Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 11 September 2015

Case Number: T 0925/11 - 3.2.04

Application Number: 02077198.6

Publication Number: 1264533

IPC: A01F15/07

Language of the proceedings: EN

Title of invention:
Over the edge net wrap dispensing system for a round baler

Patent Proprietor:
CNH Industrial Belgium nv

Opponent:
Deere & Company

Headword:

Relevant legal provisions:
EPC Art. 100(a), 56

Keyword:
Inventive step - claim 1 as granted (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0925/11 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 11 September 2015

Appellant: (Opponent)	Deere & Company One John Deere Place Moline, IL 61265-8098 (US)
Representative:	Magin, Ludwig Bernhard John Deere GmbH & Co. KG Global Intellectual Property Services John-Deere-Strasse 70 68163 Mannheim (DE)
Respondent: (Patent Proprietor)	CNH Industrial Belgium nv Leon Claeysstraat 3A 8210 Zedelgem (BE)
Representative:	Feldkamp, Rainer Patentanwälte Wallach, Koch, Dr. Haibach, Feldkamp Postfach 20 20 40 80020 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 25 February 2011 rejecting the opposition filed against European patent No. 1264533 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	A. de Vries
Members:	E. Frank
	T. Bokor

Summary of Facts and Submissions

I. The appeal lies from the decision of the opposition division dated 10 February 2011 and posted on 25 February 2011, to reject the opposition against the European patent No. 1 264 533 pursuant to Article 101(2) EPC. The appellant (opponent) filed a notice of appeal on 20 April 2011, paying the appeal fee on the same day. The statement of grounds of appeal was submitted on 24 June 2011.

II. The opposition was filed against the patent as a whole and based on Article 100(a) in conjunction with Articles 52(1) and 56 EPC. The opposition division held that the ground of lack of inventive step did not prejudice maintenance of the patent as granted. In its decision the division considered the following prior art, amongst others:

D1 = US-A-6 021 622
D2 = EP-B-0 931 449
D5 = US-A-5 581 973
D7 = JP-A-2 200 117

The further following document was cited in appeal:

D7'= "ANLAGE 4" (annexe 4) comprising Abstract of D7 from Patent Abstracts of Japan; English language translation of selected description pages of D7 corresponding to figures 5, 6, 34, and 37

III. A communication pursuant Article 15(1) RPBA was issued after a summons to attend oral proceedings. These were duly held on 11 September 2105.

IV. The appellant requests that the decision under appeal be set aside and the patent be revoked.

The respondent (proprietor) requests that the appeal be dismissed.

V. The wording of claim 1 as granted reads as follows:

"An agricultural round baler (1) comprising:

a main frame (2);
a baling chamber (24a) supported by said main frame (2), said baling chamber having a pair of opposing sidewalls (24), an apron (23) positioned between said sidewalls, and a pair of stationary, adjacent rolls (8, 9) which are rotationally affixed to said sidewalls (24);
means (5) for feeding crop material into said baling chamber (24a) for forming therein a cylindrical bale (35) having a cylindrical portion and a pair of opposing ends; and
a bale wrapping system (30) comprising means for inserting a quantity of wrapping material (41) into said baling chamber (24a), said inserting means including a delivery means (50) pivotally affixed to the baling chamber sidewalls (24) for delivering a quantity of wrapping material (41) to said bailing chamber (24a), said delivery means (50) comprising:

- a pair of arms (51) pivotally attached to said sidewalls (24);
- a transverse assembly frame (54) affixed between said arms (51); and
- an upper baffle (53a) and a lower baffle (53b) affixed to said assembly frame (54) for holding in between said quantity of wrapping material (41),

characterised in that:

said upper baffle (53a) and said lower baffle (53b) are operable to insert said quantity of wrapping material between said adjacent rolls (8, 9) of said baling chamber (24a);
at least one of said baffles (53a 53b) has a length greater than the width of said baling chamber(24); and said inserting means further comprise encircling means (50, 90) for encircling an edge (38) of said bale (35), said encircling means comprising a transition area (90) positioned on the outer side of said sidewall (24) for insertion therein of said wrapping material (41) by said delivery means (50)."

