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**D E C I S I O N**  
**of 14 June 2002**

**Case Number:** T 0135/02 - 3.2.4

**Application Number:** 96201479.1

**Publication Number:** 0745319

**IPC:** A01F 15/07

**Language of the proceedings:** EN

**Title of invention:**  
A harvesting machine

**Applicant:**  
Greenland Geldrop B.V.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**  
EPC Art. 84, 111(1), 123(2)

**Keyword:**  
"Amended claims"  
"Clarity (yes)"  
"Added subject-matter (no)"

**Decisions cited:**  
T 0187/91

**Catchword:**

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**Case Number:** T 0135/02 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 14 June 2002**

**Appellant:** Greenland Geldrop B.V.  
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**Representative:** Vollebregt, Cornelis Jacobus, Ir.  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 18 July 2001  
refusing European patent application  
No. 96 201 479.1 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** C. D. A. Scheibling  
C. Holtz

## Summary of Facts and Submissions

- I. By its decision dated 18 July 2001 the Examining Division refused the European Patent application 96 201 479.1. On 17 September 2001 the appellant (applicant) filed an appeal and paid the appeal fee. The statement of grounds was filed on 22 November 2001.
- II. The Examining Division refused the European Patent application 96 201 479.1 on the ground that claim 1 filed with letter of 28 February 2001 did not comply with the requirements of Article 123(2) EPC.
- III. After a communication of the Board the appellant withdrew, with a letter dated 27 May 2002, all previous requests, introduced a new main request and new first and second auxiliary requests each comprising a set of twelve claims and a new third auxiliary request comprising a set of eleven claims.

As a result of a personal consultation of the Rapporteur of the Board with the representative on 12 June 2002 the third auxiliary request was amended and comprises now a set of ten claims.

- IV. The independent claims read as follows:

Claim 1 of the main request:

"A harvesting machine intended for processing crop comprising a frame (1), at least one group (4, 5) of belts being arranged in a side-by-side relationship, at least one guide roller (10) journaled in said frame (1), which assists in transporting the crop

during operation and a roller (11) cooperating with said guide roller (10), whereby at least one of the cooperating rollers (10, 11) is circumferentially provided with at least one outwardly projecting member (14, 15; 16; 17, 18; 19, 20) extending along at least part of the length of the respective roller (10, 11), which member is at least substantially in contact with the outer circumference of the other roller, characterized in that at least part of the belts of one of the at least one group (4, 5) are passed over the roller being circumferentially provided with the at least one outwardly projecting member (14, 15; 16; 17, 18; 19, 20) extending along at least part of the length of the respective roller (10, 11)".

Claim 1 of the first auxiliary request:

"A harvesting machine intended for processing crop comprising a frame (1), at least one group (4, 5) of belts being arranged in a side-by-side relationship, at least one guide roller (10) journaled in said frame (1), which assists in transporting the crop during operation and a roller (11) cooperating with said guide roller (10), whereby at least one of the cooperating rollers (10, 11) is circumferentially provided with at least one outwardly projecting member (14, 15; 16; 17, 18; 19, 20) extending along at least part of the length of the respective roller (10, 11), which member is at least substantially in contact with the outer circumference of the other roller, characterized in that the belts of one of the at least one group (4, 5) are passed over the roller being circumferentially provided with the at least one outwardly projecting member (14, 15; 16; 17, 18;

19, 20) extending along at least part of the length of the respective roller (10, 11)".

Claim 1 of the second auxiliary request:

"A harvesting machine intended for processing crop comprising a frame (1), two groups (4, 5) of belts being arranged in a side-by-side relationship, at least one guide roller (10) journaled in said frame (1), which assists in transporting the crop during operation and a roller (11) cooperating with said guide roller (10), whereby at least one of the cooperating rollers (10, 11) is circumferentially provided with at least one outwardly projecting member (14, 15; 16; 17, 18; 19, 20) extending along at least part of the length of the respective roller (10, 11), which member is at least substantially in contact with the outer circumference of the other roller, characterized in that the belts of one of the two groups (4, 5) are passed over the roller being circumferentially provided with the at least one outwardly projecting member (14, 15; 16; 17, 18; 19, 20) extending along at least part of the length of the respective roller (10, 11)".

