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D E C I S I O N
of 21 January 2003

Case Number: T 1258/01 - 3.2.4

Application Number: 92202349.4

Publication Number: 0513939

IPC: A01B 49/06

Language of the proceedings: EN

Title of invention:
A soil working implement

Patentee:
MAASLAND N.V.

Opponents:
Amazonen-Werke H. Dreyer GmbH & Co. KG
Kuhn S.A.

Headword:
Height-adjustable roller/MAASLAND

Relevant legal provisions:
EPC Art. 76(1), 123

Keyword:
"Extension of the subject-matter (yes)"
"Generalisation of specific features"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1258/01 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 21 January 2003

Appellant: (Proprietor of the patent)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 13 November 2001 revoking European patent No. 0 513 939 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
M. B. Tardo-Dino

Summary of Facts and Submissions

I. Two oppositions based upon Articles 100(a) and (c) EPC were filed against the European patent No. 513 939.

This patent is based upon the European patent application No. 92 202 349.4 filed as a divisional application (hereinafter "DA as filed") of the earlier European patent application No. 87 202 100.1 published under the publication number EP-A-271 119 (hereinafter "EA as filed").

The patent was revoked by the decision of the opposition division dispatched on 13 November 2001. In the decision, the opposition division found that the ground for opposition mentioned in Article 100(c) EPC prejudiced the maintenance of the patent either as granted or in each of the amended versions upon which the auxiliary requests of the patent proprietor were based.

II. On 27 November 2001 the patent proprietor (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 19 March 2002.

III. With the statement setting out the grounds of appeal the appellant based its request on a set of amended claims which had been filed during the oral proceedings before the opposition division on 16 October 2001 and had represented the third auxiliary request during the opposition proceedings.

This set of claims, which is identified as being the

annex 4 to the minutes of the oral proceedings before the opposition division, contains an independent Claim 1 for the Contracting States Austria (AT), France (FR), Great Britain (GB) and The Netherlands (NL) and an independent Claim 1 for the Contracting State Germany (DE).

The independent Claim 1 for AT, FR, GB and NL reads as follows:

"1. A soil working machine for the preparation of a seedbed comprising a rotary harrow and a seeddrill including a seed container (51A) and seed pipes (46) for drilling seed into the prepared seedbed, the machine further comprising a frame part (8) supporting a plurality of adjacent soil working members (12), the frame part (8) being at least partly supported by a height-adjustable roller (20), which roller (20) is designed as a packer roller and includes at its rear side a carrier (26) for scraper members (24), the roller (8) being located at the rear of the said frame part (8) and being connected pivotably thereto by means of a carrier construction (17); the seed pipes (46) being supported by a transverse carrier beam (45) wherein carrier (26) is located rearwardly of the roller (20), the carrier (26) with the seed pipes (46) being arranged adjustable in height relative to and pivotably connected to said carrier construction (17), characterized in that the seed container (51A) is supported in a further frame (52) independently of said seed pipes (46), and in that means (62) are provided for moving said seed pipes (46) into or out of

an operating position independently of the position of said seed container (51A)."

The independent Claim 1 for DE reads as follows:

"1. A soil working machine for the preparation of a seedbed comprising a rotary harrow and a seeddrill including a seed container (51A) and seed pipes (46) for drilling seed into the prepared seedbed, the machine further comprising a frame part (8) supporting a plurality of adjacent soil working members (12), the frame part (8) being at least partly supported by a height-adjustable roller (20), which roller (20) is designed as a packer roller and includes at its rear side a carrier (26) for scraper members (24), the roller (8) being located at the rear of the said frame part (8) and being connected pivotably thereto by means of a carrier construction (17); the seed pipes (46) being supported by a transverse carrier beam (45) wherein carrier (26) is located rearwardly of the roller (20), the carrier (26) with the seed pipes (46) being arranged adjustable in height relative to and pivotably connected to said carrier construction (17), characterized in that the carrier beam (45) is a single transverse beam (45) and in that the seed container (51A) is supported in a further frame (52) independently of said seed pipes (46), and in that means (62) are provided for moving said seed pipes (46) into or out of a working/operational position independently of the position of said seed container (51A)."

IV. Opponent I withdrew its opposition with letter of 4 June 2002.

V. Oral proceedings were held on 21 January 2003.

During the oral proceedings the appellant filed a set of amended claims upon which a subsidiary request was based.