VI. The appellant argued as follows:

Whether D1 or D5 formed the closest prior art was academic. Starting from the duck bill delivery system of D5, and faced with the problem of how to feed a wide net into the baler, everything of D5's delivery system would need to be wider than the bale chamber. Moreover, claim 1 does not exclude tangential feeding as in D2. Therefore, taking into consideration D2, which also states that the sidewalls of the baler have to end above the feeding path (see D2, par. 0017 and 0026), the skilled person would suitably adapt the duck bill delivery system of D5 to feed a wider net by means of an over the edge inserting means of D2, thus to arrive at the subject-matter of claim 1. Therefore, claim 1 as granted lacks an inventive step.

VII. The respondent argued as follows:

Starting from D5's duckbill, the problem should not be formulated to refer to insertion of a wider net into a duckbill, since this already contained a clear pointer to the solution of claim 1. Rather, the underlying problem of claim 1's distinguishing features vis-à-vis D5 had to be seen as how to adapt D5's system in such a way that over the edge bale wrapping can be achieved. D2 provided a perfect over the edge feeding solution, which was completely different from a duckbill, viz. a bottom feed system between a bottom roll and the bale. Therefore, the skilled person would take out D5's duckbill and insert the over the edge net dispensing system of D2 in its place. Moreover, although D7 does not describe a feeding system in detail, this document in principle also shows feeding between a roll and the bale similar to D2. Thus, claim 1 as granted would in any case not be obvious in the light of D5 and D2 (or D7) and, therefore, involves an inventive step.

Reasons for the Decision

1. The appeal is admissible.

2. *Inventive step*

2.1 It is common ground that document D5 can also be considered as closest prior art. D5's fixed chamber round baler discloses a bale wrapping system having a dispensing assembly 11, see D5, column 4, lines 44 to 52, and figures 1 and 2, that is commonly known as a "duckbill" delivery system as advanced by the appellant. The duckbill system is formed by a pair of arms, viz. two parallel frame members 43, pivotally attached to the sidewalls 17 of D5's baling chamber. In order to insert a quantity of wrapping material into

the baling chamber, the rotatably mounted frame members 43 of D5 comprise transverse upper and lower baffles, namely the upper and lower clamping members 45,46, respectively, for grasping wrapping material in the form of a net "n" at their tips, see figures 2 to 5 of D5. It is further undisputed that D5's duck bill delivery means together with its net supply roll is entirely arranged between the sidewalls 17 of D5's baling chamber before (upstream of) the crop inlet, and that D5 nowhere addresses wrapping around the edges of the cylindrical bale.

2.2 Thus, the subject-matter of claim 1 in any event differs from D5's agricultural round baler and its duckbill delivery system in that

- at least one of the baffles has a length greater than the width of the (baling) chamber; and

- the inserting means comprise encircling means for encircling an edge of said bale, said encircling means comprising a transition area positioned on the outer side of said sidewall (of the baling chamber) for insertion therein of said wrapping material by said delivery means.

2.3 The Board concurs with the respondent that the problem underlying these distinguishing features is to be formulated as how to improve D5's round baler in such a way that it allows net wrap to be placed over the edge of the round bale, cf. patent, paragraphs 0001 and 0007.

The Board adds that, when applying the "problem-solution-approach" in line with the established case law of the boards of appeal, the formulated problem

must not contain elements of, or point towards to, the claimed solution, to avoid an ex post facto analysis, cf. Case Law of the Boards of Appeal, 7th edition, 2013, I.D.4.3.1. Thus, the problem formulation advanced by the appellant, i.e. how to feed a wider net into D5's duck bill delivery system, does not conform to the required objective standard of the problem-solution approach, since it hints at an adaptation of D5's duckbill, which is, in fact, envisaged by means of the characterising features of claim 1 to enable over the edge wrapping.

