

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAIRIE LAND MILLWRIGHT SERVICES, INC.,
Petitioner,

v.

SIOUX STEEL COMPANY,
Patent Owner.

Case IPR2016-01873
Patent 8,967,937 B2

Before NEIL T. POWELL, JAMES A. TARTAL, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

POWELL, *Administrative Patent Judge*.

DECISION TO INSTITUTE
37 C.F.R. § 42.108

I. INTRODUCTION

A. *Background*

Prairie Land Millwright Services, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–28 of U.S. Patent No. 8,967,937 B2 (Ex. 1001, “the ’937 patent”). Paper 9 (“Pet.”). Patent Owner, Sioux Steel Company, filed a Preliminary Response. Paper 46 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(a); 37 C.F.R. § 42.4(a). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless the Director determines . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

After considering the Petition and Preliminary Response, we determine that Petitioner has established a reasonable likelihood of prevailing in showing the unpatentability of claims 1–28. Accordingly, we institute an *inter partes* review of these challenged claims.

B. *Related Matters*

The parties note the following related case: *Sioux Steel Co. v. Prairie Land Millwright Svcs., Inc.*, No. 1-16-cv-02212-JBG/SMF (N.D. Ill.). Pet. 7; Paper 45, 1.

C. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1–28 of the '937 patent are unpatentable based on the following grounds:

| References | Statutory Basis | Challenged Claim(s) |
|---|--------------------|---------------------------|
| Dixon ¹ , Berreau ² , and Borowski ³ | 35 U.S.C. § 103(a) | 1–4 and 6–11 ⁴ |
| Dixon, Berreau, Borowski, and Vander Schaaf ⁵ | 35 U.S.C. § 103(a) | 5 |
| Dixon, Berreau, Borowski, and Sudenga ⁶ | 35 U.S.C. § 103(a) | 12–28 |

¹ U.S. Patent No. 6,499,930 to Dixon, iss. Dec. 31, 2002 (Ex. 1007).

² U.S. Patent Application Publication No. 2005/0254922 to Berreau et al., published Nov. 17, 2005 (Ex. 1013).

³ Canadian Patent Application No. CA2312068 to Borowski, published Dec. 20, 2001 (Ex. 1019).

⁴ Petitioner identifies a “First Ground” as being “Obviousness of Claims 1–28 in view of 35 USC § 103(a) in view of U.S. Patent 6,499,930 to *Dixon*; U.S. Published Patent Appl’n. 2005/0254922 to *Berreau et al.*; Canadian Published Patent Appl’n. 2,312,068 to *Borowski*; U.S. Patent 3,175,676 to *Vander Schaaf*; and Sudenga Industries, Inc. Press Release.” Pet. 14 (emphasis omitted). Petitioner does not, however, cite each of the listed references with respect to each of the challenged claims. For example, Petitioner asserts that Dixon, Berreau, and Borowski render claims 1–4 and 6–11 obvious. *Id.* Based on the combinations of references that Petitioner actually cites as rendering different claims obvious, we identify the actual grounds as those listed in this table.

⁵ U.S. Patent No. 3,175,676 to Vander Schaaf, iss. Mar. 30, 1965 (Ex. 1032).

⁶ Sudenga Industries, Inc. “Series II Sweep Augers,” November 1, 2004 (Ex. 1035).

| References | Statutory Basis | Challenged Claim(s) |
|---|--------------------|-----------------------|
| Cantenot ⁷ , Carrouget ⁸ , Jackson ⁹ , and Schiltz ¹⁰ | 35 U.S.C. § 103(a) | 1, 3, 4, and 6–11 |
| Cantenot, Carrouget, Jackson, Schiltz, and Weikel ¹¹ | 35 U.S.C. § 103(a) | 2 |
| Cantenot, Carrouget, Jackson, Schiltz, and Klein ¹² | 35 U.S.C. § 103(a) | 5 |
| Cantenot, Carrouget, Jackson, Schiltz, and Wilham ¹³ | 35 U.S.C. § 103(a) | 12–15 and 17–20 |
| Cantenot, Carrouget, Jackson, Schiltz, Wilham, and Weikel | 35 U.S.C. § 103(a) | 16, 21, 22, and 26–28 |
| Cantenot, Carrouget, Jackson, Schiltz, Wilham, Weikel, and Epp ¹⁴ | 35 U.S.C. § 103(a) | 23 |
| Cantenot, Carrouget, Jackson, Schiltz, Wilham, Weikel, Epp, and Sudenga | 35 U.S.C. § 103(a) | 24 and 25 |
| Dixon, Jackson, and Schiltz | 35 U.S.C. § 103(a) | 1–4 and 6–11 |
| Dixon, Jackson, Schiltz, and Klein | 35 U.S.C. § 103(a) | 5 |
| Dixon, Jackson, Schiltz, and Sudenga | 35 U.S.C. § 103(a) | 12–28 |

⁷ U.S. Patent No. 4,516,898 to Cantenot, iss. May 14, 1985 (Ex. 1008).

⁸ French Patent Application Publication No. FR2630620 to Carrouget, published Nov. 3, 1989 (Ex. 1009).

⁹ U.S. Patent No. 3,647,094 to Jackson, iss. Mar. 7, 1972 (Ex. 1011).

¹⁰ U.S. Patent No. 4,824,312 to Schiltz, iss. Apr. 25, 1989 (Ex. 1018).

¹¹ U.S. Patent No. 6,039,647 to Weikel, iss. Mar. 21, 2000 (Ex. 1037).

¹² U.S. Patent No. 3,014,575 to Klein, iss. Dec. 26, 1961 (Ex. 1031).

¹³ U.S. Patent No. 6,017,180 to Wilham, iss. Jan. 25, 2000 (Ex. 1002).

¹⁴ U.S. Patent Application Publication No. 2006/0245864 to Epp et al., published Nov. 2, 2006 (Ex. 1038).

Petitioner also relies on a Declaration from Bruce Meyer. Ex. 1039.
Patent Owner relies on a Declaration from James E. Maness. Ex. 2001.

D. The '937 Patent

The '937 patent discloses a modular storage bin sweep system.
Ex. 1001, 4:31–34. Figure 2 of the '937 patent shows a top view of one embodiment of the system. Figure 2 is reproduced below.

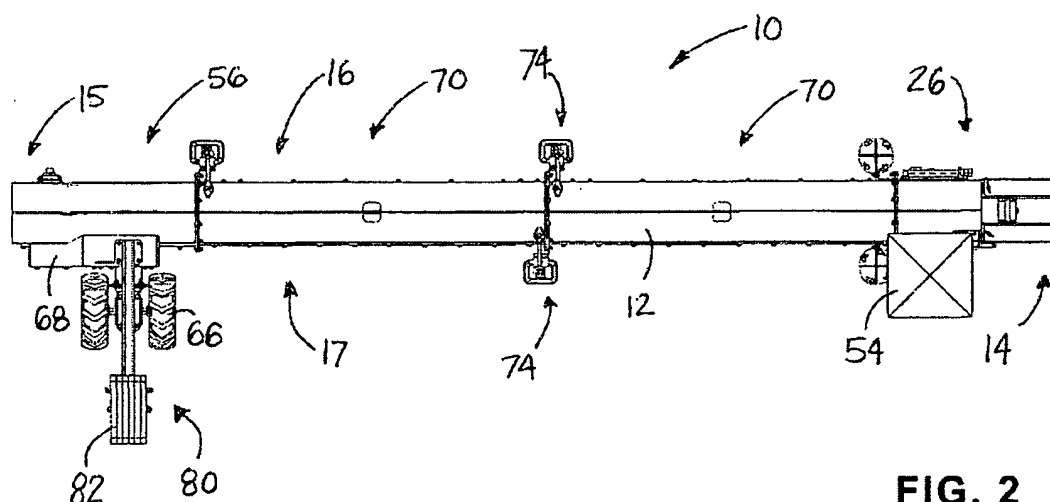


FIG. 2

Figure 2 shows system 10, including sweep assembly 12, which comprises power unit 26, drive unit 56, and linking units 70. *Id.* at 4:48–50; 5:32–33. The '937 patent discloses that sweep assembly 12 “may include two units, but often includes more than two units in the linear array.” *Id.* at 4:62–63. The '937 patent elaborates that:

The number of units in the array of the sweep assembly may typically be a function of the distance between the central area and the peripheral area of the bin interior so that the length of the sweep assembly generally approximates the distance between the areas (which in the case of a round bin is approximately the radius of the bin interior). The units may have different lengths that may be utilized in the linear array of units to achieve

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