The independent Claim 1 for AT, FR, GB and NL (subsidiary request) reads as follows:

"1. A soil working machine for the preparation of a seedbed comprising a rotary harrow and a seeddrill including a seed container (51A) and seed pipes (46) for drilling seed into the prepared seedbed, the machine further comprising a frame part (8) supporting a plurality of adjacent soil working members (12), the frame part (8) being at least partly supported by a height-adjustable roller (20), which roller (20) is designed as a packer roller and includes at its rear side a carrier (26) for scraper members (24), the roller (8) being located at the rear of the said frame part (8) and being connected pivotably thereto by means of a carrier construction (17); the seed pipes (46) being supported by a transverse carrier beam (45) which is connected to carrier (26) via rearwardly extending brackets (44) and is located at least substantially parallel to the carrier (26), the carrier (26) with the seed pipes (46) arranged thereon being arranged adjustable in height and lockable in a plurality of positions by means of a hydraulic ram (62)

relative to and pivotably connected to said carrier construction (17), characterized in that the seed container (51A) is supported in a further frame (52) independently of said seed pipes (46), and in that means (62) are provided for moving said seed pipes (46) into or out of an operating position independently of the position of said seed container (51A)."

The independent Claim 1 for DE (subsidiary request) reads as follows:

"1. A soil working machine for the preparation of a seedbed comprising a rotary harrow and a seeddrill including a seed container (51A) and seed pipes (46) for drilling seed into the prepared seedbed, the machine further comprising a frame part (8) supporting a plurality of adjacent soil working members (12), the frame part (8) being at least partly supported by a height-adjustable roller (20), which roller (20) is designed as a packer roller and includes at its rear side a carrier (26) for scraper members (24), the roller (8) being located at the rear of the said frame part (8) and being connected pivotably thereto by means of a carrier construction (17); the seed pipes (46) being supported by a transverse carrier beam (45) which is connected to carrier (26) via rearwardly extending brackets (44) and is located at least substantially parallel to the carrier (26), the carrier (26) with the seed pipes (46) arranged thereon being arranged adjustable in height and lockable in a plurality of positions by means of an hydraulic ram (62)

relative to and pivotably connected to said carrier construction (17), characterized in that the carrier beam (45) is a single transverse beam (45) and in that the seed container (51A) is supported in a further frame (52) independently of said seed pipes (46), and in that means (62) are provided for moving said seed pipes (46) into or out of a working/operational position independently of the position of said seed container (51A)."

VI. The appellant requested that the impugned decision be set aside and that the patent be maintained on the basis of either (as a main request) the set of claims 1 of the "annex 4" to the minutes of the oral proceedings before the opposition division (see section III above) or (as a subsidiary request) the set of claims filed in the oral proceedings on 21 January 2003 (see section IV above).

Opponent 2 (hereinafter "respondent") requested that the appeal be dismissed.

VI. The appellant essentially argued that the present Claim 1 did not contravene the requirements of Articles 100(c) and 123 EPC.

Reasons for the Decision

1. The appeal is admissible.

2. *The admissibility of the amendments (Articles 76(1) and 123 EPC)*

2.1 The patent as granted contains a Claim 1 for AT, FR, GB and NL and a Claim 1 for DE. Each of these independent claims refers to "a roller (20)" and specifies the following features which refer to the roller:

(A) the frame part (8) is at least partly supported by a roller (20);

(B) the roller is located at the rear of the frame part;

(C) the roller is connected pivotally to the frame part by means of a carrier construction (17).

2.2 Each of the independent claims upon which both requests of the appellant are based (see sections III and V above) differs from the corresponding independent claim of the patent as granted *inter alia* in that the roller is further characterised by the following features:

(D) the roller (20) is height-adjustable;

(E) the roller is designed as a packer roller;

(F) the roller includes at its rear side a carrier (26) for scraper members (24).

2.3 Features D, E and F have an explicit basis in Claim 11 of the EA as filed. Therefore, the amendments consisting in the introduction of these features into each of the amended independent claims do not infringe the requirements of Articles 123(2) EPC and 76(1) EPC as far as the relationship of these amendments to the

EA as filed is concerned.

2.4 However, since the patent in suit is based upon a divisional application, it has to be examined whether the above mentioned features have also a basis in the DA as filed (Article 123(2) EPC).

2.4.1 The independent Claim 1 of the DA as filed refers to a "roller (20)" which is characterised only by features A, B and C without any reference to features D, E and F.

Neither the dependent claims (Claim 2 to 7) nor the introductory part of the description (page 1, line 1 to page 2, line 8) of the DA as filed (which parts of the application normally contain generalisations of features specifically disclosed in relation to the drawings) refer to features D, E and F.