2.4 As opposed to D5, document D2 concerns an industrial baler that allows wrapping material to be placed over the edge of the bale. This wrapping system is suitable for both variable chamber balers and fixed chamber balers, see D2, paragraphs 0004, 0006, and 0047.

However, the Board notes that D2 consistently teaches the skilled person to dispense the wrapping material ("Wickelmaterial 162") from a point located to the rear (i.e. downstream) of the bale chamber ("Ballenbildungs-kammer 56"), such that it runs below and along the bottom of the chamber before being directed upwards and entering the chamber between a single roll ("untere vordere Rolle 40") and the crop material itself, without passing over any pivotally attached elements. Cf. D2, paragraphs 0017, 0026, column 11, lines 5 to 15 and 31 to 36, and figures 1 to 3. This over the edge wrapping system is suggested as a particularly cost saving and effective solution, see D2, paragraph 0017.

2.5 Due to the different feed-in point and the consequential different arrangement of components of the delivery system of D2 vis-a-vis the bale chamber and its walls, when compared to that of D5, the Board

considers that the skilled person would view the two as alternative delivery mechanisms. Therefore, if the skilled person starting from D5 and faced with the problem of over the edge wrapping, were to look toward D2 he would at best consider replacing the complete duck bill delivery system of D5 by the advantageous bottom feed dispensing system of D2 as argued by the respondent. However, he would not as a matter of obviousness contemplate combining features of the two alternatives to form a new hybrid by adapting a duck bill system that operates entirely within the bale chamber's sidewalls to incorporate selected features of a system located outside the sidewall at a different feed in point. Nor does any of the remaining cited prior art hint at the use of duckbill delivery systems for over the edge feeding. D7, cited in this context, see figures 34 to 37, and the relevant passages in D7' shows introducing of wider wrapping material at the front end of the baler, again between a bottom roll and the bale, and is thus more akin to the system of D2.

2.6 Even if the skilled person were to consider adapting D5's duckbill delivery assembly based on aspects of D2, it is not self-evident how this should be done and indeed appears far from straightforward. For example, it is not clear, which elements or aspects he should adopt from D2 to properly design a "wider" duckbill, which in D5 is pivotally attached within the side walls and through the interaction of various components places the wrapping material physically between adjacent rolls directly onto the bale. Given the relative complexity of the many components that make up D5’s delivery system and which are all accommodated within the main side walls defining the bale chamber, it is thus not immediately clear to the Board how he should redesign the assembly so that the baffles then

extend beyond those side walls. The Board holds that any such modifications go well beyond routine design skills of the skilled person. Hence, assuming for the sake of the appellant's argument that the skilled person would take D2 into consideration to modify D5's duck bill system to deliver a wrapping material being wider than the bale width, in the Board's view, the skilled person would then not arrive at the subject-matter of claim 1 without inventive skill.

2.7 It follows from the above, that the subject-matter of claim 1 would not be obvious for the skilled person in the light of D5 and D2 (or D7). Whether or not D5 and D2 (or D7), respectively, disclose a pair of stationary adjacent rolls and a transition area positioned on the outer side of the sidewall (to insert the net "n" (or the film "F")), as is also required by claim 1 of the patent, thus can be left undecided by the Board.

2.8 As to the discussion of inventive step of claim 1 starting from D1 in the light of D2 (or D7) no sound argument has in fact been presented by the appellant, contrary to the requirements of Article 12(2) RPBA. However, the Board agrees with the opposition division's finding under point 3 of the impugned decision.

2.9 Therefore, claim 1 as granted involves an inventive step in view of the cited prior art, Articles 100(a) and 56 EPC.

3. In conclusion, the Board confirms the impugned decision's finding that the sole opposition ground of inventive step raised in the first instance does not prejudice the maintenance of the patent, Article 101(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated