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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/314,468	06/25/2014	John Oren	074686.003.030	2123
35979 7590 Bracewell & Giuliani LLP P.O. Box 61389 Houston, TX 77208-1389			EXAMINER SCHWENNING, LYNN E	
			ART UNIT 3652	PAPER NUMBER
			NOTIFICATION DATE 01/30/2015	DELIVERY MODE ELECTRONIC

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

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

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@bgllp.com

<b>Office Action Summary</b>	<b>Application No.</b> 14/314,468	<b>Applicant(s)</b> OREN, JOHN	
	<b>Examiner</b> LYNN SCHWENNING	<b>Art Unit</b> 3652	<b>AIA (First Inventor to File) Status</b> No

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

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/8/2014.  
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims\***

- 5) ☒ Claim(s) 1-30 is/are pending in the application.  
5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-30 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

\* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see [http://www.uspto.gov/patents/init\\_events/pph/index.jsp](http://www.uspto.gov/patents/init_events/pph/index.jsp) or send an inquiry to [PPHfeedback@uspto.gov](mailto:PPHfeedback@uspto.gov).

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 6/25/2014 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

**Certified copies:**

- a) ☐ All    b) ☐ Some\*\*    c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)  
Paper No(s)/Mail Date 6/25/14; 7/9/14; 9/10/14; 12/2/14; 12/8/14.
- 3) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 4) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

1. The present application is being examined under the pre-AIA first to invent provisions.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following claim limitations must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

- a) “lashing each of the plurality of containers”, as recited in Claims 4 and 20;
- b) “bar-codes or logging mechanisms”, as recited in Claims 8-9 and 22-23.
- c) “a hopper adjacent the bottom thereof, the hopper having downwardly inclined sidewalls terminating at the outlet”, as recited in Claims 12 and 27.
- d) “the plurality of containers has a plurality of wheels”, as recited in Claims 13 and 28.
- e) “aligning the inlet of each of the plurality of containers with the outlet”, as recited in Claims 14 and 29.
- f) “positioning the prongs of a forklift in one or more slots”, as recited in Claims 15 and 30.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of 35 U.S.C. 112(b):  
(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-5, 10, 18-21 and 25 rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

a) With regard to Claims 2-5, 10, 18-21 and 25, they include relative terms which render the claim indefinite. These terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. More specifically:

i. Claims 2 and 18 recite “each rail car configured to transport a great enough quantity of proppant to fill more than one of the plurality of containers”. The public will not be able to determine what amount will be a “great enough quantity”; i.e., will any small amount, for example 1 lb., over the amount it takes to fill two containers be sufficient to be “a great enough quantity”?

ii. Claims 3 and 19 recite “staging the plurality of flatbeds for efficient and effective removal of proppant from the multiple rail cars”. The public will not be able to determine what will be an “efficient and effective removal of proppant”; i.e., will the efficiency and effectiveness be based on how long it takes or by how much is left in the rail car?

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- iii. Claims 4 and 20 recite “positioning each of the plurality of containers that has proppant contained therein close to a fracturing operation of a production field”. The public will not be able to determine what distance can be considered “close”; i.e., does close mean within 500 feet, 1000 yards, 1 mile, or 5 miles, etc.?
- iv. Claims 5 and 21 recite “scaling the number of the plurality of containers at the location adjacent the rail line for as much or as little proppant as required at a particular location”. The public will not be able to determine the amounts that constitute “as much” or “as little”.
- v. Claims 10 and 25 recite “staging a plurality of empty containers at a proppant mine site to smooth out productivity for a proppant supplier”. The public will not be able to determine the number of containers that will smooth out productivity. In addition, it is unclear as to what the phrase “smooth out productivity” means and/or how it is determined.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1-2, 4-7, 10-12, 15, 16-18, 20-21, 24-27, and 29 are rejected under pre-AIA 35 U.S.C.

102(a)/ (e) as being anticipated by Sheesley, US 2013/0206415.

a) With regard to Claims 1, 16, and 17, Sheesley discloses a method of storing and moving proppant at location adjacent rail line (Figs 1-2, [0078]-[0091]), the method comprising: a) stacking a plurality of containers (130, 270, Figs. 9-22, [0050]-[0077]) that each contain proppant on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack (276, Figs. 2-3), the stack positioned at a location adjacent a rail line (adjacent can include being on top of the rail line as shown in Fig. 2), the structural integrity of the plurality of containers enhanced by a plurality of structural uprights (the vertically extending frame members that extend between corner castings (152), as shown in Figs. 9-10; [0050]-[0051]) positioned to extend from the bottom (146) to the top (142) of each of the plurality of containers and thereby increase the weight carrying capacity of each of the plurality of containers ([0012]-[0018]); b) placing one or more of the plurality of containers (270) from the stack onto one or more of a plurality of flatbeds (278, 320, Figs. 2 and 7-8) by use of a container loader/unloader (298, Fig. 3; [0088]); and c) moving the plurality of containers when positioned on the plurality of flatbeds away from the stack of the plurality of containers and away from the adjacent rail line (Fig. 2).

b) With regard to Claims 2 and 18, Sheesley discloses the method further comprising: before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each rail car configured to transport a great enough quantity of proppant to fill more than one of the plurality of containers (Fig. 1, the transporting lines shown by 42/58/64/66 and/or 42/60/62).

c) With regard to Claims 4 and 20, Sheesley discloses lashing each of the plurality of containers (given that the containers are standard cargo containers having the standard corner castings (152) with openings (154) for twist-lock fasters as described in [0050] and that Sheesley discloses that the containers are stacked in any conventional means as described in [0018], lashing of the containers could be included in the stacking process by using the appropriate lines that are attached to openings (154)) and wherein the moving includes positioning each of the

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plurality of containers that has proppant contained therein close to a fracturing operation of a production field. (Fig. 2, [0017], [0087]).

d) With regard to Claims 5, 16, and 21, Sheesley discloses scaling the number of the plurality of containers at the location adjacent the rail line for as much or as little proppant as required at a particular location (Figs. 1-2), wherein each of the plurality of containers includes an outlet (144, Fig. 10, 308, Fig. 5) adjacent a bottom for discharge of proppant therefrom (the outlets (144, 308) are adjacent to the bottom of walls (160, 162, 176, 178), which form the "hopper" portion of containers (130, 270, 302)), an opening (140, Fig. 10; 305, 310 Fig. 5) adjacent the top thereof to load proppant therein (the openings (140, 305, 308) are adjacent to the top of hopper walls (160, 162, 176, 178)), a pair of spaced-apart end walls connected to and extending between the bottom and the top ((132, 134) form one end wall between top (142) and bottom (146), the other end wall is opposite (132, 134, as shown in Fig. 9) and a pair of side walls connected to and extending between the pair of end walls and the top and the bottom (the longer walls shown in Fig. 9), and wherein each of the plurality of containers further includes one or more cross members rigidly extending between the pair of end walls (the longer structural frame members of (156) as shown in Fig. 10) and one or more cross members rigidly extending between the side walls (the shorter structural frame members of (156) as shown in Fig. 10).

e) With regard to Claims 6 and 16, Sheesley discloses a flow gate (214, 216, 218, 220, 222, Figs. 11, 16-17, [0057], [0064]-[0066])) positioned adjacent the outlet to control flow of proppant through the outlet, (Fig. 18, [0066]) wherein each of the plurality of containers further includes a plurality of horizontal structural members extending between the plurality of structural uprights (the horizontally extending frame members that extend between corner castings (152), as shown in Figs. 9-10; [0050]-[0051]), and wherein prior to step b), the method further comprises lifting each of the plurality of containers from the stack and transporting each of the plurality of containers with the container loader/unloader (298, [0083]) to be placed onto one of the plurality of flatbeds (Figs. 2, 6-8, [0086]-[0090]).

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f) With regard to Claims 7 and 24, Sheesley discloses that four containers are positioned in the stack (Figs. 2 and 7-8), wherein the stack comprises a first stack, and wherein the method further comprises stacking another plurality of containers that each have proppant therein closely adjacent the first stack (two sets of stacks, each comprised of four containers, are shown adjacent to each other in Figs. 7-8).

g) With regard to Claims 10 and 25, Sheesley discloses staging a plurality of empty containers at a proppant mine site to smooth out productivity for a proppant supplier (Fig. 2, wherein in order for the many containers (270) that can be filled and then transported by ship, barge, rail or truck, it is inherent that a plurality of empty containers would be staged next to the quarry (30)).

h) With regard to Claims 11 and 26, Sheesley discloses that the outlet (144) of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container (Figs. 9-11, 15-18).

i) With regard to Claims 12 and 27, Sheesley discloses that each of the plurality of containers has a hopper (156, Figs. 10-12) adjacent the bottom thereof (Figs. 16-17), the hopper having downwardly inclined sidewalls 160, 162, 176, 178) terminating at the outlet (Figs. 16-17), and wherein each of the plurality of containers has an open space region adjacent the hopper (the space surrounding braces (168, 174, Figs. 16-17) to enhance stackability of the plurality of containers (these spaces house the controls for operating the flow gates (218, 190), which enhances stackability by keeping these hoses and electrical wires from being touched by other containers).

j) With regard to Claims 14 and 29, Sheesley discloses wherein each of the plurality of containers has an inlet in the top thereof, and wherein step a) further comprises: aligning the inlet of each of the plurality of containers with the outlet (Fig. 5, [0084]).



***Claim Rejections - 35 USC § 103***

8. The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3 and 19 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sheesley, as applied to Claims 1/2 and 16/18 above, and Cope, US 2009/0038242. Sheesley discloses staging the plurality of flatbeds for efficient and effective removal of proppant from rail cars (Fig. 5); however, Sheesley fails to teach unlading multiple rail cars at the same time. Cope discloses a method of storing and moving proppant (Figs. 4-9, [0005]-[0007], [0024], [0045]-[0061]) in which proppant in rail cars is unloaded from multiple rail cars at the same time (Fig. 6, [0049]). It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to combine Cope's step of unlading multiple rail cars at the same time with Sheesley's method because it would reduce demurrage charges that occur when the incoming transport vehicles, such as rail cars, are used as temporary storage spaces, and would increase the capacity of the method to load proppant into the outgoing transport vehicles, such as flatbed trucks, as taught by Cope ([0004], [0024]).

10. Claims 8-9 and 22-23 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sheesley, as applied to Claims 1/7 and 16 above, Benedict et al., US 2008/0213073, and Lawrence, US 5,199,826. Sheesley disclose that the type of sand used in fracing is critical, and that the quartz content needs to be varied based on the depth of the well ([0010]. However, Sheesley fails to teach tracking the amount or mesh size of the proppant. Benedict discloses a method of moving, stacking and storing standard shipping containers that includes placing a bar code, RFID or other identification means on the container, wherein the tag includes information on the content of the container (Fig. 11, [0062]). It would

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have been obvious to one of ordinary skill in the art, at the time of Applicant's invention to combine Benedict's bar-codes with Sheesley's method because it would allow physical properties of the proppant to be stored on the tag, such as the amount of quartz content of the sand, which can be correlated to a mesh size of the sand, thereby allowing a specific container to be efficiently located based on the contents of the container, as taught by Benedict ([0014]). Sheesley also fails to teach injecting air into the containers. Lawrence discloses a method of moving and storing bulk materials that includes a container (10, Figs. 1-7, C2, L40 – C4, L22) and a system (50, Figs 3-4, C3, L1-21) for injecting air into the container. It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to combine Lawrence's air injection system with Sheesley's method because it would help to fluidize and break-up the proppant, thereby making the removal of the proppant from the container easier and more efficient, as taught by Lawrence (C1, L60-65).

11. Claims 13 and 28 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sheesley, as applied to Claims 1 and 16 above, and Heger et al., US 5,806,863. Sheesley fails to teach wheels attached to the containers. Heger discloses a stackable container (1) that includes a plurality of wheels (12, 13, Figs. 1, 6, 10, 12-13) attached to lower end portions of the container to enhance movability of the containers (C5, L36-63). It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to combine Heger's wheels with Sheesley's containers because it would assist in moving the container over short and medium distances and to facilitate the picking up and depositing of containers on transport vehicles (C1, L47-51).

12. Claims 15 and 30 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sheesley, as applied to Claims 1/5/11/12 and 16/26/27 above, and Jones et al., US 3,318,473. Sheesley fails to teach a container having slots for forklift prongs. Jones discloses a method of storing and moving granular bulk materials (C1, L9 – C3, L8, Figs. 1-13) that uses a stackable container (20) having slots (34, 36, 38, Fig. 2) adjacent the bottom of the container (Fig. 2) wherein prongs of a forklift are positioned in the slots to lift and move the containers for stacking and moving (Fig. 1, C2, L6-21). It would have been

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obvious to one of ordinary skill in the art, at the time of Applicant's invention, to combine Jones' slots and the step of positioning the prongs of a forklift in the slots to stack and move the containers with Sheesley's containers because it would allow the containers to be moved by readily available equipment, such as a forklift, and would allow higher stacks of containers to be formed due to the slots being located near the bottom of the container, as taught by Jones (C2, L63-68).

### ***Double Patenting***

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the claims at issue are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the reference application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO internet Web site contains terminal disclaimer forms which may be used. Please visit <http://www.uspto.gov/forms/>. The filing date of the application will determine what form should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to

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<http://www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp>.

14. Claims 1-30 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over Claims 1-2, 4, 8-9, and 15-18 of copending Application No. 14/310,648. Although the claims at issue are not identical, they are not patentably distinct from each other because both sets of claims are directed to methods of transporting proppant that includes stacking the containers, filling the containers from proppant transporting rail vehicles, and transferring the containers with a loader onto a support platform.

15. Claims 1-30 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over Claims 10-20 of copending Application No. 13/427,140. Although the claims at issue are not identical, they are not patentably distinct from each other because both sets of claims are directed to methods of transporting proppant that includes transporting a load of proppant in a vessel to a desired location, moving the proppant from the vessel into a container, and transporting the proppant to a well site.

This is a provisional nonstatutory double patenting rejection because the patentably indistinct claims have not in fact been patented.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3,661,293; US 4,265,266; US 6,415,909; US 7,104,425; ; US 7,967,161; US 2003/0111470; US 2008/0008562; US 2008/0226434; US 2009/0038242; US 2009/0078410; US 2011/0017693; ,

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNN SCHWENNING whose telephone number is (313)446-4861. The examiner can normally be reached on Monday - Friday, 8:30 am - 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAUL RODRIGUEZ/  
Supervisory Patent Examiner, Art Unit  
3652

/L. S./  
Examiner, Art Unit 3652

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	§	
Oren	§	Group Art Unit: 3652
	§	
Serial No.: 14/314,468	§	Confirmation No. : 2123
	§	
Filed: June 25, 2014	§	Examiner: Schwenning, Lynn E.
	§	
METHODS OF STORING AND MOVING	§	Atty. Docket No.: 074686.003.030
PROPPANT AT LOCATION ADJACENT	§	
RAIL LINE	§	

**Mail Stop Amendment**  
Commissioner for Patents  
P.O. Box Amendment  
Alexandria, VA 22313-1450

**RESPONSE TO NON-FINAL OFFICE ACTION OF JANUARY 30, 2015**

Applicants respectfully submit the following amendments and remarks in response to the  
Non-Final Office Action mailed January 30, 2015 ("Office Action").

Please amend the above identified application as follows:

**AMENDMENTS TO THE DRAWINGS**

Please replace drawings sheet 1/2 of the drawings with replacement sheet 1/2, which is enclosed herewith.

**AMENDMENTS TO THE SPECIFICATION**

Please amend paragraph [0060] of the specification as follows:

[0060] The arrangement of containers is scalable for as much or as little proppant as required. A WMS inventory control system can be utilized. In such a system, each container can be bar-coded (using bar codes or logging mechanisms 49) and logged-in to track the amount of proppant on hand by the mesh size of the proppant. Once the containers are loaded, they can be easily and safely stacked up in yards. As such, air space is utilized as opposed to yard space. All that is required is a solid foundation and proper container handling equipment.



**AMENDMENTS TO THE CLAIMS**

The following listing of claims replaces all prior versions and listing of claims in the application.

**Listing of claims:**

1. (Currently Amended) A method of storing and moving proppant at a location adjacent a rail line, the method comprising:

a) removing a plurality of containers containing fracking proppant from a rail car;

[[a]]b) after step a), stacking ~~a~~ the plurality of containers ~~that each contain proppant~~ separate from the rail car on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack, the stack positioned at a location adjacent a rail line, the structural integrity of the plurality of containers enhanced by a plurality of structural uprights positioned to extend from the bottom to the top of each of the plurality of containers and thereby increase the weight carrying capacity of each of the plurality of containers;

[[b]]c) placing one or more of the plurality of containers from the stack adjacent the rail line onto one or more of a plurality of flatbeds by use of a container loader/unloader; and

[[c]]d) moving the plurality of containers when positioned on the plurality of flatbeds away from the stack of the plurality of containers and away from the adjacent rail line.

2. (Currently Amended) The method of Claim 1, further comprising:

before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each railcar configured to transport ~~a great enough quantity of~~ an amount of proppant equal to or greater than the amount of proppant required to fill ~~more than one~~ at least two of the plurality of containers.

3. (Cancelled)

4. (Currently Amended) The method of Claim 1, ~~further comprising:~~

~~lashing each of the plurality of containers, and~~ wherein the moving includes positioning each of the plurality of containers that has proppant contained therein ~~close to~~ adjacent a fracturing operation of a production field.

5. (Currently Amended) The method of Claim 1, further comprising:

scaling the number of the plurality of containers at the location adjacent the rail line ~~for as much or as little according to the amount of~~ proppant as required at a particular location, wherein each of the plurality of containers includes an outlet adjacent a bottom for discharge of proppant therefrom, an opening adjacent the top thereof to load proppant therein, a pair of spaced-apart end walls connected to and extending between the bottom and the top, and a pair of side walls connected to and extending between the pair of end walls and the top and the bottom, and wherein each of the plurality of containers further includes one or more cross members rigidly extending between the pair of end walls and ~~one or more~~ a plurality of cross members rigidly extending between the side walls at intervals between the end walls of each container.

6. (Currently Amended) The method of Claim 5, further comprising a flow gate positioned adjacent the outlet to control flow of proppant through the outlet, wherein each of the plurality of containers further includes a plurality of horizontal structural members extending between the plurality of structural uprights, and wherein prior to step ~~[[b]]e~~, the method further comprises lifting each of the plurality of containers from the stack and transporting each of the plurality of containers with the container loader/unloader to be placed onto one of the plurality of flatbeds.

7. (Original) The method of Claim 1, wherein the plurality of containers that each has proppant therein includes up to four containers, wherein up to four containers are positioned in the stack, wherein the stack comprises a first stack, and wherein the method further comprises

stacking another plurality of containers that each have proppant therein closely adjacent the first stack.

8. (Original) The method of Claim 7, further comprising:

tracking the amount of proppant on hand at the location adjacent the rail line with bar-codes or logging mechanisms, and injecting air into each of the plurality of containers to enhance flow of proppant from the outlet of each of the plurality of containers adjacent the flow gate.

9. (Original) The method of Claim 8, further comprising:

tracking the mesh size of the proppant in the containers at the location adjacent the rail line with bar-codes or logging mechanisms.

10. (Currently Amended) The method of Claim 1, further comprising staging a plurality of empty containers at a proppant mine site ~~to smooth out productivity for a proppant supplier.~~

11. (Original) The method of Claim 5, wherein the outlet of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container.

12-14. (Cancelled)

15. (Original) The method of Claim 12, further comprising:

positioning the prongs of a forklift in one or more slots positioned adjacent the bottom of each of the plurality of containers in the open space region to thereby enhance lifting and positioning of the containers for stacking and moving the plurality of containers.

16. (Currently Amended) A method of storing and moving proppant at a location adjacent a rail line, the method comprising:

a) removing proppant for fracking from a railcar;

[[a]]b) storing the proppant separate from the rail car and adjacent a rail line in a plurality of containers that each contain proppant and that are located near the rail line, each container comprising:

an opening adjacent the top thereof to receive proppant into the container, a pair of spaced-apart end walls connected to and extending between the bottom and the top, and a pair of sidewalls connected to an extending between the pair of end walls and the top and the bottom, and one or more cross members rigidly extending between the pair of end walls and one or more cross members rigidly extending between the side walls;

an outlet adjacent a bottom for discharge of proppant therefrom; and

a flow gate positioned adjacent the outlet to control flow of proppant through the outlet; and

[[b]]c) transferring one or more of the plurality of containers from the location adjacent the rail line onto one or more of a plurality of flatbeds by use of a loader/unloader; and

[[c]]d) removing the one or more of the plurality of containers away from ~~the stack of the plurality of containers and away from the rail line.~~

17. (Currently Amended) The method of Claim 16, wherein step [[a]]b) further comprises:

stacking the plurality of containers on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack to reduce the footprint of the stored containers.

18. (Currently Amended) The method of Claim 16, further comprising:

before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each railcar configured to transport ~~a great enough quantity of~~ an amount of proppant equal to or greater than the amount of proppant required to fill more than one at least two of the plurality of containers.

19. (Cancelled)

20. (Currently Amended) The method of Claim 16, ~~further comprising:~~

~~lashing each of the plurality of containers, and wherein the moving includes positioning~~  
each of the plurality of containers that has proppant contained therein ~~close to~~ adjacent a  
fracturing operation of a production field.

21. (Currently Amended) The method of Claim 16, further comprising:

scaling the number of containers at the location adjacent the rail line ~~for as much or as~~  
~~little according to the amount of~~ proppant as required at a particular location, wherein each of the  
plurality of containers has a plurality of structural uprights positioned to extend from the bottom  
to the top of each of the plurality of containers at intervals between the side walls and the end  
walls to ~~and~~ thereby increase the weight carrying capacity of each of the plurality of containers,  
and a plurality of horizontal structural members extending between the plurality of structural  
uprights.

22. (Original) The method of Claim 16, further comprising:

tracking the amount of proppant on hand at the location adjacent the rail line with bar-  
codes or logging mechanisms, and injecting air into each of the plurality of containers to enhance  
flow of proppant from the outlet of each of the plurality of containers adjacent the flow gate.

23. (Original) The method of Claim 22, further comprising:

tracking the mesh size of the proppant in the containers at the location adjacent the rail  
line with bar-codes or logging mechanisms.

24. (Currently Amended) The method of Claim ~~[[16]]~~ 17, wherein the plurality of containers  
that each has proppant therein includes up to four containers, wherein up to four containers are  
positioned in the stack, wherein the stack comprises a first stack, and wherein the method further  
comprises stacking another plurality of containers that each have proppant therein closely  
adjacent the first stack.

25. (Currently Amended) The method of Claim 16, further comprising staging a plurality of empty containers at a proppant mine site ~~to smooth out productivity for a proppant supplier.~~

26. (Original) The method of Claim 16, wherein the outlet of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container.

27-29. (Cancelled)

30. (Original) The method of Claim 27, further comprising:

positioning the prongs of a forklift in one or more slots positioned adjacent the bottom of each of the plurality of containers in the open space region to thereby enhance lifting and positioning of the containers for stacking and moving the plurality of containers.

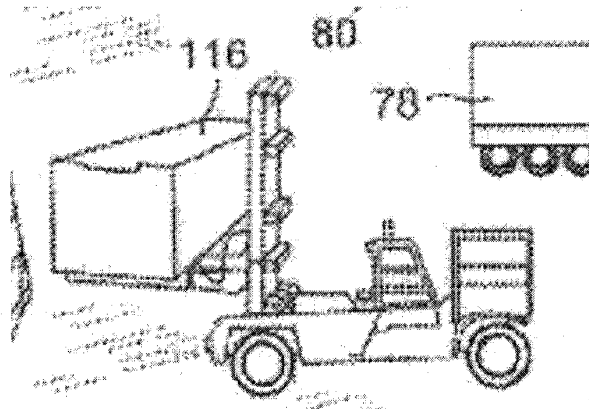
**REMARKS**

This amendment is in response to the Non-Final Office Action mailed January 30, 2015. Claims 1, 2, 4-11, 15-18, and 20-30 are pending in the application. Claims 1, 2, 4-6, 10, 16-18, 20, 21, 24, and 25 have been amended as to patentability, including the doctrine of equivalents. Claims 3, 12-14, 19, and 27-29 have been cancelled. No new matter has been added by way of the amendments.

In the Office Action, the Examiner first objected to the drawings, alleging that some features of the claims are not shown in the drawings. The Examiner rejected Claims 2-5, 10, 18-21, and 25 under 35 U.S.C. 112(b) as indefinite for using the terms identified by the Examiner as relative terms. The Examiner rejected Claims 1-2, 4-7, 10-12, 15, 16-18, 20-21, 24-27, and 29 under 35 U.S.C. 102(a)/(e) as anticipated by U.S. Patent Appln. Pub. No. 2013/0206415 to Sheesley ("*Sheesley*"). In addition, the Examiner rejected Claims 3 and 19 under 35 U.S.C. 103(a) as obvious over *Sheesley* in view of U.S. Patent Appln. Pub. No. 2009/0038242 to Cope ("*Cope*"); Claims 8-9 and 22-23 as obvious over *Sheesley* in view of U.S. Patent Appln. Pub. No. 2008/0213073 to Benedict et al. ("*Benedict*") and further in view of U.S. Patent No. 5,199,826 to Lawrence ("*Lawrence*"); Claims 13 and 28 as obvious over *Sheesley* in view of U.S. Patent No. 5,806,863 to Heger et al. ("*Heger*"); and Claims 15 and 30 as obvious over *Sheesley* in view of U.S. Patent No. 3,318,473 to Jones et al. ("*Jones*"). Finally, the Examiner rejected Claims 1-30 for non-statutory obviousness type double-patenting over certain claims of U.S. Patent Appln. Nos. 14/310,648 and 13/427,140. In the application, Claims 1 and 16 are written in independent form.

**I. The Drawings Objections Are Overcome**

Applicant has cancelled Claims 12-14 and 27-29, has amended claims 4 and 20, and has amended Fig. 2 of the drawings and paragraph [0060] of the specification, each of which relate to language identified by the Examiner in Claims 4, 8-9, 12-14, 20, 22-23, and 27-29. With regard to “positioning the prongs of a forklift in one or more slots,” as recited in Claims 15 and 30, Applicant respectfully submits that this is shown in Fig. 3 of the drawings. Specifically, the following image portion is shown in the upper left portion of Fig. 3, where the forks of a forklift are engaged with slots at the bottom of a container 116:



Accordingly, Applicant respectfully submits that the drawing objections are overcome.

**II. The Rejections of claims 2-5, 10, 18-21, and 25 under 35 U.S.C. 112(b) Are Overcome.**

Applicant has amended claims 2, 4, 5, 10, 18, 20, 21, and 25, to clarify the claim language identified by the Examiner. In addition, Applicant has cancelled claims 3 and 19. Accordingly, Applicant respectfully submits that the rejections under 35 U.S.C. 112(b) are overcome.



**III. Claims 1 and 16 are patentable because *Sheesley* fails to disclose stacking or storing proppant separate from a rail car adjacent a rail line.**

Claim 1 recites the step of stacking the plurality of containers “separate from the rail car,” with the stack “positioned at a location adjacent a rail line.” Similarly, Claim 16 recites storing the proppant “separate from the rail car and adjacent the rail line.” These features are advantageous because they allow for stacking proppant containers next to a rail line as the containers are delivered. Due to differences in the timing and number of containers delivered by train, versus the number taken away from a rail line by truck, the ability to stack the containers next to a rail line after removing them from train cars frees the train to move on, even when no truck is immediately available to transport the containers away from the rail line. Among other benefits, these features help to reduce costs associated with demurrage of proppant.

*Sheesley* does not disclose these features. Instead, *Sheesley* shows containers stacked on a train car, and containers stacked at a well site. Nowhere, however, are the containers stacked near a rail line, but separate from the train cars. Instead, the containers on the train cars of *Sheesley* are moved directly from the train car to a truck, so that each train car is tied up until a truck arrives to receive its respective containers. Accordingly, *Sheesley* does not anticipate Claims 1 and 16.

**IV. Claims 5 and 21 are patentable because *Sheesley* fails to disclose scaling the number of containers according to the amount of proppant required at a particular location.**

Claims 5 and 21 each recite “scaling the number of containers at the location adjacent the rail line according to the amount of proppant required at a particular location.” This step of scaling is made possible in part by the stacking of the containers adjacent the rail line. If the ultimate destination or destinations are well sites requiring more proppant, a greater number of containers can be stacked and stored at the rail line. Conversely, if the ultimate destination

requires less proppant, a lesser number of containers can be stacked and stored at the rail line. Such scaling of containers adjacent the rail line is not shown or described in *Sheesley*.

For example, and as discussed above, *Sheesley* merely shows containers arriving by train, and being loaded directly from the train to a truck for transport to a well site. Thus, each container is shipped by truck as it arrives by train. There is no intermediate stacking step that allows for scaling. Accordingly, Claims 5 and 21 are not anticipated by *Sheesley*.

V. **Claims 5 and 21 are patentable because *Sheesley* fails to disclose a plurality of cross members extending between side walls and end walls at intervals to strengthen the containers.**

Claims 5 recites that each container includes “a plurality of cross members rigidly extending between the side walls at intervals between the end walls of each container.” Similarly, Claim 21 recites “a plurality of structural uprights positioned to extend from the bottom to the top of each of the plurality of containers at intervals between the side walls and the end walls.” Such structural supports, located at intervals across the width or height of the container, add support above and beyond that provided by reinforced corners and edges of the container. Neither of these features is shown or described by *Sheesley*.

Instead, *Sheesley* shows support members only at corners and edges of the containers where the side walls and the end walls meet. Thus, the supports of *Sheesley* are not positioned at intervals between side walls and end walls. As a result, the sides and ends of the *Sheesley* containers are not reinforced, but are left subject to deformation or buckling when the containers are full of sand. For this additional reason, Claims 5 and 21 are not anticipated by *Sheesley*.

VI. **Claims 8 is patentable because *Sheesley*, *Benedict*, and *Lawrence* all fail to disclose, teach, or suggest tracking the amount of proppant on hand at the location adjacent the rail line.**

Claim 8 recites “tracking the amount of proppant on hand at the location adjacent the rail line with bar-codes or logging mechanisms.” This feature is advantageous because such tracking

allows an operator to keep track of remaining stores of proppant, and to adjust orders for additional proppant as necessary to continue fracking operations. This feature is not disclosed by the prior art.

The Examiner admits that *Sheesley* does not disclose this feature, and instead relies on *Benedict*, alleging that “Benedict discloses a method of moving, stacking and storing standard shipping containers that includes placing a bar code, RFID or other identification means on the container, wherein the tag includes information on the content of the container.” See Office Action at 8. The Examiner is correct that *Benedict* discloses use of a bar code to identify the contents of containers. *Benedict* does not, however, use a bar code to track the amount of proppant in a container, as required by the claim. Applicant submits that identification of the type of material in a container does not include information about the amount of that material in the container. Thus, Claim 8 is not rendered obvious by the combination of art relied on by the Examiner.

**VII. Dependent Claims Patentable by Virtue of Dependency.**

Claims 2, 4-11, 15, 17, 18, 20-26, and 30 are patentable by virtue of their dependency on at least one of independent Claims 1 and 16, as well as for other patentable features recited therein.

**VI. Non-Statutory Obviousness-Type Double Patenting Rejections**

The Examiner rejects claims 1-30 for non-statutory obviousness-type double patenting over Claims 1-2, 4, 8-9, and 15-18 of U.S. Patent Appln. No. 14/310,648, as well as Claims 10-20 of U.S. Patent Appln. No. 13/427,140. Applicant has filed a terminal disclaimer over the ‘648 patent application. Applicant is confused, however, about the double patenting rejection over the ‘140 application. The ‘140 application is no longer pending, but issued on January 7, 2014 as U.S. Patent No. 8,622,251. Furthermore, the ‘251 patent includes only Claims 1-8, and does not

have any Claims 10-20. Accordingly, Applicant has not filed a terminal disclaimer over the '140 application, and instead asks the Examiner to clarify the double patenting rejection in this regard.

**Conclusion**

The foregoing response is full, complete, and timely filed. Amendments to the claims are made without prejudice, including under the doctrine of equivalents. In addition, the comments made herein are without prejudice. Applicants respectfully request reconsideration of the instant application in light of the foregoing response and amendments. If any additional fees are necessary for continued prosecution of this Application, the commissioner is hereby authorized to charge those fees to **Bracewell & Giuliani LLP's Deposit Account Number 50-0259 (074686.003.030)**.

Respectfully submitted,

Date: April 30, 2015

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/314,468	06/25/2014	John Oren	074686.003001	2123
132858	7590	08/04/2015	EXAMINER	
Hogan Lovells US LLP Bank of America Center 700 Louisiana Street Suite 4300 Houston, TX 77002			SCHWENNING, LYNN E	
			ART UNIT	PAPER NUMBER
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			NOTIFICATION DATE	DELIVERY MODE
			08/04/2015	ELECTRONIC

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

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

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

hlusdocketing@hoganlovells.com

<b>Office Action Summary</b>	<b>Application No.</b> 14/314,468	<b>Applicant(s)</b> OREN, JOHN	
	<b>Examiner</b> LYNN SCHWENNING	<b>Art Unit</b> 3652	<b>AIA (First Inventor to File) Status</b> No

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

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on April 30, 2015.  
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims\***

- 5) ☒ Claim(s) 1,2,4-11,15-18,20-26 and 30 is/are pending in the application.  
5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1,2,4,7,16-18,20,24-26 and 30 is/are rejected.
- 8) ☒ Claim(s) 5,6,8,9,11,15 and 21-23 is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

\* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see [http://www.uspto.gov/patents/init\\_events/pph/index.jsp](http://www.uspto.gov/patents/init_events/pph/index.jsp) or send an inquiry to [PPHfeedback@uspto.gov](mailto:PPHfeedback@uspto.gov).

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 4/30/15 and 6/25/2014 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

**Certified copies:**

- a) ☐ All    b) ☐ Some\*\*    c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)  
Paper No(s)/Mail Date 4/30/15; 5/15/15; 5/20/15; 6/19/15; 7/14/15.
- 3) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 4) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

1. The present application is being examined under the pre-AIA first to invent provisions.

***Drawings***

2. A Replacement Sheet 1/2 was received on April 30, 2015. These drawings are acceptable.
3. In view of the cancellations of several claims, the drawing objections identified in paragraph 2.b) through 2.e) in the January 30, 2015 Office Action are withdrawn.
4. In view of Applicant's arguments with respect to the Drawing objection with regard to Claims 15 and 30, this drawing objection is withdrawn.

***Response to Arguments***

5. Applicant's arguments, see page 11, filed April 30, 2015, with respect to Claims 2-5, 10, 18-21 and 25 have been fully considered and are persuasive. The 35 U.S.C. 112 (pre-AIA), second paragraph, rejection of Claims 2-5, 10, 18-21 and 25 has been withdrawn.
6. Applicant's arguments, see pages 11-13, filed April 30, 2015, with respect to Claims 1, 5, 16, and 21 have been fully considered and are persuasive. The 35 U.S.C. 102(b) rejection of Claims 1-2, 4-7, 10-12, 15, 16-18, 20-21, 24-27, and 29 has been withdrawn. However, upon further consideration, a new 35 U.S.C. 103(a) ground of rejection is made based on the combination of Sheesley and Benedict.
7. Applicant's arguments, see pages 13-14, filed April 30, 2015, with respect to the rejection of Claim 8 (and Claim 22 because it includes the same limitations) under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.
8. Applicant's arguments, see page 14-15, filed April 30, 2015, with respect to the Double Patenting Rejections of Claim 1-30 have been fully considered and are persuasive. Applicant has filed a Terminal Disclaimer with respect to US Patent Application 14/310,648, and accordingly, this rejection is withdrawn. The rejection that was improperly based on US Patent Application 13/427,140, now US 8,622,251, is also withdrawn.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of 35 U.S.C. 112(b):  
(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 30 is rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Claim 30 depends on cancelled Claim 27. For purposes of examination, it is presumed that Claim 30 depends from Claim 26, as it originally did through now-cancelled Claim 27.

***Claim Rejections - 35 USC § 103***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 1-2, 4, 7, 10, 16-18, 20, and 24-26 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sheesley, US 2013/0206415 and Benedict et al., US 2008/0213073.

- a) With regard to Claims 1, 16, and 17, Sheesley discloses a method of storing and moving proppant at location adjacent rail line (Figs1-2, [0078]-[0091]), the method comprising:

- a) removing a plurality of containers containing fracking proppant from a rail car (Figs. 1-2);
- b) after step a), stacking the plurality of containers (130, 270, Figs. 9-22, [0050]-[0077]) on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack (276, Figs. 2-3), the structural integrity of the plurality of containers enhanced by a plurality of structural uprights (the vertically extending frame members that extend between corner castings (152), as shown in Figs. 9-10; [0050]-[0051]) positioned to



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extend from the bottom (146) to the top (142) of each of the plurality of containers and thereby increase the weight carrying capacity of each of the plurality of containers ([0012]-[0018]);

- c) placing one or more of the plurality of containers (270) from the stack onto one or more of a plurality of flatbeds (278, 320, Figs. 2 and 7-8) by use of a container loader/unloader (298, Fig. 3; [0088]); and
- d) moving the plurality of containers when positioned on the plurality of flatbeds away from the stack of the plurality of containers and away from the adjacent rail line (Fig. 2).

b) Sheesley fails to teach stacking the plurality of containers separate from the rail car at a location adjacent a rail line. Benedict discloses a method of storing and moving containers (Figs. 1-22, [0039]-[0077]) at a location adjacent a rail line (T, Figs. 1-10. [0046]-[0049], the containers being brought to the storage area via track (78)) wherein a plurality of containers are removed from a rail car and then stacking the plurality of containers (C) separate from the rail car on top of one another (W, 56, 65, Fig. 1 that shows a plurality of containers (C) that are stacked vertically above each other) so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack (Figs. 1-10) that reduces the footprint of the stored containers (Figs. 1-10), the stack positioned at a location adjacent a rail line (Figs. 1-10, the stack being adjacent the railway loading and unloading portion (64, 73, [0048]-[0049]), and placing the containers from the stack adjacent the rail line onto one or more of a plurality of flatbeds (TR) by use of a container loader/unloader (60, [0049]). It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to stack the containers next to the rail line because it would increase the overall efficiency of the method of moving and storing containers because multiple trains could transport a quantity of the containers to the storage facility where the containers are stacked, thereby making a greater quantity of containers available to be removed by flatbed trucks, as taught by Benedict ([0010]-[0018]). By stacking all of the containers brought by multiple trains near the rail line, they can be quickly and efficiently

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unloaded, and the flatbeds will not need to wait on the trains and the further transporting of the containers to the fracturing site can be done simultaneously. In addition, Sheesley at least suggests that a stack of containers could be placed next to the rail line (see [0018] which states "Also, the modified frac containers may be stacked in any conventional means, either while in transit or at the frac site."). The ordinarily skilled artisan would be motivated by Sheesley's suggestion to provide stacks of containers during the transit of the containers (which includes moving the containers from the train to the flatbeds) and combine Sheesley's teaching with Benedict's teaching to place container stacks adjacent a rail line in order to increase the efficiency of moving and storing fracking proppant containers.

c) With regard to Claims 2 and 18, Sheesley discloses the method further comprising: before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each rail car configured to transport an amount of proppant equal to or greater than the amount of proppant to fill at least two of the plurality of containers (Fig. 2, the rail line shows four containers, and a truck removing one of the containers, which would imply that the rail car is configured to transport an amount of proppant to fill at least four containers).

d) With regard to Claims 4 and 20, Sheesley discloses wherein the moving includes positioning each of the plurality of containers that has proppant contained therein close to a fracturing operation of a production field. (Fig. 2, [0017], [0087]).

e) With regard to Claims 7 and 24, Sheesley discloses that four containers are positioned in the stack (Figs. 2 and 7-8), wherein the stack comprises a first stack, and wherein the method further comprises stacking another plurality of containers that each have proppant therein closely adjacent the first stack (two sets of stacks, each comprised of four containers, are shown adjacent to each other in Figs. 7-8).

f) With regard to Claims 10 and 25, Sheesley discloses staging a plurality of empty containers at a proppant mine site (Fig. 2, wherein in order for the many containers (270) that can be filled and then transported by ship, barge, rail or truck, it is inherent that a plurality of empty containers would be staged next to the quarry (30)).

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g) With regard to Claim 26, Sheesley discloses that each of the plurality of containers includes an outlet (144, Fig. 10, 308, Fig. 5) adjacent a bottom for discharge of proppant therefrom (the outlets (144, 308) are adjacent to the bottom of walls (160, 162, 176, 178), and the outlet (144) of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container (Figs. 9-11, 15-18).

11. Claim 30 is rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Sheesley and Benedict, as applied to Claims 16 and 26 above, and Jones et al., US 3,318,473. Sheesley fails to teach a container having slots for forklift prongs. Jones discloses a method of storing and moving granular bulk materials (C1, L9 – C3, L8, Figs. 1-13) that uses a stackable container (20) having slots (34, 36, 38, Fig. 2) adjacent the bottom of the container (Fig. 2) wherein prongs of a forklift are positioned in the slots to lift and move the containers for stacking and moving (Fig. 1, C2, L6-21). It would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to combine Jones' slots and the step of positioning the prongs of a forklift in the slots to stack and move the containers with the Sheesley/Benedict method and containers because it would allow the containers to be moved by readily available equipment, such as a forklift, and would allow higher stacks of containers to be formed due to the slots being located near the bottom of the container, as taught by Jones (C2, L63-68).

#### ***Allowable Subject Matter***

12. Claims 5-6, 8-9, 11, 15, and 21-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNN SCHWENNING whose telephone number is (313)446-4861. The examiner can normally be reached on Monday - Friday, 8:30 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAUL RODRIGUEZ/  
Supervisory Patent Examiner, Art Unit  
3652

/L. S./  
Examiner, Art Unit 3652

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this document is being filed electronically with the Office of the Commissioner for Patents and Trademarks, Alexandria, Virginia, on the date indicated below.

Date: August 18, 2015

/Jennifer M. Tilley/

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Oren

§

§

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Serial No.: 14/314,468

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Filed: June 25, 2014

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§

METHODS OF STORING AND MOVING  
PROPPANT AT LOCATION ADJACENT  
RAIL LINE

§

§

§

Group Art Unit: 3652

Confirmation No. : 2123

Examiner: Schwenning, Lynn E.

Atty. Docket No.: 074686.003001

**Mail Stop After Final**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**RESPONSE TO FINAL OFFICE ACTION MAILED AUGUST 4, 2015**

This is in response to the Final Office Action mailed August 4, 2015.

## **AMENDMENTS TO THE CLAIMS**

The following listing of claims replaces all prior versions and listing of claims in the application.

### **Listing of claims:**

1. (Currently amended) A method of storing and moving proppant at a location adjacent a rail line, the method comprising:

- a) removing a plurality of containers containing fracking proppant from a rail car;
- b) after step a), stacking the plurality of containers separate from the rail car on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack, the stack positioned at a location adjacent a rail line, the structural integrity of the plurality of containers enhanced by a plurality of structural uprights positioned to extend from the bottom to the top of each of the plurality of containers and thereby increase the weight carrying capacity of each of the plurality of containers;
- c) placing one or more of the plurality of containers from the stack adjacent the rail line onto one or more of a plurality of flatbeds by use of a container loader/unloader; [[and]]
- d) moving the plurality of containers when positioned on the plurality of flatbeds away from the stack of the plurality of containers and away from the adjacent rail line; and
- e) scaling the number of the plurality of containers at the location adjacent the rail line according to the amount of proppant required at a particular location, each of the plurality of containers positioned to include an outlet adjacent the bottom for discharge of proppant therefrom, an opening adjacent the top thereof to load proppant therein, a pair of spaced-apart end walls connected to and extending between the bottom and the top, and a pair of side walls connected to and extending between the pair of end walls and the top and the bottom, each of the

plurality of containers further includes one or more cross members rigidly extending between the pair of end walls and a plurality of cross members rigidly extending between the side walls at intervals between the end walls of each container.

2. (Previously presented) The method of Claim 1, further comprising:

before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each railcar configured to transport an amount of proppant equal to or greater than the amount of proppant required to fill at least two of the plurality of containers.

3. (Cancelled)

4. (Previously presented) The method of Claim 1, wherein the moving includes positioning each of the plurality of containers that has proppant contained therein adjacent a fracturing operation of a production field.

5. (Cancelled)

6. (Currently amended) The method of Claim 1 ~~Claim 5~~, further comprising a flow gate positioned adjacent the outlet to control flow of proppant through the outlet, wherein each of the plurality of containers further includes a plurality of horizontal structural members extending between the plurality of structural uprights, and wherein prior to step c), the method further comprises lifting each of the plurality of containers from the stack and transporting each of the plurality of containers with the container loader/unloader to be placed onto one of the plurality of flatbeds.

7. (Original) The method of Claim 1, wherein the plurality of containers that each has proppant therein includes up to four containers, wherein up to four containers are positioned in the stack, wherein the stack comprises a first stack, and wherein the method further comprises

stacking another plurality of containers that each have proppant therein closely adjacent the first stack.

8. (Original) The method of Claim 7, further comprising:

tracking the amount of proppant on hand at the location adjacent the rail line with bar-codes or logging mechanisms, and injecting air into each of the plurality of containers to enhance flow of proppant from the outlet of each of the plurality of containers adjacent the flow gate.

9. (Original) The method of Claim 8, further comprising:

tracking the mesh size of the proppant in the containers at the location adjacent the rail line with bar-codes or logging mechanisms.

10. (Previously presented) The method of Claim 1, further comprising staging a plurality of empty containers at a proppant mine site.

11. (Currently amended) The method of Claim 1 ~~Claim 5~~, wherein the outlet of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container.

12-14. (Cancelled)

15. (Currently amended) The method of Claim 1 ~~Claim 12~~, further comprising:

positioning ~~[[the]]~~ prongs of a forklift in one or more slots positioned adjacent the bottom of each of the plurality of containers in ~~[[the]]~~ an open space region to thereby enhance lifting and positioning of the containers for stacking and moving the plurality of containers.

16. (Currently amended) A method of storing and moving proppant at a location adjacent a rail line, the method comprising:

- a) removing proppant for fracking from a railcar;
- b) storing the proppant separate from the rail car and adjacent a rail line in a plurality of containers that are located near the rail line, each container comprising:



an opening adjacent the top thereof to receive proppant into the container, a pair of spaced-apart end walls connected to and extending between the bottom and the top, and a pair of sidewalls connected to an extending between the pair of end walls and the top and the bottom, and one or more cross members rigidly extending between the pair of end walls and one or more cross members rigidly extending between the side walls;

an outlet adjacent a bottom for discharge of proppant therefrom; [[and]]

a flow gate positioned adjacent the outlet to control flow of proppant through the outlet; and

c) transferring one or more of the plurality of containers from the location adjacent the rail line onto one or more of a plurality of flatbeds by use of a loader/unloader; [[and]]

d) removing the one or more of the plurality of containers away from the rail line; and

e) scaling the number of containers at the location adjacent the rail line according to the amount of proppant required at a particular location, each of the plurality of containers has a plurality of structural uprights positioned to extend from the bottom to the top of each of the plurality of containers at intervals between the side walls and the end walls to thereby increase the weight carrying capacity of each of the plurality of containers, and a plurality of horizontal structural members extending between the plurality of structural uprights.

17. (Previously presented) The method of Claim 16, wherein step b) further comprises:

stacking the plurality of containers on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack to reduce the footprint of the stored containers.

18. (Previously presented) The method of Claim 16, further comprising:

before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each railcar configured to transport an amount of proppant equal to or greater than the amount of proppant required to fill at least two of the plurality of containers.

19. (Cancelled)

20. (Previously presented) The method of Claim 16, wherein the moving includes positioning each of the plurality of containers that has proppant contained therein adjacent a fracturing operation of a production field.

21. (Cancelled)

22. (Original) The method of Claim 16, further comprising:

tracking the amount of proppant on hand at the location adjacent the rail line with bar-codes or logging mechanisms, and injecting air into each of the plurality of containers to enhance flow of proppant from the outlet of each of the plurality of containers adjacent the flow gate.

23. (Original) The method of Claim 22, further comprising:

tracking the mesh size of the proppant in the containers at the location adjacent the rail line with bar-codes or logging mechanisms.

24. (Previously presented) The method of Claim 17, wherein the plurality of containers that each has proppant therein includes up to four containers, wherein up to four containers are positioned in the stack, wherein the stack comprises a first stack, and wherein the method further comprises stacking another plurality of containers that each have proppant therein closely adjacent the first stack.

25. (Previously presented) The method of Claim 16, further comprising staging a plurality of empty containers at a proppant mine site.

26. (Original) The method of Claim 16, wherein the outlet of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container.

27-29. (Cancelled)

30. (Currently amended) The method of Claim 16 ~~Claim 27~~, further comprising:

positioning [[the]] prongs of a forklift in one or more slots positioned adjacent the bottom of each of the plurality of containers in [[the]] an open space region to thereby enhance lifting and positioning of the containers for stacking and moving the plurality of containers.

31. (New) A method of storing and moving proppant at a location adjacent a rail line, the method comprising:

a) removing proppant for fracking from a railcar;

b) storing the proppant separate from the rail car and adjacent a rail line in a plurality of containers that are located near the rail line, each container comprising:

an opening adjacent the top thereof to receive proppant into the container, a pair of spaced-apart end walls connected to and extending between the bottom and the top, and a pair of sidewalls connected to an extending between the pair of end walls and the top and the bottom, and one or more cross members rigidly extending between the pair of end walls and one or more cross members rigidly extending between the side walls;

an outlet adjacent a bottom for discharge of proppant therefrom;

a flow gate positioned adjacent the outlet to control flow of proppant through the outlet; and

c) transferring one or more of the plurality of containers from the location adjacent the rail line onto one or more of a plurality of flatbeds by use of a loader/unloader;

d) removing the one or more of the plurality of containers away from the rail line; and

e) tracking the amount of proppant on hand at the location adjacent the rail line with bar-codes or logging mechanisms, and injecting air into each of the plurality of containers to enhance flow of proppant from the outlet of each of the plurality of containers adjacent the flow gate

32. (New) The method of Claim 31, wherein step b) further comprises:

stacking the plurality of containers on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack to reduce the footprint of the stored containers.

33. (New) The method of Claim 31, further comprising:

before step a), transporting proppant to the location adjacent the rail line on one or more rail cars, each railcar configured to transport an amount of proppant equal to or greater than the amount of proppant required to fill at least two of the plurality of containers.

34. (New) The method of Claim 31, wherein the moving includes positioning each of the plurality of containers that has proppant contained therein adjacent a fracturing operation of a production field.

35. (New) The method of Claim 31, further comprising:

tracking the mesh size of the proppant in the containers at the location adjacent the rail line with bar-codes or logging mechanisms.

36. (New) The method of Claim 32, wherein the plurality of containers that each has proppant therein includes up to four containers, wherein up to four containers are positioned in the stack, wherein the stack comprises a first stack, and wherein the method further comprises stacking another plurality of containers that each have proppant therein closely adjacent the first stack.

37. (New) The method of Claim 31, further comprising staging a plurality of empty containers at a proppant mine site.

38. (New) The method of Claim 31, wherein the outlet of each of the plurality of containers is positioned in a substantially central portion of the bottom of the container.

39. (New) The method of Claim 31, further comprising:

positioning prongs of a forklift in one or more slots positioned adjacent the bottom of each of the plurality of containers in an open space region to thereby enhance lifting and positioning of the containers for stacking and moving the plurality of containers.

### **REMARKS**

This is in response to the Final Office Action mailed August 4, 2015. By the present response, claims 1, 6, 11, 15, 16, and 30 are amended, without prejudice, including under the doctrine of equivalents, claims 5 and 21 are cancelled, and claims 31-39 are new. No new matter has been added. Upon entry of the amendments, claims 1, 2, 4, 6-11, 15-18, 20, 22-26, and 30-39 will remain pending. Applicant respectfully requests consideration and allowance of the pending claims.

### **Rejections under § 112**

In the Office Action, the Examiner rejected claim 30 under 35 U.S.C. § 112(b) as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Examiner rejected claim 30 for being dependent from a cancelled base claim. *See* Office Action, page 3. As presented above, Applicant has amended claim 30 to depend from claim 16. Accordingly, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112.

### **Allowable Subject Matter**

In the Office Action, the Examiner indicated that claims 5, 6, 8, 9, 11, 15, and 21-23 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. *See* Office Action, page 6. Applicant believes the previously presented claims previously were patently distinct over the cited references. In order to advance prosecution, however, Applicant has elected to incorporate dependent claim 5 into independent claim 1 and dependent claim 21 into independent claim 16. Moreover, new independent claim

31 includes features of independent claim 16 and claim 22. Because Applicant has amended independent claims 1 and 16 to include features of allowable base claims, Applicant respectfully requests an indication of allowance of independent claims 1, 16, and 31 and the claims depending therefrom.

#### **Rejections under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected claims 1, 2, 4, 7, 10, 16-18, 20, and 24-26 under 35 U.S.C. 103(a) as being unpatentable over Sheesley (U.S. Patent Publication No. 2013/0206415) and Benedict et al. (U.S. Patent Publication No. 2008/0213073). Applicant respectfully disagrees with the Examiner's rejection. As presented above, Applicant has amended independent claims 1 and 16, without prejudice as to patentability, including the doctrine of equivalents, to incorporate allowable base claims. Accordingly, the Examiner's rejections are now moot. For at least these reasons, among others, Applicant respectfully requests withdrawal of the rejection of independent claims 1 and 16 and the claims depending therefrom.

#### **Remarks and Amendments Made Without Prejudice**

In commenting upon the cited documents and the making of amendments to the claims as set forth herein, and in order to facilitate a better understanding of the differences that are expressed in the claims, certain details of distinction between the cited documents and the claimed embodiments of the invention have been mentioned, as well as the minor amendments as noted, without prejudice as to patentability, including the doctrine of equivalents, even though such differences do not appear in all of the claims. It is not intended by mentioning any such





**Conclusion**

The foregoing response is full, complete, and timely filed. Amendments to the claims are made without prejudice, including under the doctrine of equivalents. In addition, the comments made herein are without prejudice. Applicants respectfully request reconsideration of the instant application in light of the foregoing response and amendments. If any additional fees are necessary for continued prosecution of this Application, the commissioner is hereby authorized to charge those fees to **Hogan Lovells US LLP's Deposit Account Number 506763 (074686,003001)**.

Respectfully submitted,

Date: August 18, 2015

/Jeffrey S. Whittle/  
Jeffrey S. Whittle  
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132858 7590 09/10/2015  
Hogan Lovells US LLP  
Bank of America Center  
700 Louisiana Street  
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Houston, TX 77002

EXAMINER

SCHWENNING, LYNN E

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 09/10/2015

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/314,468	06/25/2014	John Oren	074686.003001	2123

TITLE OF INVENTION: Methods of Storing and Moving Proppant at Location Adjacent Rail Line

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	\$480	\$0	\$0	\$480	12/10/2015

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

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For purposes of this notice, small entity fees are 1/2 the amount of undiscounted fees, and micro entity fees are 1/2 the amount of small entity fees.

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III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

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132858 7590 09/10/2015  
Hogan Lovells US LLP  
Bank of America Center  
700 Louisiana Street  
Suite 4300  
Houston, TX 77002

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

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I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/314,468	06/25/2014	John Oren	074686.003001	2123

TITLE OF INVENTION: Methods of Storing and Moving Proppant at Location Adjacent Rail Line

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	\$480	\$0	\$0	\$480	12/10/2015

EXAMINER	ART UNIT	CLASS-SUBCLASS
SCHWENNING, LYNN E	3652	414-802000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) The names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

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- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

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- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The director is hereby authorized to charge the required fee(s), any deficiency, or credits any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

- ☐ Applicant certifying micro entity status. See 37 CFR 1.29
- ☐ Applicant asserting small entity status. See 37 CFR 1.27
- ☐ Applicant changing to regular undiscounted fee status.

**NOTE:** Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.

**NOTE:** If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.

**NOTE:** Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

**NOTE:** This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/314,468	06/25/2014	John Oren	074686.003001	2123

132858	7590	09/10/2015
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Hogan Lovells US LLP  
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Houston, TX 77002

EXAMINER	
SCHWENNING, LYNN E	

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 09/10/2015

## **Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)** (Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

## OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

### Privacy Act Statement

**The Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

<b>Notice of Allowability</b>	<b>Application No.</b> 14/314,468	<b>Applicant(s)</b> OREN, JOHN	
	<b>Examiner</b> LYNN SCHWENNING	<b>Art Unit</b> 3652	<b>AIA (First Inventor to File) Status</b> No

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

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *Response filed August 18, 2015*.  
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_\_.
2. ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
3. ☒ The allowed claim(s) is/are 1,2,4,6-11,15-18,20,22-26 and 30-39. As a result of the allowed claim(s), you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see [http://www.uspto.gov/patents/init\\_events/pph/index.jsp](http://www.uspto.gov/patents/init_events/pph/index.jsp) or send an inquiry to [PPHfeedback@uspto.gov](mailto:PPHfeedback@uspto.gov).
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

**Certified copies:**

- a) ☐ All    b) ☐ Some    \*c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.  
☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.  
**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date <u>7/23/15; 7/28/15; 8/5/15; 8/10/15; 8/17/15</u></li> <li>3. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material</li> <li>4. <input type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date _____.</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Examiner's Amendment/Comment</li> <li>6. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>7. <input type="checkbox"/> Other _____.</li> </ol> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

/L. S./  
Examiner, Art Unit 3652

**DETAILED ACTION**

1. The present application is being examined under the pre-AIA first to invent provisions.

***Response to Arguments***

2. Applicant's arguments, see page 10, filed August 18, 2015, with respect to Claim 30, have been fully considered and are persuasive. The 35 U.S.C. 112 (pre-AIA), second paragraph, rejection of Claim 30 has been withdrawn.

3. Applicant's arguments, see pages 10-11, filed August 18, 2015, with respect to 1-2, 4, 7, 10, 16-18, 20, 24-26, and 30, have been fully considered and are persuasive. The 35 U.S.C. 103 rejections of Claims 1-2, 4, 7, 10, 16-18, 20, 24-26, and 30 have been withdrawn.

***Allowable Subject Matter***

4. Claims 1-2, 4, 6-11, 15-18, 20, 22-26, and 30-39 are allowed.
5. The following is an examiner's statement of reasons for allowance: The prior art fails to teach, *inter alia*, a method of storing and moving proppant at a location adjacent a rail line, the method comprising:
  - a) removing a plurality of containers containing fracking proppant from a rail car;
  - b) after step a), stacking the plurality of containers separate from the rail car on top of one another so that a bottom of one of the plurality of containers overlies the top of another one of the plurality of containers to thereby define a stack, the stack positioned at a location adjacent a rail line, the structural integrity of the plurality of containers enhanced by a plurality of structural uprights positioned to extend from the bottom to the top of each of the plurality of containers and thereby increase the weight carrying capacity of each of the plurality of containers;
  - c) placing one or more of the plurality of containers from the stack adjacent the rail line onto one or more of a plurality of flatbeds by use of a container loader/unloader;
  - d) moving the plurality of containers when positioned on the plurality of flatbeds away from the stack of the plurality of containers and away from the adjacent rail line; and

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e) scaling the number of the plurality of containers at the location adjacent the rail line according to the amount of proppant required at a particular location, each of the plurality of containers positioned to include an outlet adjacent the bottom for discharge of proppant therefrom, an opening adjacent the top thereof to load proppant therein, a pair of spaced-apart end walls connected to and extending between the bottom and the top, and a pair of side walls connected to and extending between the pair of end walls and the top and the bottom, each of the plurality of containers further includes one or more cross members rigidly extending between the pair of end walls and a plurality of cross members rigidly extending between the side walls at intervals between the end walls of each container.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNN SCHWENNING whose telephone number is (313)446-4861. The examiner can normally be reached on Monday - Friday, 8:30 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAUL RODRIGUEZ/  
Supervisory Patent Examiner, Art Unit  
3652

/L. S./  
Examiner, Art Unit 3652

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being electronically filed with the United States Patent Office.

September 10, 2015  
Date

/Jennifer Tilley/  
Jennifer Tilley

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:	)	
John Oren	)	Confirmation No. 2123
	)	
Serial No.: 14/314,468	)	Examiner: SCHWENNING, LYNN E
	)	
Filed: June 25, 2014	)	Group Art Unit: 3652
	)	
For: Methods of Storing and Moving	)	Attorney Docket No. 074686.003001
Proppant at Location Adjacent Rail	)	
Line	)	

**COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE**

Mail Stop Issue Fee  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Applicant acknowledges receipt of the Reasons for Allowance. Applicant accepts such allowance without prejudice as being a limitation of any type to the claims, their scope, or the invention as disclosed in the patent application in general or any subsequent applications filed therefrom. Applicant respectfully thanks the Examiner for the reasons for allowance but also sets forth that the claims as written speak for themselves and include other novel and non-obvious features, which separately or in combination with features cited by the Examiner make them patentable and allowable as well.

In re Patent Application of  
Oren

Comments on Statement of Reasons for Allowance  
Serial No. 14/314,468

Applicant believes no fees are due for Applicant's Comments on Statement of Reasons for Allowance. The Commissioner is hereby authorized to charge the requisite fees to Hogan Lovells US LLP Deposit Account No. 506763 (074686.003001/JSW/jmt).

Respectfully submitted,

Date: September 10, 2015

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