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**Datasheet for the decision  
of 30 September 2008**

**Case Number:** T 1913/06 - 3.2.04

**Application Number:** 00201085.8

**Publication Number:** 1044592

**IPC:** A01C 23/00

**Language of the proceedings:** EN

**Title of invention:**

Device and method for manuring land

**Patentee:**

Veenhuis Machines B.V.

**Opponent:**

ETABLISSEMENTS JOSKIN S.A.

**Headword:**

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**Relevant legal provisions:**

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**Relevant legal provisions (EPC 1973):**

EPC Art. 100(a), 111(1)

EPC R. 55(c)

**Keyword:**

"Admissibility of the appeal (yes)"

"Patent opposed in its entirety (yes)"

"Documents filed with the grounds of appeal - admitted"

"Automatic remittal after citation of a new document (no)"

"Inventive step (no)"

**Decisions cited:**

G 0009/91, G 0010/91, T0133/87, T 0860/90, T 0926/93

**Catchword:**

"Submissions made at the oral proceedings which the Board or the other party cannot reasonably be expected to deal with without adjournment of the oral proceedings should not be admitted into the proceedings. Neither should the case be remitted to the first instance for consideration of these submissions"



Case Number: T 1913/06 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 30 September 2008

**Appellant:**  
(Opponent)

ETABLISSEMENTS JOSKIN S.A.  
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**Representative:**

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**Respondent:**  
(Patent Proprietor)

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**Representative:**

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**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office posted 7 November 2006  
rejecting the opposition filed against European  
patent No. 1044592 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** C. Scheibling  
C. Heath

## Summary of Facts and Submissions

I. By its decision dated 7 November 2006 the Opposition Division rejected the opposition. On 21 December 2006 the Appellant (opponent) filed an appeal. The appeal fee was paid on 29 December 2006. The statement setting out the grounds of appeal was received on 14 March 2007.

II. The patent was opposed on the grounds based on Articles 100(a) (lack of inventive step), (b) and (c) EPC 1973.

III. The following documents played a role in the present proceedings:

D1: EP-A-0 520 974

D2: US-A-4 114 815

D6: Gebo prospect of a manuring device and translation

D7: User manual for the Gebo manuring device and partial translation

D8: Declaration under oath that Gebo manuring devices as well as the prospect and the manual were made accessible to the public prior to the filing date of the patent in suit.

IV. Oral proceedings took place on 30 September 2008 before the Board of Appeal.

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

He mainly argued as follows:

D6 and D7 have been submitted with the statement of the grounds of appeal in response to the first instance's

decision. These documents should therefore be admitted into the proceedings. Remitting the case to the first instance for consideration of these two documents would only unduly lengthen the proceedings. All requests comprise either an independent claim based on the combination of claims 1 and 6 as granted or on the combination of claims 1, 6 and 7 as granted. However, it would have been obvious for a skilled person to provide a device according to D6/D7 with knives shaped as taught in D1 and thus to arrive at a device according to the combination of claims 1, 6 and 7 as granted. Consequently, all requests on file must fail.

The Respondent (patentee) contested the arguments of the Appellant and submitted inter alia that the statement of the grounds of appeal failed to clearly indicate why the attacked decision should be set aside. The opposition was restricted to claim 1 since the lack of patentability only referred to this claim. If D6/D7 was introduced into the proceedings, then the case should be remitted to the first instance in order not to deprive the patentee of two instances of jurisdiction.

With respect to D6/D7, the problem solved by the invention could be seen in improving the life time of the knives by avoiding excessive punctual wear and in facilitating the replacement of the worn cutting edge of a knife by a fresh one. However, in D1 the knives were rotatable and thus presented the same drawback (so called "guillotine effect") as the knives of D6/D7. Furthermore, this arrangement could not give a hint to a skilled person that could lead him to the claimed solution.

The Respondent requested that the decision under appeal be set aside and that the patent be maintained in amended form, on the basis of one of the sets of claims of the auxiliary requests 1 to 6 filed with letter dated 26 August 2008. The former main request (claims 1 to 9 as granted) was withdrawn.

V. Claims 1 and 2 of the auxiliary request 1 read as follows:

"1. A device for manuring land, comprising a container for substantially liquid manure, a supply pipe for supplying the manure from the container to a distributor, and a plurality of discharge pipes (20) for discharging the manure from the distributor to several outlet openings, said distributor comprising a housing (19) which is bounded on one side by a flat wall (17) in which holes (18) are provided, to which the discharge pipes (20) connect, in which housing (19) a rotatable cutting element (11) fitted with knives (12,22) is present, which cutting element (11) is capable of rotation in a plane parallel to the flat wall (17), so that the knives (12,22) move past the holes (18), wherein the cutting element (11) and the knives (12,22) are provided with means (15, 28) for attaching each knife (12, 22) to the cutting element (11) in at least two positions, so that more portions of the cutting edge (26) of the knife (12,22) can be used, characterized in that more than eight, preferably more than ten knives (12, 22) are present, and in that two or more, preferably four knives (12, 22) are removable."

"2. A device for manuring land, comprising a container for substantially liquid manure, a supply pipe for supplying the manure from the container to a distributor, and a plurality of discharge pipes (20) for discharging the manure from the distributor to several outlet openings, said distributor comprising a housing (19) which is bounded on one side by a flat wall (17) in which holes (18) are provided, to which the discharge pipes (20) connect, in which housing (19) a rotatable cutting element (11) fitted with knives (12,22) is present, which cutting element (11) is capable of rotation in a plane parallel to the flat wall (17), so that the knives (12,22) move past the holes (18), wherein the cutting element (11) and the knives (12,22) are provided with means (15, 28) for attaching each knife (12, 22) to the cutting element (11) in at least two positions, so that more portions of the cutting edge (26) of the knife (12,22) can be used, characterized in that a knife (12,22) substantially consists of a circular disc having a bevelled circumferential edge (27), so that a cutting edge (26) is formed on the side of the flat wall (17)."

Claim 1 of auxiliary request 2 comprises all features of claims 1, 3 and 4 as granted.

Claim 2 of auxiliary request 2 is identical with claim 2 of auxiliary request 1.

Claim 1 of auxiliary request 3 is identical with claim 1 of auxiliary request 1.

Claim 2 of auxiliary request 3 comprises all features of claims 1, 6 and 7 as granted.

Claim 1 of auxiliary request 4 is identical with claim 1 of auxiliary request 2.

Claim 2 of auxiliary request 4 comprises all features of claims 1, 6 and 7 as granted.

Claim 1 of auxiliary request 5 is identical with claim 2 of auxiliary request 1.

Claim 1 of auxiliary request 6 comprises all features of claims 1, 6 and 7 as granted.

## **Reasons for the Decision**

### **1. *Admissibility of the appeal:***

The statement of the grounds of appeal clearly gives the reasons why the subject-matter of claim 1 allegedly lacks an inventive step with respect to D1 seen alone (see page 3, section 3), or in combination with D6/D7 (see page 3, section 4).

Thus, the appeal is sufficiently substantiated to comply with Article 108 EPC, third sentence. The appeal also complies with the further requirements of Articles 106 to 108 and Rule 99 EPC and is therefore admissible.



2. *Extent of the opposition (Rule 55(c) EPC 1973):*
  - 2.1 The opposition is explicitly directed against the European patent "as a whole", that is, against all the granted claims.
  - 2.2 In such a case according to the well established case law of the Boards of Appeal, the opposition is considered as unrestricted in its extent although the substantiation of the grounds only refers to claim 1, since non-patentability of a single independent claim must lead to the revocation of the entire patent in its granted form (see in particular T 896/90 point 4.2, T 926/93, OJ 1997, 447, headnote and Singer/Stauder (Günzel) EPC 3<sup>rd</sup> edition, Article 99 note 85).
  - 2.3 Decisions G 9/91 and G 10/91 of the Enlarged Board of Appeal cannot support the Respondent's submissions, since these decisions only discuss cases in which there is **no** explicit statement of the extent of the opposition and consequently, the intentions of the Opponent have to be established by interpretation.
3. *Admissibility of documents D6, D7 and D8 filed with the grounds of appeal:*
  - 3.1 Documents D6/D7 are highly relevant on a prima facie basis. This point has not been contested by the Respondent. The sworn statement D8 evidences their availability to the public before the priority date of the patent in suit.

These documents are easy to understand and there is no suggestion that they were consciously known to the

Appellant at the time of filing the notice of opposition and that for tactical reasons a deliberate decision was taken not to cite them at that time. Furthermore, introducing new citations to challenge the decision rejecting the opposition is considered as a normal behaviour of a losing party.

3.2 It is also observed that in accordance with Article 13(2) of the Rules of Procedure of the Boards of Appeal (RPBA), the patent proprietor was entitled to file no fewer than six auxiliary requests in response, quite a considerable number.

3.3 D6 to D8 are therefore admitted into the proceedings.

4. *Remittal of the case to the first instance:*

4.1 The Respondent requested that the case be remitted to the first instance in case the Board intended to admit D6 to D8 into the proceedings.

He submitted that remittal of the case would give the opportunity to hear the author of the sworn statement D8 as witness in order to clearly establish that D6 and D7 have been made available to the public before the priority date of the European patent.

4.2 The Respondent thus for the first time at the oral proceedings before the Board raised the issue of the public availability of D6/D7 before the priority date and also requested that the author of the sworn statement D8 be heard on that issue before the department of first instance.

Article 13(3) RPBA stipulates that amendments to submissions sought to be made after oral proceedings have been arranged "shall" not be admitted if they raise issues which the Board or the other parties cannot reasonably be expected to deal with without adjournment of the oral proceedings. This provision expresses a rule not to admit late filed submissions if they cannot be dealt with here and now. Since it would be necessary for the case to be remitted to the first instance for hearing the author of the sworn statement D8 as witness, the Board had to refuse introduction of this new issue under Article 13(3) RPBA.

4.3 Moreover, Article 111(1) EPC 1973 establishes no absolute right for parties to have all matters raised in appeal proceedings examined by two successive instances; on the contrary, it leaves the Board of Appeal to decide a remittal in the light of the circumstances of the case, see inter alia T 133/87, point 2 of the reasons. It is observed that the patent was granted in 2004, i.e. four years ago and that remittal would prolong the already rather lengthy opposition proceedings.

4.4 Accordingly, in view of the above circumstances and taking into consideration the imperative of procedural efficiency, the public interest in a speedy and streamlined procedure, as well as the saying that "justice delayed is justice denied", the Board considers it not appropriate to remit the present case to the department of first instance for further consideration, but rather to decide the case itself under Article 111(1) EPC 1973.

5. *Inventive step:*

5.1 After withdrawal of the main request, all requests on file comprise an independent claim comprising all the features of claims 1 and 6 as granted or of claims 1, 6 and 7 as granted. In particular, independent claim 2 of the auxiliary requests 1 and 2 as well as independent claim 1 of auxiliary request 5 comprise all the features of claims 1 and 6 as granted, whereas independent claim 2 of the auxiliary requests 3 and 4 as well as independent claim 1 of auxiliary request 6 comprise all the features of claims 1, 6 and 7 as granted.

5.2 D6/D7 discloses the features of the prior art portion of the independent claims resulting from the combination of the features of claims 1 and 6 as granted. This point is agreed to by the parties.

5.3 Thus, the claimed subject-matter differs from the device of D6/D7 in that:  
a knife substantially consists of a circular disc having a bevelled circumferential edge, so that a cutting edge is formed on the side of the flat wall.

5.4 The Respondent considered that the problem to be solved is to avoid uneven wear of the knife so as to increase its life time and to provide attaching means allowing to turn a worn knife so as to expose a fresh cutting edge in an easier way.

The Appellant strongly contested the Respondent's conclusions concerning the wear of the knives. The Board considers that whether the knives can be easily

turned to expose a fresh cutting edge depends only on the "knife attaching means" which are not further specified in the claim.

Therefore, the problem the invention seeks to solve can solely be seen in providing an alternative knife design.

- 5.5 Such an alternative design is known from D1 which discloses a manuring device of the same type as D6/D7 and which uses knives consisting of a circular disc having a bevelled circumferential edge, so that a cutting edge is formed on the side of the flat wall.

To replace the straight knives of D6/D7 by the circular knives of D1 is therefore merely one of a limited number of possibilities from which a skilled person would select, in accordance with circumstances, without the exercise of inventive skill in order to solve the problem posed. He would also attach the knives in a fixed position so that the cutting operation is still performed as shown in D6/D7 in order to have comparable working conditions, i.e. not to change the forces which act on the knives and which can be considerably higher when the knives are free to rotate.

Accordingly, the subject-matter of claim 2 of auxiliary requests 1 and 2 and of claim 1 of auxiliary request 5 does not involve an inventive step.

- 5.6 The independent claims resulting from the combination of the features of claims 1, 6 and 7 as granted further require that "said circular disc (12, 22) can be attached to the cutting element (11) in two positions,

turned through 180° relative to each other, or in more positions, turned through a smaller angle relative to each other."

- 5.7 That the knives can be attached to the cutting element in two positions, turned through 180° relative to each other is already known from D6/D7. Furthermore, that a circular knife can be attached in more than two positions to make a better use of its the cutting edge extending over 360° is self-evident.
- 5.8 Accordingly, these additional features cannot confer inventiveness to the claimed subject-matter on their own. Consequently, the subject-matter of independent claim 2 of the auxiliary requests 3 and 4 as well as of independent claim 1 of auxiliary request 6 does not involve an inventive step.
- 5.9 Therefore, all the requests on file must fail.

**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. Magouliotis

M. Ceyte