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Datasheet for the decision of 6 July 2007

Case Number: T 1256/06 - 3.2.07

Application Number: 98117133.3

Publication Number: 0901892

IPC: B27B 31/00

Language of the proceedings: EN

Title of invention:
Automatic electronic wood cutting/chopping machine

Patentee:
PINOSA Srl

Opponent:
PEZZOLATO OFFICINE COSTRUCIONI MECCANICHE Spa

Headword:
-

Relevant legal provisions:
EPC Art. 56, 108
EPC R. 64

Keyword:
"Admissibility of the appeal (yes)"
"Inventive step (no)"

Decisions cited:
T 0220/83, T 0213/85, T 0145/88, T 0250/89, T 0154/90, T 0188/92, T 0349/00

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1256/06 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 6 July 2007

Appellant: (Opponent)	PEZZOLATO OFFICINE CONSTRUCIONI MECCANICHE Spa Via Provinciale Revello, 89 IT-12030 Envie (Cuneo) (IT)
Representative:	Buzzi, Franco c/o Buzzi, Notaro & Antonielli d'Oulux Via Maria Vittoria 18 IT-10123 Torino (IT)
Respondent: (Patent Proprietor)	PINOSA Srl 93, Via Udine IT-Tarcento (UD) (IT)
Representative:	Petraz, Giberto Luigi GLP S.r.l. Piazzale Cavedalis 6/2 IT-33100 Udine (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted 13 June 2006 rejecting the opposition filed against European patent No. 0901892 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
I. Beckedorf

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division to reject of the opposition against the European patent No. 0 901 892.

The opposition was filed against the patent as a whole based on Article 100(a) EPC (lack of industrial application (Article 57 EPC); lack of novelty (Article 54(2) EPC); lack of inventive step (Article 56 EPC)) and on Article 100(b) EPC (insufficient disclosure; Article 83 EPC).

At the beginning of the oral proceedings before the Opposition Division the opponent withdrew the objections directed to insufficient disclosure, lack of industrial application and lack of novelty, see minutes of the oral proceedings, point 1, second paragraph, and the respondent (patentee) withdrew its request filed with letter dated 19 November 2002 for a refund of all expenses, see point 10 of the facts and submissions of the decision under appeal.

In the decision reference was made to the following documents:

D1: EP 0 097 245 A
D2: US 5 058 638 A
D3: US 3 720 247 A
D4: EP 0 579 898 A
D5: EP 4 011 779 A
Dx: US 4 373 564 A.

The Opposition Division held that the combination of the teachings of D1 with D2, D1 with Dx and D2, or D1 and D4 does not render obvious the subject-matter of claim 1 and that therefore the patent could be maintained as granted.

II. The appellant requests the revocation of the patent and with letter dated 15 March 2007 requests that "the appeal be decided without delay".

III. The respondent requests with letter dated 19 February 2007 that "the appeal be declared inadmissible" and in case the Board decides that the appeal is admissible that the appeal be rejected. With letter dated 30 April 2007 it requests "a decision on this case in the shortest possible time".

IV. Independent claim 1 as granted reads as follows:

"Automatic electronic wood cutting/chopping machine (10) for producing pieces or segments (49) of firewood from branchless trunks (12), being collected from a stacking zone,
said machine comprises, in coordinated cooperation,
a loading assembly (11) to automatically pick up the trunks (12) from the stacking zone and to deposit them on a lengthwise feed assembly (13) with a sliding channel (20),
a cutting assembly (14) located to follow the lengthwise feed assembly (13) to divide the trunks (12) into sections of pre-determined length,
characterised by a gripper assembly (29) located in cooperation with the cutting assembly (14) to

temporarily retain the trunks (12) during the cutting operation
and to measure the diameter of the trunks (12),
a translation assembly (25) located immediately downstream of the cutting assembly (14) to translate the cut sections of trunk (12),
a chopping assembly (15), complanar [*sic*] and substantially adjacent to the feed assembly (13), to divide the cut sections into a defined number of pieces or segments (49)
and a carrier assembly (16) located immediately downstream of the chopping assembly (15) to discharge and/or separate the pieces or segments (49) produced,
the assemblies (11, 13, 14, 15, 16, 25, 29) being governed by an electronic control and drive unit associated at least with means to automatically determine the length of the trunks (12)".

V. The appellant argued essentially as follows:

D1 discloses a cutting/chopping machine having all the features of the cutting/chopping machine of claim 1 of the patent in suit but the features of a loading assembly automatically picking up the trunks from the stacking zone, a gripper assembly measuring the diameter of the trunks and a control and drive unit associated at least with means to automatically determine the length of the trunks.

A gripper assembly measuring the diameter of the trunks and a control and drive unit associated with means to automatically determine the length of the trunks are known from each one of the documents D2, D3, D4 or D5.

The provision of an automatic loading assembly for the trunks is self-evident to the skilled person intending to have an entirely automatic cutting/chopping machine. Moreover, such a loading assembly is known from Dx.

Therefore, the subject-matter of claim 1 is not inventive.

The loading assembly to automatically pick up the trunks from the stacking zone and deposit them on the feed assembly as claimed in claim 1 renders the invention insufficiently disclosed and not susceptible of industrial application. The requirements of Articles 57 and 83 EPC are therefore not fulfilled.

VI. The respondent argued essentially as follows:

The appellant's statements in the grounds of appeal do not set out which legal or factual grounds form the basis for setting aside the impugned decision, see T 220/83, T 213/85, T 145/88 and T 250/89. The appellant refers en masse to its own arguments before the first instance, which are not automatically included in the grounds of appeal, see T 220/83, T 154/90, T 188/92 and T 349/00.

The appeal is therefore inadmissible pursuant to Article 108 EPC and Rule 64 EPC, since it is lacking in grounds.

The apparatus according to D1 does not show the following features:

a loading assembly for automatically picking up the trunks from the stacking zone;
a gripper assembly measuring the diameter of the trunks;
a chopping assembly being coplanar and substantially adjacent to the feed assembly and dividing the cut sections into a defined number of pieces or segments;
a carrier assembly located immediately downstream of the chopping assembly to discharge and/or separate the pieces or segments produced;
the assemblies being governed by an electronic control and drive unit;
the electronic control and drive unit being associated at least with means for automatically determine the length of the trunks.

D4 does not mention a longitudinal cut, that is, parallel to the axis of the trunk, where segments are cut to obtain pieces or logs of wood for firewood. Besides that the content of D4 is immaterial relative to the content of the patent in suit as it does not refer to wood cutting/chopping machines.

Therefore, the skilled person would not combine the teachings of D1 and D4.

Reasons for the decision

1. *Procedural matters*

In the last paragraph of its letter dated 15 March 2007 the appellant stated: "Since oral proceedings was required neither by the appellant nor by the patentee,

it is requested that the appeal be decided without delay".

In the last paragraph of its letter dated 30 April 2007 the respondent stated: "In the light of the above, we courteously request the Board of Appeal to kindly take a decision on this case in the shortest possible time".

Taking into consideration the fact that no request for oral proceedings was filed by the parties during the appeal proceedings, the fact that the respondent presented its arguments in the support of inventive step in the event that the Board would not find the appeal inadmissible, the will of the parties to have a decision "without delay" and "in the shortest possible time" and having at the same time ascertained that both parties were able to present their arguments on the decisive points of the present appeal the Board considers the case can be decided on without the need for a prior communication of the Board or for oral proceedings. As can be seen below, this decision is based on the documents brought forward in the opposition proceedings, relied upon in the appealed decision and again being used in argumentation of the appellant, to which the respondent has been able to argue in return.

2. *Admissibility of the appeal*

2.1 In arguing inadmissibility of the appeal the respondent mentioned the decisions T 220/83, T 213/85, T 145/88 and T 250/89 and quoted mainly the headnote of T 220/83 stating that "Grounds of appeal ... should state the legal and factual reasons why the decision under appeal

should be set aside and the appeal allowed. It is not sufficient for the appellants merely to refer in general terms to passages from the literature showing the state of the art and to the Guidelines for Examination in the EPO without making their inferences adequately clear".

The Board observes that in its grounds of appeal (chapter 1) the appellant referred to the decision of the Opposition Division stating that: "Namely, according to the Opposition Division the skilled person, even if combining the prior art references of record, would not arrive in an obvious manner to the subject matter of Claim 1". In chapters 2 to 5 of these grounds the appellant presents arguments why, according to its opinion, the finding of the Opposition Division that the combinations of the teachings of D1 with D2 or D1 and Dx and D2 or D1 and D4 do not render the subject-matter of claim 1 obvious, given in paragraphs 5.3 and 5.5 of the impugned decision, are incorrect. The appellant lists the features it considers known from D1 and states that the distinguishing features over D1 can be found in documents D2 to D5 and Dx, discussing them in some detail.

Therefore, the Board considers that the above mentioned chapters 1 to 5 set out both the legal reasons, namely lack of inventive step (Article 100(a) EPC in combination with Article 56 EPC), and the factual reasons, namely that the provision of these features in the apparatus of D1 is obvious. On the basis of the above, the patentee should not be at a loss to know what the appellant is relying upon.

Therefore, the Board considers that the above-mentioned requirements for an admissible appeal as established in the case law are met.

2.2 In its reply to the appeal grounds dated 19 February 2007 the respondent further referred to the decisions T 220/83, T 154/90, T 188/92 and T 349/00 and argued that: "The appeal presented by Pezzolato is to be declared inadmissible also because it refers *en masse* to the arguments of the first instance".

The Board remarks that in chapters 1 to 5 of its grounds of appeal the appellant filed the above-mentioned feature analysis of the subject-matter of claim 1, presented the technical problems as listed in a number of paragraphs of the patent specification, defined which features of the apparatus of claim 1 according to its view are in its opinion known from document D1, stated which features according to its view were known from documents D2 to D5 and Dx, and developed a line of arguments against the reasoning of the Opposition Division in the decision under appeal.

The Board concludes from the above that this cannot be seen as being a mere reference to the arguments made during the opposition proceedings but that it represents an independent line of arguments in support of obviousness of the subject-matter of claim 1.

Accordingly, the Board finds that the findings of the decisions T 220/83, T 154/90, T 188/92 and T 349/00 are not applicable here.

2.3 In its reply to the appeal the respondent further states that:

"Pezzolato includes in the appeal statements that are all alone, without supporting them with any reasoning, motivation or explanation. To give an example, we here report Pezzolato's statement on page 3, point 3 of its appeal Brief:

"Features (g) e [sic] (l) are known per se from either D2 (and D3) or D4 (and D5)".

The Board is of the opinion that although in the second paragraph of chapter 3 of the appellant's grounds of appeal no passages of the therein mentioned documents disclosing features (g) and (l) are given, this statement is further used in the fourth paragraph of the same chapter when developing the line of arguments directed to inventive step. Also in connection with its inventive step argumentation the appellant argues in chapter 4 that "the Patentee himself recognized that Dx is actually disclosing a loading assembly to automatically pick up the trunks from the stacking zone, since feature (c1) is placed in the pre-characterizing part of Claim 1 which in turn is construed upon Dx (as per §[0001] of the Patent)".

Accordingly, the Board regards said chapters 3 and 4 as disclosing reasoning, albeit brief, as to why the subject-matter of claim 1 is not inventive, sufficient to render the appeal admissible.

2.4 The Board remarks that whilst irrelevant or non-cogent arguments may lead to an unsuccessful outcome of the

appeal, they need not by themselves, render it inadmissible, as long as the general line of argumentation is sufficiently clear. The latter is considered to be here the case.

2.5 For the above-mentioned reasons, the Board concludes that the appeal is admissible.

3. *Inventive step, Article 56 EPC*

3.1 The Board agrees with the parties that D1 represents the closest prior art.

3.2 It is undisputed that D1 discloses an automatic wood cutting/chopping machine for producing pieces or segments of firewood (see page 6, lines 19 to 22) from branchless trunks 14, said machine comprising, in coordinated cooperation, a lengthwise feed assembly with a sliding channel 15, a cutting assembly 12, 16 located to follow the lengthwise feed assembly to divide the trunks into sections of pre-determined length, a gripper assembly 30 located in cooperation with the cutting assembly to temporarily retain the trunks during the cutting operation, a translation assembly 66, 77 located immediately downstream of the cutting assembly to translate the cut sections of trunk, and a chopping assembly 13.

3.3 In the paragraph bridging pages 6 and 7 of its reply to the appeal the respondent, following the analysis of the claim features provided by the appellant, states that the apparatus according to D1 does not show

(i) a loading assembly for automatically picking up the trunks from the stacking zone;
(ii) a gripper assembly measuring the diameter of the trunks;
(iii) a chopping assembly being coplanar and substantially adjacent to the feed assembly and dividing the cut sections into a defined number of pieces or segments;
(iv) a carrier assembly located immediately downstream of the chopping assembly to discharge and/or separate the pieces or segments produced;
(v) the assemblies are governed by an electronic control and drive unit;
(vi) the electronic control and drive unit is associated at least with means for automatically determining the length of the trunks.

3.4 In respect of these features the Board finds as follows:

Feature (i): Although D1 is directed to an apparatus for automatically cutting and chopping trunks, see claim 1, lines 1 and 2, it does not define how the trunks are brought onto the machine-table 11. The introductory portion of D1, however, explains that the trees, once felled in the woods, are cut into 1 to 2 meters lengths is and are stacked at the side of the road to be transported off. It is evident that such stacking and cutting up into lengths can only be performed on branchless tree trunks. These lengths are then collected and brought to the location of the cutting and chopping apparatus of D1. To the Board it is obvious that this is not done by hand, but by an "assembly", e.g. in the form of a pickup truck. In the environment of the automatic apparatus of D1 it is also

to be expected that the lengths are stacked up to allow a steady supply for the apparatus. The trunks therefore will have to be picked up from such a stacking zone and brought onto the machine-table. In the first paragraph of page 10 of D1, said paragraph referring to figure 1 of D1, it is stated that the machine-table 11 has a V-shaped channel 15 in order to take up and transport the trunks to the cutting assembly using thereby either a conveyor chain having pushers or horizontally swivelling driving rolls. Although the first part of the machine-table 11 which takes up the trunks forms the loading assembly, it is fact that an **automatic** loading assembly operating between the stacking zone and the cutting apparatus is not known from D1.

Feature (ii): In several passages of D1 it is stated that the thickness of the trunks is measured, see page 2, line 1; page 3, line 19; of page 12, line 8; page 15, line 26; claim 1, lines 7 and 8. It is also stated therein that the gripper assembly 30 measures the thickness of the trunk, see page 13, lines 1 to 5 and claim 1, lines 6 to 8. Therefore, the Board considers that a gripper assembly measuring the diameter of the trunks is known from D1. It is to be noted that claim 1 does not mention the relation between the measurement of the diameter of the trunk and the positioning of the chopping blades with respect to the trunk.

Feature (iii): On page 17, lines 10 and 20 of D1 it is stated that the only difference between the apparatus shown in figure 7 and the one shown in figure 1 is that the chopping assembly shown in figure 7 lies horizontally adjacent to the cutting assembly and is

serviced by the feed assembly 66. The chopping assembly 13 of figure 7 having the same pattern of chopping blades as shown in figures 4 and 5 of D1 divides the cut sections into a defined number of segments. Accordingly, the Board concludes that a chopping assembly, coplanar and substantially adjacent to the feed assembly and dividing the cut sections into a defined number of segments is known from D1.

Feature (iv): Figure 1 of D1 shows the carrier assembly 57 which is located immediately downstream of the chopping assembly 13 and which discharges the produced trunk segments. Therefore, the Board considers that a carrier assembly located immediately downstream of the chopping assembly to discharge the segments produced is known from D1.

Feature (v): On page 16, lines 17 to 19 of D1 it is stated that the control and drive unit governing the movement of the saw can be used independently of the presence of the chopping assembly. This implies that normally the control and drive unit of the apparatus controls at least two parts of the apparatus, namely the cutting and the chopping assembly. In D1 it is not stated if said control and drive unit acts pneumatically, electrically or electronically. Therefore, the use of an **electronic** control and drive unit for governing these assemblies is not known from D1.

Feature (vi): Despite the fact that switch 23 after detecting a predetermined length of the trunks stops the feed assembly of D1, no means for automatically determining the length of the trunks are foreseen in

said document. Therefore, the control and drive unit of D1 is not associated with means for automatically determining the length of the trunks.

3.5 Taking into account the above, the Board considers that the machine of claim 1 differs from the apparatus known from D1 in that the loading assembly **automatically** picks up the trunks to be cut from their stacking zone and deposits them on the feed assembly, the control and drive unit governing the assemblies is **electronic** and is also **associated with means to automatically determining the length of trunks**.

3.6 The effect of these distinguishing features is three fold: the process is also automated from the stacking zone to the cutting and chopping apparatus, the apparatus itself is modernised in its own control and waste of wood is reduced.

3.7 Consequently, starting from the apparatus known from D1 the problem to be solved can be seen, firstly, in how to avoid manpower at the start of the process, secondly how to modernise the existing control and drive unit and thirdly how to minimise waste during the cutting of the trunks, see paragraphs 5, 6, 10, 11, 13 and 64 of the patent specification.