Claim 1 of the third auxiliary request:

"A harvesting machine intended for processing crop comprising a frame (1), two groups (4, 5) of belts being arranged in a side-by-side relationship, at least one guide roller (10) journaled in said frame (1), which assists in transporting the crop during operation and a roller (11) cooperating with said guide roller (10), whereby at least one of the cooperating rollers (10, 11) is circumferentially provided with at

least one outwardly projecting member (14, 15; 16; 17, 18; 19, 20) extending along at least part of the length of the respective roller (10, 11), which member is at least substantially in contact with the outer circumference of the other roller, characterized in that the belts of one of the two groups (4, 5) are passed over the cooperating rollers (10, 11)".

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Compliance with Article 123(2) EPC:*
  - 2.1 In the pre-characterising portions of claims 1 of the main request and of the first auxiliary request, it is indicated: "at least one group (4, 5) of belts being arranged in a side-by-side relationship".
  - 2.2 The sole passage of the description as filed referring explicitly to the number of group of belts reads (see page 2, lines 31, 32 of the originally filed application): "Two groups of belts 4 and 5 respectively arranged in side-by-side relationship are provided in the frame ...". In this passage, as well as in Figure 1, solely a machine comprising two groups of belts is disclosed.

The originally filed claims are silent in this respect. Thus, there is no basis in the originally filed description, drawings and claims for claiming a single group of belts.
  - 2.3 The appellant argues that in a corresponding case

T 187/91, although the application referred to "a plurality of pump light sources" the Board found that a skilled reader would seriously contemplate the use of only one light source.

However, when analysing the said decision, the deciding Board referred to a sentence of the description where it is stated that "it will be understood that more or less sources 60 may be utilized" convincing it that the writer of the application as filed was aware of the fact that the invention could be carried out with only one light source.

No such statement can be found in the description of the present application and thus, the case related to T 187/91 is not comparable to the present case.

Furthermore, the wording "at least one group" does not mean "one or two groups" as suggested by the appellant. It clearly means one or more than one group with no upper limit. There is however no basis in the description as filed for claiming an indefinite number of groups of belts.

- 2.4 In the characterizing portions of claims 1 of the main request, first and second auxiliary requests it is stated that "the belts ... are passed over the roller".

The sole passage of the description as originally filed referring to this statement (see page 3, lines 33 to 36) reads: "The two co-operating rollers 10 and 11 can be rotated in the same direction or in opposite directions by suitable transmission means, such as ropes, chains or gears. Preferably said drive takes place by means of (a) belt(s) 4". In this passage, as

well as in Figures 2 to 10, solely a machine wherein the belts are passed over both rollers is disclosed. Once again, the originally filed claims are silent in this respect.

Thus, there is no basis in the originally filed description, drawings or even claims for claiming that the belts are passed over only one roller.

2.5 Consequently, for the reasons indicated in sections 2.3 and 2.4 above, claim 1 of the main request and claims 1 of the first and second auxiliary requests do not meet the requirements of Article 123(2) EPC and are consequently not allowable.

2.6 Claim 1 of the third auxiliary request, comprises the features of claim 1 as originally filed, and the features according to which "two groups (4, 5) of belts are arranged in a side-by-side relationship" and "the belts of one of the two groups (4, 5) are passed over the cooperating rollers". These features can be found in the description as filed page 2, lines 31 and 32 and page 3, lines 33 to 36.

2.7 Claims 2 to 10 of the third auxiliary request correspond to claims 2 to 10 as filed.

2.8 Thus, claims 1 to 10 of the third auxiliary request meet the requirements of Articles 84 and 123 (2) EPC.

3. *Third auxiliary request, remittal:*

3.1 Since in the set of claims according to the third auxiliary request, the appellant no longer seeks grant of the patent with a text corresponding to that which



was rejected by the Examining Division, and since the claims of this request were found to comply with the requirements of Article 123(2) EPC, the objection on which the appealed decision was based does not prevail any longer.

- 3.2 Thus, owing to the fact that the Examining Division has not yet been able to examine the text of the third auxiliary request, the case is remitted to the first instance, according to the provisions of Article 111(1) EPC, for further prosecution as to the other requirements of the EPC.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the claims 1 to 10 of the third auxiliary request as filed on 12 June 2002.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries