

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARRY FENTON

Appeal No. 96-3024
Application 08/183,856¹

ON BRIEF

Before STONER Chief ***Administrative Patent Judge*** and MEISTER and
FRANKFORT, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

DECISION ON APPEAL

Barry Fenton (the appellant) appeals from the final
rejection of claim 1, the only claim present in the application.
We reverse.

¹Application for patent filed January 21, 1994.

The appellant's invention pertains to a tiltable cargo deck for a truck that is adapted to facilitate the loading and unloading of a vehicle such as a snowmobile. Claim 1 defines the invention in the following manner:

1. A motor driven tiltable cargo deck, comprising:
 - a. a support frame having opposed sides, a first end and a second end;
 - b. a first pair of sprockets mounted to opposed sides adjacent the first end of the support frame;
 - c. a second pair of sprockets mounted to opposed sides adjacent the second end of the support frame;
 - d. a pair of continuous chains rotatably mounted between the first pair of sprockets and the second pair of sprockets;
 - e. a rigid deck having a first end and a second end supported by the support frame and slidably movable from a travel position in which the first end of the deck is adjacent the first end of the first end of the support frame to an unloading position in which the first end of the deck is positioned immediately adjacent to the second end of the support frame and the second end of the deck rests upon a ground surface;
 - f. a pair of rigid linkage arms having a first end and a second end, the first end of the linkage arms being pivotally mounted in a fixed position adjacent to the first end of the deck, the second ends of the linkage arms being attached to the chains, the linkage arms serving as rigid connection between the deck and the chains whereby the deck moves relative to the support frame upon movement of the chains, the angular positioning of the linkage arms relative to the chains

changing as the linkage arms exert a resisting force upon the first end of the deck to enable the second end of the deck to be lowered in a controlled manner; and

g. a drive motor for rotating one of the first pair of sprockets and the second pair of sprockets thereby rotating the chains to effect movement of the deck relative to the support frame.

The references relied on by the examiner are:

Stoll et al. (Stoll)	5,340,267	Aug. 23, 1994
Hardy (France) ²	556,399	Mar. 3, 1931

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Stoll in view of Hardy. It is the examiner's position that:

Stoll et al. teach the usage of a rigid deck 26 having a first end and second end and [which is] slidably movable from a travel position to an unloading position and a pair of rigid link arms 40 with first ends pivotally mounted in a fixed position adjacent a first end of the deck and second ends mounted for movement along a support frame 20. Hardy teaches the usage of a pair of chains 5, first sprockets 6, second sprockets 7, and a drive motor for moving a deck 9, connected to the chains 5 by linkage arms 4, along a support frame from first to second positions. To modify the apparatus of Stoll et al. so as [to] connect the second ends of the link arms to chains entrained around sprockets driven by a motor would have been obvious to one of ordinary skill in the art in view of

²A translation of the French patent is attached to this Decision.

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the teachings of Hardy that it is old and well known in the art [to] utilize driven chains to move a deck relative to a support frame. [Answer, pages 2 and 3.]

We do not agree with the examiner's position. The "deck" 26 of Stoll is a retractable loading/unloading ramp of the type which, in its operative position, attaches to the rear of the cargo compartment of a vehicle and slopes downwardly to the ground. In its inoperative position, the ramp 26 of Stoll is stored in channels 22, 24 underneath the cargo compartment 14 of a vehicle 10. When it is desired to utilize the ramp in order to facilitate the loading or unloading of cargo, the ramp is manually withdrawn from its stowed position by grasping handles 60 which are provided on the end of the ramp that is to be placed on the ground. In order to assist in the lifting of the end of the ramp which attaches to the rear of the cargo compartment up to the level of the floor or bed of that compartment, a spring-biased lifting linkage 40, 42 is provided.

The "deck" 9 of Hardy, however, is used for an entirely different function and/or purpose. That is, Hardy's "deck" 9 forms the rigid part of a two-part of the bed a **dumping body** on a truck. The other part 10 of Hardy's bed is flexible in the sense

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that it comprises a plurality of plate-like elements which are hinged to one another. The sprockets 6, 7 and the chain 5 of Hardy serve to (1) move the flexible portion 10 of Hardy's bed to the point where it hangs over, and flexes downwardly from, the rear of the truck in order to partially discharge the cargo on the bed and (2) thereafter tilt the rigid portion or "deck" 9 to an inclined position in order to discharge the remainder of the cargo.

The mere fact that, as a broad proposition, the ramp 26 of Stoll and the bed 9 on the dumping body of Hardy are both used on vehicles such as trucks does not serve as proper motivation for combining the teachings of these two references as the examiner apparently believes. Instead, it is well settled that it is the teachings of the prior art taken as a whole which must provide the motivation or suggestion to combine the references. **See *Uniroyal, Inc. v. Rudkin-Wiley Corp.***, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988) and ***Interconnect Planning Corp. v. Feil***, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). Here, there is simply no suggestion or motivation which would have led one of ordinary skill in the art to single

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out the chain and sprocket mechanism from the dumping body of Hardy and incorporate that mechanism into Stoll's completely disparate arrangement of a retractable ramp and, from our perspective, the examiner has impermissibly relied upon the appellant's own teachings for a suggestion to combine the references to Stoll and Hardy in the manner proposed.

We also observe that providing a ramp with a lifting mechanism was the main thrust of Stoll's invention (see column 1, lines 34-36) and, in making the proposed combination, the examiner seeks to attach the link arms 40 (a part of the lifting mechanism) to a **flexible** chain incorporated from the dumping body Hardy. It is not clear, however, that if these link arms 40 were attached to flexible members, such as Hardy's chains, that the lifting mechanism would even function (or at least function well) in its intended manner, thus perhaps destroying that upon which Stoll's invention was based. *See Ex parte Hartmann*, 186 USPQ 366, 367 (Bd. App. 1974). This, in our view, would provide even more reason why one of ordinary skill in this art would not have

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been motivated to make the modification of Stoll which the
examiner has proposed.

The decision of the examiner is reversed.

REVERSED

BRUCE H. STONER, JR.)	
Chief Administrative Patent Judge)	
)	
)	
JAMES M. MEISTER)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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Anthony R. Lambert
c/o Thompson Lambert
#204, 10328 - 81 Avenue
Edmonton, Alberta, Canada T6E 1X2