF ORDINARY SKILL IN THE ART 5
V. THE CHALLENGED CLAIMS WOULD HAVE BEEN OBVIOUS 5
A. Ground 1: Hiniker Manual in View of Hiniker Webpage (and, If Necessary, Johnson and/or Morris) 5
1. Overview of Hiniker Manual 5
2. Overview of Hiniker Webpage 11
3. Reasons to Combine Hiniker Manual and Hiniker Webpage 12
4. Independent Claim 16 13
5. Dependent Claim 18 36
6. Dependent Claim 19 36
7. Dependent Claim 20 37
8. Dependent Claim 21 37
B. Ground 2: Hiniker Manual in View of Hiniker Webpage and Furrer 38
1. Furrer Discloses a First Coupling Rotatable About a Vertical Axis Extending Through the Main Hopper Discharge 38
2. Reasons to Modify the Hiniker Combination in View of Furrer 42
C. Ground 3: Hiniker Manual in View of Hiniker Webpage and Baskerville 45
1. Overview of Baskerville 45
2. Dependent Claim 22 47
3. Dependent Claim 23 49
D. Ground 4: Morris in View of Furrer 52
1. Overview of Morris 52
2. Overview of Furrer 57
3. Reasons to Modify Morris in View of Furrer 57
4. Independent Claim 16 61
5. Dependent Claim 17 77
6. Dependent Claim 18 77
7. Dependent Claim 19 79
8. Dependent Claim 20 79
9. Dependent Claim 21 80

E. Ground 5: Morris in View of Furrer and Baskerville 80
1. Dependent Claim 22 81
2. Dependent Claim 23 82

VI. THE BOARD SHOULD REACH THE PETITION'S MERITS 83
A. The *General Plastic* Factors Do Not Apply 83
B. The *Fintiv* Factors Weigh Against Discretionary Denial 84
C. The *Becton, Dickinson* Factors Weigh Against Discretionary Denial ...84

VII. PAYMENT OF FEES – 37 C.F.R. § 42.103 88

VIII. CONCLUSION 88

IX. MANDATORY NOTICES UNDER 37 C.F.R. § 42.8(a)(1) 88
A. Real Party-In-Interest Under 37 C.F.R. § 42.8(b)(1) 88
B. Related Matters Under 37 C.F.R. § 42.8(b)(2) 88
C. Lead And Back-Up Counsel Under 37 C.F.R. § 42.8(b)(3) 89
D. Service Information 90

EXHIBITS

PK-1001	U.S. Patent No. 8,967,940 to Peterson et al. ("the '940 patent")
PK-1002	Excerpts from the Prosecution History of the '940 Patent ("the '940 Prosecution History")
PK-1003	Declaration of Douglas S. Prairie
PK-1004	*Assembly Manual: Part Number 80504785 REV A*, Hiniker Company, Jan. 2001 ("Hiniker Manual")
PK-1005	Screen capture of the archived version of a Hiniker Company webpage captured by the Internet Archive on March 14, 2006, *available at* https://web.archive.org/web/20060314112127/http://www.hiniker.com/ag_products/4800features.htm ("Hiniker Webpage")
PK-1006	U.S. Patent Publication No. 2005/0158155 ("Johnson")
PK-1007	U.S. Patent No. 7,500,817 ("Furrer")
PK-1008	U.S. Patent No. 5,888,044 ("Baskerville")
PK-1009	*Operator's Manual, 7000 Series Air Cart*, Morris, Sept. 2004 ("Morris")
PK-1010	Canadian Patent No. CA 2462001 C ("Cochran")
PK-1011	Screen captures of the archived version of Morris Industries Ltd.'s website captured by the Internet Archive on August 6, 2006, *available at* https://web.archive.org/web/20060806015900/http://www.morris-industries.com:80/index.php and https://web.archive.org/web/20060806172322/http://www.morris-industries.com/product.php?current_lang=en&product_id=1

PK-1012	Excerpts from the Prosecution History of U.S. Patent No. 8,221,047 ("the '047 Prosecution History")
PK-1013	Excerpts from the Reexamination Proceedings of the '047 Patent ("the '047 Reexamination")
PK-1014	Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation, Katherine K. Vidal (USPTO June 21, 2022), *available at* https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf
PK-1015	Declaration of June Ann Munford
PK-1016	Stipulation
PK-1017	Declaration of Mark Miller
PK-1018	Screen captures of the archived version of Hiniker Company's website captured by the Internet Archive on March 14, 2006, *available at* https://web.archive.org/web/20060314110919/http://www.hiniker.com/index.html, https://web.archive.org/web/20060314110910/http://www.hiniker.com/ag_products/index.htm, and https://web.archive.org/web/20060314111921/http://www.hiniker.com/ag_products/4800s.htm
PK-1019	U.S. Patent No. 6,994,039 ("Beck")
PK-1020	U.S. Patent No. 7,500,814 ("Meyer")
PK-1021	U.S. Patent Publication No. 2008/0173521 ("Hitch")

LISTING OF CHALLENGED CLAIMS

Claim 16	
[16.pre]	A seed or grain tender comprising:
[16.1]	a main hopper having a main hopper discharge;
[16.2]	a base positioned below said main hopper;
[16.3]	a support arm having first and second ends;
[16.4]	a first coupling connecting said first end of said support arm with said base,
[16.5]	said first coupling being rotatable about a first vertical axis of rotation, and
[16.6]	said first end of said support arm being rotatable about a first horizontal axis of rotation;
[16.7]	a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, and a conveyor discharge at said second end; and
[16.8]	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 first conveyor axis of rotation that is not parallel to said conveyor longitudinal axis, and
[16.9]	said conveyor being rotatable about said first conveyor 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 17	
[17]	The seed or grain tender of claim 16, wherein said first vertical axis of rotation extends through said main hopper discharge.

Claim 18	
[18]	The seed or grain tender of claim 16, wherein said first conveyor axis of rotation extends through said approximate center of gravity of said conveyor.
Claim 19	
[19]	The seed or grain tender of claim 16, wherein said first horizontal axis extends through said first end of said support arm.
Claim 20	
[20]	The seed or grain tender of claim 16, wherein said second end of said support arm terminates at or near said second coupling.
Claim 21	
[21]	The seed or grain tender of claim 16, wherein said conveyor includes an internal elevator for moving seed or grain from said conveyor hopper to said conveyor discharge.
Claim 22	
[22]	The seed or grain tender of claim 16, further comprising a hydraulic piston extending at an acute angle relative to a horizontal plane to connect with a portion of said support arm spaced from said first horizontal axis of rotation.
Claim 23	
[23]	The seed or grain tender of claim 16, 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.

Par-Kan Company, LLC ("Petitioner") petitions for IPR under 35 U.S.C. §§ 311–319 and 37 C.F.R. § 42 of claims 16–23 of U.S. Patent 8,967,940. As explained below, the challenged claims would have been obvious. The Board should institute IPR and cancel the challenged claims.

I. REQUIREMENTS FOR IPR (37 C.F.R. § 42.104)

A. Grounds for Standing (37 C.F.R. § 42.104(a))

Petitioner certifies the '940 patent is available for IPR. This petition was filed within one year of service of a complaint against Petitioner in *Unverferth Mfg. Co. v. Par-Kan Co.*, 3:23-cv-00653 (N.D. Ind.). Nothing bars or estops Petitioner from requesting IPR.

B. Challenge and Relief Requested (37 C.F.R. § 42.104(b))

Petitioner requests IPR on the following grounds, which Mr. Prairie explains in his supporting declaration (Ex. PK-1003).

Ground	Claims	Basis
1	**16, 18–21**	§ 103 – Hiniker Manual in view of Hiniker Webpage (and, if necessary, Johnson and/or Morris)
2	**17**	§ 103 – Hiniker Manual in view of Hiniker Webpage and Furrer
3	**22–23**	§ 103 – Hiniker Manual in view of Hiniker Webpage and Baskerville
4	**16–21**	§ 103 – Morris in view of Furrer

Ground	Claims	Basis
5	**22–23**	§ 103 – Morris in view of Furrer and Baskerville

Each reference pre-dates the '940 patent's earliest possible effective filing date (February 15, 2007) and qualifies as prior art:

Reference	Date	Statute
Hiniker Manual (Ex. PK-1004)	January 2, 2001 (published)	Pre-AIA § 102(b)
Hiniker Webpage (Ex. PK-1005)	March 14, 2006 (published)	Pre-AIA § 102(a)
Johnson (Ex. PK-1006)	July 21, 2005 (published)	Pre-AIA § 102(b)
Furrer (Ex. PK-1007)	February 7, 2006 (filed)	Pre-AIA § 102(e)
Baskerville (Ex. PK-1008)	March 30, 1999 (issued)	Pre-AIA § 102(b)
Morris (Ex. PK-1009)	August 13, 2006 (published)	Pre-AIA § 102(a)

Hiniker Manual is a manual for the Hiniker Company 4800 Series Air Seeder that was published January 2, 2001. Hiniker Webpage is a Hiniker Company webpage describing the features of the same product family and was published by March 14, 2006. Johnson is a U.S. patent publication that published July 21, 2005. Furrer is a U.S. patent that was filed February 7, 2006. Baskerville is a U.S. patent that issued March 30, 1999. Morris is a manual for the Morris Industries Ltd. 7000 Series Air Cart that was published by August 13, 2006.

II. SUMMARY OF THE '940 PATENT

The '940 patent discloses a seed carrier 100 comprising a main hopper 105 for carrying seeds, a conveyor 104 for conveying seeds, and a support arm 102 for supporting the conveyor. Ex. PK-1001 at Abstract, 2:65–3:1. The support arm 102 is "pivotably coupled to a base . . . so that the support arm 102 is rotatable about a vertical axis." *Id.* at 3:39–41. Similarly, the conveyor 104 is "pivotably coupled with the support arm [102] by a coupling 103" to "allow the conveyor to be rotated between [a seed] loading and unloading position." *Id.* at 3:1–3, 2:1-4.

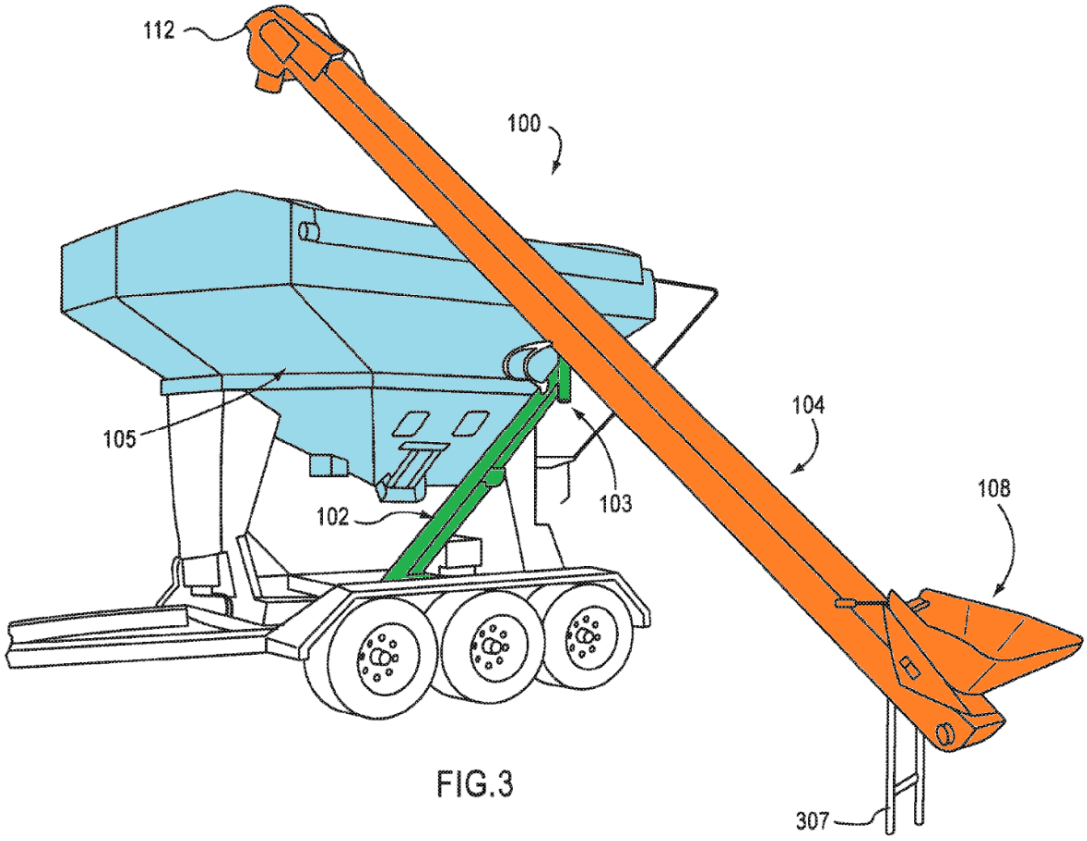


FIG.3

Id. at Fig. 3 (color added) (depicting conveyor 104 in loading position).

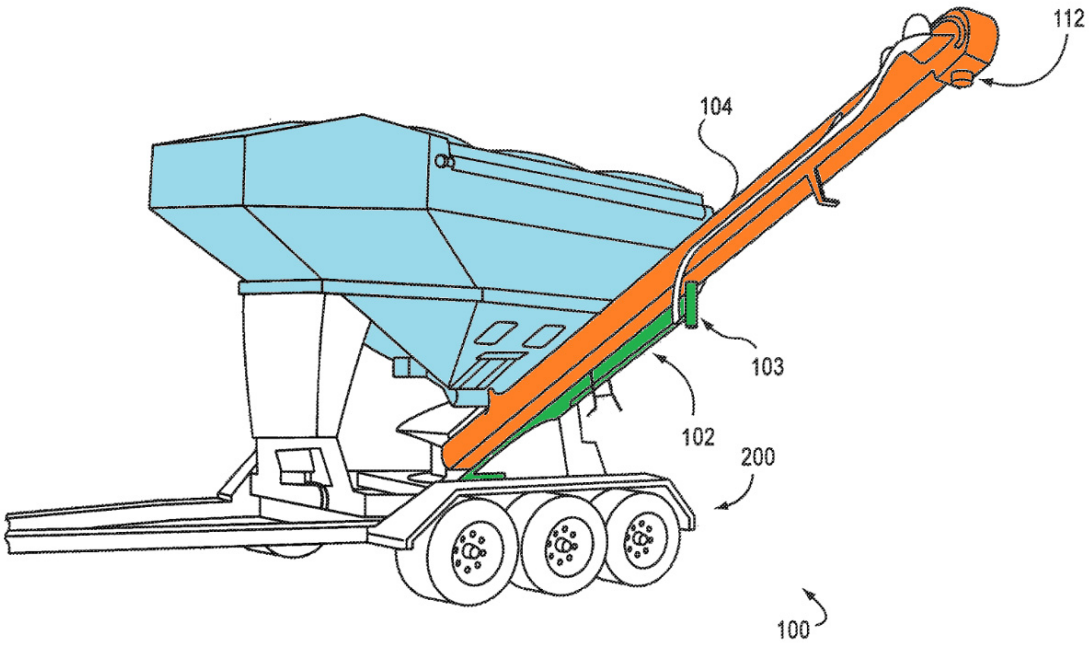


FIG.2

Id. at Fig. 2 (color added) (depicting conveyor 104 in unloading position).

The examiner issued two rejections before allowing the claims. Ex. PK-1002. The examiner did not base any rejections on any prior art pertaining to agricultural equipment. *See id.*

III. CLAIM CONSTRUCTION

For purposes of this proceeding only, Petitioner submits the Board need not construe any claim terms to address the identified grounds. *See Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011). Petitioner may respond to any constructions offered by Patent Owner or adopted by the Board. *Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1383 (Fed. Cir. 2023).

IV. LEVEL OF ORDINARY SKILL IN THE ART

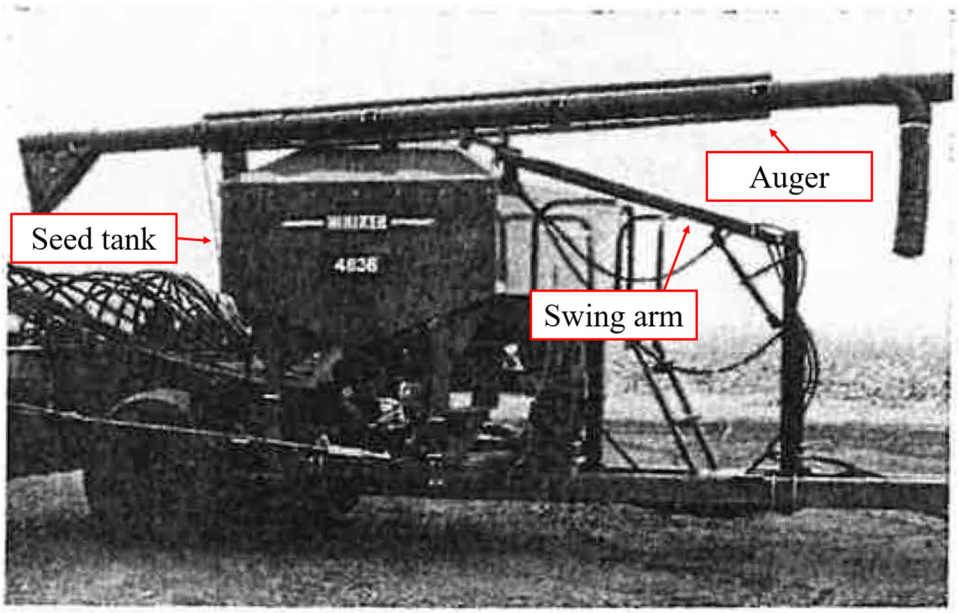
A skilled artisan would have had at least a Bachelor of Science degree in mechanical engineering, agricultural engineering, or a related discipline, with at least two years' experience in a field related to agricultural equipment. Ex. PK-1003 ¶ 24. More education could substitute for work experience, and vice versa. *Id.*

V. THE CHALLENGED CLAIMS WOULD HAVE BEEN OBVIOUS

A. Ground 1: Hiniker Manual in View of Hiniker Webpage (and, If Necessary, Johnson and/or Morris)

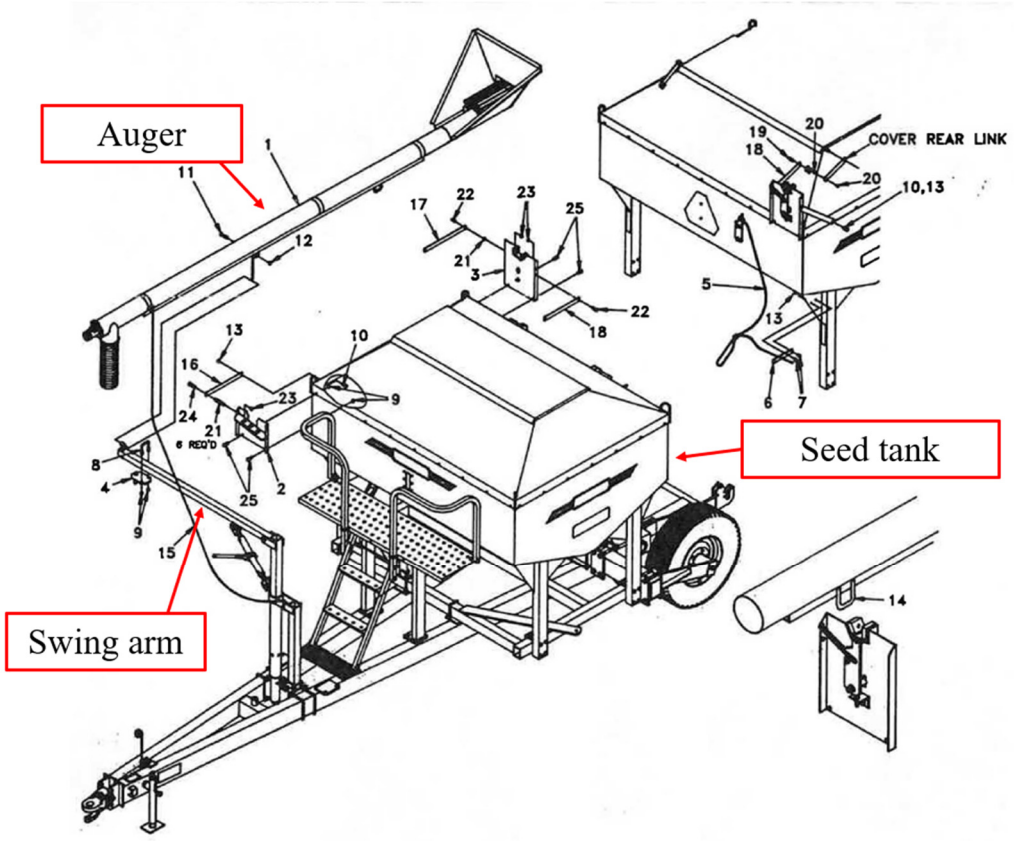
1. Overview of Hiniker Manual

Hiniker Manual discloses the Hiniker Company 4800 Series Air Seeder, an air seeder comprising a seed tank and an auger mounted on a "swing arm":



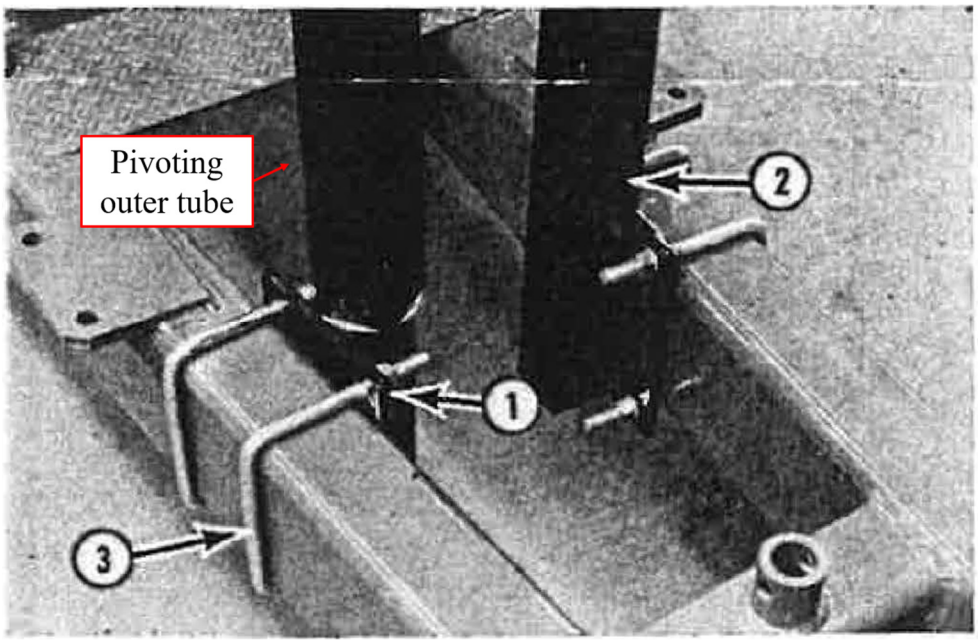
Ex. PK-1004 at 25 (annotated).[1]

[1] All citations to Ex. PK-1004 refer to the page numbers originally printed on each page, rather than the page numbers Petitioner added at the bottom of each page.

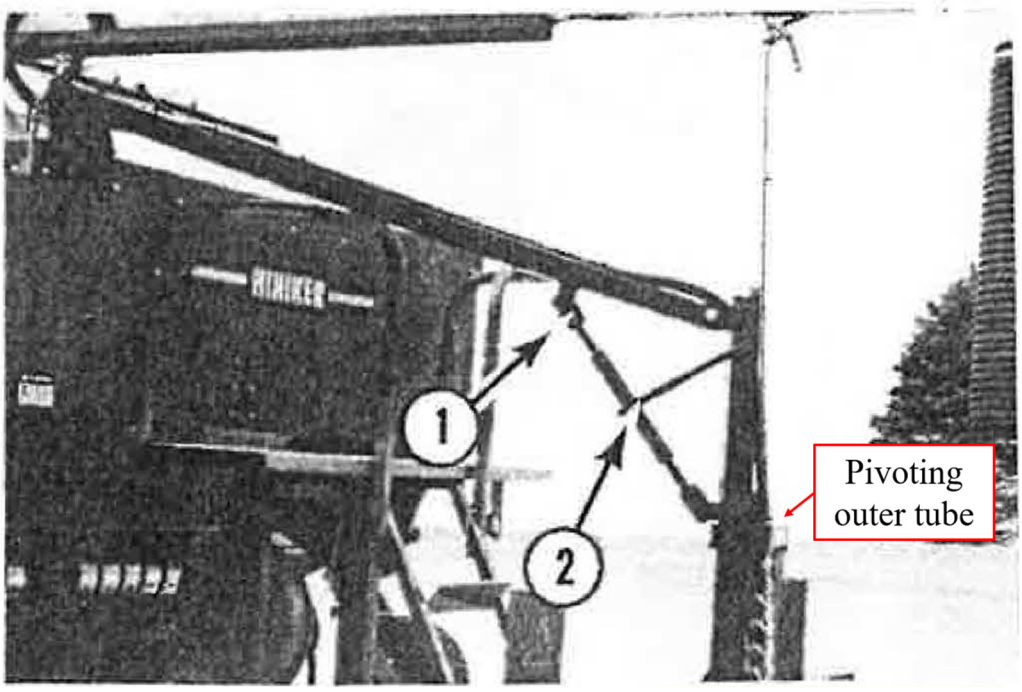


Id. at 38 (annotated); *see also id.* at 37 (referring to "swing arm").

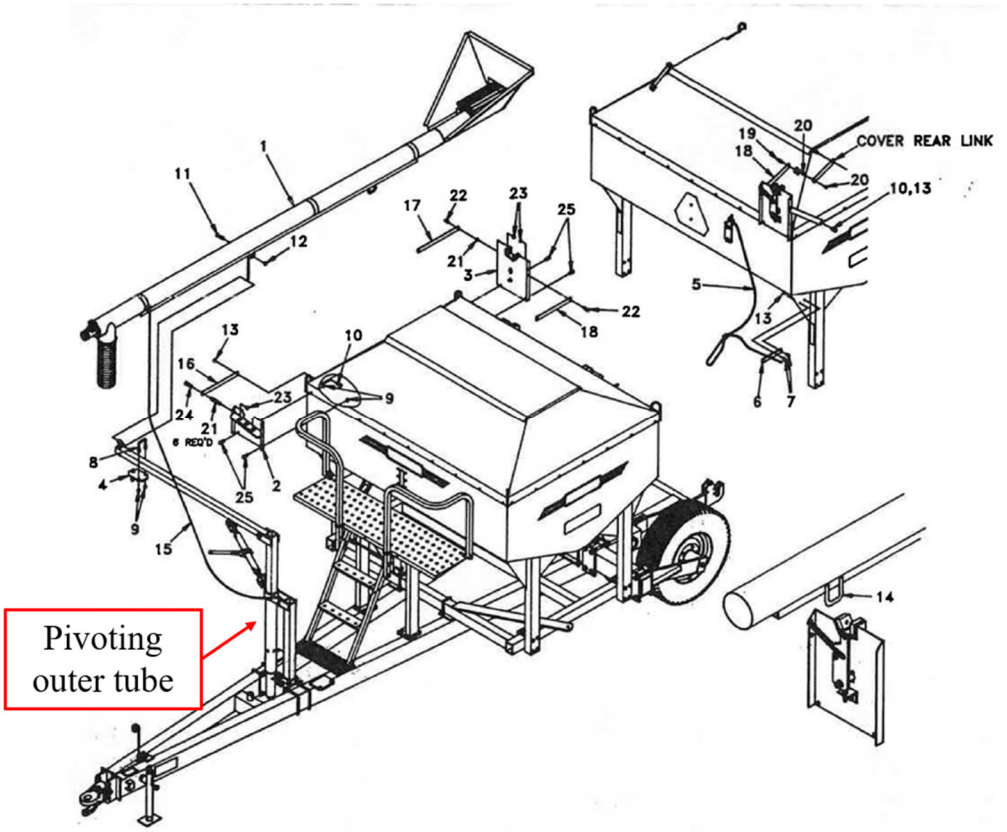
The swing arm is connected to a vertical "pivoting outer tube" that "allows the fill auger to rotate easily." *Id.* at 36, 37.



Id. at 37 (annotated).



Id. (annotated).



Id. at 38 (annotated).

Hiniker Manual was not before the examiner during prosecution of the '940 patent, *see* Ex. PK-1002, nor during prosecution of U.S. Patent No. 8,221,047, from which the '940 patent issued as a continuation, *see* Ex. PK-1012.

(a) Hiniker Manual Is Prior Art

Hiniker Manual is prior art under pre-AIA § 102(b) because it is a printed publication that was publicly accessible as of January 2, 2001.

Hiniker Manual is like the manuals that the Federal Circuit held were printed publications in *Weber, Inc. v. Provisur Technologies, Inc.*, 92 F.4th 1059 (Fed. Cir. 2024). There, the court reasoned that the manuals "were created for dissemination

to the interested public to provide instructions about how to assemble, use, clean, and maintain Weber's slicer, as well as guidance for addressing malfunctions that users might encounter." *Id.* at 1067. The court also noted that the manuals were not confidential. *Id.* at 1067–68. Rather, "Weber employees testified that the operating manuals could be obtained either upon purchase of the Weber food slicer or upon request directed to a Weber employee." *Id.* at 1068 (footnote omitted). And it added that "Weber's declarants provided actual examples of deliveries of the operating manuals to customers." *Id.*

Likewise, here, Hiniker Company distributed a copy of Hiniker Manual to each purchaser of the Hiniker 4800 Air Seeder S/N - 104 between January 2, 2001, and March 16, 2004. Ex. PK-1017 ¶ 3. "For example, a copy of the manual was distributed to Puthoff Repair Sales & Service on January 31, 2001, when Hiniker shipped a 4833 Air Seeder (S/N 4836-0085-104) to Puthoff." *Id.* Hiniker Manual also is not confidential, but rather is available "upon request directed to a [Hiniker] employee," which is how Petitioner obtained it. *Weber*, 92 F.4th at 1068. Hiniker Manual was, moreover, created for dissemination to the interested public to provide instructions about how to assemble, use, clean, and maintain the Hiniker 4800 Air Seeder. *See generally* Ex. PK-1004. It further provides guidance for addressing malfunctions that users might encounter. *See id.* at 4 (noting the manual provides "[s]ervice information" and instructing users to "[f]ix damage immediately" and

"[r]eplace worn or broken parts"); *id.* at 51 (providing contact information). Accordingly, like the manuals in *Weber*, Hiniker Manual is a printed publication.

2. Overview of Hiniker Webpage

Hiniker Webpage is an archived page on Hiniker Company's website describing the features of the Hiniker Company 4800 Series Air Seeder. *See* Ex. PK-1005; *see also* Ex. PK-1018 (showing that Hiniker Webpage is a subpage of the "4800 Air Seeder" page on Hiniker Company's website). Hiniker Webpage states that although the 4800 Series Air Seeder's auger is referred to as a "[f]ill" auger, it "may be used to both fill ***and empty*** the seed hopper when changing seed varieties." Ex. PK-1005.

Hiniker Webpage was not before the examiner during prosecution of the '940 patent, *see* Ex. PK-1002, nor during prosecution of the parent '047 patent, *see* Ex. PK-1012.

(a) Hiniker Webpage Is Prior Art

Hiniker Webpage is prior art under pre-AIA § 102(a) because it is a printed publication that was publicly accessible as of at least March 14, 2006. On that date, the Wayback Machine captured Hiniker Webpage. Ex. PK-1015 ¶ 5. Hiniker Webpage was therefore publicly accessible no later than March 14, 2006. *Id.*; *see also* MPEP § 2128(II)(E) ("Prior art obtained via the Wayback Machine sets forth a prima facie case that the art was publicly accessible at the date and time provided

in the time stamp."); *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374–75 (Fed. Cir. 2021) ("District courts have taken judicial notice of the contents of webpages available through the Wayback Machine 'as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.'" (quoting *Erickson v. Neb. Mach. Co.*, No. 15-CV-01147-JD, 2015 WL 4089849, at *1 n.1 (N.D. Cal. July 6, 2015))).

Moreover, persons interested and ordinarily skilled in the art could easily have located Hiniker Webpage through reasonable diligence. Hiniker Company was (and still is) a well-known manufacturer of agricultural machinery. Ex. PK-1003 ¶ 37. And a person interested in Hiniker Company's 4800 Series Air Seeder could have found Hiniker Webpage on the Hiniker Company website by simply clicking the "AGRICULTURAL Equipment" link on the homepage, then clicking the "4800 Air Seeder" link on the next page, then clicking the "4800features" link on the next page. *See* Ex. PK-1018.

3. Reasons to Combine Hiniker Manual and Hiniker Webpage

Hiniker Manual and Hiniker Webpage describe the same product family, the Hiniker Company 4800 Series Air Seeder. *See* Ex. PK-1004 at Cover (referring to "4800 Air Seeder"); Ex. PK-1017 ¶ 3 (declaring Hiniker Manual "was distributed to each purchaser of the Hiniker 4800 Air Seeder S/N - 104"); Ex. PK-1018 (showing that Hiniker Webpage is a subpage of the "4800 Air Seeder" page on Hiniker

Company's website). A skilled artisan would have looked to both references together because they are from the same company and provide complementary disclosures of similar products. Ex. PK-1003 ¶ 40. Indeed, Hiniker Manual provides details that Hiniker Webpage does not, and vice versa. For example, Hiniker Manual explains how to assemble and operate the auger, Ex. PK-1004 at 36–41, and Hiniker Webpage explains that the auger "may be used to both fill and empty the seed hopper," Ex. PK-1005. Accordingly, a skilled artisan would have been motivated to provide the full capabilities of the auger, and thus combine the teachings of Hiniker Manual and Hiniker Webpage.

A skilled artisan also would have had a reasonable expectation of success in combining the teachings of Hiniker Manual and Hiniker Webpage. Because both references describe the same product family, a skilled artisan would have known that combining the references was not only achievable, but also had already been achieved by Hiniker. Ex. PK-1003 ¶ 41. A skilled artisan also would have viewed this combination as requiring no more than routine skill since it had already been done. *Id*. Accordingly, a skilled artisan would have had a reasonable expectation of success in achieving the combination.

4. Independent Claim 16

(a) [16.pre] A seed or grain tender comprising:

The preamble is not limiting. It neither "recites essential structure" nor "is

necessary to give life, meaning, and vitality to the claim." *Shoes by Firebug LLC v. Stride Rite Children's Grp., LLC*, 962 F.3d 1362, 1367 (Fed. Cir. 2020) (citation omitted). Further, the body of the claim "defines a structurally complete invention" because it does not "depend[] on a . . . preamble phrase for antecedent basis." *Id.* (citation omitted). And the preamble merely "state[s] a purpose or intended use for the invention." *Id.* (citation omitted). Accordingly, the preamble is not relevant to the obviousness analysis.

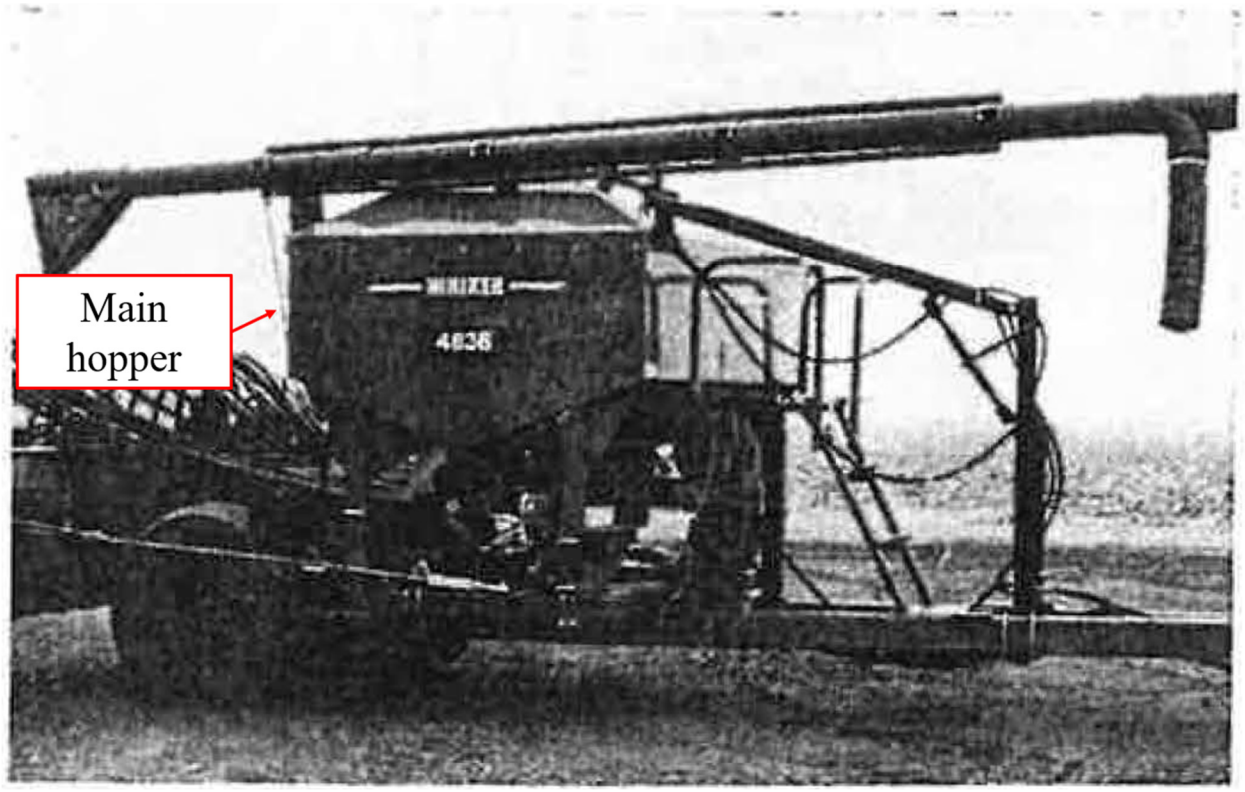
Regardless, the Hiniker combination discloses a seed or grain tender. Ex. PK-1003 ¶ 44. The '940 patent equates a "tender" with a "carrier." Ex. PK-1001 at 1:43–46 (referring to "a seed tender or carrier"); *id.* at 1:16–17 ("The present invention relates generally to a conveyor system for a grain or seed carrier."); *id.* at Abstract ("A seed carrier includes a main hopper coupled with a frame via leg members."); *id.* at Title ("Seed Carrier with Pivoting Conveyor"). Hiniker Manual discloses an "air seeder cart" comprising a "tank" for carrying seeds—i.e., a seed carrier. Ex. PK-1004 at Cover, 36. Thus, the Hiniker combination satisfies the preamble.

If Patent Owner argues the Hiniker combination is not a tender, it would have been obvious to apply the combination to a tender. Ex. PK-1003 ¶ 45. The Hiniker combination is analogous to a tender with additional components for plant-

ing seeds. *Id.* A skilled artisan seeking to make a tender would have been motivated to design a tender based on this combination, but without the seed-planting components, to achieve the benefits discussed in § V.A.3 above. *Id.* A skilled artisan also would have reasonably expected success in doing so because it would merely require removing the seed-planting components. *Id.*

(b) [16.1] a main hopper having a main hopper discharge;

The Hiniker combination discloses this limitation. *Id.* ¶ 46. Hiniker Manual discloses that the Hiniker combination has a "seed tank" (main hopper) having an "outlet" (main hopper discharge):



Ex. PK-1004 at 25 (annotated); *see also id.* (referring to "seed tank outlet").

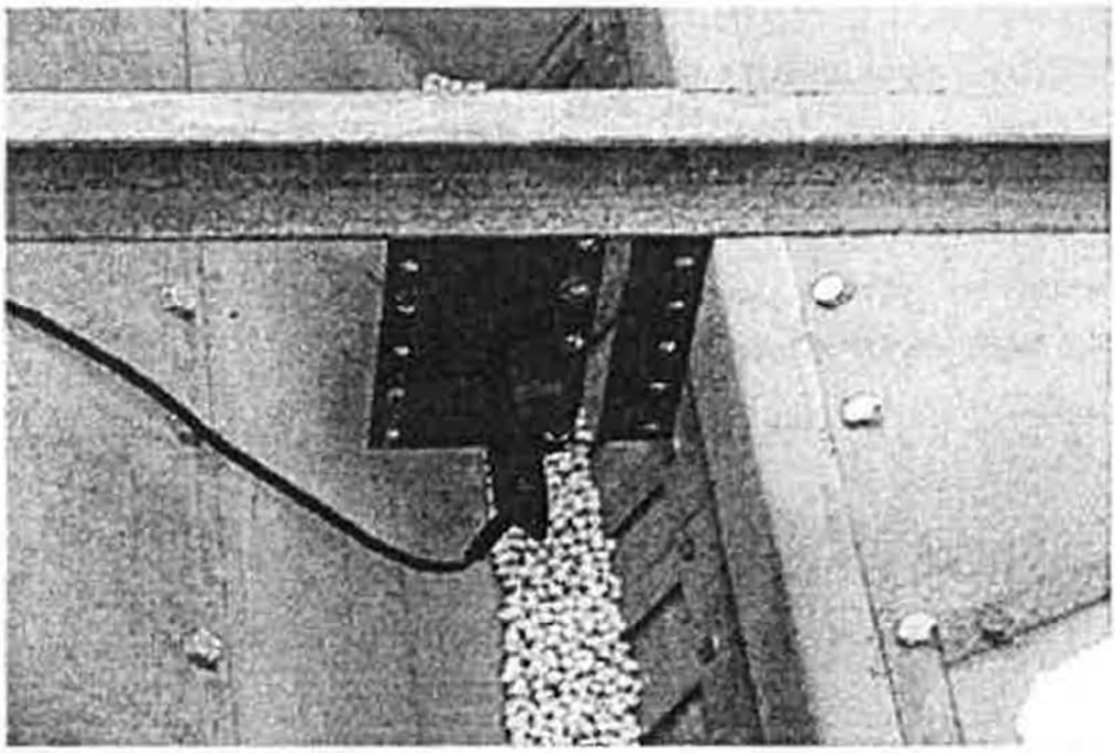
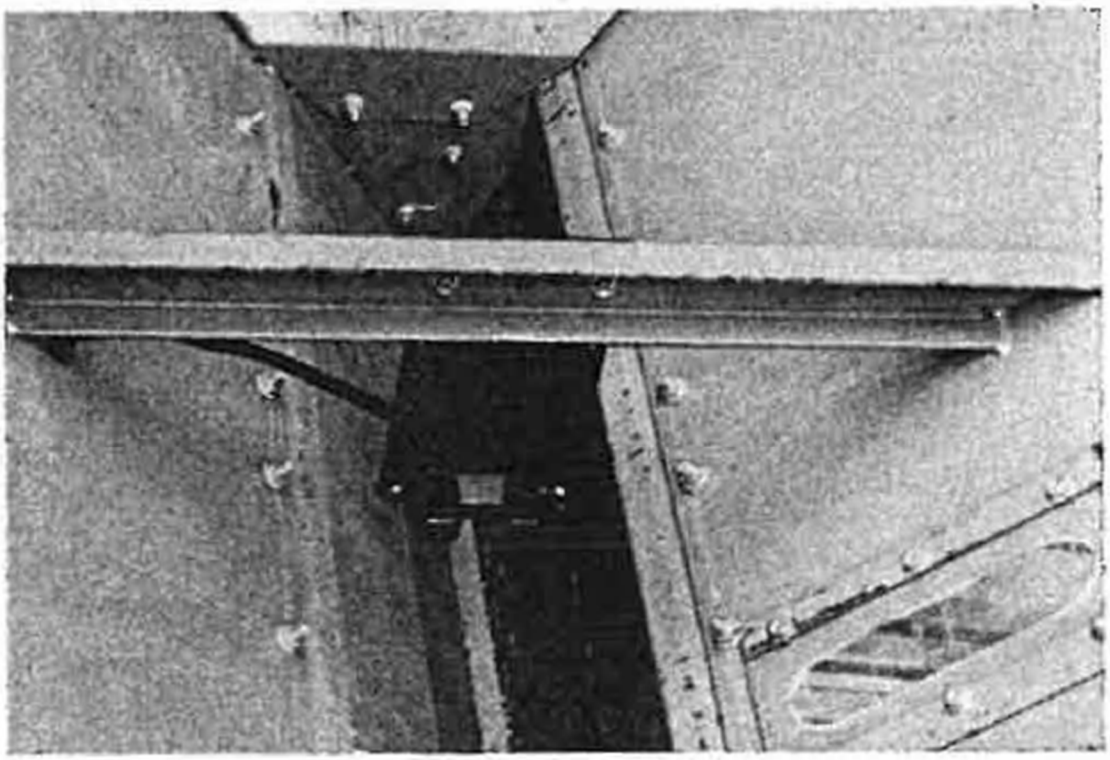
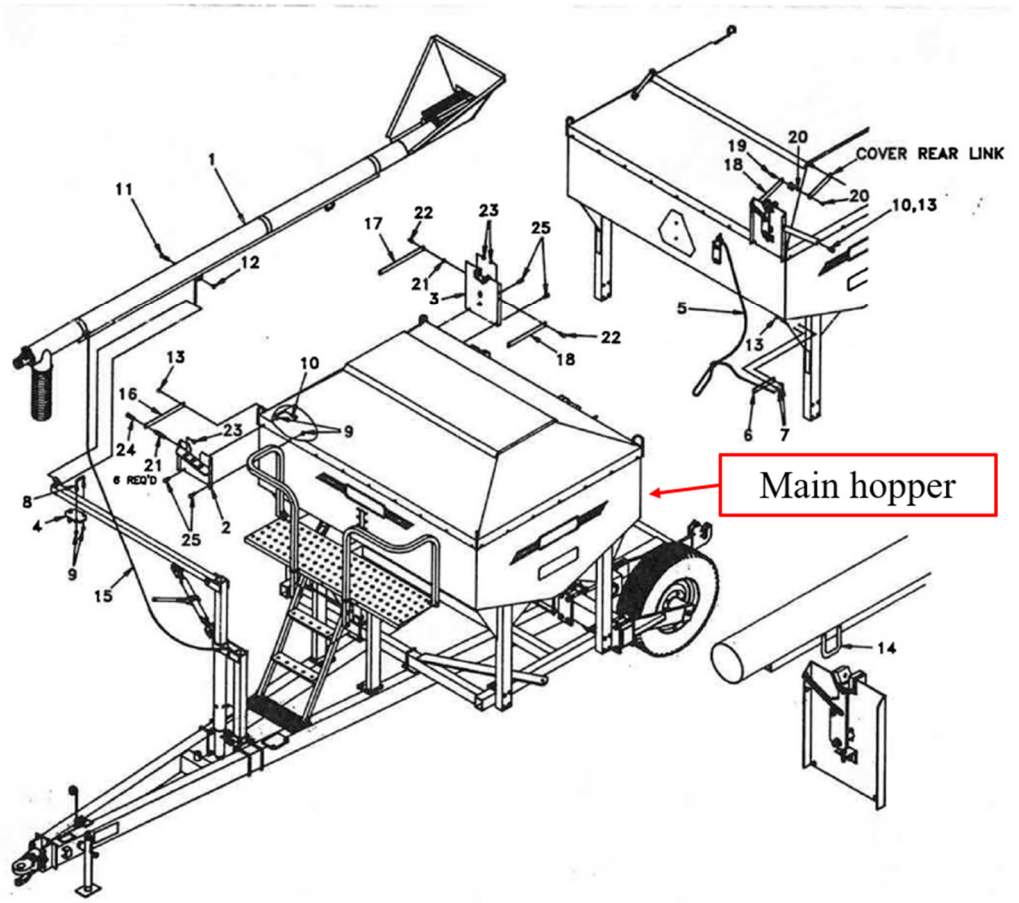


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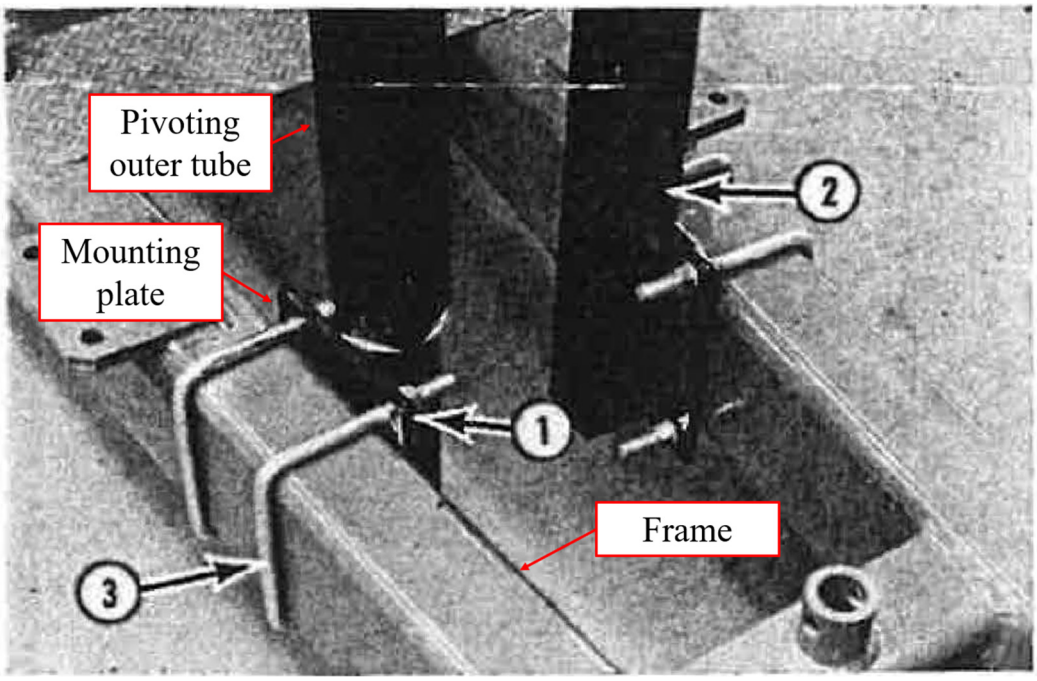
Id. at 46.



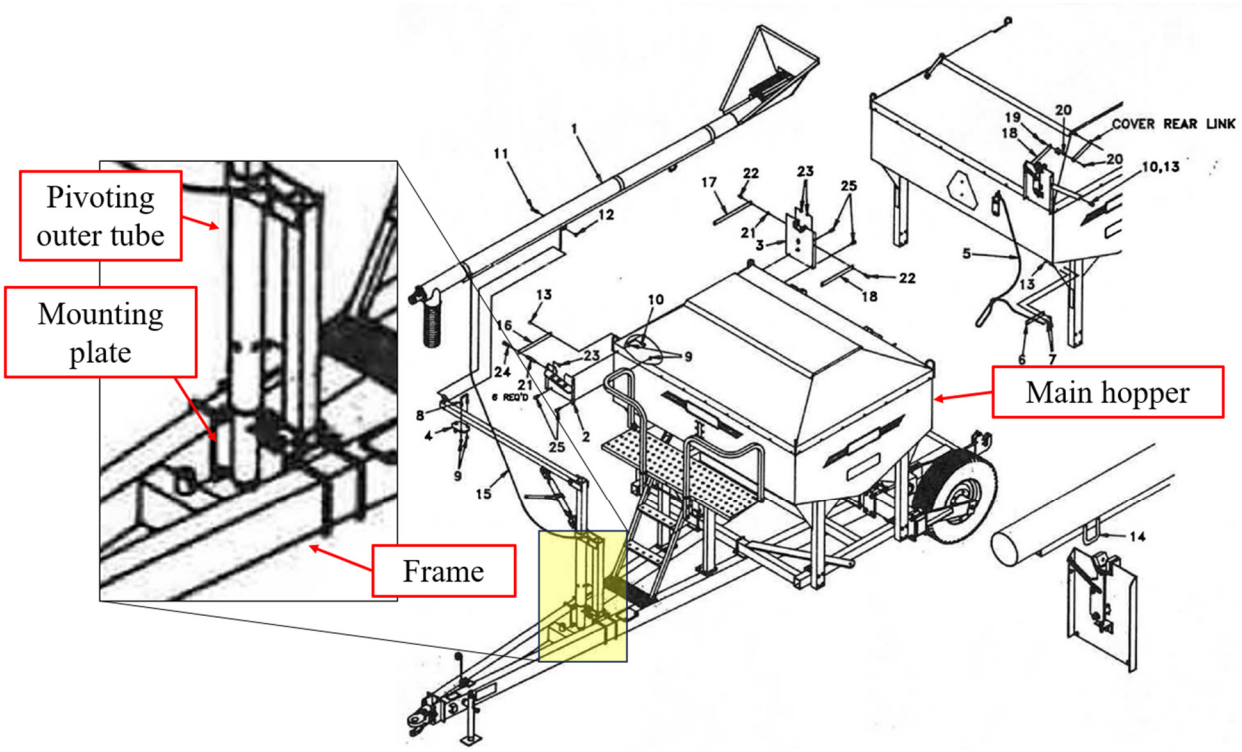
Id. at 38 (annotated); *see also* Ex. PK-1005 ("Two easily accessible slide gates permit complete hopper cleanout without any scooping."); Ex. PK-1001 at 1:44–45 ('940 patent stating the "main hopper" is "for holding seed").

(c) [16.2] a base positioned below said main hopper;

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 47. Hiniker Manual discloses that the Hiniker combination comprises a "mounting plate" (base) that is positioned below the main hopper and coupled with the tender's frame via bolts and with the "swing arm" via the "pivoting outer tube." Ex. PK-1004 at 37.



Id. (annotated).

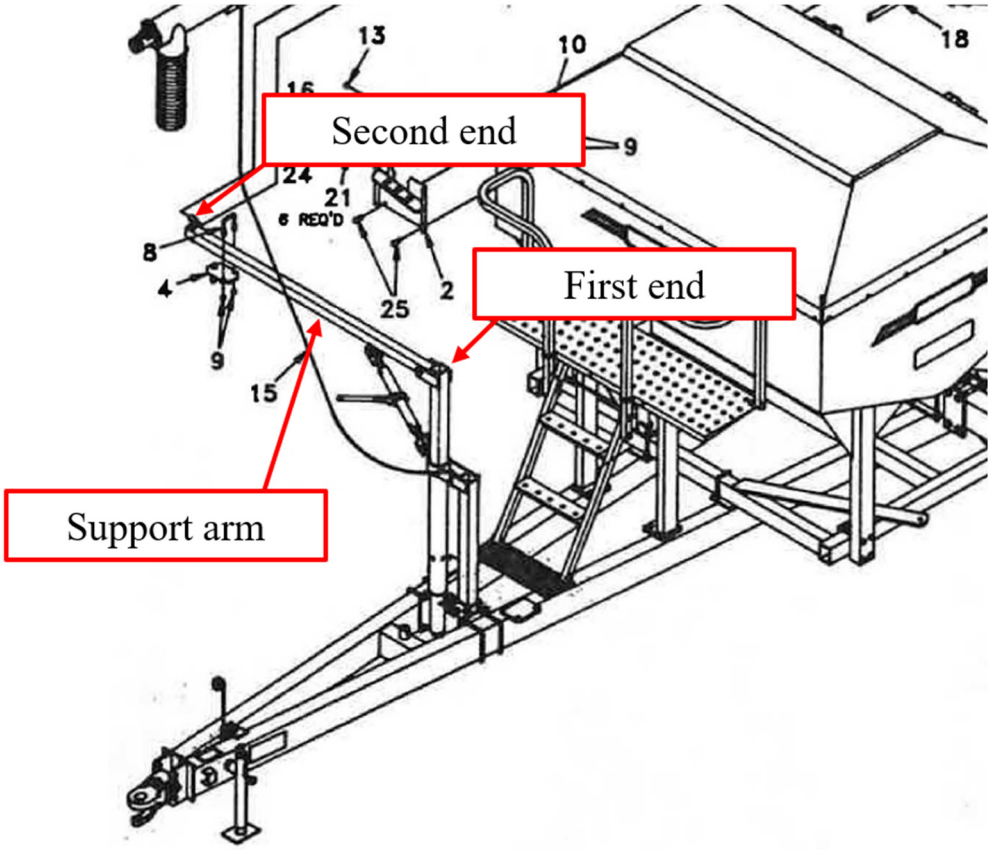


Id. at 38 (annotated); *see also* Ex. PK-1001 at Abstract ('940 patent similarly de-

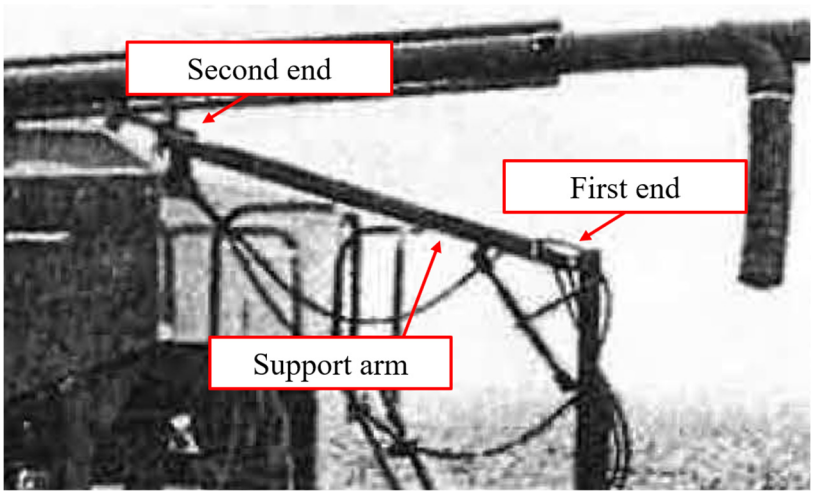
scribing the base as a "plate" that is "coupled with the frame" and "rotatably coupled" with a "support arm").

(d) [16.3] a support arm having first and second ends;

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 48. Hiniker Manual discloses a "swing arm" (support arm) having first and second ends. Ex. PK-1004 at 37.



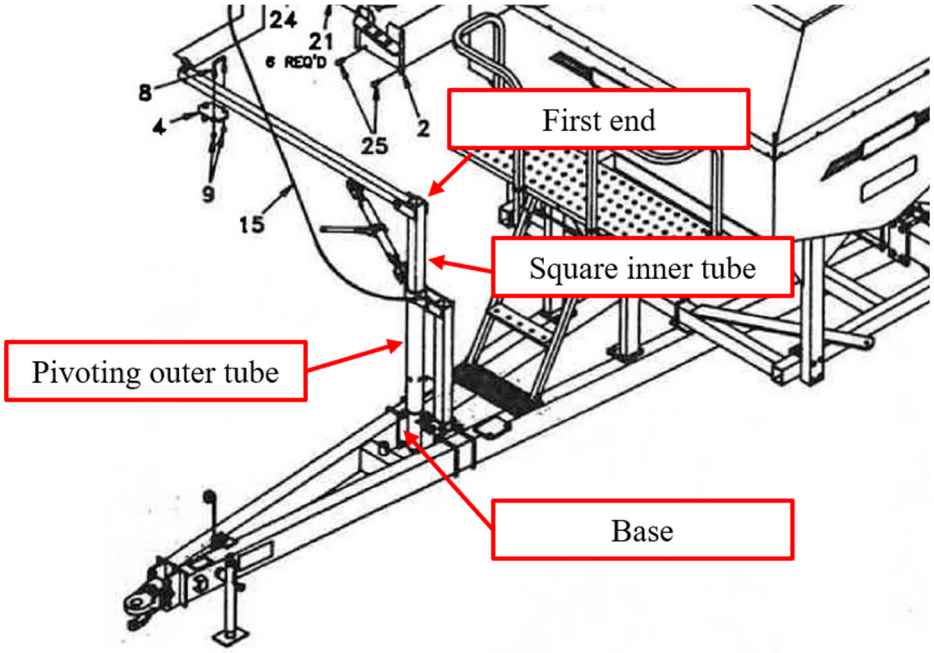
Id. at 38 (annotated).



Id. at 25 (annotated).

(e) [16.4] a first coupling connecting said first end of said support arm with said base,

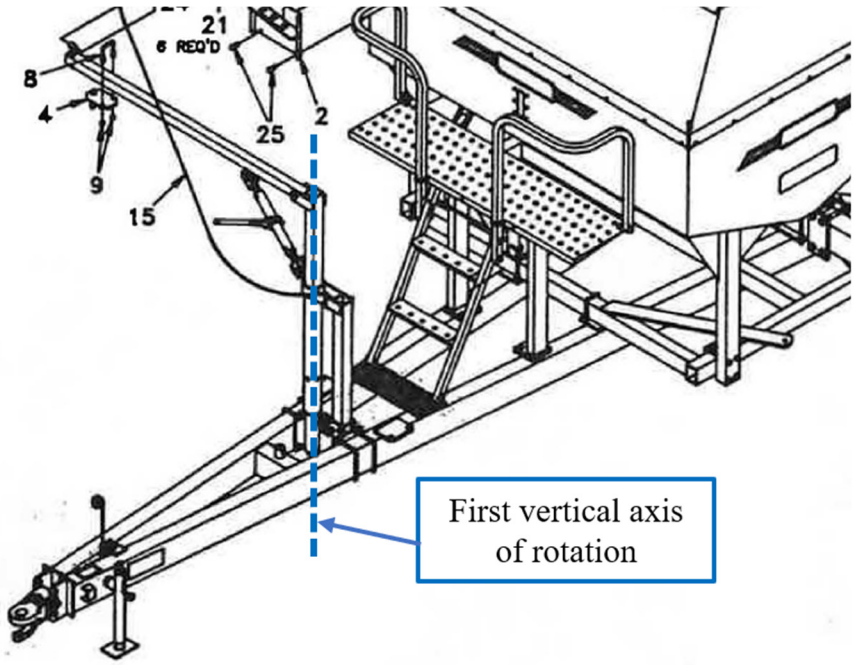
The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 49. Hiniker Manual discloses a first coupling that comprises the "pivoting outer tube" and a square inner tube and connects the first end of the support arm with the base:



Ex. PK-1004 at 38 (annotated); *id.* at 37 (referring to "pivoting outer tube").

(f) [16.5] said first coupling being rotatable about a first vertical axis of rotation, and

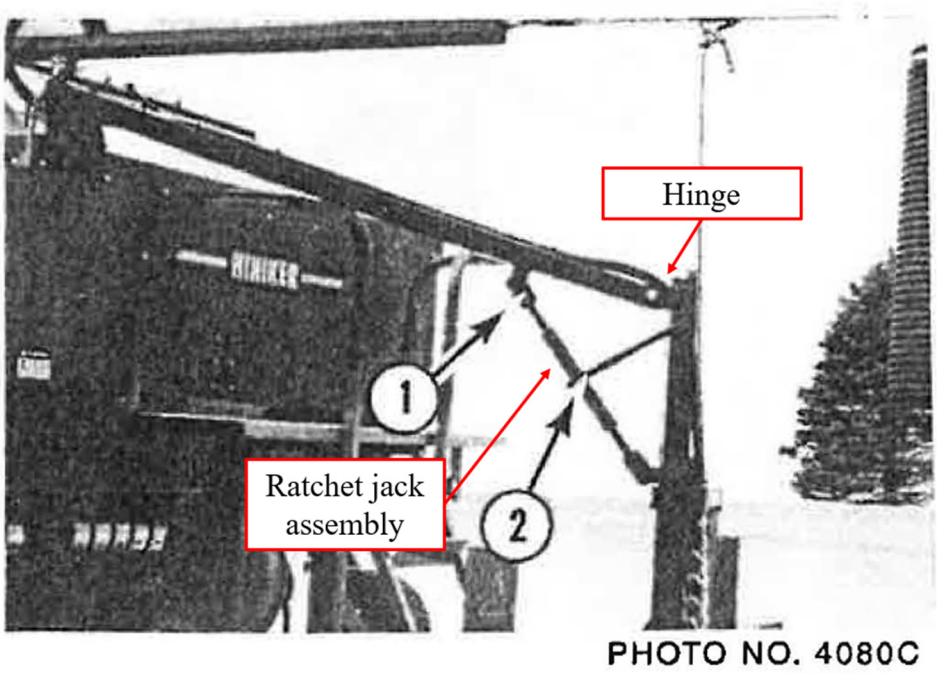
The Hiniker combination discloses this limitation. Ex. PK-1003 ¶¶ 50–52. As shown above in § V.A.4(e), the first coupling of the Hiniker combination includes a "***pivoting*** outer tube" that is vertical. Further, Hiniker Manual depicts the support arm at different angles relative to the longitudinal axis of the frame, demonstrating that the support arm can rotate about the first coupling. *Compare* Ex. PK-1004 at 25 (showing support arm parallel to frame's longitudinal axis), *with id.* at 38 (showing support arm perpendicular to frame's longitudinal axis). And Hiniker Manual states that the auger attached to the support arm can "rotate easily." *Id.* at 36. Thus, the first coupling of the Hiniker combination is rotatable about a first vertical axis of rotation:



Id. at 38 (annotated).

(g) [16.6] said first end of said support arm being rotatable about a first horizontal axis of rotation;

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶¶ 53–55. Hiniker Manual discloses that the first end of the support arm is connected to the first coupling via a hinge and "ratchet jack assembly":

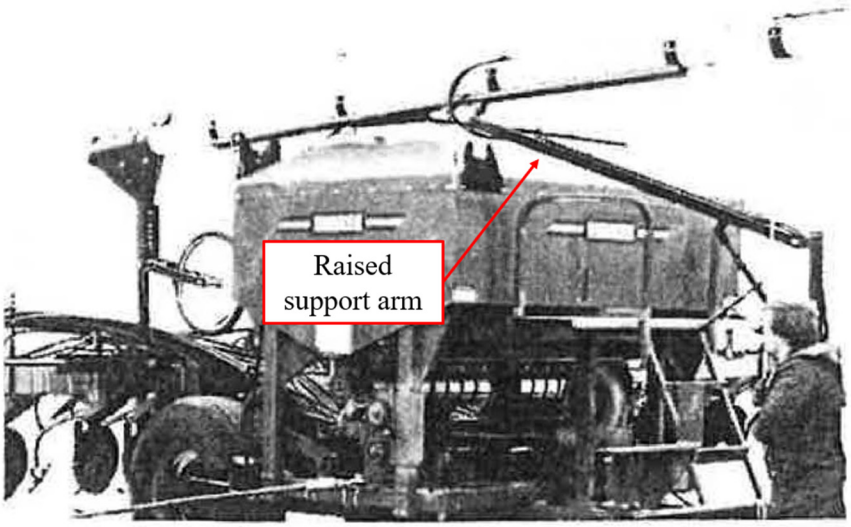


Pin ratchet jack assembly to swing arm (arrow 1) with tahe pin provided. Install ratchet jack lever (arrow 2) with the pin provided.

Ex. PK-1004 at 37 (highlighted, annotated).

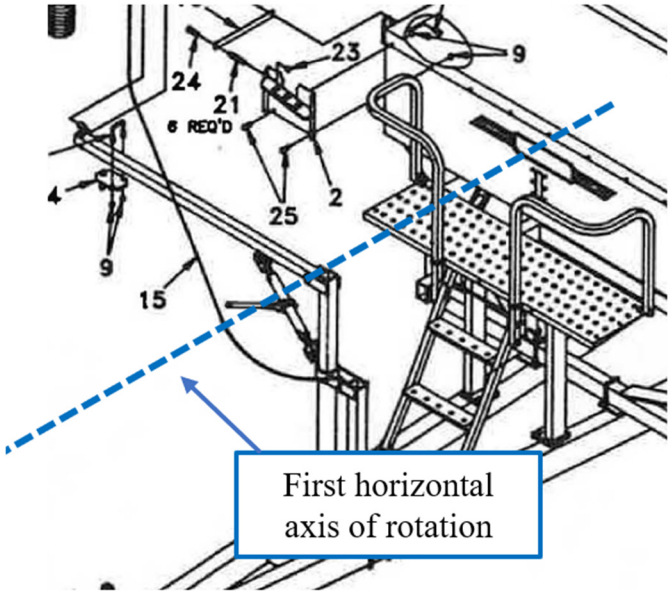
Hiniker Manual further discloses that the ratchet jack assembly is, as its name suggests, used to jack the support arm up and down:

3. Ratchet auger out of front auger support.



Id. at 41 (highlighted, annotated); *see also id.* ¶ 4 (instructing user to "lower the auger to the correct height for filling, by using the ratchet").

Thus, the first end of the support arm is rotatable about a first horizontal axis of rotation:

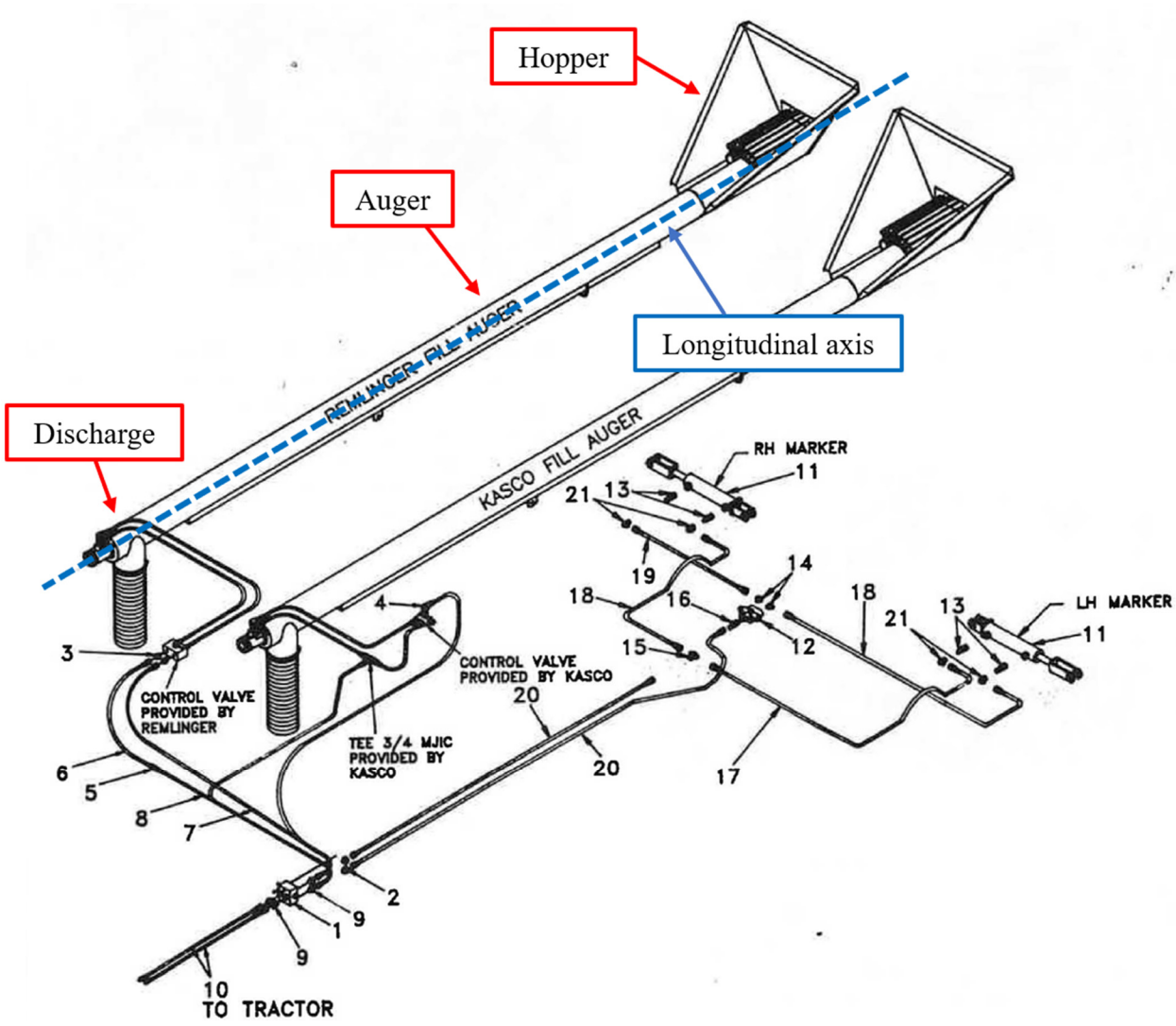


Id. at 38 (annotated).

(h) [16.7] a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, and a conveyor discharge at said second end; and

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶¶ 56–60.

Hiniker Manual discloses an auger having a longitudinal axis, a "hopper end" (first end), a second end, a "hopper" at the first end, and a discharge at the second end:



Ex. PK-1004 at 42 (annotated); *see also id.* at 41 (referring to "hopper end of auger").

As Mr. Prairie explains, an auger is a type of conveyor (a screw-type conveyor). Ex. PK-1003 ¶ 57. Indeed, the '940 patent identifies "[a]uger systems" as an example of "***[c]onveyor*** systems for moving grain, seed, etc." that were "well known." Ex. PK-1001 at 1:21–24 (emphasis added). It also acknowledges that augers "are used to rapidly ***move [i.e., convey]*** grain such as feed or the like." *Id.* (emphasis added). Moreover, other prior art confirms that an auger is a type of conveyor. *See* Ex. PK-1019 at 2:37–40 ("An ***auger conveyor*** is rotatably mounted within the auger housing and is adapted to ***convey*** the seed." (emphasis added)); Ex. PK-1020 at 1:33–36 ("An air cart as described above typically includes a ***conveyor in the form of an auger***." (emphasis added)); *id.* at 2:43–45 ("***conveyor 32 is in the form of an auger***" (emphasis added)). Thus, the auger of the Hiniker combination is a conveyor. Ex. PK-1003 ¶ 58.

In the alternative, if Patent Owner contends that an auger is not a conveyor, then it would have been obvious to replace the auger of the Hiniker combination with a conveyor belt in view of Johnson (Ex. PK-1006). Ex. PK-1003 ¶ 59. Johnson warns that "augers tend to grind or split at least some of [the] kernels of grain," which "not only can engender mechanical problems, e.g. jamming or degradation of the auger or structure around the auger, it can destroy or damage the grain"—"an increasingly important issue in today's agriculture" because certain seed or grain is "highly valued." Ex. PK-1006 ¶ 9. Johnson also warns that "augers have

inherent safety issues" because they "can grab or pull on clothing and [are] dangerous to the extremities of workers." *Id.* ¶ 12. To solve these problems, Johnson discloses "an endless conveyor belt" for "unloading grain bins." *Id.* at Abstract. According to Johnson, replacing an auger with a conveyor belt "provides relatively gentle handling of grain," is more "efficient" and "economical," "deters harmful [e]ffect on quality of the grain or seeds," and is "safe" and "simple to use and maintain." *Id.* ¶¶ 18–20, 130. Johnson therefore would have motivated a skilled artisan to replace the auger in the Hiniker combination with a conveyor belt.

A skilled artisan also would have had a reasonable expectation of success in replacing the Hiniker combination's auger with a conveyor belt. Ex. PK-1003 ¶ 60. As the '940 patent admits, conveyor belts were "well known" and commonly used at the time of the alleged invention. Ex. PK-1001 at 1:21–24. Indeed, "[c]onveyors have been used in the transportation of grain since the 1800's." Ex. PK-1021 ¶ 1. And the Hiniker-Johnson combination would use a conveyor belt according to its known function (conveying seed or grain) to achieve predictable results (e.g., safe and efficient transport of seed or grain). Ex. PK-1003 ¶ 60. Therefore, a skilled artisan would have reasonably expected success with this modification.

(i) [16.8] 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 first conveyor axis of rotation that is not parallel to said conveyor longitudinal axis, and

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶¶ 61–64. Hiniker Manual discloses a "swing arm pivot" (second coupling) connecting the second end of the support arm with the auger conveyor:

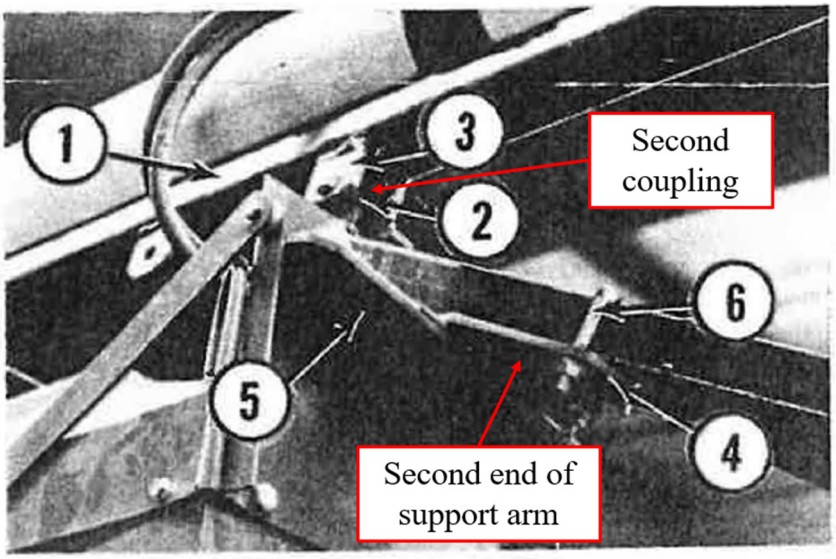
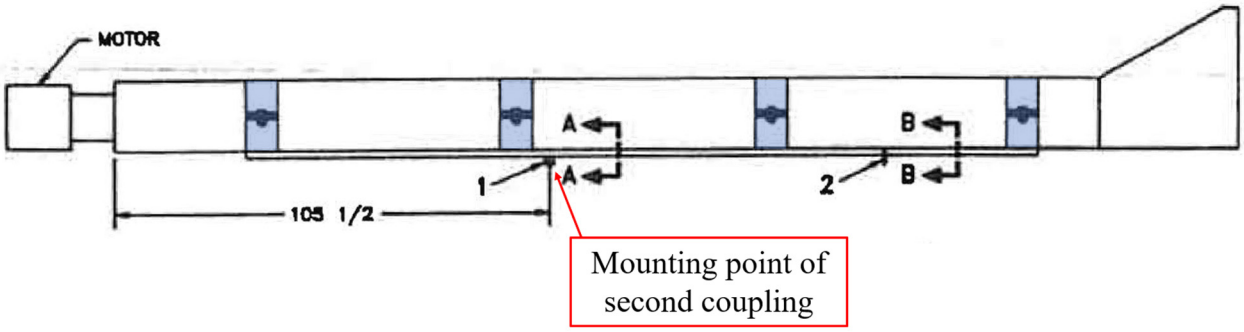


PHOTO NO. 4146

Install fill auger assembly (arrow 1) on to the swing arm pivot (arrow 2). The Kasco auger has pivot bracket in place. The Reminger auger two support tab (arrow 3) must be welded onto bottom channel. See (page 39) for proper location.

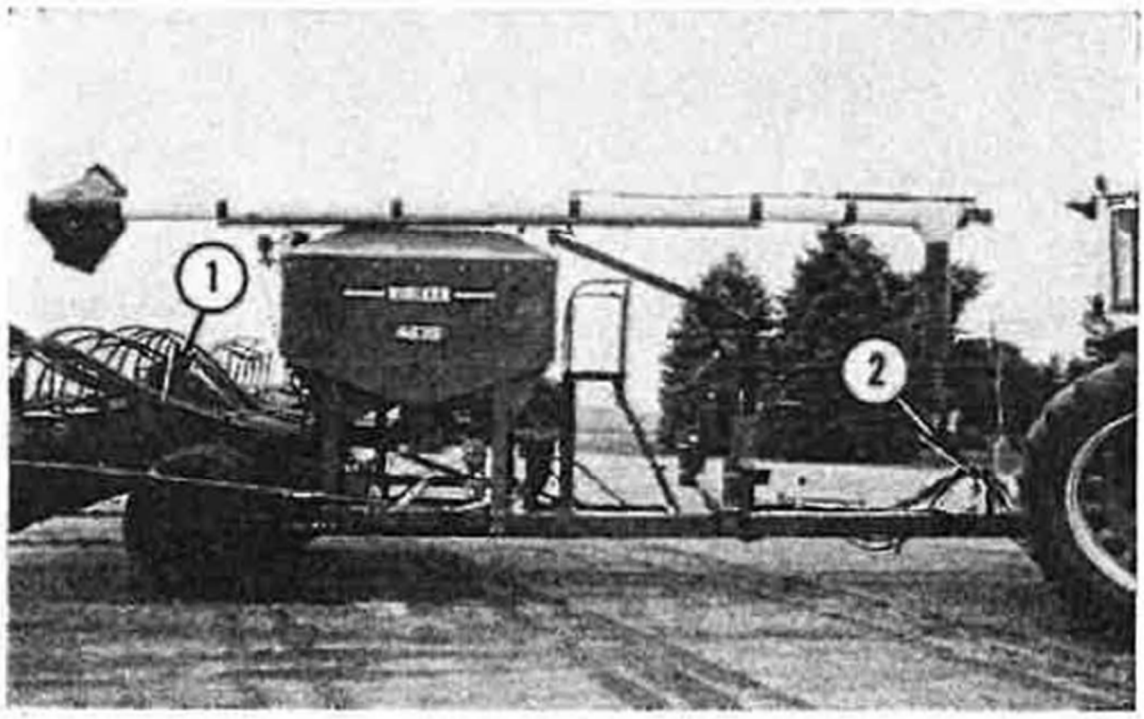
Ex. PK-1004 at 37 (highlighted, annotated).

Further, Hiniker Manual discloses that the second coupling is located at an approximate center of gravity of the auger conveyor:

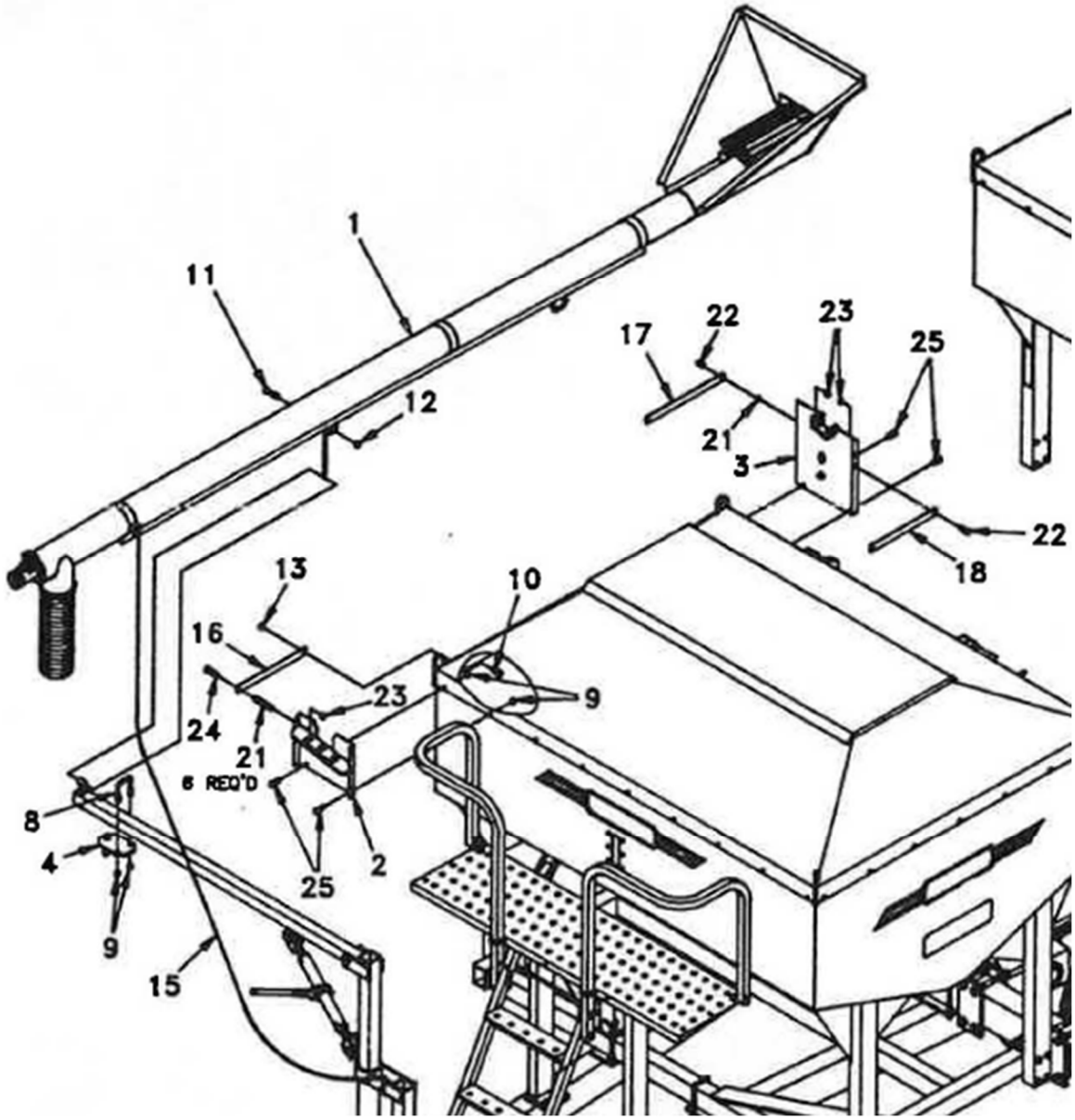


Id. at 39 (highlighted, annotated); *see also id.* at 40 ("The auger must be ***balanced*** in the support assembly with slightly more weight on the hopper end." (emphasis added)); *id.* at 39 (noting that "if auger is not balanced properly, the clamps [highlighted blue above] can be loosened and the auger moved until it is balanced").

Hiniker Manual also discloses that the auger conveyor can rotate about the second coupling between (1) a position in which the auger conveyor is in approximately the same plane as the support arm, *see id.* at 30, and (2) a position in which the auger conveyor is perpendicular to the support arm, *see id.* at 38:

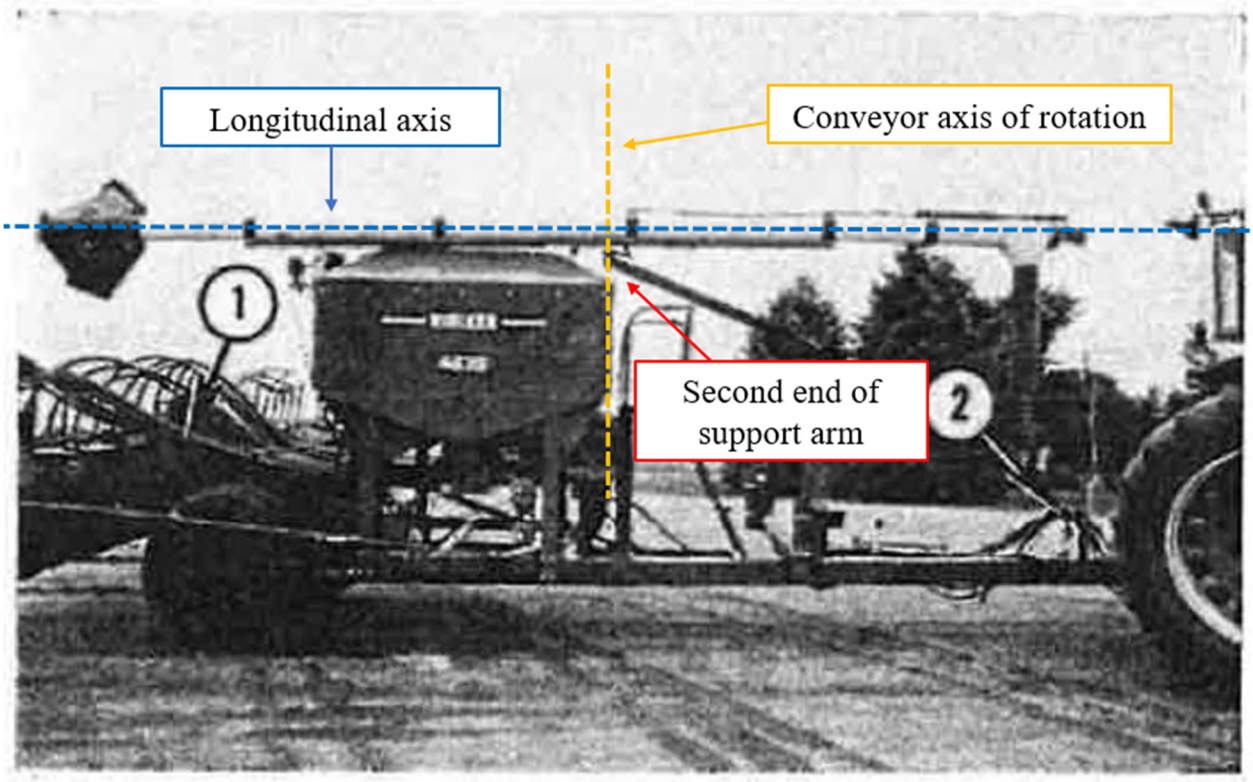


Id. at 30 (showing auger in approximately same plane as support arm); *see also id.* at 37 (same).



Id. at 38 (excerpted) (showing auger perpendicular to support arm). Thus, the second coupling defines a first conveyor axis of rotation.

Finally, this conveyor axis of rotation is not parallel to the conveyor longitudinal axis:



Id. at 30 (annotated).

(j) ***[16.9] said conveyor being rotatable about said first conveyor 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.***

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶¶ 65–74.

Loading Position: To load the main hopper, Hiniker Manual instructs the user to "lift [the] auger out of [the] rear cradle and maneuver [it] to the desired position," "[w]ith the hopper end of [the] auger on the ground" and the discharge end "lower[ed] . . . to the correct height for filling":

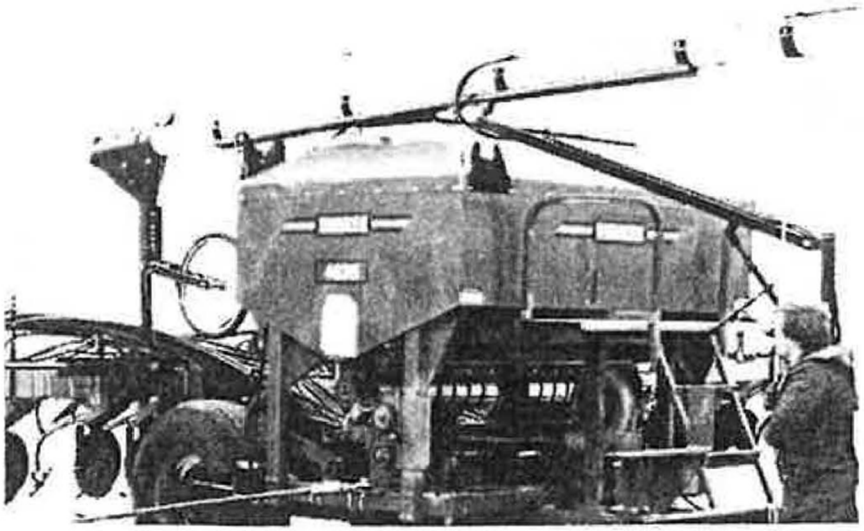


PHOTO NO. 4081

4. Pull rope to lift auger out of rear cradle and maneuver to the desired position. With the hopper end of auger on the ground, lower the auger to the correct height for filling, by using the ratchet. Reverse procedure for transport. Make sure the auger is secured both in the front and rear saddle before transport.

Ex. PK-1004 at 41 (highlighted); *see also id.* at 36 (noting the auger can "rotate easily for use in the field"); Ex. PK-1001 at Fig. 3, 3:26–27 ('940 patent similarly disclosing that the conveyor hopper sits on the ground when the conveyor is in the "loading position"). Thus, the Hiniker combination's auger conveyor is rotatable about its axis of rotation to a loading position wherein the conveyor discharge is disposed above the main hopper to dispense agricultural product (seed or grain) into the main hopper. Ex. PK-1003 ¶ 67.

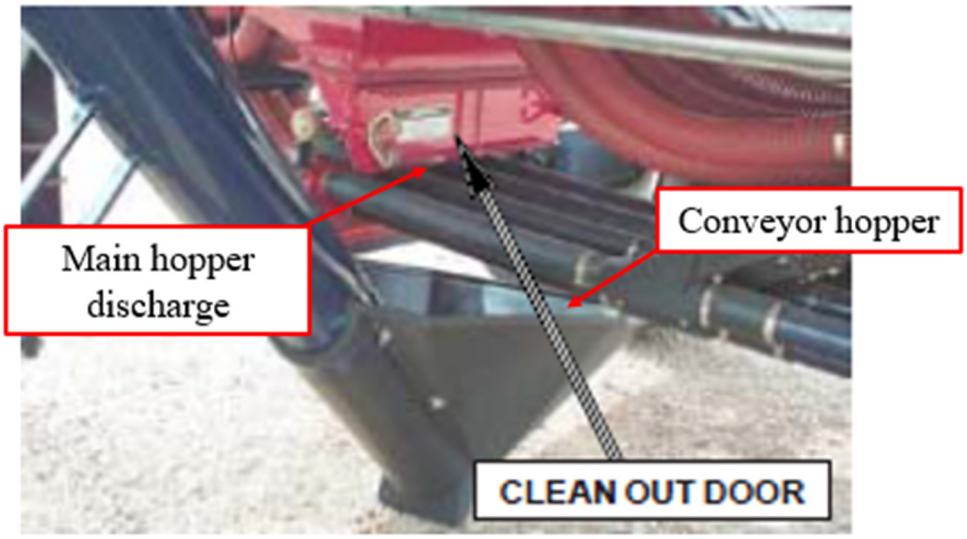
Unloading Position: Hiniker Webpage discloses that "[t]he auger may be used to both fill ***and empty*** the seed hopper when changing seed varieties." Ex.

PK-1005 (emphasis added). A skilled artisan would have readily understood that to empty the seed hopper using the auger conveyor, as Hiniker Webpage instructs, the auger conveyor must be rotated about its axis of rotation to a position in which the auger conveyor is disposed below the main hopper discharge and the seed tube moved from the discharge. Ex. PK-1003 ¶ 68. The Hiniker combination thus discloses an unloading position wherein the conveyor hopper is disposed below the main hopper discharge to receive agricultural product (seed or grain) from the main hopper.

In the alternative, if Patent Owner contends that Hiniker Website does not disclose the unloading position, the unloading position would have been obvious in view of Morris. *Id.* ¶ 69. As explained in § V.D below, Morris discloses a seed tender with an auger conveyor mounted to a support arm that allows the auger conveyor to rotate between a loading position and, as shown below, an unloading position:



Ex. PK-1009 at 5-27 (red annotations added).[2]



Id. (red annotations added); *see also id.* (instructing operator to "[p]osition auger

[2] All citations to Ex. PK-1009 refer to the page numbers originally printed on each page, rather than the page numbers Petitioner added at the bottom of each page.

under the tank to be emptied").

In seeking to understand Hiniker Webpage's disclosure that the auger conveyor of the Hiniker combination can "empty the seed hopper," Ex. PK-1005, a skilled artisan would have looked to Morris for guidance. Ex. PK-1003 ¶ 70. As shown above, Morris's seed tender resembles that of the Hiniker combination. Further, the Hiniker references and Morris are in the same technical field (seed or grain conveyor systems) and address the same problem (improved transport of seed or grain using a conveyor). *Id.* (citing Ex. PK-1004 at 36 ("The fill auger support . . . allows the fill auger to rotate easily for use in the field or for transporting."); *id.* at 40 ("The Fill Auger is designed for one-man operation."); Ex. PK-1009 at 4-4 ("The optional hydraulic auger is designed to make loading and unloading product from the Air Cart tank very simple and easy.")). Both Morris and Hiniker Webpage, moreover, disclose using their respective auger conveyors for loading and unloading the main hopper. Ex. PK-1005; Ex. PK-1009 at 5-25, 5-27. Thus, a skilled artisan would have turned to Morris for guidance in implementing the Hiniker combination.

After consulting Morris, a skilled artisan would have readily realized that the Hiniker combination's second coupling ("swing arm pivot") already allows the auger conveyor to rotate about the first conveyor axis of rotation from a loading position to an unloading position without any modifications. Ex. PK-1003 ¶¶ 71–73.

That readiness to accommodate the unloading position makes sense given that Hiniker Webpage states "[t]he auger may be used to both fill and empty the seed hopper" and does not mention the need for any modifications to achieve that result. Ex. PK-1005. Accordingly, if Patent Owner contends that Hiniker Website does not disclose the unloading position, the unloading position would have been obvious in view of Morris.

For the above reasons, the Board should hold that claim 16 would have been obvious over the combination of the Hiniker references or, in the alternative, the combination of the Hiniker references, Johnson, and/or Morris.

5. Dependent Claim 18

18. The seed or grain tender of claim 16, wherein said first conveyor axis of rotation extends through said approximate center of gravity of said conveyor.

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 75. As shown in § V.A.4(i) above, Hiniker Manual discloses that the first conveyor axis of rotation extends through the approximate center of gravity of the conveyor.

6. Dependent Claim 19

The seed or grain tender of claim 16, wherein said first horizontal axis extends through said first end of said support arm.

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 76. As shown in § V.A.4(g) above, the first horizontal axis of rotation extends through the first end of the support arm.

7. Dependent Claim 20

The seed or grain tender of claim 16, wherein said second end of said support arm terminates at or near said second coupling.

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 77. As shown in § V.A.4(i) above, the second end of the support arm terminates at or near the second coupling.

8. Dependent Claim 21

The seed or grain tender of claim 16, wherein said conveyor includes an internal elevator for moving seed or grain from said conveyor hopper to said conveyor discharge.

The Hiniker combination discloses this limitation. Ex. PK-1003 ¶ 78. As explained in § V.A.4(h) above, the Hiniker combination has an auger conveyor. Further, the ’940 patent acknowledges that augers “are used to rapidly move grain such as feed or the like.” Ex. PK-1001 at 1:21–24. And Hiniker Manual teaches that the auger conveyor moves product from “the hopper end of [the] auger on the ground” to the discharge end at “the correct height for filling.” Ex. PK-1004 at 41. Thus, the auger conveyor of the Hiniker combination includes an internal elevator for moving seed or grain from the conveyor hopper to the conveyor discharge.

If Patent Owner contends that an auger is not a conveyor, then the alternative Hiniker-Johnson combination also discloses this limitation. Ex. PK-1003 ¶ 79. As explained in § V.A.4(h), it would have been obvious to replace the Hiniker combination’s auger with Johnson’s conveyor belt. The ’940 patent, moreover,

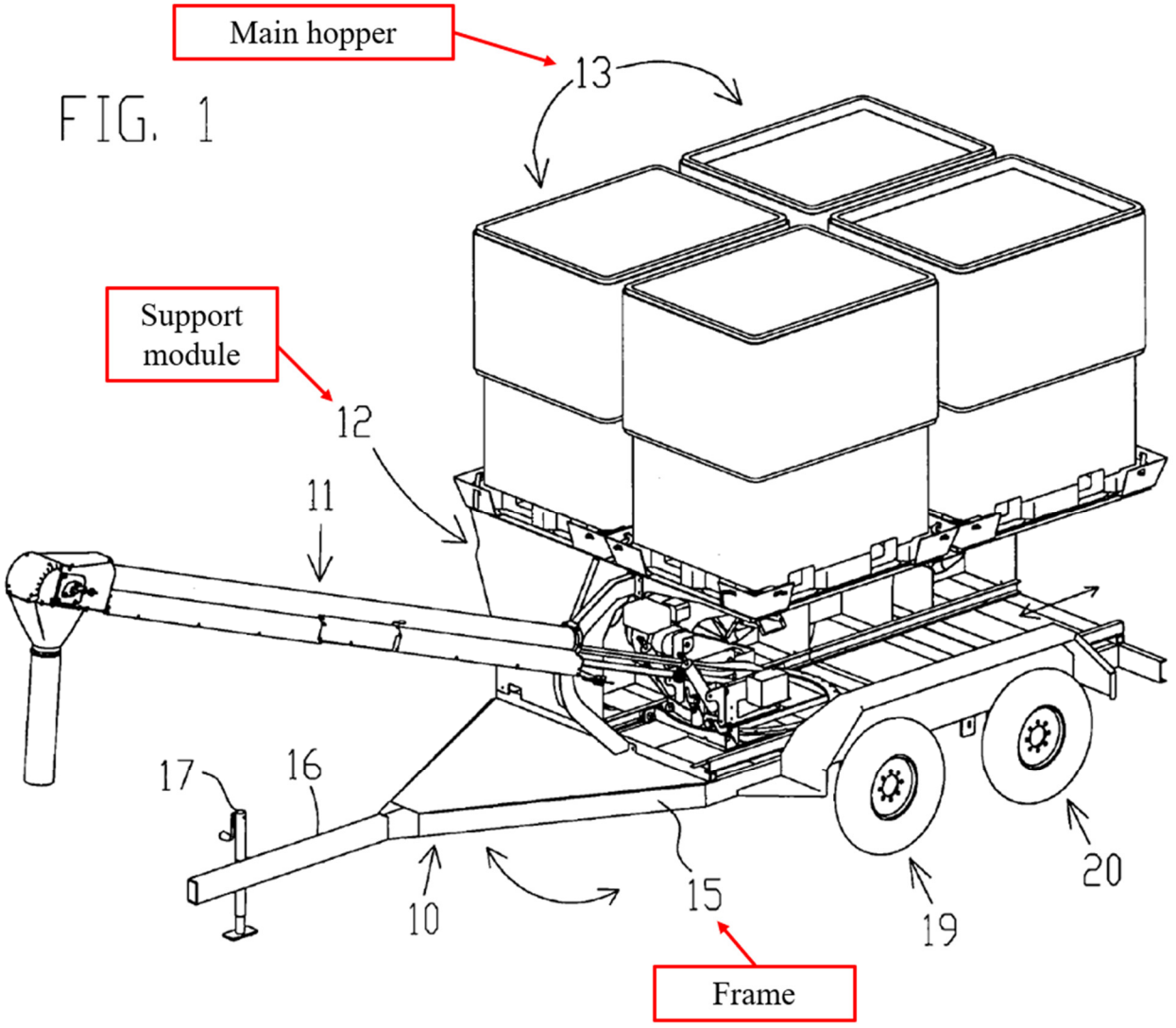
identifies conveyor belts as an example of an internal elevator. Ex. PK-1001 at 3:15–20 ("In one embodiment, the [internal] elevator is a motor-driven belt type elevator coupled onto rollers at both ends of the conveyor."). Accordingly, regardless of whether Patent Owner disputes that an auger is a conveyor, claim 21 would have been obvious.

B. Ground 2: Hiniker Manual in View of Hiniker Webpage and Furrer

Claim 17 would have been obvious over the Hiniker combination of Ground 1 in view of Furrer. Claim 17 recites: "The seed or grain tender of claim 16, wherein said first vertical axis of rotation [of the support arm's first coupling] extends through said main hopper discharge." As explained below, Furrer discloses this limitation, and it would have been obvious to modify the Hiniker combination to incorporate Furrer's teachings. The Board should therefore cancel claim 17.

1. Furrer Discloses a First Coupling Rotatable About a Vertical Axis Extending Through the Main Hopper Discharge

Like the Hiniker references, Furrer discloses a seed tender comprising a conveyor. Ex. PK-1007 at Abstract. Unlike the Hiniker references, however, Furrer's seed tender further comprises a "support module 12" that supports its main hopper ("individual storage bins 13") above "frame 15":



Id. at Fig. 1 (annotated), 3:59–67.

Furrer further discloses a "turret 28" (base) positioned below the main hopper and "rotatable about a vertical axis":

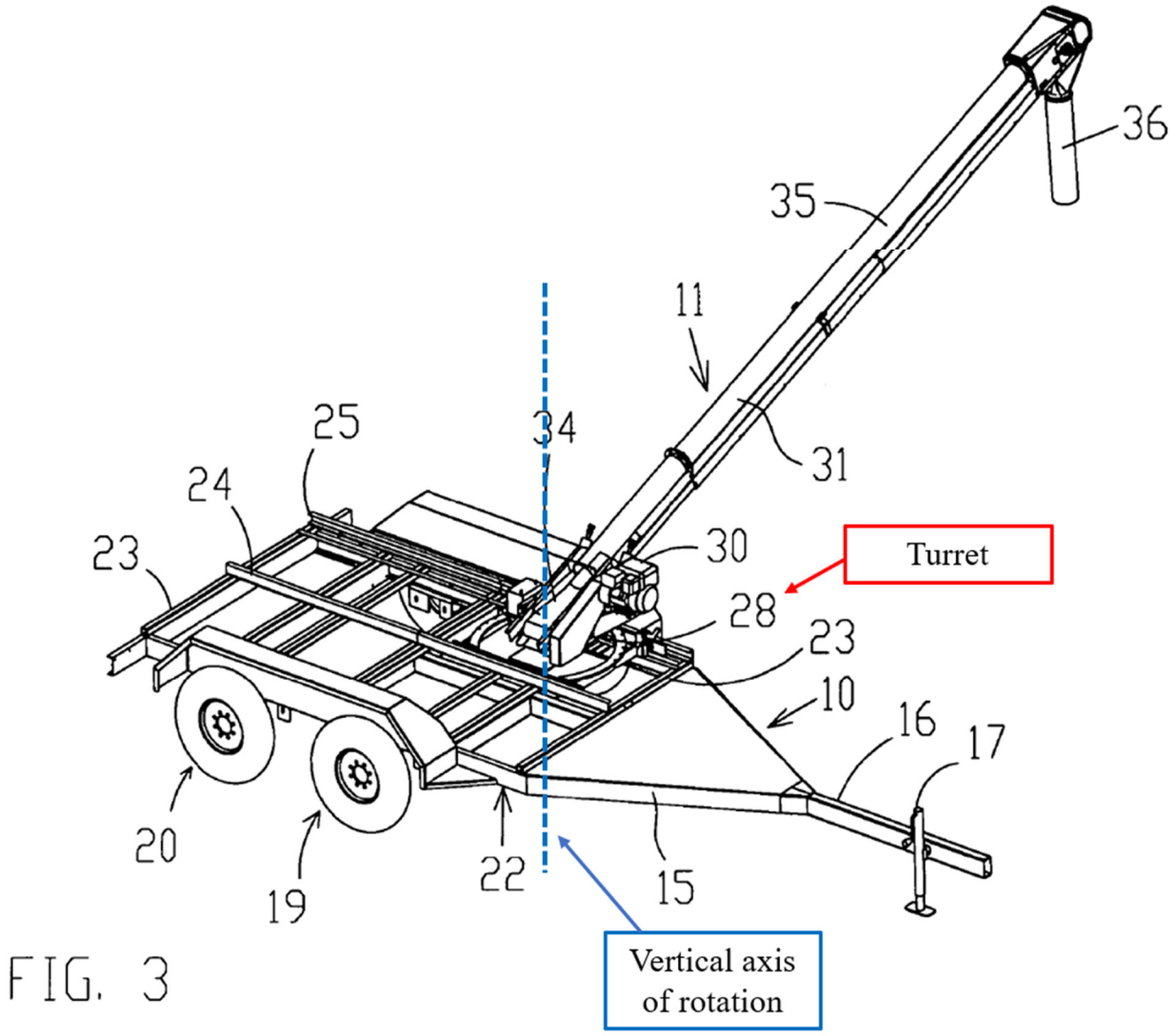
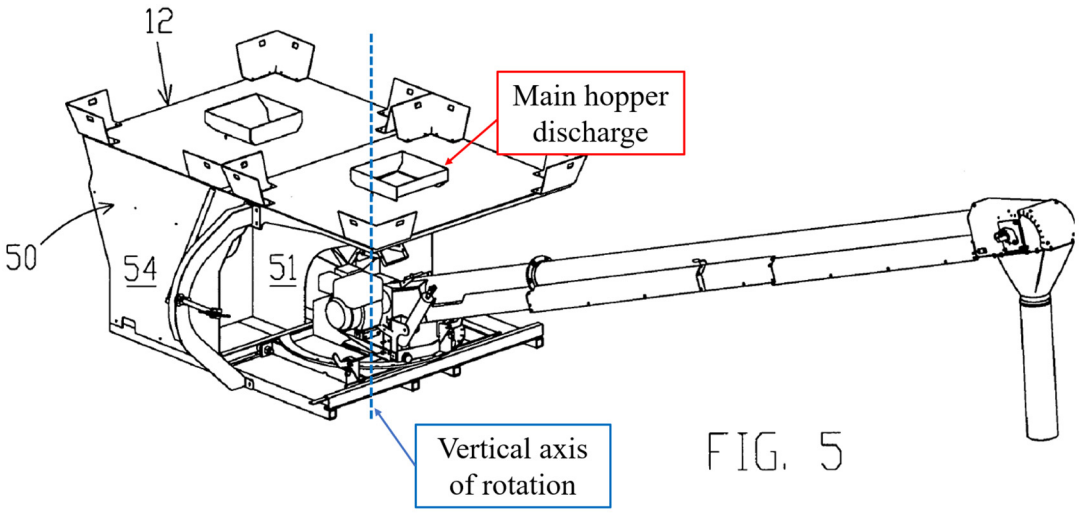


FIG. 3

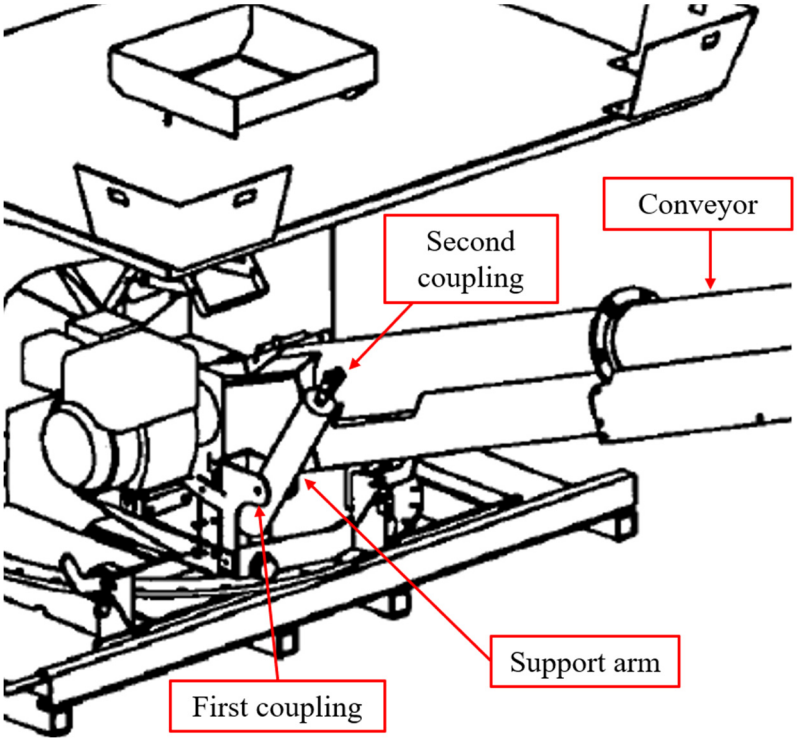
Id. at Fig. 3 (annotated), Abstract, 1:64–65, 4:26–29; *see also* Ex. PK-1001 at Figs. 4–5, 3:38–65, Abstract (depicting and describing "base 401" as a horizontal circular "plate" that is "free to rotate about its vertical axis"—i.e., a turret).

As shown below, the vertical axis of rotation of the turret (base) extends through a discharge of the main hopper:



Ex. PK-1007 at Fig. 5 (annotated).

Furrer's tender further comprises a support arm having (1) a first end connected to the turret via a first coupling and (2) a second end connected to the conveyor via a second coupling:



Id. (excerpted, annotated).

Because the first coupling of Furrer's support arm is connected to the turret (base), and because the turret is rotatable about a vertical axis extending through a discharge of the main hopper, the first coupling is rotatable about a vertical axis of rotation that extends through said main hopper discharge. Ex. PK-1003 ¶ 87. Accordingly, Furrer discloses the limitation of claim 17.

2. Reasons to Modify the Hiniker Combination in View of Furrer

A skilled artisan would have been motivated to modify the Hiniker combination to incorporate Furrer's teachings. *Id.* ¶ 88. Specifically, a skilled artisan would have been motivated to (1) open at least part of three sides of the space under the main hopper (e.g., like Furrer does with its support module 12) and (2) position the first end of the Hiniker support arm in that open space, with its vertical axis of rotation extending through the main hopper discharge (e.g., like Furrer does with the first end of its support art connected to the turret 28). *Id.* There are several reasons why a skilled artisan would have been motivated to make these modifications.

First, a skilled artisan would have looked to the Hiniker references and Furrer because they are in the same technical field (seed or grain conveyor systems) and address the same problem (improved transport of seed or grain). *Id.* ¶ 89 (citing Ex. PK-1004 at 36 ("The fill auger support . . . allows the fill auger to rotate easily for use in the field or for transporting."); *id.* at 40 ("The Fill Auger is designed for one-man operation."); Ex. PK-1007 at 1:44–49 ("It is thus desirable to

have a seed tender which is not only portable and adaptable to the various situations found in different farms and areas, but which is capable of handling large volumes and considerable weight of seed, and which is also capable of carrying seed containers of different volumes and/or configurations, for maximum flexibility.")).

Second, Furrer discloses that opening the space below the main hopper and positioning the first end of the support arm in that open space provides "great flexibility and adaptability in the positioning of the conveyor, whether for unloading or for transport or storage." Ex. PK-1007 at 4:51–53. For example, "[t]he conveyor may be turned . . . about its vertical axis between: (i) a side position for unloading seed, (ii) a forward position and extending forwardly wherein the conveyor is located between the sides of the trailer and in front of it, for transport, or (iii) to the rear and extending rearwardly, for unloading or transport." *Id.* at 2:27–32. Further, "when the conveyor is in the forward position, it can be used . . . for unloading in a forward location." *Id.* at 4:43–45. By contrast, in the Hiniker combination, because the main hopper is not raised above the frame and the support arm is connected to the side of the main hopper, the conveyor cannot unload seed forwardly or rearwardly and has only one storage position. Ex. PK-1003 ¶ 90. Thus, to achieve Furrer's stated benefits ("great flexibility and adaptability in the positioning of the conveyor, whether for unloading or for transport or storage"), a skilled artisan would have been motivated to modify the Hiniker combination so the first end of

its support arm is under the main hopper and the support arm is rotatable between "a side position for unloading seed" and a forward or rear position "for transport," as Furrer teaches. *Id.*; Ex. PK-1007 at 2:27–32, 4:43–53.

Finally, the proposed modifications would lower the center of gravity of the seed tender, making it more stable and less likely to tip over. Ex. PK-1003 ¶ 91. Positioning the first end of the support arm below the main hopper (1) lowers the support arm, (2) lowers the auger conveyor, and (3) shortens or obviates the Hiniker pivoting outer tube and square inner tube. *Id.* Each of these changes would lower the seed tender's center of gravity, which increases its stability. *Id.* Thus, a skilled artisan would have been motivated to make the proposed modifications to achieve improved stability. *Id.*

A skilled artisan also would have had a reasonable expectation of success in modifying the Hiniker combination to incorporate Furrer's teachings. *Id.* ¶ 92. These modifications would have been a routine design change, requiring merely the addition of known components (e.g., structures like Furrer's support module 12 and turret 28) according to their known functions (supporting the main hopper above the frame and enabling the support arm to rotate about a vertical axis extending through the main hopper discharge) to achieve predictable results (e.g., "great flexibility and adaptability in the positioning of the conveyor" and greater stability). *Id.* (quoting Ex. PK-1007 at 4:51–53). Therefore, a skilled artisan would

have reasonably expected success with these modifications.

* * *

Because Furrer discloses the limitation of claim 17 and a skilled artisan would have been motivated to modify the Hiniker combination to incorporate Furrer's teachings, the Board should hold that claim 17 would have been obvious.

C. Ground 3: Hiniker Manual in View of Hiniker Webpage and Baskerville

1. Overview of Baskerville

Baskerville discloses a bulk seed cart with a conveyor for loading and unloading seed into and out of the cart. Ex. PK-1008 at Abstract. The conveyor is "pivotably attached" to a support arm ("telescoping boom 53") via a hinge 54, allowing the conveyor to pivot between loading and unloading positions. *Id.* at Figs. 4–5, 4:42–43. The support arm 53 is "pivotably attached to the upper sidewall 16 of the seed bin 11" so it can pivot vertically and horizontally. *Id.* at Fig. 3, 1:12–15, 4:53–56; *compare* Fig. 1 (showing support arm 53 in declined position)*, with* Fig. 2 (showing support arm 53 in inclined position).

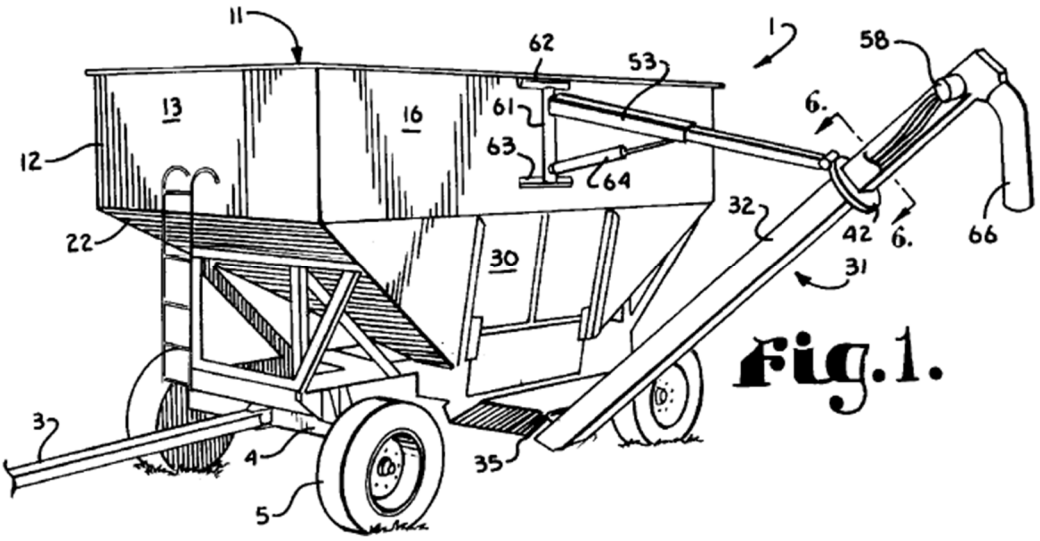
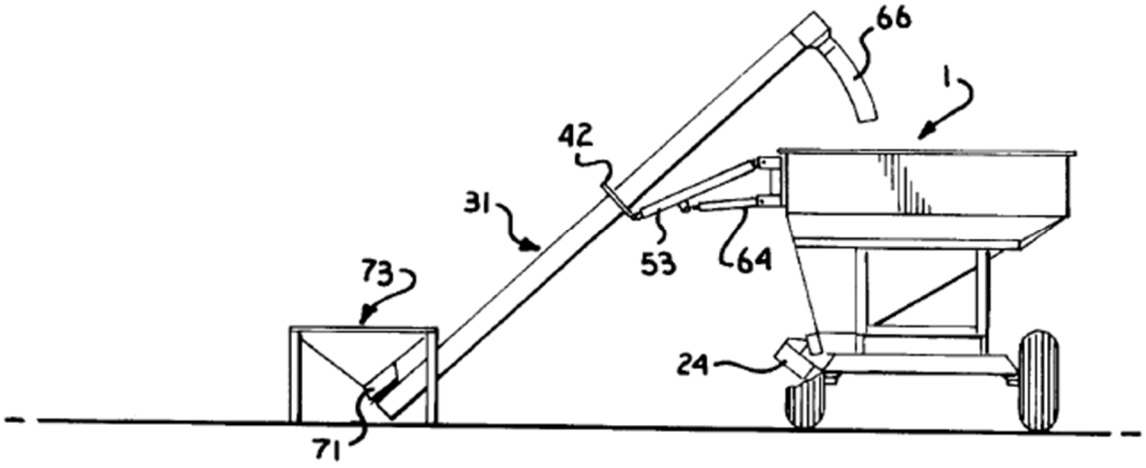


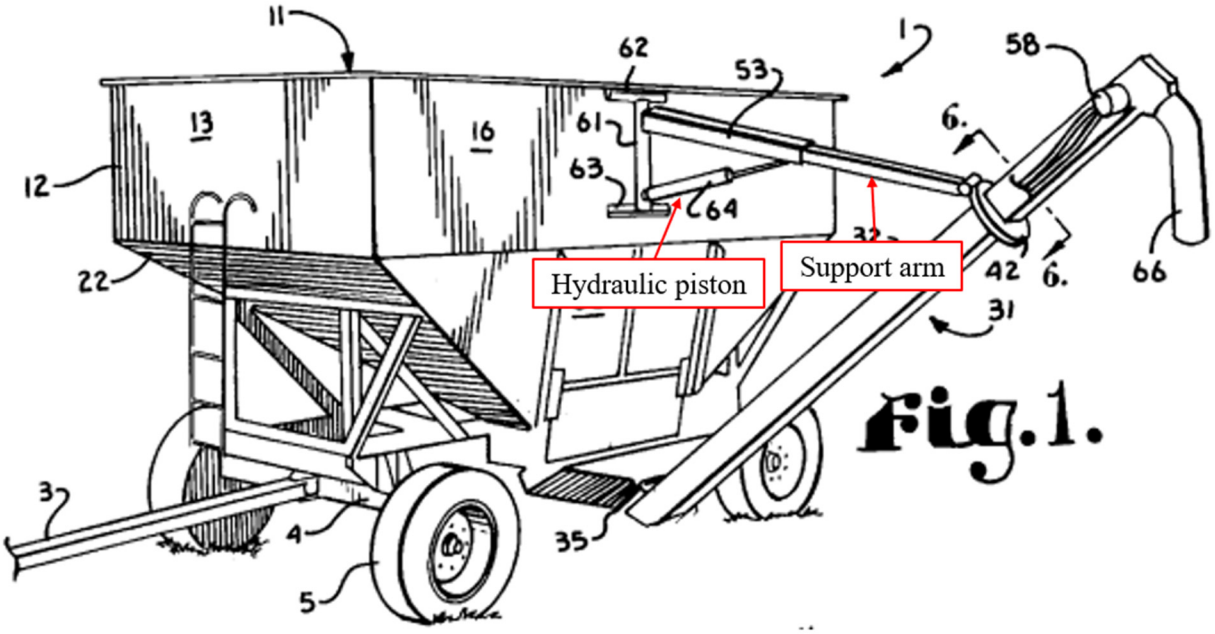
Fig.1.

Id. at Fig. 1 (depicting conveyor in unloading position).



Id. at Fig. 5 (depicting conveyor in loading position).

To assist with vertical pivoting, Baskerville discloses a "hydraulic lifting cylinder 64" (hydraulic piston) connected with the support arm:



Id. at Fig. 1 (annotated); 4:53–58; *see also id.* at 5:25–41 (discussing hydraulic system that "supplies and returns pressurized hydraulic fluid to the lifting cylinder 64").

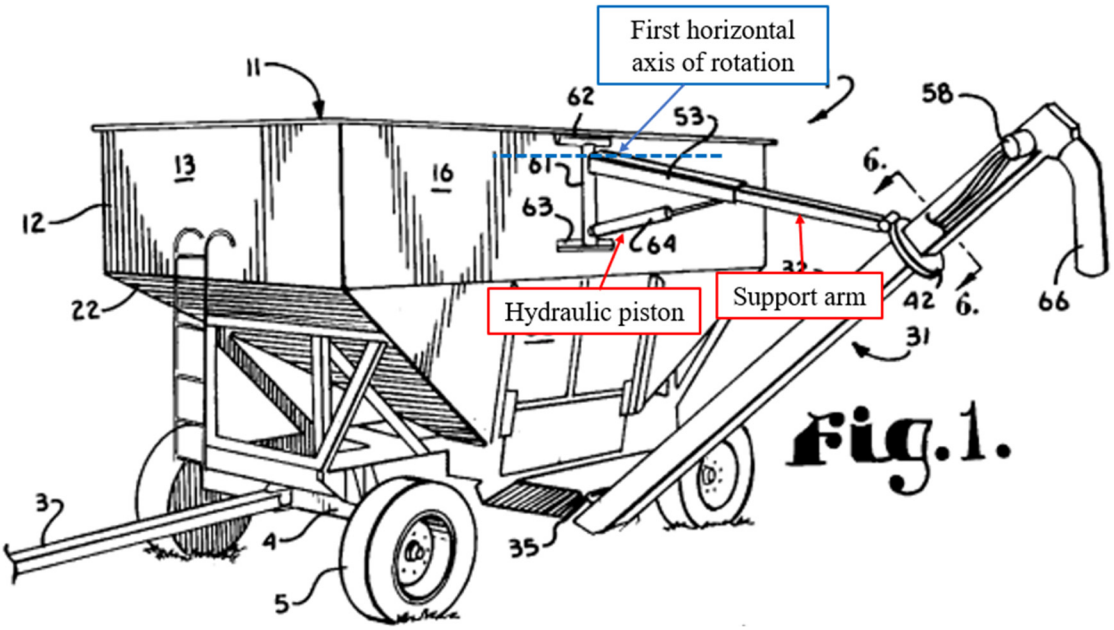
Baskerville was before the examiner during prosecution of the '940 patent, but the examiner issued no rejections based upon Baskerville. *See* Ex. PK-1002. Baskerville was also before the examiner during prosecution of the '047 patent. Ex. PK-1012.

2. Dependent Claim 22

The seed or grain tender of claim 16, further comprising a hydraulic piston extending at an acute angle relative to a horizontal plane to connect with a portion of said support arm spaced from said first horizontal axis of rotation.

This claim would have been obvious over the Hiniker combination in view

of Baskerville. Ex. PK-1003 ¶¶ 97–101. Baskerville discloses that its hydraulic piston extends at an acute angle (< 90°) relative to a horizontal plane and connects to a portion of the support arm spaced from the first horizontal axis of rotation:



Ex. PK-1008 at Fig. 1 (annotated).

A skilled artisan would have been motivated to replace the Hiniker "ratchet jack assembly" with a hydraulic piston like Baskerville's. Ex. PK-1003 ¶ 98. ***First***, a skilled artisan would have looked to the Hiniker references and Baskerville together because they are in the same technical field (seed or grain conveyor systems) and address the same problem (improved transport of seed or grain). *Id.* ¶ 99 (citing Ex. PK-1004 at 36 ("The fill auger support . . . allows the fill auger to rotate easily for use in the field or for transporting."); *id.* at 40 ("The Fill Auger is designed for one-man operation."); Ex. PK-1008 at 1:54–56 ("[I]t is clear that a need

exists for an improved bulk seed cart with a self contained conveyor which can be used both for loading and for unloading the seed cart.")). ***Second***, Baskerville teaches that its hydraulic piston helps lift and lower the conveyor, "dampen[s] any dramatic shifts in the position of the [support arm]," and allows the operator to "remotely control the lifting and lowering of the [support arm]," which makes the machine "much safer and more reliable." Ex. PK-1008 at 5:25–52. Because Baskerville touts the benefits of its hydraulic piston, a skilled artisan would have been motivated to include a similar piston into the Hiniker combination.

A skilled artisan also would have had a reasonable expectation of success in incorporating a hydraulic piston into the Hiniker combination. Ex. PK-1003 ¶ 101. Hydraulic pistons were well known by the '940 patent's earliest possible effective filing date. *Id.* Moreover, adding a hydraulic piston to the Hiniker combination would have been routine, requiring merely the addition of a known component according to its known function (actuating and dampening) to achieve a predictable result (the ability to lift and lower the conveyor remotely and dampen movement of the support arm). *Id.* Therefore, a skilled artisan would have reasonably expected success with this modification.

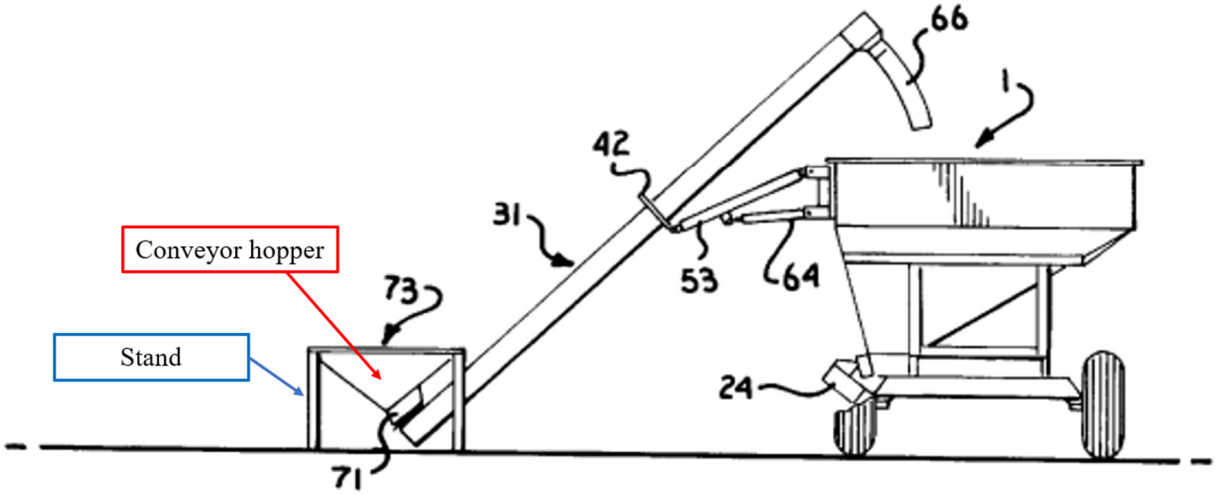
3. Dependent Claim 23

The seed or grain tender of claim 16, 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.

