

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

H&S MANUFACTURING COMPANY, INC.,
Petitioner,

v.

OXBO INTERNATIONAL CORPORATION,
Patent Owner.

Case IPR2016-00950
Patent 8,166,739 B2

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

TARTAL, *Administrative Patent Judge*.

DECISION

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

Petitioner, H&S Manufacturing Company, Inc., filed a Petition requesting an *inter partes* review of claim 1 of U.S. Patent No. 8,166,739 B2 (“the ’739 patent”). Paper 2 (“Pet.”). Patent Owner, Oxbo International Corporation, filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition and the Preliminary Response, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of claim 1 of the ’739 patent. Accordingly, we authorize an *inter partes* review to be instituted as to claim 1 of the ’739 patent. Our factual findings and conclusions at this stage of the proceeding are based on the evidentiary record developed thus far (prior to Patent Owner’s Response). This is not a final decision as to patentability of claims for which *inter partes* review is instituted. Our final decision will be based on the record, as fully developed during trial.

I. BACKGROUND

A. *The ’739 Patent (Ex. 1003)*

The ’739 patent, titled “Windrow Merging Apparatus,” issued May 1, 2012, from U.S. Application No. 12/925,405, filed October 19, 2010. Ex. 1003. The ’739 patent describes a windrow merger apparatus used “to merge cut hay, and/or windrows into larger windrows for harvesting or

baling.” *Id.* at 2:42–44. According to Patent Owner, the ’739 patent “improved windrow merger technology by providing a windrow merger with three pickup assemblies each having a pickup head and transverse belt conveyor that can move cut hay to either the left or the right.” Prelim. Resp. 6.

Figure 1 of the ’739 patent is reproduced below:

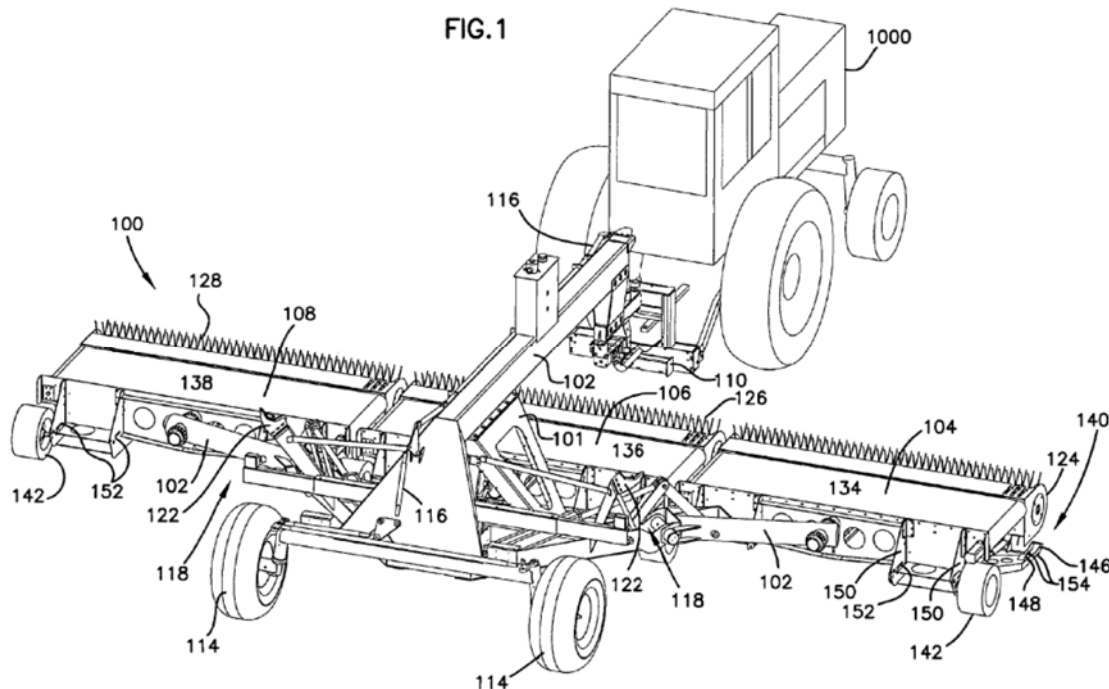


Figure 1 illustrates merger apparatus 100 with three pickup and transfer assemblies (104, 106, and 108) supported on framework 101, including folding arms 102 that provide for movement of outer assemblies 104 and 108. Ex. 1003, 4:40–52. “Each pickup and transfer assembly 104, 106 and 108 includes a head unit, designated 124, 126 and 128 respectively.” *Id.* at 4:67–5:2. Each “pickup and transfer assembly” is also referred to as a “pickup assembly.” *Id.* at 5:22–25. “The heads 124, 126 and 128 pick up and deliver the crop rearward to corresponding conveyors 134, 136 and

138.” *Id.* at 5:2–4. “The folding arm 102 is actuated by a linkage 118 to facilitate movement of the pivoting assemblies 104, 106 and 108 between a use position to a storage position.” *Id.* at 4:65–67.

Figure 5 of the ’739 patent is reproduced below:

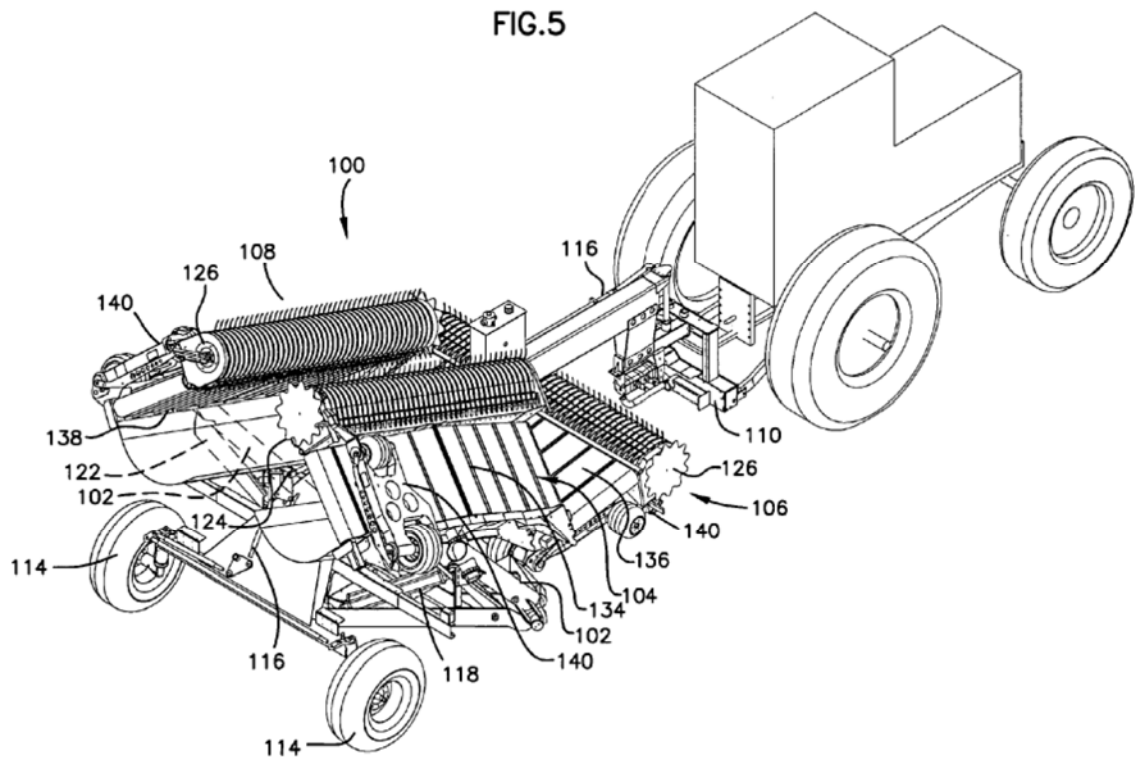


Figure 5 illustrates the merger shown in Figure 1 with two heads in a folded position. Ex. 1003, 4:1–2. “The pickup and transfer assemblies 104 and 108 fold rearward and inward to minimize the overall width and height of the merger 100.” *Id.* at 5:63–65. “[T]he merger 100 may have both pickup assemblies 104 and 108 raised simultaneously while the center pickup and transfer assembly 106 remains lowered in an operating position.” *Id.* at 5:46–49. Additionally, all three pickup and transfer assemblies may be raised for transporting the merger on public roads when not operating to collect material. *Id.* at 5:58–63.

B. Challenged Claim

Claim 1, the only claim of the '739 patent, provides as follows:

1. A windrow merger apparatus configured for travel in a first direction comprising:

a frame;

a first pickup assembly supported by the frame, the first pickup assembly including a first belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a first motor;

a second pickup assembly supported by the frame, the second pickup assembly including a second belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a second motor; and

a third pickup assembly supported by the frame, the third pickup assembly including a third belt conveyor arranged to convey material in a direction transverse to the first direction of travel and driven by a third motor;

wherein at least two of the pickup assemblies are foldable between an extended position and a retracted position, each of the first, second, and third pickup assemblies being aligned side by side when each of the pickup assemblies is positioned in the extended position such that the first, second, and third pickup assemblies provide an unobstructed continuous line of material pickup;

each of the first, second and third belt conveyors being operable in either direction independently of the other belt conveyors.

Ex. 1003, 10:36–61.

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