3.8 Concerning the above mentioned first differentiating feature (i) the Board comments as follows:

It is self-evident that in order to feed the cutting/chopping machine of D1 with trunks, these have to be picked up from their stacking zone and deposited onto the feed assembly of the machine. This operation

can be done either by manual labour or by an automatic, semi-automatic or operator-controlled machine. The skilled person intending to improve the apparatus known from D1 in that aspect will foresee the best solution, i.e. an automatic loading assembly which automatically picks up the trunks from the stacking zone and deposits them onto the feed assembly, and to do so does not need to exercise any inventive activity.

3.9 Concerning feature (v), as mentioned above in point 3.4:

The person skilled in the art knows that there exist different types of control and drive units for machines. There exist for example electric, pneumatic or electronic control and drive units and it is well known to the skilled person that the electronic control and drive units are the most modern ones. The selection of such a type of control and drive unit for the cutting and chopping machine known from D1 belongs to the normal activities of the person skilled in the art and it does not require an inventive step on his part.

3.10 As far as the means for automatic determination of the length of the trunks are concerned (feature(vi)) the Board notes that claim 1 defines only that the control and drive unit is associated with means to automatically determine the length of the trunks. In which way the information collected by said means is integrated into the governance of the assemblies is not stated in the claim.

Independently of the above, the Board considers it self-evident to the person skilled in the art that in order to divide a trunk into sections of equal length

while avoiding the problem of waste, the length of the trunks has to be determined in advance so that an optimised cutting pattern can be calculated.

Furthermore, according to D4 it is well known in the art of cutting up long lengths of felled trees that in order to optimise the cuts perpendicular to the longitudinal axis of a trunk a crane vehicle moves along the trunk measuring thereby automatically the length of the trunk together with the diameter of the trunk at predetermined distances. The gained data are then communicated to a computer which calculates an optimal cutting matrix, see column in 1, lines 17 to 32. D4 itself proposes instead of a heavy crane vehicle the use of a lighter measuring and cross-cutting carriage for automatically determining inter alia the lengths of the trunks to be cut.

The Board concludes from the above that the person skilled in the art intending to minimise the waste of the trunks cut up by the apparatus known from D1 would be led by the teaching of D4 from the same field of technology to install means automatically determining the length of the trunks and associate it with the control and drive unit governing the cutting assembly in order to optimise the cutting pattern of the tree trunks without exercising an inventive activity.

3.11 In paragraph 5.4 of its decision the Opposition Division referring to D4 argued that "it is also apparent that the type of wood to be cut is destined to be a high quality cut board and not a rough firewood timber" and subsequently concluded that it is "unlikely" that the skilled person would combine the

disclosures of D1 and D4 with each other (see paragraph 5.5). Similarly argued also the respondent in its reply to the appeal stating that "no mention is made in document D4 of a longitudinal cut, that is, parallel to the axis of the trunk, where segments are cut to obtain pieces or logs of wood for firewood", and that "the content of D4 is immaterial relative to the content of EP'892, as it does not refer to wood cutting/chopping machines".

The Board cannot follow these arguments for the following reasons:

Firstly, according to claim 1 of D4 the claimed apparatus is described therein as being capable of cutting up long timber into specific lengths. Furthermore, in D4 there is no information about the quality of the wood cut up or about what happens to the timber afterwards.

Secondly, the machine according to D1, just like the machine of the patent in suit, is a combination of a trunk cutting and a chopping machine. The skilled person confronted with the problem of optimising the length cutting pattern in that machine would adopt the teaching of D4 proposing the provision of a computer calculating the cutting pattern on the basis of data determined by automatically measuring the length and the diameter of the trunks. What happens after the cutting of the trunk has no influence on the data needed for optimising the cutting pattern in the cutting part of the machine of D1, so this cannot keep the person skilled in the art from applying this teaching of D4.

3.12 For the above-mentioned reasons the subject-matter of claim 1 does not involve an inventive step.

4. Since the requirements of Article 56 EPC are not fulfilled for the reasons given above, there is no need for the Board to address the question whether it is admissible to raise objections under Articles 57 and 83 EPC in the appeal, when these objections were - according to the minutes of the oral proceedings before the Opposition Division, point 1 - apparently withdrawn by the appellant in the opposition proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Nachtigall H. Meinders