2.4.1.1 Feature D defines the roller 20, at a very high generalisation level, as being "height-adjustable". Moreover, there is no relationship between this feature and features A, B and C. Therefore, the expression "height-adjustable roller" in the context of a soil working machine covers any roller whose vertical position with respect to any part of the soil working machine can be adjusted by means of any adjusting means.

In this respect, it has to be noted that the DA as filed does not explicitly refer somewhere to a "height-adjustable roller 20".

Furthermore, none of the drawings of the DA as filed permits this feature to be derived in an unambiguous

and unequivocal manner. In this respect, it has to be noted that Figure 3 represents - in a side view - a roller provided with reference number 20 having a cylindrical portion provided with the reference number 22 which is shown as being in contact with the soil.

The part of the description of the DA which describes in detail an embodiment of the invention referring to the drawings (Figures 1 and 2) contains the following passages which can be considered as being in relation with the adjustability of the roller.

(i) "By means of a horizontal pin, mounted to the carrier 30 and extending transversely to the direction of operative travel A, there is arranged freely movably a threaded spindle 36, which spindle is also connected to a carrier 8. By means of the spindle 36 the working depth of a carrier 8 relative to a roller can be adjusted" (see page 4, lines 17 to 23; corresponding to column 3, lines 22 to 28 of the DA as published, ie of document EP-A-513 939);

(ii) "With the aid of the spindle 36 and the roller 20 located behind the soil working members 12, which rollers, as stated above, each are designed as a packer roller, it is possible to set the working depth of the soil working members 12 prior to starting the job. This setting can be effected by means of the adjusting devices provided on the cross beam 30 and constituted by the threaded spindles 36, which adjusting devices are movably connected to the rear side of a carrier 8 by means of connecting strips constituting a guide for a

carrier 8" (see page 6, lines 26 to 35; corresponding to column 5, lines 5 to 16 of document EP-A-513 939).

It can be understood from these passages of the DA as filed - read in conjunction with the remaining description - that the roller 20 is adjustable in height with respect to the carrier 8 (ie to the frame part 8, if the terminology of Claim 1 of the patent in suit is used) which supports the soil working members 12 by means of an adjusting device constituted by a spindle 36 which is mounted on a carrier or cross beam 30, which "together with the arms 17 constitutes a carrier construction for the roller" (see page 4, lines 5 to 7; corresponding to column 3, lines 8 and 9 of document EP-A-513 939), and which is also connected to the carrier 8. It can also be understood that the adjustability in height of the roller 20 results in making it possible to set the working depth of the soil working member 12 supported by the carrier 8.

It is clear that the adjustability in height of the roller 20 has been disclosed in the description of the DA as filed in the context of specific features which define the adjustability in height of the roller relative to the soil working members and which relate to a specific adjusting means arranged between an element 30 of the carrier construction connecting the roller to the frame part 8 which is partly supported by the roller and said frame part 8.

Feature D represents however the generalisation of these specific features, without there being a basis in the DA as filed for such a generalisation.

In other words, the amendment according to feature D extends beyond the content of the DA as filed in so far as it generates new subject-matter consisting of a soil working machine provided with rollers which are adjustable in height by means of an adjusting means other than the only adjusting means which is specifically disclosed in the description of the DA as filed.

2.4.1.2 With respect to feature D, the appellant referred to the passage referred to in the above section 2.4.1.1(i) and essentially argued that the skilled person would immediately understand from this passage that the specific features relating to the arrangement of the spindle 36 are not essential, in so far as the adjustability in height of the roller could be arrived at in many other ways.

This argument cannot be accepted for the following reasons:

(i) According to the description of the DA as filed (see particularly page 4, lines 21 to 23, and page 6, lines 26 to 30) the adjustability in height of the roller 20 solves the specific problem of adjusting or setting the working depth of the soil working members 12 relative to the roller. Therefore, at least the feature that the adjusting means (ie the spindle 36) is arranged between the frame part 8 supporting the soil working members 12 and the carrier construction for the roller is essential for the solution of this problem.

(ii) The fact that a skilled person could have seen

that the specific features concerning the arrangement of the spindle 36 were not essential for the solution of the problem of adjusting the working depth of the soil working members 12 does not imply that the DA as filed discloses unambiguously and unequivocally the adjustability in height of the roller at the level of generalisation of feature D.

2.4.1.3 Therefore, the amendment consisting in the introduction of feature D into an independent claim contravenes the requirements of Article 123(2) EPC.

2.5 Therefore, none of the appellant's requests can be allowed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis C. Andries