This claim would have been obvious over the Hiniker combination in view of Baskerville. *Id.* ¶¶ 102–106. Baskerville discloses a "companion seed bin 73" with a stand that can be "engaged with" (coupled with) the conveyor to support the conveyor hopper above the ground when the conveyor is in the loading position:

Fig. 5.



Ex. PK-1008 at Fig. 5 (annotated), 5:12–16.

A skilled artisan would have been motivated to include a stand like Baskerville's in the Hiniker combination for at least two reasons. Ex. PK-1003 ¶ 103. First, providing a stand reduces the vertical distance between the conveyor hopper and the outlet of the seed or grain source (e.g., another seed or grain tender, a semi-

trailer, or a railroad car), thus reducing spillage. *Id.* Second, a stand provides stability and lifts the conveyor off the ground, which helps keep it clean from dirt, mud, manure, and other contaminants that could interfere with and degrade the exposed moving parts of the Hiniker conveyor. *Id.* A skilled artisan would have readily recognized these benefits and thus been motivated to include a stand like Baskerville's in the Hiniker combination. *Id.*

Baskerville also teaches that its stand is movable between the "engaged" (extended) position shown above and a disengaged (stowed) position. *See* Ex. PK-1008 at 5:12–16 (noting the stand can be "engaged with" the conveyor), Figs. 1–4, 9 (depicting the conveyor without the stand). The disengaged position corresponds to the claimed "stowed position" because it necessarily involves detaching the stand and putting it somewhere (i.e., stowing it). Ex. PK-1003 ¶ 104. Alternatively, it would have been obvious to convert the disengaged position to a stowed position by stowing the stand somewhere (e.g., in a dedicated stowage compartment on the tender). *Id.* A skilled artisan would have been motivated to stow the stand somewhere to, for example, avoid losing or running over it. *Id.*

If Patent Owner contends that the stand must remain coupled with the first end of the conveyor when in the stowed position, it would have been obvious to modify the stand in this manner. *Id.* ¶ 105. For example, it would have been obvious to modify the stand's legs to fold up *in situ* for storage, like the well-known

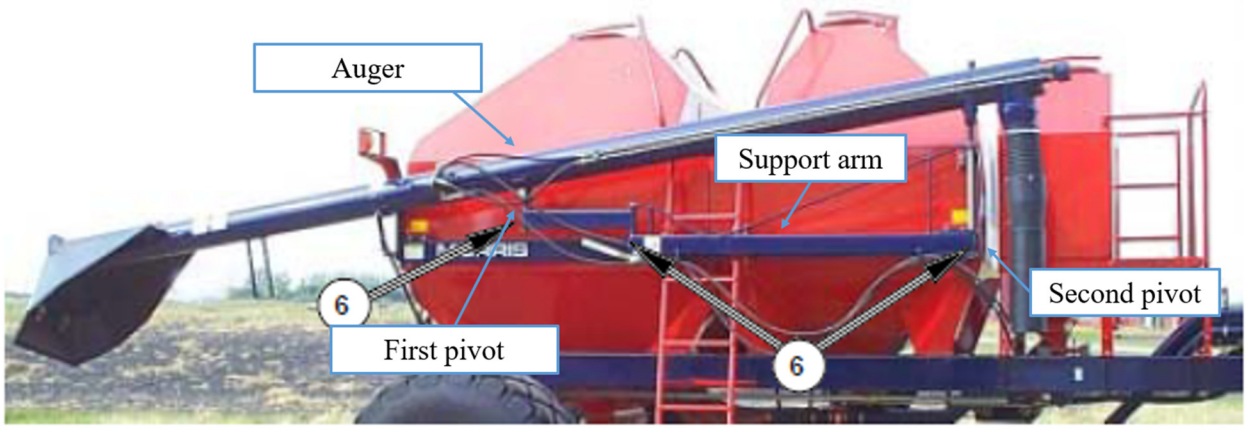
kickstand of a bicycle. *Id.* A skilled artisan would have been motivated to make this modification because it would be more convenient than removing the stand and storing it somewhere else, and it would eliminate the risk of losing or running over the stand. *Id.* And this modification would have been routine, requiring merely the addition of, for example, a hinge and spring for each leg, like a bicycle kickstand, according to their known functions (allowing the leg to fold up and down) to achieve predictable results (extended and stowed positions). *Id.*

Accordingly, claim 23 would have been obvious over the Hiniker combination in view of Baskerville.

D. Ground 4: Morris in View of Furrer

1. Overview of Morris

Morris discloses a seed tender with an auger to transport seed and other product. Ex. PK-1009 at 5-25. The auger is mounted to a support arm via a first pivot, and the support arm is mounted to the seed tender via a second pivot:



Id. at 7-7 (blue annotations added).



Id. at 5-27 (showing unloading position).

The pivots allow the auger to rotate between the above-depicted unloading position, in which it discharges seed out of the seed tender, to the below-depicted loading position, in which it discharges seed into the seed tender:



Id. at 5-25 (loading position).

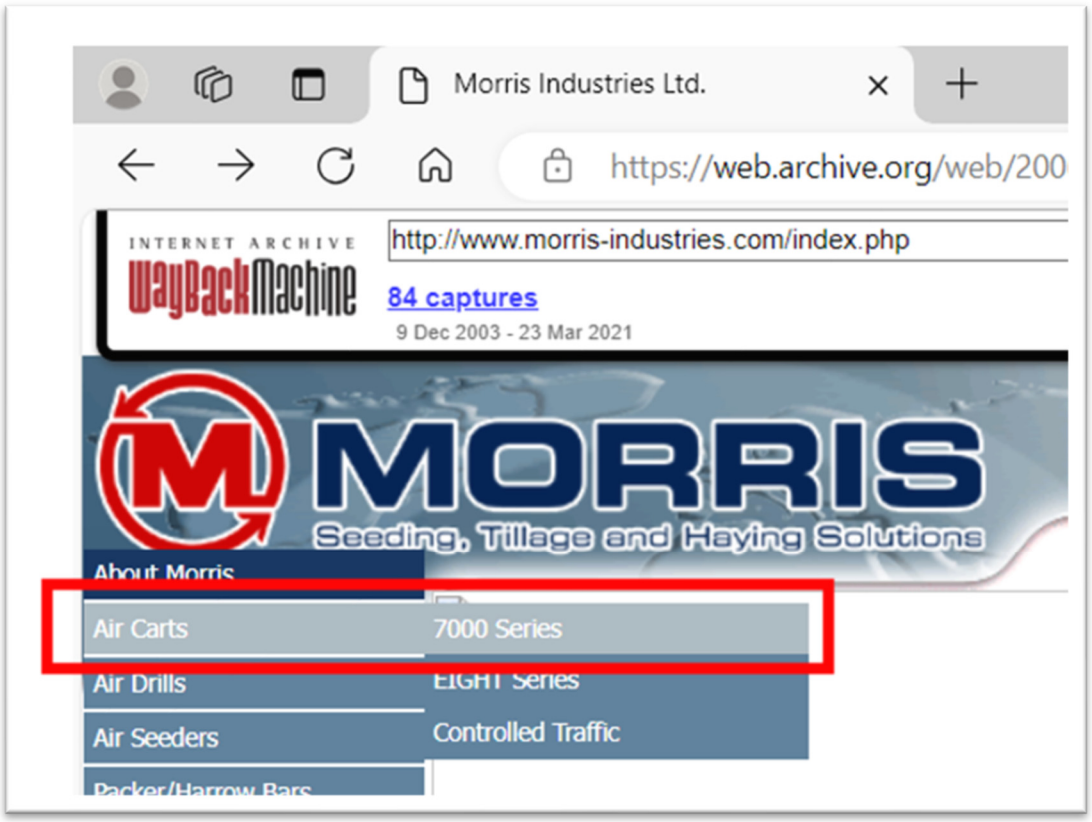
Morris was not before the examiner during prosecution of the ’940 patent, *see* Ex. PK-1002, nor during prosecution of the parent ’047 patent, *see* Ex. PK-1012.

(a) Morris Is Prior Art

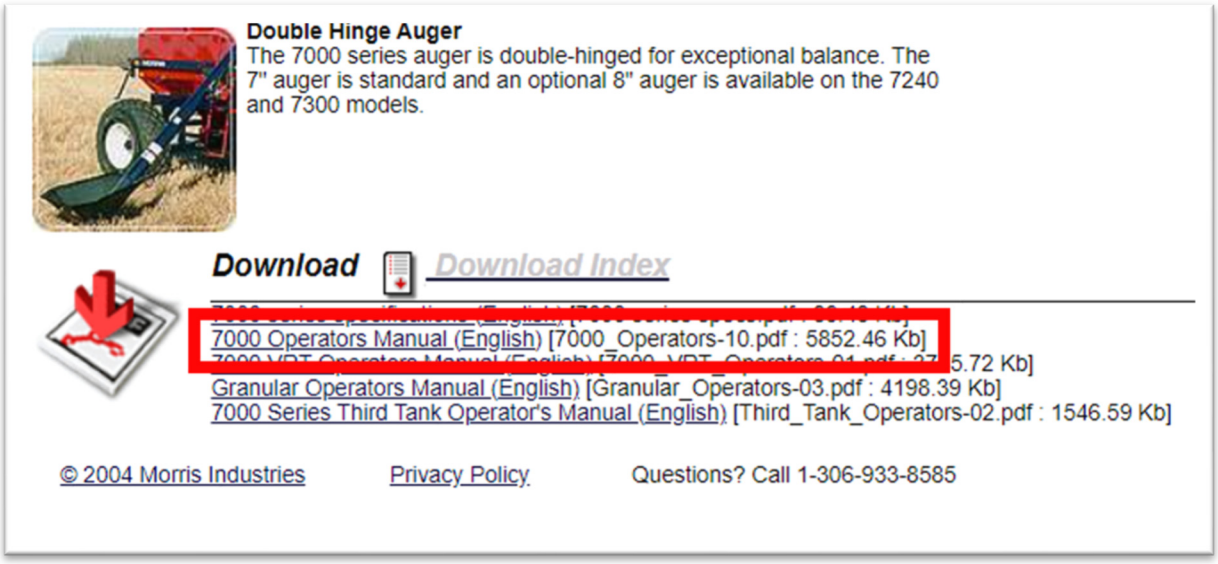
Morris is prior art under pre-AIA § 102(a) because it is a printed publication that was publicly accessible by at least August 13, 2006. On that date, the Way-back Machine captured Morris on Morris Industries Ltd.’s website. Ex. PK-1015 ¶¶ 7–8. Morris was therefore publicly accessible no later than August 13, 2006. *Id.*;

see also MPEP § 2128(II)(E) ("Prior art obtained via the Wayback Machine sets forth a prima facie case that the art was publicly accessible at the date and time provided in the time stamp."); *Valve*, 8 F.4th at 1374–75 ("District courts have taken judicial notice of the contents of webpages available through the Wayback Machine as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." (cleaned up).

Moreover, persons interested and ordinarily skilled in the art could easily have located Morris through reasonable diligence. Morris Industries Ltd. was (and still is) a well-known manufacturer of agricultural machinery. Ex. PK-1003 ¶ 110. And a person interested in Morris Industries Ltd.'s 7000 Series Air Cart could have found Morris on the Morris Industries Ltd. website by clicking the link on the homepage for the 7000 Series Air Cart and, on the next page, clicking the link at the bottom that says "7000 Operators Manual (English)":



Ex. PK-1011 (annotated).



Id. (annotated).

2. Overview of Furrer

Furrer likewise discloses a seed tender with a conveyor for transporting seed. Ex. PK-1007 at Abstract. As discussed in § V.B.1 above, Furrer's seed tender further comprises a "support module 12" that supports its main hopper ("individual storage bins 13") above "frame 15," a base ("turret 28") positioned below the main hopper and "rotatable about a vertical axis," and a support arm coupled to the base at its first end and to the conveyor at its second end. *Id.* at Abstract, 1:64–65, 3:59–67, 4:26–29.

Furrer was before the examiner during prosecution of the '940 patent, but the examiner issued no rejections based upon Furrer. *See* Ex. PK-1002. Furrer was also before the examiner during prosecution of the parent '047 patent. Ex. PK-1012.

3. Reasons to Modify Morris in View of Furrer

A skilled artisan would have been motivated to modify Morris to incorporate Furrer's teachings. Ex. PK-1003 ¶ 112. Specifically, a skilled artisan would have been motivated to (1) raise the main hopper and create a space under it that is open on parts of three sides (e.g., like Furrer does with its support module 12) and (2) add a rotatable base similar to Furrer's turret 28, with its vertical axis of rotation extending through the main hopper discharge, and connect the first end of the

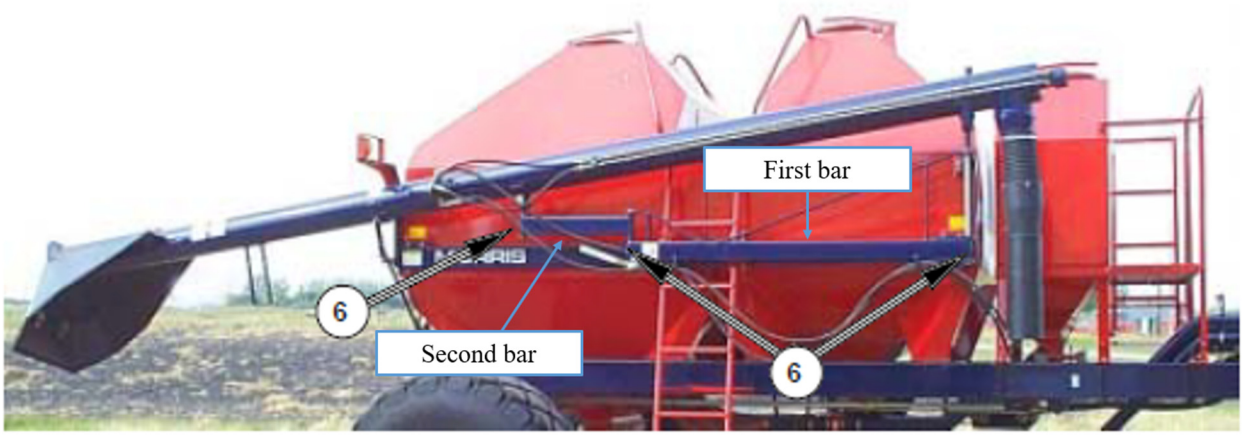
Morris support arm to that base (e.g., like Furrer does with the first end of its support arm connected to the turret 28). *Id.* There are several reasons why a skilled artisan would have been motivated to make these modifications.

First, a skilled artisan would have looked to Morris and Furrer because they are in the same technical field (seed or grain transport systems) and address the same problem (improved transport of seed or grain). Ex. PK-1003 ¶ 113 (citing Ex. PK-1009 at 4-4 ("The optional hydraulic auger is designed to make loading and unloading product from the Air Cart tank very simple and easy."); Ex. PK-1007 at 1:44–49 ("It is thus desirable to have a seed tender which is not only portable and adaptable to the various situations found in different farms and areas, but which is capable of handling large volumes and considerable weight of seed, and which is also capable of carrying seed containers of different volumes and/or configurations, for maximum flexibility.")).

Second, Furrer discloses that raising the main hopper above the base and positioning the first end of the support arm in that open space provides "great flexibility and adaptability in the positioning of the conveyor, whether for unloading or for transport or storage." Ex. PK-1007 at 4:51–53. For example, "[t]he conveyor may be turned . . . about its vertical axis between: (i) a side position for unloading seed, (ii) a forward position and extending forwardly wherein the conveyor is located between the sides of the trailer and in front of it, for transport, or (iii) to the

rear and extending rearwardly, for unloading or transport." *Id.* at 2:27–32. Further, "when the conveyor is in the forward position, it can be used . . . for unloading in a forward location." *Id.* at 4:43–45. By contrast, in Morris, because the main hopper is not raised above the frame and the support arm is connected to the side of the main hopper, the conveyor cannot unload seed forwardly or rearwardly and has only one storage position (on the side). Ex. PK-1003 ¶ 114. Thus, to achieve Furrer's stated benefits ("great flexibility and adaptability in the positioning of the conveyor, whether for unloading or for transport or storage"), a skilled artisan would have been motivated to modify Morris so the first end of its support arm is under the main hopper and the support arm is rotatable between "a side position for unloading seed" and a forward or rear position "for transport," as Furrer teaches. *Id.*; Ex. PK-1007 at 2:27–32, 4:43–53.

Finally, incorporating Furrer's teachings allows replacement of Morris's folding support arm with a rigid support arm, which provides several benefits. As shown below, Morris's support arm is a two-bar linkage:



Ex. PK-1009 at 7-7 (annotated). This two-bar linkage allows the support arm to change its effective length by increasing or decreasing the angle between the two bars. Ex. PK-1003 ¶ 116. Such variable length is necessary in Morris's tender to maintain the conveyor at the correct distance from the main hopper. *Id.*

Incorporating Furrer's teachings, however, would obviate the need for a variable-length support arm. *Id.* ¶ 117. By coupling the support arm below the main hopper discharge, as Furrer teaches, the support arm need not have a variable length to maintain the conveyor at the correct distance from the main hopper. *Id.* Rather, the support arm can be a single bar because rotating the support arm about its first axis of rotation does not change the distance of the conveyor from the main hopper. *Id.* A skilled artisan would have recognized two benefits of this modification: (1) it reduces the complexity of the support arm by eliminating a hinge, and (2) it makes the position of the conveyor easier to control by eliminating the need

for the operator to extend or retract the support arm to correctly position the conveyor. *Id.* Accordingly, a skilled artisan would have been motivated to incorporate Furrer's teachings to gain those benefits.

A skilled artisan also would have had a reasonable expectation of success in modifying Morris to incorporate Furrer's teachings. *Id.* ¶ 118. These modifications would have been a routine design change, requiring merely the addition of known components (e.g., structures like Furrer's support module 12 and turret 28) according to their known functions (supporting the main hopper above the frame and enabling the support arm to rotate about a vertical axis) to achieve predictable results (e.g., "great flexibility and adaptability in the positioning of the conveyor"). *Id.* (quoting Ex. PK-1007 at 4:51–53). Therefore, a skilled artisan would have reasonably expected success with these modifications.

4. Independent Claim 16

(a) [16.pre] A seed or grain tender comprising:

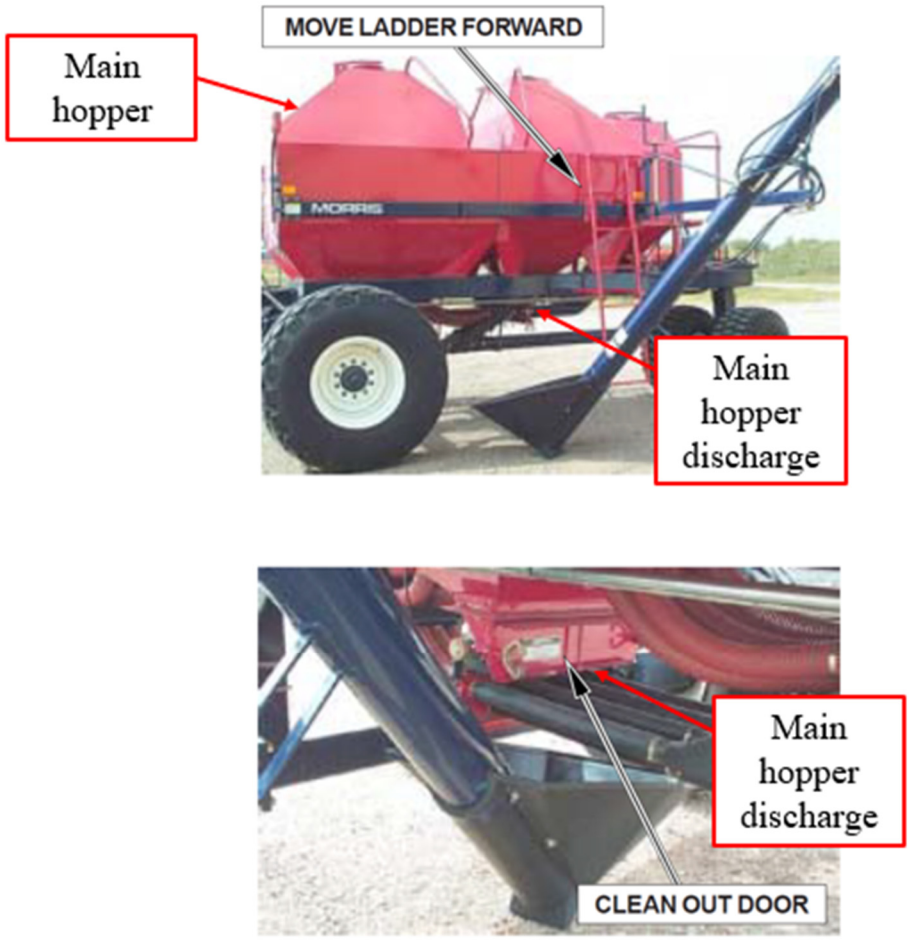
As explained in § V.A.4(a) above, the preamble is not limiting. Regardless, the Morris-Furrer combination discloses a seed tender because the '940 patent equates a "tender" with a "carrier," and Morris describes a cart having a tank for carrying seeds. Ex. PK-1003 ¶ 120; Ex. PK-1009 at 4-4, 5-4, 5-25; Ex. PK-1001 at Title, Abstract, 1:16–17, 1:43–46.

If Patent Owner argues the Morris-Furrer combination is not a tender, it

would have been obvious to apply the Morris-Furrer combination to a tender. Ex. PK-1003 ¶ 121. The Morris-Furrer combination is analogous to a tender with additional components for planting seeds. *Id.* A skilled artisan would have been motivated to design a tender based on the Morris-Furrer combination, but without the seed-planting components, to achieve the benefits discussed in § V.D.3 above. *Id.* A skilled artisan also would have reasonably expected success in doing so because it would merely require removing the seed-planting components. *Id.*

(b) [16.1] a main hopper having a main hopper discharge;

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 122. Morris's seed tender has a "tank" (main hopper) into and from which "product" such as "seed" is discharged. Ex. PK-1009 at 5-4, 5-25, 5-27. Moreover, Morris's main hopper has a "clean out door" (main hopper discharge):



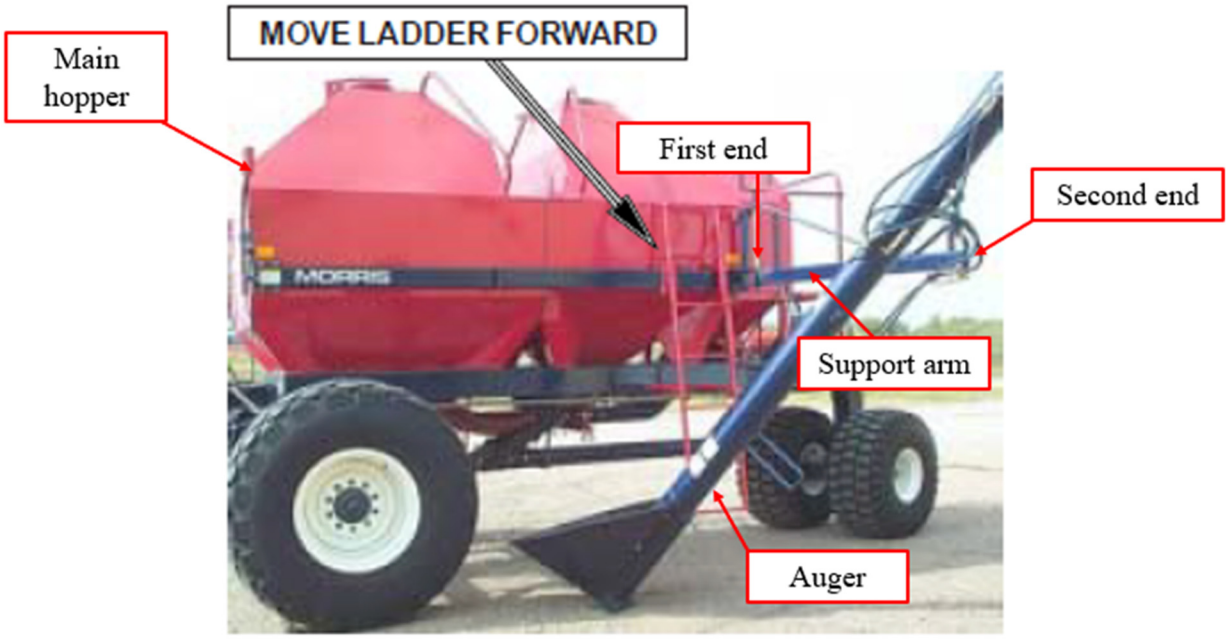
Id. at 5-27 (red annotations added).

(c) [16.2] a base positioned below said main hopper;

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 123. As discussed in § V.D.3, a skilled artisan would have been motivated to modify Morris to (1) raise the main hopper and create a space under it that is open on parts of three sides and (2) add a base similar to Furrer's turret 28 and connect the first end of the Morris support arm to that base, as in Furrer.

(d) [16.3] a support arm having first and second ends;

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 124. Morris discloses a support arm that mounts the auger to the seed tender and has a first (tender-side) end and a second (auger-side) end:

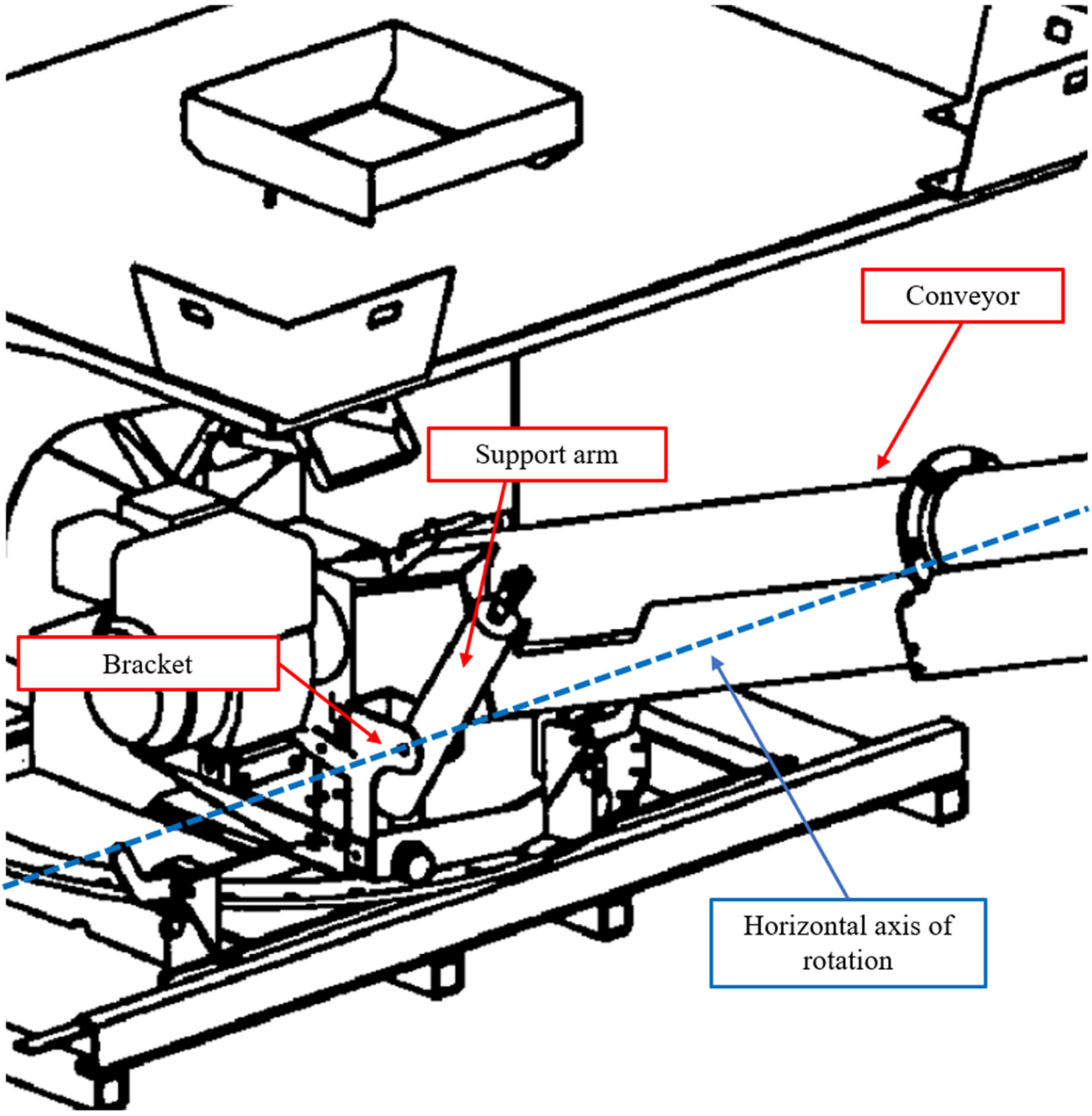


Ex. PK-1009 at 5-27 (red annotations added).

(e) [16.4] a first coupling connecting said first end of said support arm with said base,

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶¶ 125–128. As discussed in § V.D.3, a skilled artisan would have been motivated to modify Morris by adding a base similar to Furrer's turret 28 and connecting the first end of the Morris support arm to that base, as in Furrer. To make that connection, a skilled artisan would have used a first coupling like the bracket shown be-

low so the first end of the support arm can rotate about a horizontal axis, as in Furer:



Ex. PK-1007 at Fig. 5 (excerpted, annotated), 4:45–47 (noting the conveyor "may be rotated to a wide range of angles, both vertical and horizontal"); Ex. PK-1003

¶ 125.

A skilled artisan would have recognized several benefits to adding this degree of freedom. Ex. PK-1003 ¶ 126. For example, Furrer states that when the conveyor is in the unloading position, the ability to lower the conveyor discharge "permits [the receiving] grain containers or bins carried on a trailer to be mounted at a lower elevation, thus lowering the center of gravity of the trailer and providing greater stability in transport, as well as during unloading." Ex. PK-1007 at 2:44–48. Furrer further states that the converse ability to raise the conveyor during unloading "permits unloading to be accomplished at greater heights than heretofore [achievable] using conventional techniques." *Id.* at 2:48–53. Furrer thus teaches that by adding this degree of freedom, "the system accommodates a number of different applications, from loading grain drills to loading individual hoppers for row crop planters to loading larger central seed storage hoppers on a planter or seed drill which have a higher reach." *Id.* at 6:26–35. Moreover, other prior art teaches that this additional degree of freedom "allows discharged seed to be directed at virtually any desired location or height along the conveyor side of the seed cart." Ex. PK-1008 at 5:1–5.

Although Morris might allow some limited flexibility in the height of the discharge end (e.g., using an optional "spout extension," *see* Ex. PK-1009 at 4-4), adding Furrer's additional degree of freedom would enable a greater range of

heights and provide more precise control over the height. Ex. PK-1003 ¶ 127. Accordingly, in modifying Morris's tender to include Furrer's teachings, a skilled artisan would have been motivated to connect the first end of the support arm to the base using a coupling like Furrer's bracket. *Id.*

A skilled artisan also would have had a reasonable expectation of success in modifying Morris this way. *Id.* ¶ 128. Making this connection merely requires, for example, adding a coupling like Furrer's bracket and reorienting the hinge at the first end of Morris's support arm, from vertical to horizontal. *Id.* These modifications would have required nothing more than routine skill because the coupling and hinge would be used according to their known functions (allowing rotation) to achieve predictable results (rotation about a horizontal axis at the first end of the support arm). *Id.* Therefore, a skilled artisan would have reasonably expected success in connecting Morris's support arm to the base using a coupling like Furrer's bracket.

(f) [16.5] said first coupling being rotatable about a first vertical axis of rotation, and

The Morris-Furrer combination discloses this limitation. *Id.* ¶ 129. As discussed in §§ V.D.3 and V.D.4(e), a skilled artisan would have been motivated to modify Morris by adding a rotatable base with a vertical axis of rotation, like Furrer's turret 28, and connecting the first end of the Morris support arm to that base using a first coupling. Thus, in the Morris-Furrer combination, the first coupling is

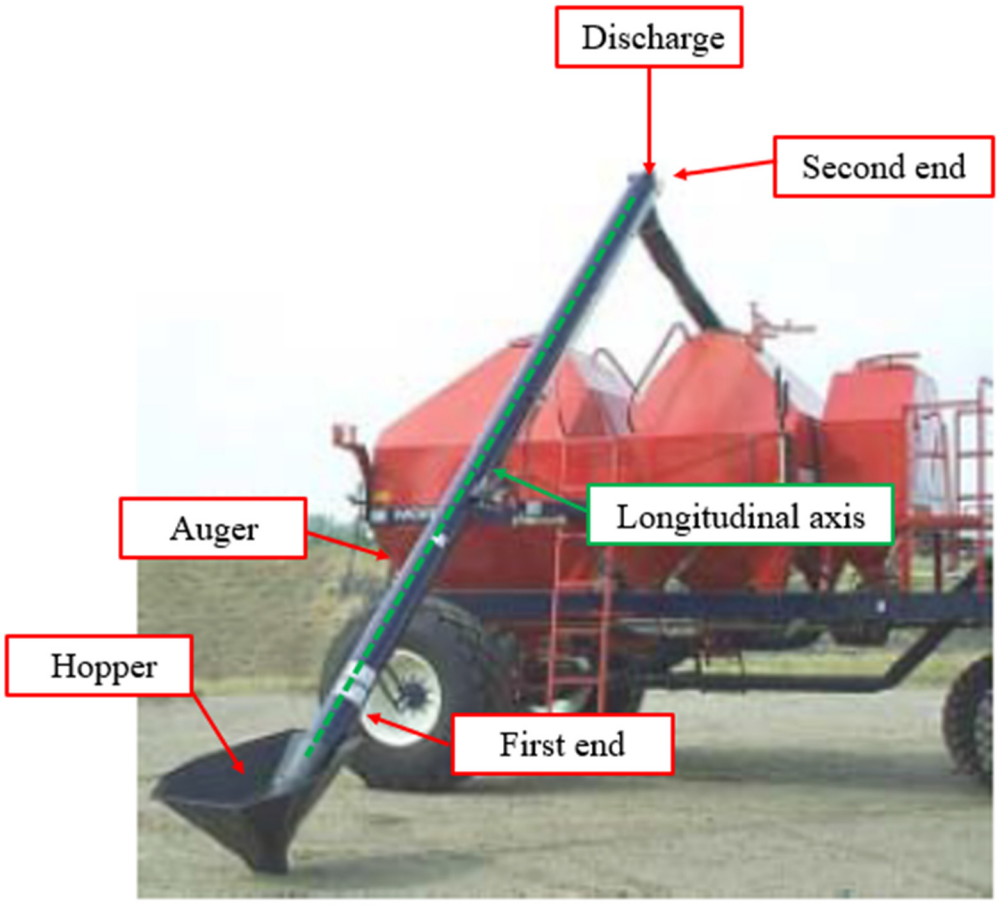
rotatable about a first vertical axis of rotation.

(g) [16.6] said first end of said support arm being rotatable about a first horizontal axis of rotation;

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 130. As explained in § V.D.4(e) above, the first end of the support arm in the Morris-Furrer combination connects to a coupling like Furrer's bracket that makes the first end of the support arm rotatable about a first horizontal axis of rotation.

(h) [16.7] a conveyor having a longitudinal axis and first and second ends, a conveyor hopper at said first end, and a conveyor discharge at said second end; and

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶¶ 131–135. For example, Morris discloses an auger having a longitudinal axis, first and second ends, a "hopper" at the first end and a "spout" (discharge) at the second end:



Ex. PK-1009 at 5-25 (instructing operator to "[o]pen lids on tank and insert spout" and "[b]ack truck to the hopper" to load the seed).

Morris's auger is a conveyor. Ex. PK-1003 ¶ 132. As explained above in § V.A.4(h), an auger is a type of conveyor. *See* Ex. PK-1001 at 1:21–24; Ex. PK-1019 at 2:37–40 ("An ***auger conveyor*** is rotatably mounted within the auger housing and is adapted to ***convey*** the seed."); Ex. PK-1020 at 1:33–36 ("An air cart as described above typically includes a ***conveyor in the form of an auger***."); *id.* at 2:43–45. Thus, Morris's auger is a conveyor.

Even if Morris's auger were not a conveyor, it would have been obvious to

replace Morris's auger with Furrer's conveyor in the Morris-Furrer combination. Ex. PK-1003 ¶ 133. Furrer discloses a "conveyor 11" having a longitudinal axis, first and second ends, an "inlet hopper 34" (conveyor hopper) at the first end, and a "discharge tube 36" (conveyor discharge) at the second end:

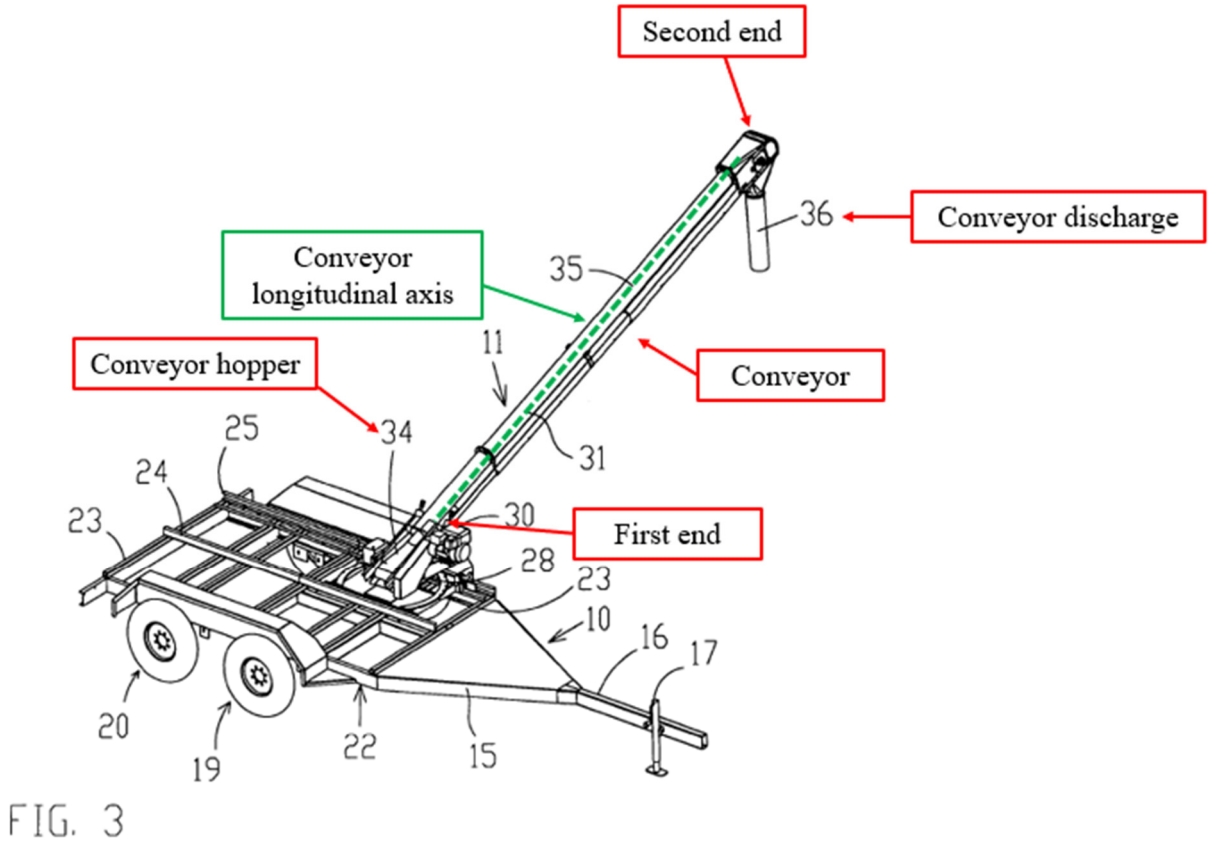


FIG. 3

Ex. PK-1007 at Fig. 3 (annotated), 4:34–38.

A skilled artisan would have been motivated to replace Morris's auger with Furrer's conveyor because conveyors were known to provide several benefits over augers. Ex. PK-1003 ¶ 134. For example, Furrer teaches that using a conveyor to transfer seed is "preferred" over using an auger. Ex. PK-1007 at 4:34–35; *see also id.* at 4:33–34 ("Although less desirable, the conveyor could be an auger."). Hitch

similarly teaches that "conveyors are ideal appliances in that they can run at relatively high speeds with a moderate expenditure of power." Ex. PK-1021 ¶ 1. Hitch further states that conveyors "are ideal for use with grain" and "are also capable of rendering good service in handling other materials such as seeds and fertilizer." *Id.* ¶ 2. Indeed, the background section of the '940 patent acknowledges that conveyors were "well known" and "often used for moving more expensive payload, such as seed." Ex. PK-1001 at 1:21–24. These known benefits would have motivated a skilled artisan to use a conveyor, rather than an auger, in the Morris-Furrer combination. Ex. PK-1003 ¶ 134.

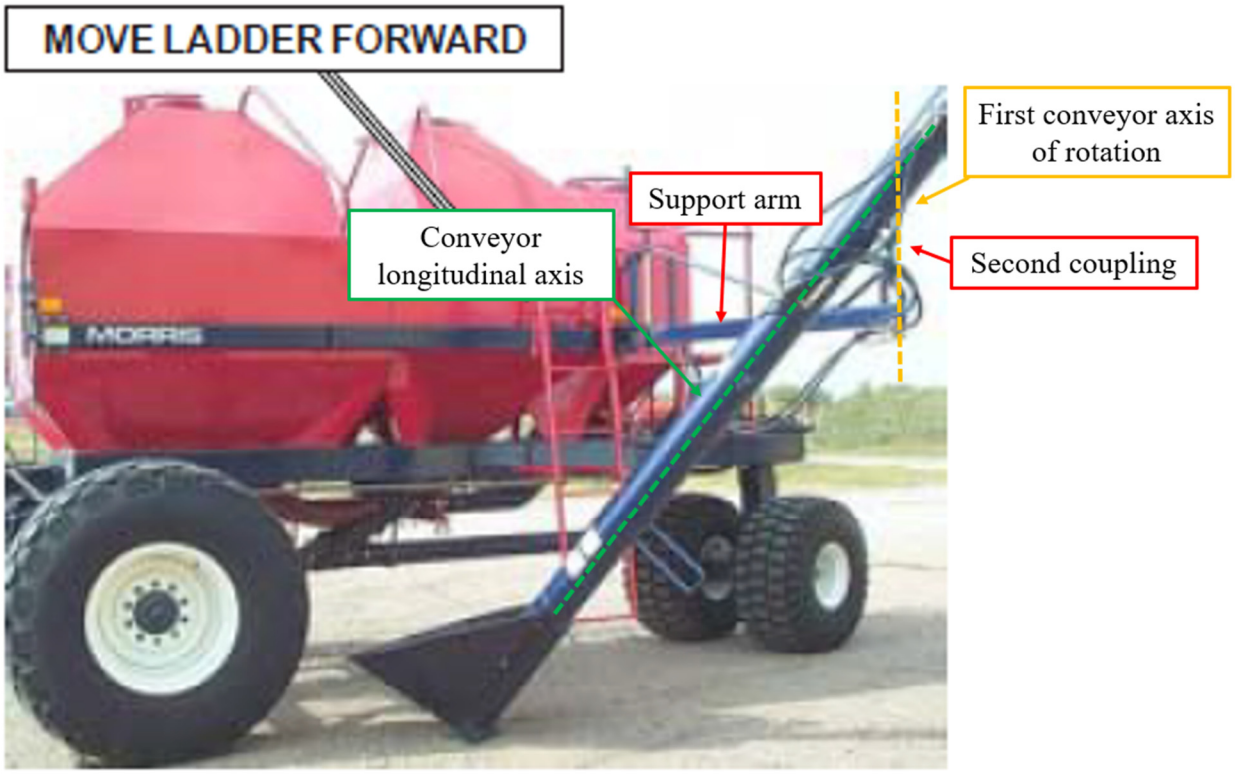
A skilled artisan also would have had a reasonable expectation of success in modifying Morris to use a conveyor rather than an auger. *Id.* ¶ 135. As the '940 patent admits, conveyors were "well known" and commonly used at the time of the alleged invention. Ex. PK-1001 at 1:21–24. Indeed, "[c]onveyors have been used in the transportation of grain since the 1800's." Ex. PK-1021 ¶ 1. And the Morris-Furrer combination would use a conveyor according to its known function (conveying seed or grain) to achieve predictable results (e.g., efficient transport of seed or grain). Ex. PK-1003 ¶ 135. Therefore, a skilled artisan would have reasonably expected success with this modification.

In any event, the Board need not address whether it would have been obvious to replace Morris's auger with Furrer's conveyor because, as explained above,

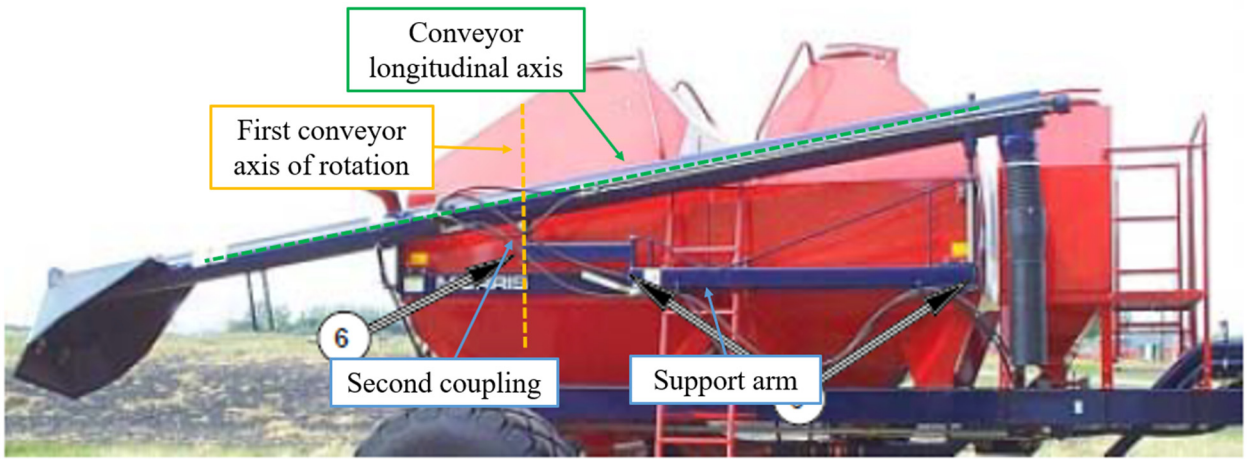
Morris's auger is a conveyor. *Id.* ¶ 132.

(i) [16.8] 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 first conveyor axis of rotation that is not parallel to said conveyor longitudinal axis, and

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶¶ 136–138. As shown below, Morris discloses a second coupling connecting the second end of the support arm with the conveyor at an approximate geometric center of the conveyor, said second coupling defining a first conveyor axis of rotation that is not parallel to the conveyor longitudinal axis:



Ex. PK-1009 at 5-27 (colored annotations added).



Id. at 7-7 (colored annotations added).

As Mr. Prairie explains, the conveyor's approximate geometric center corresponds to its approximate center of gravity because the conveyor has an approximately uniform cross-section from end to end. Ex. PK-1003 ¶ 137. Granted, the exact center of gravity is offset from the exact geometric center because the conveyor hopper adds weight to the conveyor's first end. *Id.* The claim, however, uses the term "approximate," and as shown above the second end of the support arm is coupled with the conveyor slightly toward its first end. *Id.* Thus, Morris discloses that the second end of the support arm is coupled with the conveyor at an approximate center of gravity of the conveyor.

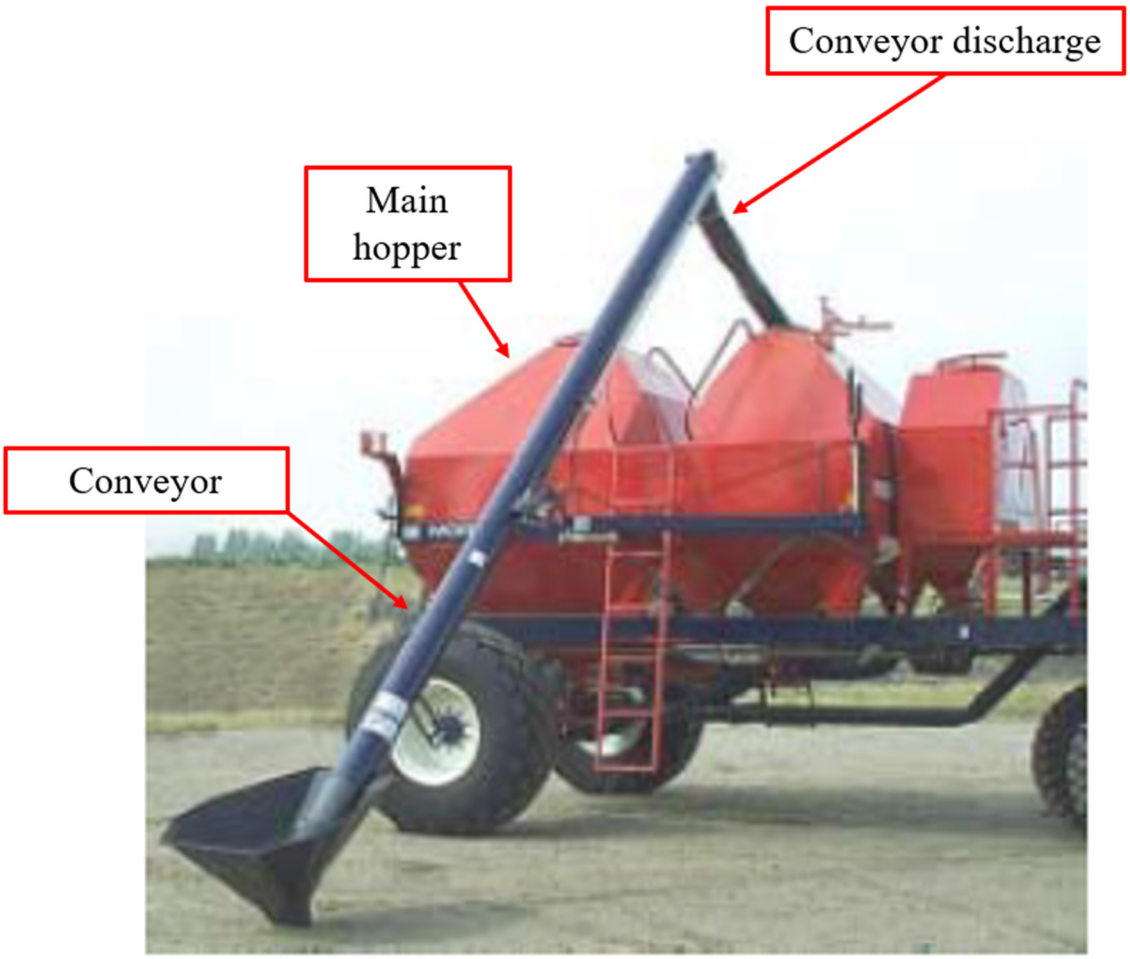
If Patent Owner disputes this point, it would have been obvious to modify the Morris-Furrer combination to couple the second end of the support arm with the conveyor at its approximate center of gravity. *Id.* ¶ 138. A skilled artisan would

have been motivated to do so to balance the conveyor, making it easier to manipulate. *Id.* A skilled artisan also would have reasonably expected success because, as explained in § V.A.4(i), others had already accomplished balancing a conveyor on a support arm. *Id.*

> ***(j) [16.9] said conveyor being rotatable about said first conveyor 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.***

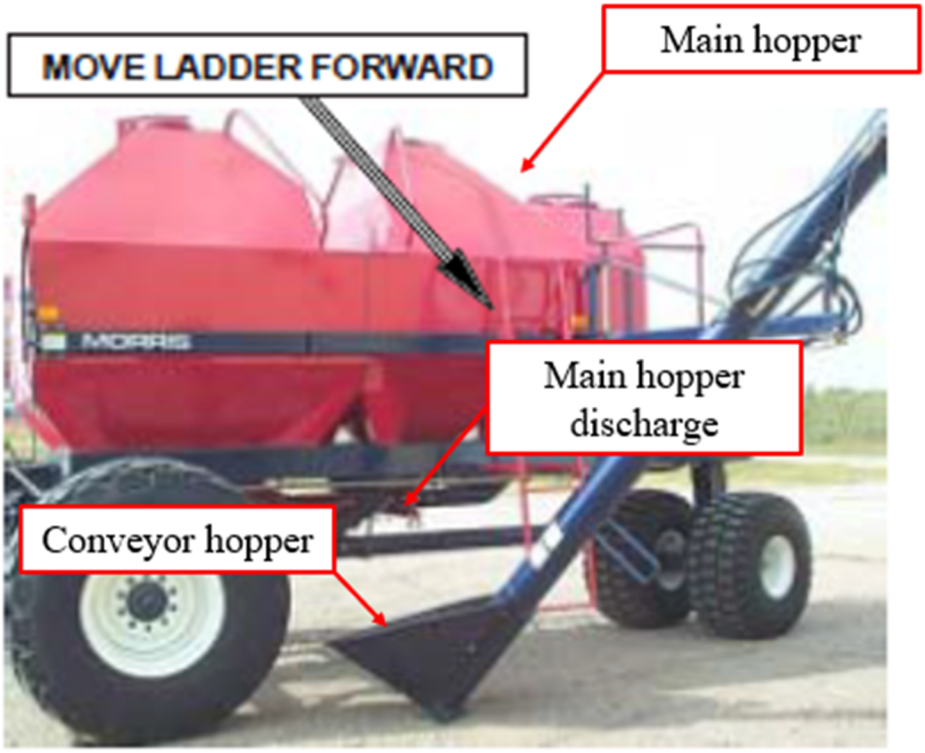
The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶¶ 139–142.

Loading Position: Morris discloses a loading position wherein the conveyor discharge is disposed above the main hopper to dispense agricultural product (seed or grain) into the main hopper:

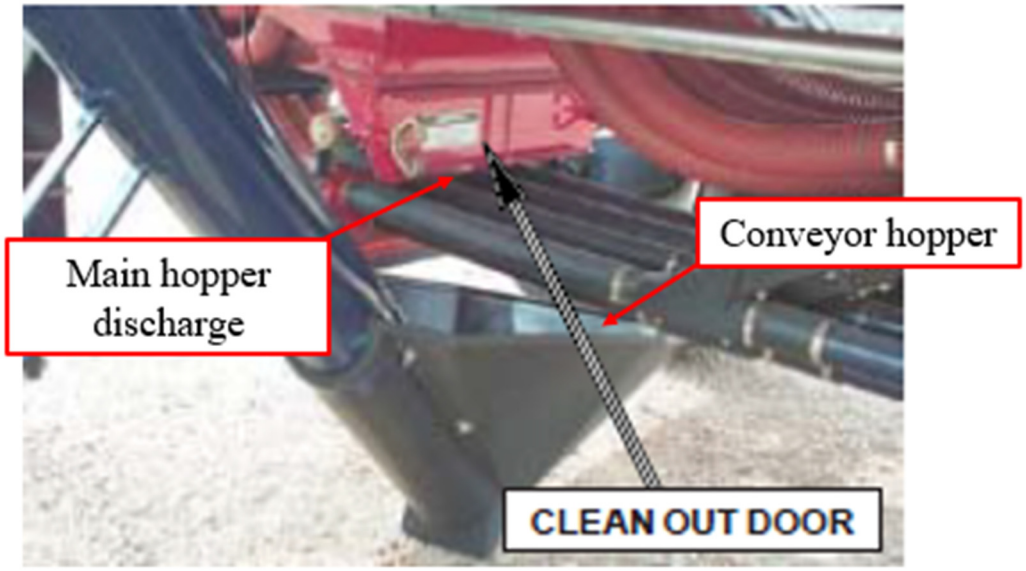


Ex. PK-1009 at 5-25 (annotated); *see also id.* (instructing operator to "[o]pen lids on tank and insert spout" and "[a]uger product into tank until product is visible").

Unloading Position: Morris discloses an unloading position wherein the conveyor hopper is disposed below the main hopper discharge to receive agricultural product (seed or grain) from the main hopper.



Id. at 5-27 (red annotations added); *see also id.* (instructing operator to "[p]osition auger under the tank to be emptied").



Id. (red annotations added).

To switch between these positions, the conveyor is rotatable about the first conveyor axis of rotation, as shown above. Ex. PK-1003 ¶ 142; *see also* Ex. PK-1009 at 7-7 (showing "auger pivots"). Accordingly, the Board should hold that claim 16 would have been obvious over the combination of Morris and Furrer.

5. Dependent Claim 17

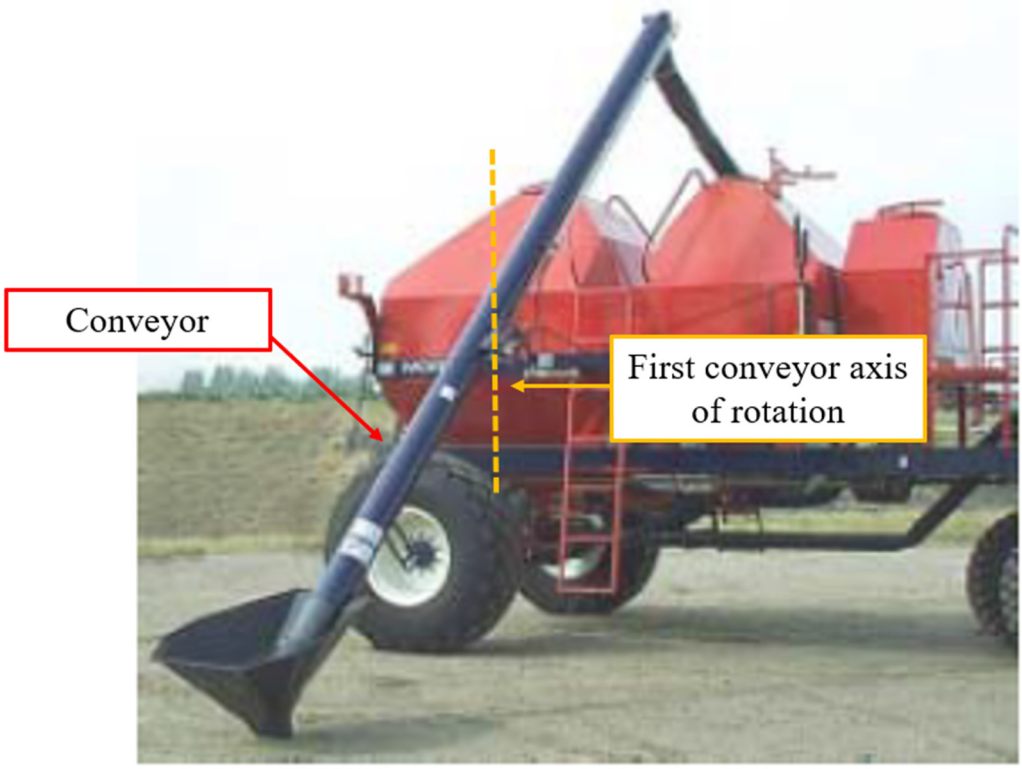
The seed or grain tender of claim 16, wherein said first vertical axis of rotation extends through said main hopper discharge.

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 144. As discussed in §§ V.D.3 and V.D.4(e), a skilled artisan would have been motivated to modify Morris by adding a rotatable base having a vertical axis of rotation extending through the main hopper discharge, similar to Furrer's turret 28, and connecting the first end of the Morris support arm to that base using a first coupling. Thus, in the Morris-Furrer combination, the first vertical axis of rotation of the first coupling extends through the main hopper discharge.

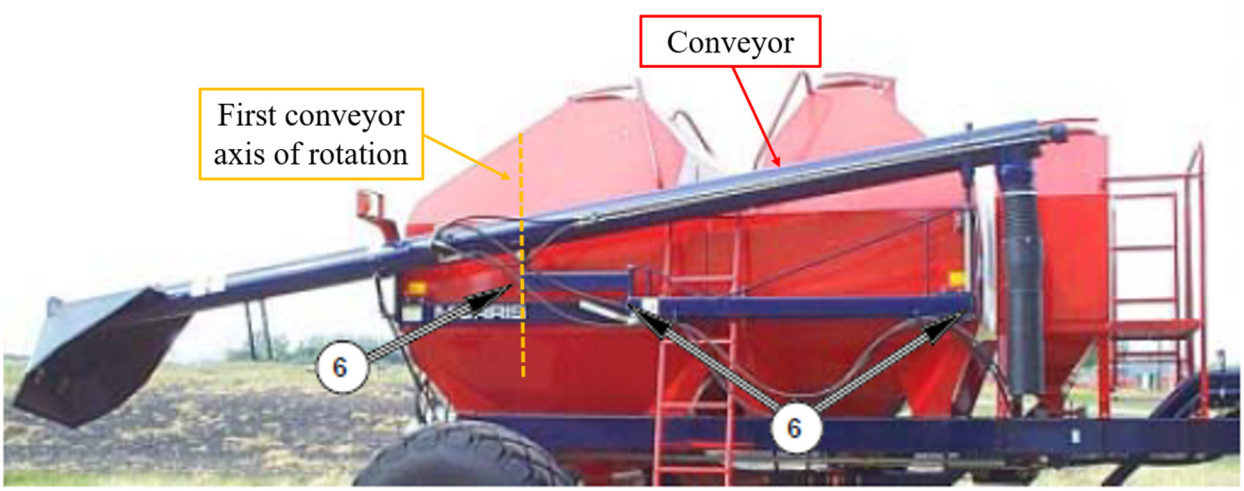
6. Dependent Claim 18

The seed or grain tender of claim 16, wherein said first conveyor axis of rotation extends through said approximate center of gravity of said conveyor.

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶¶ 145–146. For example, the below images of Morris show the first conveyor axis of rotation extends through the approximate geometric center of the conveyor:



Ex. PK-1009 at 5-25 (annotated).



Id. at 7-7 (colored annotations added).

As explained in § V.D.4(i), the conveyor's approximate geometric center corresponds to its approximate center of gravity. Section V.D.4(i) also explains, in

the alternative, that it would have been obvious to modify the Morris-Furrer combination to couple the second end of the support arm with the conveyor at its approximate center of gravity, in which case the conveyor axis of rotation extends through the approximate center of gravity of the conveyor.

7. Dependent Claim 19

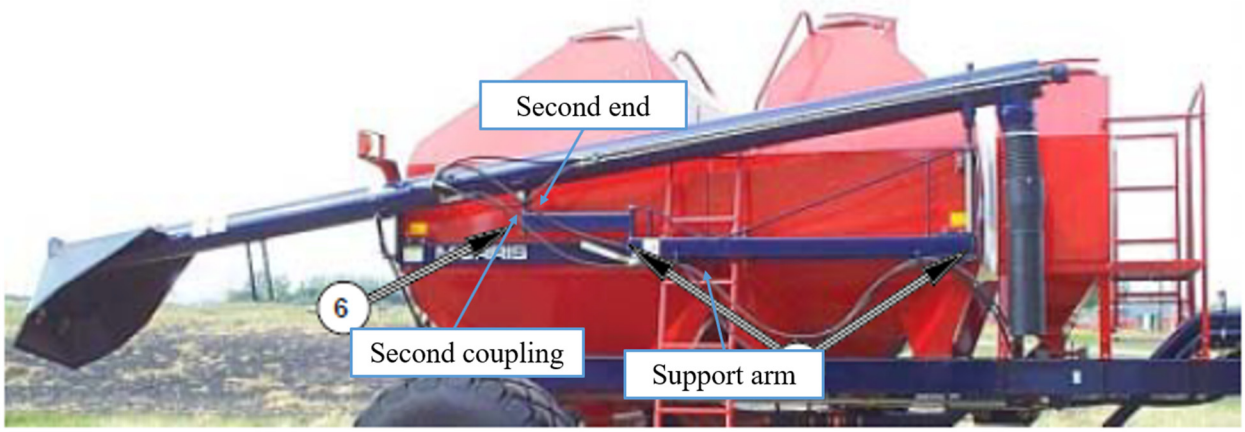
The seed or grain tender of claim 16, wherein said first horizontal axis extends through said first end of said support arm.

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 147. As shown in § V.D.4(e) above, the first horizontal axis of rotation extends through the first end of the support arm.

8. Dependent Claim 20

The seed or grain tender of claim 16, wherein said second end of said support arm terminates at or near said second coupling.

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 148. For example, the below images of Morris show that the second end of the support arm terminates at or near the second coupling:



Ex. PK-1009 at 7-7 (blue annotations added).

9. Dependent Claim 21

The seed or grain tender of claim 16, wherein said conveyor includes an internal elevator for moving seed or grain from said conveyor hopper to said conveyor discharge.

The Morris-Furrer combination discloses this limitation. Ex. PK-1003 ¶ 149. For example, Morris's conveyor comprises an auger (internal elevator) that moves seed or grain from the conveyor hopper to the conveyor discharge. Ex. PK-1009 at 4-4, 5-25, 5-27. Moreover, the '940 patent acknowledges that an auger can "rapidly move grain such as feed or the like." Ex. PK-1001 at 1:21–24. Likewise, Furrer's conveyor includes "a tubular housing 31 in which the seed is moved by" a motor-driven "cleated belt" (internal elevator) from the conveyor hopper to the conveyor discharge. Ex. PK-1007 at 4:29–39.

E. Ground 5: Morris in View of Furrer and Baskerville

Claims 22 and 23 would have been obvious over the Morris-Furrer combination of Ground 4 in view of Baskerville. As explained below, Baskerville discloses

the additional limitations in these claims, and it would have been obvious to modify the Morris-Furrer combination to incorporate Baskerville's teachings. The Board should therefore cancel claims 22 and 23.

1. Dependent Claim 22

The seed or grain tender of claim 16, further comprising a hydraulic piston extending at an acute angle relative to a horizontal plane to connect with a portion of said support arm spaced from said first horizontal axis of rotation.

It would have been obvious to modify the Morris-Furrer combination in view of Baskerville to include the claimed hydraulic piston. Ex. PK-1003 ¶¶ 151–154.

As explained in § V.C.2 above, Baskerville discloses a hydraulic piston that extends at an acute angle (< 90°) relative to a horizontal plane and connects with a portion of the support arm spaced from its first horizontal axis of rotation.

A skilled artisan would have been motivated to incorporate a hydraulic piston like Baskerville's into the Morris-Furrer combination. Ex. PK-1003 ¶ 153. Baskerville teaches that its hydraulic piston helps lift and lower the conveyor, "dampen[s] any dramatic shifts in the position of the [support arm]," and allows the operator to "remotely control the lifting and lowering of the [support arm]," which makes the machine "much safer and more reliable." Ex. PK-1008 at 5:25–52. Because Baskerville touts the benefits of its hydraulic piston, a skilled artisan would have been motivated to incorporate a similar piston into the Morris-Furrer

combination.

A skilled artisan also would have had a reasonable expectation of success in incorporating a hydraulic piston like Baskerville's into the Morris-Furrer combination. Ex. PK-1003 ¶ 154. Hydraulic pistons were well known by the '940 patent's earliest possible effective filing date. *Id.* Moreover, adding a hydraulic piston to the Morris-Furrer combination would have been routine, requiring merely the addition of a known component according to its known function (actuating and dampening) to achieve a predictable result (the ability to lift and lower the conveyor remotely and dampen movement of the support arm). *Id.* Therefore, a skilled artisan would have reasonably expected success with this modification.

2. Dependent Claim 23

The seed or grain tender of claim 16, 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.

It would have been obvious to modify the Morris-Furrer combination in view of Baskerville to include the claimed stand. Ex. PK-1003 ¶¶ 155–156. As explained in § V.C.3 above, Baskerville discloses the claimed stand. A skilled artisan would have been motivated to include a stand like Baskerville's in the Morris-Furrer combination for at least two reasons. Ex. PK-1003 ¶ 155. First, providing a stand reduces the vertical distance between the conveyor hopper and the outlet of

the seed source (e.g., another seed tender, a semi-trailer, or a railroad car), thus reducing spillage. *Id.* Second, a stand provides stability and lifts the conveyor off the ground, which helps keep it clean from dirt, mud, manure, and other contaminants that could interfere with and degrade the conveyor's moving parts. *Id.* A skilled artisan would have readily recognized these benefits and thus been motivated to include a stand like Baskerville's in the Morris-Furrer combination. *Id.* Thus, it would have been obvious to modify the Morris-Furrer combination in view of Baskerville to include a stand.

If Patent Owner contends that the stand must remain coupled with the first end of the conveyor when in the stowed position, it would have been obvious to modify the stand in this manner, as discussed in § V.C.3 above.

VI. THE BOARD SHOULD REACH THE PETITION'S MERITS

A. The *General Plastic* Factors Do Not Apply

The *General Plastic* factors for determining whether to discretionarily deny an IPR petition are inapplicable here. *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357 through -01361, Paper 19 (PTAB Sept. 6, 2017).

The animating concern of *General Plastic* was "follow-on petitions." *Id.* at 8. Indeed, *General Plastic* factors 2–5 are relevant only for follow-on petitions. *See id.* at 9.

Here, no one has petitioned for IPR of the '940 patent before. Accordingly,

the *General Plastic* factors do not support discretionary denial of this petition.

B. The *Fintiv* Factors Weigh Against Discretionary Denial

Under "binding agency guidance," "***the PTAB will not discretionarily deny institution*** of an IPR or PGR in view of parallel district court litigation where a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition." Ex. PK-1014 at 7 (emphasis added) (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020)). Here, Petitioner stipulates not to pursue in the parallel litigation the same grounds as in this petition or any grounds that could have reasonably been raised in this petition. Ex. PK-1016. Accordingly, under Director Vidal's guidance, the Board should not discretionarily deny institution under *Fintiv*.

C. The *Becton, Dickinson* Factors Weigh Against Discretionary Denial

The Board may deny institution when "the same or substantially the same prior art or arguments previously were presented to the Office." 35 U.S.C. § 325(d). The Board considers the *Becton, Dickinson* factors in deciding whether to deny institution under § 325(d). *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (precedential in relevant part).

These factors weigh against denying institution. None of this petition's

grounds relies on prior-art combinations that were evaluated during prosecution of the ’940 patent. The primary references (Hiniker Manual and Morris) applied in this petition were not before the examiner. *See* Ex. PK-1002. Nor was Hiniker Webpage or Johnson before the examiner. *Id.* Although Baskerville and Furrer were before the examiner, the examiner did not substantively evaluate, or base any rejections on, these references during prosecution of the ’940 patent. *See id.* Therefore, “there is no evidence that any of the combinations asserted in the [p]etition were previously considered by the Office at all, let alone for the challenged claims.” *Bowtech Inc. v. MCP IP, LLC*, IPR2019-00383, Paper 14 at 4–5 (PTAB Aug. 6, 2019) (declining to deny institution under § 325(d)); *see also Edwards Lifesciences Corp. v. Boston Sci. SciMed, Inc*., IPR2017-01295, Paper 9 at 25–27 (PTAB Oct. 25, 2017) (declining to deny institution under § 325(d) where examiner did not consider whether the claims were patentable over the proposed combinations in the petition).

Additionally, none of the grounds in this petition relies on prior-art combinations that were evaluated during prosecution of the ’047 patent, from which the ’940 patent issued as a continuation, *see* Ex. PK-1012, or during *inter partes* reexamination of the ’047 patent, which Petitioner’s predecessor initiated, *see* Ex. PK-1013. The primary references (Hiniker Manual and Morris) in this petition were not before the examiner during prosecution or *inter partes* reexamination of the

'047 patent. *See* Exs. PK-1012, PK-1013. Nor was Hiniker Webpage or Johnson. *See* Exs. PK-1012, PK-1013.

Although the examiner issued rejections based on Furrer and Baskerville, he relied on different combinations of these references to address claim limitations that are absent from the claims challenged here. *See* Ex. PK-1012 at 68–71 (relying on Furrer as a primary reference for claims requiring, e.g., "a frame," "leg members," "a base," "sloped, inwardly facing walls," and "a conveyor coupling"); *id.* at 71–72 (relying on Baskerville as disclosing a "mechanism 36 for detachably coupling the first end of the conveyor with the first end of the support arm"); *id.* at 217–18 (relying on Baskerville as disclosing "a belt driven tube conveyor"); *id.* at 190–93 (relying on Baskerville as anticipating claims requiring, e.g., "a frame," "leg members," "a base," "a latch mechanism for detachably coupling said first end of said conveyor with said first end of said support arm," and "a locking mechanism"). Therefore, "there is no evidence that any of the combinations asserted in the [p]etition were previously considered by the Office at all, let alone for the challenged claims." *Bowtech*, Paper 14 at 4–5; *see also Edwards Lifesciences*, Paper 9 at 25–27.

The examiner did rely on Furrer as disclosing a support arm coupled with a base. *See* Ex. PK-1012 at 69–71. Although Ground 4 relies on Furrer as disclosing that the first end of the support arm is coupled to the base, it relies on Furrer only

as a secondary reference. Moreover, Ground 4's reliance on Furrer is entirely consistent with the examiner's findings, which were not retracted, that Furrer discloses a support arm coupled with a base (i.e., the same finding Petitioner asks the Board to make here). Instead, the applicant canceled those claims and submitted new claims, which the examiner allowed with a cursory statement of reasons for allowance. *Id.* at 18–20, 44–53. To the extent the Board disagrees and finds the examiner did retract his previous finding, that retraction was in error as it overlooks that Furrer clearly discloses a support arm coupled with a base (*see* § V.D.4(e) above). *Advanced Bionics*, Paper 6 at 10 ("[I]f the record of the Office's previous consideration of the art is not well developed or silent, then a petitioner may show the Office erred by overlooking something persuasive under factors (e) and (f).").

Baskerville was also before the examiner in the *inter partes* reexamination of the parent '047 patent, but none of the proposed rejections applied the combination of references asserted in this petition, let alone for the challenged claims. *See Bowtech*, Paper 14 at 4–6; *Edwards Lifesciences*, Paper 9 at 25–27; Ex. PK-1013 (relying on two publications from Great Plains Manufacturing as primary references). Moreover, unlike the request for *inter partes* reexamination, which the examiner faulted for not explaining why or how a skilled artisan would have modified the primary references in view of Baskerville, Ex. PK-1013 at 56–58, this petition explains for each ground why and how a skilled artisan would have modified

the primary reference in view of the secondary reference. *See, e.g.*, §§ V.A.3, V.B.2, V.C.2, V.C.3, V.D.3, V.E.1, V.E.2, *supra*; *Netflix Inc. v. Divx, LLC*, No. IPR2020-00646, Paper 12 at 54–56 (PTAB Sept. 15, 2020) (declining to deny institution under § 325(d) where "[t]he examiner . . . never considered the motivation to combine those references presented in the Petition"). Accordingly, the Board should not discretionarily deny institution.

VII. PAYMENT OF FEES – 37 C.F.R. § 42.103

Petitioner authorizes the Office to charge Deposit Account No. 06-1050 for any necessary fees.

VIII. CONCLUSION

For the above reasons, the Board should institute IPR on the grounds presented.

IX. MANDATORY NOTICES UNDER 37 C.F.R. § 42.8(a)(1)

A. Real Party-In-Interest Under 37 C.F.R. § 42.8(b)(1)

Petitioner, Par-Kan Company, LLC, and its parent corporation, RP Industries, Inc., are the real parties-in-interest.

B. Related Matters Under 37 C.F.R. § 42.8(b)(2)

Petitioner is not aware of any disclaimers, reexamination certificates or petitions for inter partes review of the '940 patent. The '940 patent is the subject of a number of civil actions including: *Unverferth Mfg. Co., Inc. v. Par-Kan Co., LLC*,

3-23-cv-00653 (N.D. Ind.), filed July 11, 2023; *Unverferth Mfg. Co., Inc. v. Meridian Mfg., Inc*, 5-19-cv-04005 (N.D. Iowa), filed January 23, 2019; *Unverferth Mfg. Co., Inc. v. Norwood Sales Inc.*, 3-18-cv-00053 (D.N.D.), filed March 12, 2018; and *Unverferth Mfg. Co., Inc. v. J&M Mfg. Co., Inc.*, 3-16-cv-02282 (N.D. Ohio), filed September 13, 2016.

C. Lead And Back-Up Counsel Under 37 C.F.R. § 42.8(b)(3)

Par-Kan provides the following designation of counsel.

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D. Service Information

Please address all correspondence and service to the address listed above. Petitioner consents to electronic service by email at PTABInbound@fr.com and IPR56436-0002IP1@fr.com (referencing No. 56436-0002IP1).

Respectfully submitted,

Dated September 11, 2024

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CERTIFICATION UNDER 37 CFR § 42.24

Under the provisions of 37 CFR § 42.24(d), the undersigned certifies that the word count for this petition for *inter partes* review totals 13,175 words, which is less than the 14,000 allowed under 37 CFR § 42.24.

Dated September 11, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on September 11, 2024, a complete and entire copy of this Petition for *Inter partes* Review, Power of Attorney, and all supporting exhibits were provided via Federal Express, to the Patent Owner by serving the correspondence address of record as follows:

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