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D E C I S I O N
of 5 August 2002

Case Number: T 0080/00 - 3.2.4

Application Number: 94610040.1

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Title of invention:
Mower

Patentee:
JF-FABRIKEN - J. FREUDENDAHL A/S

Opponent:
Alois Pöttinger Maschinenfabrik Gesellschaft m.b.H

Headword:
Mower/JF-FABRIKEN

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EPC Art. 100(a)

Keyword:
"Novelty (yes)"
"Inventive step (yes)"

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G 0009/91

Catchword:
-



Case Number: T 0080/00 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 5 August 2002

Appellant: Alois Pöttinger
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 29 November 1999
rejecting the opposition filed against European
patent No. 0 634 092 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. G. Hatherly
Members: P. Petti
C. Holtz

Summary of Facts and Submissions

- I. The European patent No. 634 092 results from the European patent application No. 94 610 040.1 filed on 8 July 1994.

Claim 1 of the patent as granted reads as follows:

"1. A mower comprising a windrower aggregate (5) provided with a knife aggregate (6) and a conditioning device (8), said windrower aggregate being movably suspended by means of rigid articular bars (13) and at least one spring (14) in a carrier frame (3, 12), the knife aggregate (6) comprising several knife means mounted along a first axis,
characterized in that the windrower aggregate (5) is suspended such that during operation it is able to pivot in relation to the carrier frame (3, 12) around a second axis (17) which is substantially parallel with the first-mentioned axis, and in that at least one second spring (15) influencing the pivoting of the windrower aggregate (5) around said second axis (17) is provided."

- II. An opposition filed against this European patent, the opposition being based only upon Article 100(a) EPC, was rejected by the opposition division by its decision dispatched on 29 November 1999.

The opposition division in its decision dealt *inter alia* with an alleged public prior use concerning a mower used from April 1991 on the farm of Mr Stacher in Neukirch (CH) and based upon the following documents:

- A1: Diagram of a tractor-mower combination;
- A2: Copy of a drawing No. 333.18.001.0 of the firm A. Pöttinger GmbH, dated 3 May 1991;
- A3: Copy of a fax from Mr Stöckli to the firm Pöttinger (for the attention of Mr Leposa);
- A4: Declaration of Mr Stacher, dated 12 December 1997;
- A5: Copy of a letter sent from the firm Pöttinger (signed by Mr Leposa) to the firm Rapid, dated 21 May 1991.

III. On 18 January 2000 the opponent (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 21 February 2000.

IV. Oral proceedings were held on 5 August 2002.

V. During the oral proceedings the parties referred to the alleged public prior use as well as to documents US-A-4 724 661 (D1), US-A-3 474 601 (D2) and WO-A-91/11099 (D3).

The appellant argued that the subject-matter of Claim 1 of the patent as granted was not novel with regard to the alleged public prior use and to the content of document D1. The appellant also argued that the subject-matter of Claim 1 of the patent as granted did not involve an inventive step and based its argumentation on the alleged public prior use and on documents D1, D2 and D3.

The respondent (proprietor of the patent) contested the arguments of the appellant.

VI. In the written phase of the appeal proceedings the appellant raised objections with regard to Article 100(b) EPC (see the statement setting out the grounds of appeal).

VII. The appellant requested that that the decision under appeal be set aside and the patent be revoked.

The respondent requested that the appeal be dismissed (main request). Auxiliarily, it was requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of amended claims 1 to 8 filed during the oral proceedings on 3 November 1999.

Reasons for the Decision

1. The appeal is admissible
2. *Concerning Article 100(b) EPC*

Since the objections under Article 100(b) EPC were raised for the first time during the appeal proceedings, this ground for opposition is a "fresh" ground for opposition in the meaning of decision G 9/91 (OJ EPO 1993, 408).

During the oral proceedings, after that the board drew the attention of the parties to the fact that, according to the decision G 9/91, a fresh ground for opposition may be introduced at the appeal stage only

with the agreement of the patent proprietor, the appellant stated that the objections under Article 100(b) EPC were no longer maintained.

3. *The subject-matter of Claim 1 of the patent as granted*

3.1 Claim 1 is directed to a mower, ie to a device suitable for cutting hay or the like when the device moves on the ground, and specifies the following features:

(A) the mower comprises a windrower aggregate (5),

(A1) the windrower aggregate (5) is provided with a knife aggregate (6),

(A2) the windrower aggregate (5) is provided with a conditioning device (8),

(A3) the windrower aggregate (5) is movably suspended in a carrier frame (3, 12)

(A31) by means of rigid articular bars (13) and at least one spring (14),

(A11) the knife aggregate (6) comprises several knife means,

(A111) the knife means are mounted along a first axis,

(A4) the windrower aggregate (5) is suspended such that during operation it is able to pivot in relation to the carrier frame (3, 12) around a second axis (17),

(A41) the second axis (17) is substantially parallel with the first-mentioned axis,

(A42) at least one second spring (15) is provided,

(A421) the second spring (17) influences the pivoting of the windrower aggregate (5) around said second axis (17).

3.2 Claim 1 refers to a windrower aggregate and to a carrier frame. According to feature A3, the windrower aggregate is movably suspended in the carrier frame. According to feature A4 the windrower aggregate is able to pivot in relation to the carrier frame.

The board finds that Claim 1 defines a unit (ie the mower) comprising the windrower aggregate and the carrier frame. In other words the mower according to Claim 1 is provided with its **own** carrier frame in which the windrower aggregate is movably suspended (feature A3) and in relation to which the windrower aggregate is able to pivot (feature A4)

This interpretation is consistent with the description of the patent as granted which refers to a first embodiment (Figure 1) concerning a "towed mower" (see column 2, lines 49 and 50) having a carrier frame 3 provided with ground wheels 2 and adapted to be connected via a pull rod to a tractor and to a second embodiment (Figures 2 and 3) concerning a "front suspended mower" (see column 2, lines 51 and 52) having a carrier frame 3' which can be connected to a tractor by means of the front lift arms 19 of the tractor. In both embodiments the windrower aggregate 5 is connected

to the carrier frame 3/3' so that it can have suspension movements relative to this frame, the carrier frame moreover being suitable for being connected to a tractor.

- 3.3 According to features A1 and A2, the mower comprises a knife aggregate **and** a conditioning device, while features A3 and A4 refer to the suspension of the **windrower aggregate** with respect to the carrier frame.

Thus, it is understood from Claim 1 that the whole windrower aggregate, ie the whole unit comprising knife aggregate **and** conditioning device is suspended with respect to the carrier frame. In other words the suspension permits movements of the whole unit. This interpretation is in accordance with the description of the patent which refers to a windrower aggregate which "swings as a whole" (column 1, lines 55 to 58) and to "a lifting of the windrower aggregate 5 as a whole" (column 3, lines 22 and 23).

- 3.4 Features A3 and A31 make it clear that the windrower aggregate is movably suspended in the carrier frame **by means of articular bars and at least one spring**, implying that the windrower aggregate is connected to the carrier by means of the articular bars and the spring. It is also clear that the "at least one spring" influences the suspension movement of the whole windrower aggregate.

The group of features A4 to A421 also defines the suspension of the windrower aggregate with respect to the carrier frame. These features make it clear that the suspension movement is a pivotal movement of the whole windrower aggregate in relation to the carrier

frame. Features A42 and A421 refer to a (at least one) second spring influencing this pivoting suspension movement.

The fact that the group of features A4 to A421 refers to a "at least one second spring", while features A3 and A31 refer to a "at least one spring" implicitly indicates that the windrower aggregate has two types of suspension movement.

This interpretation is consistent with the description of the patent, which refers to two springs each exerting its movement (column 2, lines 6 to 22, see particularly lines 14 and 15).

3.5 The expression "axis" in the context of feature A111 has to be construed as defining a main line of extension. In other words, feature A111 defines knife means mounted along a line, ie aligned knife means.

4. *Concerning the alleged public prior use*

4.1 Document A1 is a diagram showing a combination of a tractor and an implement connected thereto. On the basis of the statements made by the appellant during the oral proceedings as well as in the previous phases of the proceedings, the board consider it as being possible to interpret this document as disclosing a implement having the following features:

- The implement is provided with an overhanging frame 5 to which an aggregate 4 is suspended by means of a rigid strut ("starre Strebe" S) and connecting links (according to the handwritten comments in document A1 this suspension permits

the oscillation of the aggregate "transversely" with respect to the travel direction of the tractor);

- the overhanging frame is connected to the lower link 7 of the tractor hitch via a pivot axis A which is transverse with respect to travel direction of the tractor, the lower link 7 of the tractor hitch being pivotally connected via a further pivot axis 8 to the frame of the tractor (this further pivot axis being transverse with respect to travel direction of the tractor), a spring F acting between the frame of the tractor and the pivot axis A;
- the overhanging frame is also connected to a support 9 of the tractor frame by means of springs 10 and a telescopic strut ("Teleskopoberlenker");
- the structural unit comprising overhanging frame 5, aggregate 4, rigid strut S and connecting links is movably suspended with respect to the frame of the tractor, ie it is pivotable around the pivot axis 8, the suspension movement being influenced by the spring F; this structural unit is also suspended such that during operation it is able to pivot in relation to the frame of the tractor around the pivot axis A, wherein the springs 10 influence the pivoting of the unit around the pivot axis A.

On the basis of the statements of the appellant and of the content of documents A3 and A4, it can be understood that the aggregate 4 is a windrower aggregate, ie that the implement attached to the

tractor as shown in document A1 is a mower (hereinafter this mower will be referred to as the "prior use mower").

4.2 The appellant asserted that the windrower aggregate 4 of the prior use mower is provided with a knife aggregate, is movably suspended with respect to the frame of a tractor by means of the lower links 7 of the tractor hitch and the first spring F, the knife aggregate comprising several knife means in the form of rotating discs which are aligned along a first axis, and is also suspended such that during operation it is able to pivot in relation to the frame of the tractor around a second axis A which is substantially transverse with the first axis, wherein the springs 10 (which co-operate with the telescopic strut) influence the pivoting of the unit around said axis A. The appellant also asserted that this windrower aggregate is also provided with a plurality of inclined discs ("Schrägscheiben") arranged behind the knife means, these discs being mounted so that they can freely rotate on the ground when the mower moves and being V-shaped so that the severed crop can form rows.

4.2.1 When comparing the prior use mower with the mower according to Claim 1 as granted, the appellant essentially argued as follows:

(i) Claim 1 defines a mower in such broad terms that it covers also a combination of a mower with a tractor, as shown in document A1. Therefore, the frame of the tractor shown in document A1 can be considered as corresponding to the carrier frame defined in Claim 1, in which carrier frame the mower aggregate is movably suspended by means of

the lower links 7 of the tractor hitch, which links 7 have to be considered as corresponding to the articular bars defined in Claim 1.

- (ii) Claim 1 refers to a conditioning device without specifying the structure of this device. The V-shaped disks ("Schrägscheiben") arranged behind the knife means of the windrower aggregate of the prior use mower also have a conditioning function and, therefore, can be considered as being a conditioning device.

Therefore, the appellant sees the prior use mower as being not only suspended with respect to the tractor in such a manner that it has two types of movement as the mower according to the patent in suit but also as being provided with all the features specified in Claim 1 as granted.

- 4.2.2 Having regard to the comments in sections 3.2 and 4.1 above, the board cannot accept the argument referred to in section 4.2.1(i) above. It is clear that the mower shown in document A1 has to be compared with the claimed subject-matter by considering it in isolation from the frame of the tractor and the lower links of the tractor hitch.
- 4.2.3 The appellant's argument referred to in item 4.1.1(ii) was contested by the respondent who argued that the V-shaped discs referred to by appellant have the function of forming the rows of crop material without any conditioning function.

The board cannot establish from the evidence submitted in relation to the prior use mower whether V-shaped

discs were actually arranged within the windrower aggregate 4 of the prior use mower and, if so, whether they performed a conditioning of the severed crop.

However, in the following considerations in order to examine whether or not the claimed subject-matter is novel and involves an inventive step with respect to the prior use mower, the board will first of all proceed on the assumption that the windrower aggregate of the prior use mower comprises not only a knife aggregate but also a conditioning device.

5. *Concerning the written evidence*

5.1 Document US-A-4 724 661 (D1) discloses (see particularly Figure 2) a self-propelled mower comprising a carrier frame 12 and a windrower aggregate (header 15), the windrower aggregate 15 being divided into a first header section 20, which is provided with a conditioning device (conditioning rolls 18) and a second header section 30, which is provided with a knife aggregate (cutter bar 16).

The knife aggregate 16 is arranged along a transverse line and is provided with a plurality of cutting elements (see Figure 1). Thus, it can be said that the knife aggregate comprises several knife means mounted along a first axis.

The first header section 20 is movably suspended with respect to the carrier frame 12 by means of articular links 22/24 and first springs 27. The second header section 30 is suspended with respect to the first header section 20 by means of rigid articular bars (upper links 32 and lower links 34) and second springs

40, the second springs 40 influencing the movement of the second header section 30 with respect to the first header section 20.

According to column 3, lines 53 to 59, the upper links 32 are adjustable in length by means of a slot mechanism 33 to permit a controlling of the attitude of the second header section with respect to the first header section. Thus, when the length of the upper links 32 differs from that of the lower links 34, the second header section 30 is able to pivot in relation to the first header section 20.

Moreover, the mower according to this document is provided with a reel 17 mounted on the second header section 30.

- 5.2 Document US-A-3 474 601 (D2) discloses a mower comprising a windrower aggregate provided with a knife aggregate (cutter bar 34 and reel 36) and a conditioning device (conditioning rolls 38 and 40), the windrower aggregate being movably suspended in a carrier frame 10 by means of rigid articular bell cranks 42 and two springs 62, such that during operation the windrower aggregate is able to pivot relative to the carrier frame 10 around an axis 26, wherein the springs 62 influence the pivoting of the windrower aggregate around the axis 26.
- 5.3 Document D3 discloses (see particularly Figure 1) a mower comprising a windrower aggregate (cutter beam 23 and yoke 15) provided with a knife aggregate (cutter beam 23 and knives 24), the windrower aggregate being movably suspended in a carrier frame 10 by means of rigid articular bars (link rods 16 and 17) and at least

one spring (compression screw springs 29), such that during operation the windrower aggregate is able to move upwardly and downwardly relative to the carrier frame 10.

The knife aggregate comprises several knife means (knives 24). It can be derived from Figure 1 - in so far as this Figure is defined as being a vertical section of the mower (see page 2, lines 23 to 26) - that the knives are aligned, ie mounted along a first axis.

It has to be noted that the cutter beam 23 is swingably secured to the yoke 15 of the windrower aggregate such that during operation it is able to pivot in relation to the yoke 15 around a second axis 22 which is substantially parallel with the axis along which the knives 24 are mounted.

It has also to be noted that the mower comprises a wing wheel 35 throwing the harvested material rearwardly which is rotatably journalled in the carrier frame 10, see page 3, lines 24 to 27.

6. *Novelty (Claim 1 of the patent as granted)*

6.1 Having regard to the comments in section 4 above, when comparing the prior use mower with Claim 1, it is assumed that the prior use mower is provided with the following features:

- the mower comprises a windrower aggregate 4 (*and an overhanging frame 5*),
- the windrower aggregate 4 is provided with a knife

aggregate,

- the windrower aggregate 4 is movably suspended **with respect to the frame of the tractor** by means of rigid articular bars 7, at least one spring (*and of the overhanging frame*),
- the knife aggregate comprises several knife means,
- the knife means are mounted along a first axis,
- the windrower aggregate is suspended (*via the overhanging frame*) such that during operation it is able to pivot **in relation to the frame of the tractor** around a second axis, which is substantially parallel with the first-mentioned axis;
- at least one second spring is provided which influences the pivoting of the windrower aggregate around said second axis.

However, the windrower aggregate of the prior use mower is not suspended in or in relation to an own carrier frame as defined in features in features A3 and A4 of Claim 1.

Therefore, the subject-matter of Claim 1 differs from the prior use mower - as it was presented by the appellant - by features A3 and A4, in so far as the windrower aggregate of the mower according to Claim 1 is movably suspended in an own carrier frame and is able to pivot in relation to this carrier frame.

6.2 Having regard to the comments in section 5.1 above, the

cutter bar 16 mounted on the second header section 30 of the mower according to document D1 has two types of movement relative to the wheeled frame, one type of movement due to the movement of the second header section 30 relative to the first header section 20, and a further type of movement due to the movement of the first header section 20 relative to wheeled frame. The conditioning rolls 18 are mounted on the first header section 20 and have one type a movement relative to the wheeled frame.

Therefore, having also regard to the comments in sections 3.2 to 3.4 above, the subject-matter of Claim 1 differs from the mower according to document D1 in that the windrower aggregate is suspended such that in operation the **whole** windrower aggregate, ie the unit carrying both the knife means and the conditioning device, is able to have **two** types of movement in relation to the carrier frame.

6.2.1 The appellant analysed document D1 as follows:

- The rotating reel 17 of the mower according to document D1 performs not only a transport function but also a conditioning function and thus the reel has to be considered as a conditioning device mounted on the second header section 30.
- The second header section 30 has to be compared with the windrower aggregate according to Claim 1, this second header section - considered as representing a windrower aggregate housing the knife aggregate and the conditioning device - being not only movably suspended with respect to the carrier frame 12 but also able to pivot in relation

to the carrier frame 12.

6.2.2 The board cannot accept these arguments, because they are based upon an *ex post facto* analysis of document D1. Firstly, it is clear from document D1 that the reel is operable to convey the crop severed by the cutter bar 16 rearwardly and that the conditioning is performed by the conditioning rolls 18 which receive severed crop material from the reel (see column 3, lines 28 to 37). Secondly, if it is assumed that the second header section 30 of the mower according to document D1 corresponds to the windrower aggregate defined in Claim 1, it can be assumed that the second header section has a suspension movement in relation to the carrier frame but it cannot be assumed that the second header section 30 is movably **suspended by means of articulated links and springs in the carrier frame 12** because of the presence of the first header section 20.

6.3 Therefore, the subject-matter of Claim 1 is novel (Article 54 EPC) with respect to the prior art referred to by the appellant.

7. *Inventive step (Claim 1 of the patent as granted)*

7.1 The appellant argued that the subject-matter does not involve an inventive step with regard to the prior use mower. In this respect the appellant's arguments are summarized as follows:

- (i) The claimed subject-matter differs from the prior use mower only in that an additional carrier frame is provided.

- (ii) Mowers having their own carrier frame carrying the aggregate for cutting and conditioning are well known in the art and are used when the ground surface to be harvested is large and a large cutting width is needed.

- (iii) The skilled person wishing to combine the advantages of the suspension of the windrower aggregate of the prior use mower with the advantages of a mower able to work effectively on large ground surfaces would arrange on the windrower aggregate of the prior use mower a wider knife aggregate, wherein the increased dimensions and weight of the windrower aggregate would require an additional frame; in such a way the skilled person would arrive at a mower as defined in Claim 1 without exercising inventive skill.

7.1.1 The board cannot accept this argumentation of the appellant for the following reasons:

- (i) According to the statements of the appellant (see the notice of opposition of 18 December 1997, sections 2 and 3 on pages 6 and 7) and to document A3, the prior use mower was a special arrangement ("Sonderfertigung") which was arrived at by modifying a standard machine of the type CAT 270, made by the appellant's firm and in possession of Mr Stacher, in order to adapt this standard machine to the extremely uneven ground surface on Mr Stacher's farm. The modification consisted in arranging the spring 10 (and the telescopic strut) between the overhanging frame 5 and the support 9 of the tractor frame (as shown in document A1)

instead of a rigid strut ("starre Oberlenker").

The board consider it highly unlikely that the skilled person wishing to develop a mower able to be used on large ground surfaces would start from a mower already modified so as to adapt it to a particular ground surface and that he would keep the features which rendered the mower adapted to that ground surface.

- (ii) In any case, if the skilled person were to try to develop a mower able to be used on large ground surfaces starting from the prior use mower, it is not clear why this mower would have to be provided with an additional carrier frame in which the windrower aggregate is suspended as defined by features A3 and A4.

In this respect, it has to be considered that the prior use mower is already provided with a carrier frame, ie the overhanging frame 5. If the dimensions and the weight of the windrower aggregate were to be increased, the skilled person would not be compulsorily led to provide the mower with an additional frame. Other solutions would be possible: the skilled person could for instance modify the existing frame by making it stiffer, increase its size or increase the number of its springs and/or use a bigger tractor.

Moreover, in view of the geometry of the prior use mower as shown in document A1, the skilled person would be deterred from providing the mower with an additional carrier frame. The existing overhanging frame 5 is suspended by means of the lower links

7, the spring F, the spring 10 and the telescopic strut, so that if an additional frame were connected to the tractor the longitudinal extension of the whole structure would be increased so that the knife aggregate would be located at a disadvantageously greater distance from the tractor than normal.

7.1.2 Thus, even if the windrower aggregate of the prior use mower is assumed to have a conditioning device, it would still not be obvious for the skilled person starting from the prior use mower to arrive at a mower having all the features specified in Claim 1.

7.2 The appellant also argued that the skilled person, starting from the mower disclosed in document D3 (Figure 1), would arrive at the subject-matter of Claim 1 without exercising any inventive skill. In this respect the appellant's arguments are summarized as follows:

(i) In the mower according to document D3 the cutter beam 23 mounting the knife discs 24 is able not only to move (due to the suspension of the yoke 15) in the carrier frame 10 but also to pivot around the pivot axis 22 in relation to the carrier frame 10, while the wing wheel 35 is rotatably journalled in the carrier frame 10. The cutter beam 23 corresponds to the windrower aggregate defined in Claim 1 and the wing wheel 35 is a conditioning device.

Thus, during the operation of this mower, when irregularities in the ground surface are encountered there is a flotation movement of

the cutting discs with respect to the conditioning device. This affects negatively the transport of the severed crop towards the conditioning device.

- (ii) The subject-matter of Claim 1 differs from the prior art known from document D3 in that
 - (a) the windrower aggregate also comprises the conditioning device (ie. the conditioning device is mounted on the windrower aggregate), and
 - (b) a second spring influencing the pivoting of the windrower aggregate in relation to the carrier frame is provided.

- (iii) The skilled person wishing to eliminate the drawbacks of the mower known from document D3 would move the wing reel 35 from the carrier frame 10 to the cutter beam 23 so as to eliminate any relative movement between knife means and conditioning device (feature (a)). Then, in order to counterbalance the increased weight of the cutter beam 23 (ie of the windrower aggregate), the skilled person would provide a spring between the cutter beam 23 and either the yoke 15 or the carrier frame 10 (feature (b)). In this way the skilled person would arrive at a mower having all the features specified in Claim 1 without exercising any inventive skill. The skilled person would also be led to implement features (a) and (b) in the mower according to document D3 having regard either to the prior use mower or to document D2.

7.2.1 The board cannot accept these arguments for the following reasons:

- (i) According to the analysis of document D3 made by the appellant, only the cutter beam 23 is considered as being the windrower aggregate. However, it is clear from Figure 1 of document D3 that what is suspended in (or connected to) the carrier frame 10 **by means of the articular bars 16 and 17 and the spring 29** is the entire unit comprising the yoke 15 and the cutter beam 23. This entire unit has to be compared with the windrower aggregate defined in Claim 1.

- (ii) Document D3 refers in the introductory part of its description to prior art mowing machines which, due to the relative great weight of the machine, are subjected to very strong shock impacts on the cutter beam (see page 1 lines 4 to 13). The object of the invention in document D3 is "to additionally reduce the shock impacts to which the cutter beam is subjected when driving on an irregular field" (see page 1, lines 24 to 29). The mower disclosed in this document achieves this object because "the cutter beam can pivot freely upwardly when hitting an elevation, so that it is just the weight of the beam itself which is accelerated" (see page 1, lines 31 to 36). Thus, an important teaching of document D3 is that of limiting the weight of the cutter beam 23 pivoting around the axis 22.

Therefore, the skilled person would be led away from the idea of arranging a conditioning device

on the cutter beam 23.

Moreover, the pivoting movement of the cutter beam 23 is restricted by stop means 25, 26 and 27 so that it can pivot only when passing over a minor elevation of the ground. When passing over a large elevation, the suspended yoke will largely move upwardly causing a large relative movement between the knife means and the conditioning device. The skilled person confronted with the above mentioned drawbacks of the mower according to document D3 would realize that these drawbacks are mainly caused by the movement of the yoke. Therefore, if he were to arrange the conditioning device other than as shown in Figure 1 of document D3, he would probably mount it on the yoke.

(iii) Moreover, Figure 1 of document D3 - even though it is a diagrammatic representation of a mower - clearly indicates that not only the weight but also the dimensions of the cutter beam are small and that the dimensions of the cutter beam are comparable with that of the wing wheel 35. Thus, it would not be easy for the skilled person to modify the mower so as to arrange the wing wheel on the cutter beam.

(iv) The distinguishing features (a) and (b) represent two subsequent steps, in so far as the problem relating to the increased weight of the cutter beam 23 would only arise if the skilled person were to mount the wing wheel 25 on the cutter beam 23. Moreover, the cutter beam 23 is a lever pivoting around the axis 22. Therefore,

the problem of counterbalancing the increased weight of the beam would only arise if the wing wheel were to be mounted on the same side as the knife means 24 with respect to the axis 22. It has to be noted that the wing wheel could also be mounted on the cutter beam in such a way that no additional torque would be needed to cause the pivoting of the beam 23 around the axis 22.

7.2.2 Therefore, it would not be obvious for the skilled person to arrive at a mower having all the features specified in Claim 1 starting from the prior art known from document D3.

7.3 The appellant also submitted arguments based on the combination of documents D1 and D2, which arguments are summarized as follows:

- (i) The claimed subject-matter differs from the mower according to document D1 only in that the windrower aggregate also comprises the conditioning device (ie the conditioning device is mounted on the windrower aggregate).
- (ii) Document D2 discloses a mower having a single section header housing not only the cutter bar and the reel 36 but also the conditioning rolls 38 and 40.
- (iii) Having regard to document D2, it would be obvious for the skilled person to arrange the conditioning rolls 18 of the mower known from document D1 on the second header section 30 and thus arrive at a mower having all the features of Claim 1.

7.3.1 The board cannot accept this argumentation of the appellant for the following reasons:

- (i) An essential feature of the mower known from document D1 is the two-section structure of the header. The second header section, being floatingly suspended from the first header section accommodates minor irregularities of the ground surface, the flotation movement of the second section with respect to the first one being limited by stop means. The first section, being floatingly suspended in the carrier frame, accommodates major irregularities of the ground surface. The first header section mounts the conditioning rolls 18, while the second header houses the cutter bar 16 and the reel 17. The two-section structure permits the mass floatingly suspended with the cutter bar to be minimized (see column 5, lines 10 to 14) and, at the same time, the flotation movement between the reel and the conditioning rolls to be minimized (see column 1, lines 598 to 60).

Thus, the skilled person reading document D1 would immediately realize that it is important to minimize the weight of the second header section. Therefore, the skilled person would be taught away from the idea of further increasing the weight of the second header section, particularly because the second header section houses not only the cutter bar 16 but also the reel 17.

- (ii) In its analysis of document D1 the appellant assumes that the second header section

corresponds to the windrower aggregate defined in Claim 1. Having regard to the comments in section 6.2.2 above, this argument is based upon an *ex post facto* analysis of document D1.

7.3.2 Therefore, it would not be obvious for the skilled person to arrive at a mower having all the features specified in Claim 1 starting from the prior art known from document D1.

7.4 Thus, having regard to the prior art referred to by the appellant the subject-matter of Claim 1 as granted is considered as involving an inventive step (Article 56 EPC).

8. Having regard to the comments in sections 6 and 7 above, the grounds for opposition mentioned in Article 100(a) EPC, as referred to by the appellant (lack of novelty and inventive step), do not prejudice the maintenance of the patent as granted.

Therefore, there is no need to consider the auxiliary request of the respondent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Hatherly