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**Datasheet for the decision
of 26 September 2014**

Case Number: T 0030/12 - 3.2.01

Application Number: 03251125.5

Publication Number: 1338495

IPC: B62D49/06, A01G3/00,
A01G23/093, B62D55/075

Language of the proceedings: EN

Title of invention:

A track laying wood chipper, shredder or combined chipper and shredder

Patent Proprietor:

TURNER DEVELOPMENT LIMITED

Opponent:

Jensen Holzhackmaschinen GmbH

Headword:

Relevant legal provisions:

EPC 1973 Art. 54(2), 56

Keyword:

prior use - availability to the public (not proven) -
rehearing of a witness (no)
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

T 0472/92, T 0738/04

Catchword:



**Beschwerdekammern
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Chambres de recours**

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Case Number: T 0030/12 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 26 September 2014

Appellant: Jensen Holzhackmaschinen GmbH
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 December
2011 rejecting the opposition filed against
European patent No. 1338495 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: Y. Lemblé
D. T. Keeling
H. Geuss
P. Guntz

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the Opposition Division to reject the opposition against European patent No. 1 338 495.
- II. The patent was opposed under Art. 100(a), 100(b) and 100(c) EPC 1973. In the decision under appeal, the Opposition Division held, after having heard the witness S. Hansen, that the prior use relied upon by the Opponent, a wood chipper mounted on a chassis built in accordance with technical drawing A9 which was allegedly handed over to a member of the public (the company MBB), did not form part of the state of the art according to Article 54(2) EPC 1973 and that the subject-matter of the granted patent met the requirements for patentability having regard to the prior art documents cited by the Opponent.
- III. In its statement setting out the grounds of appeal the Appellant (Opponent) only pursued the opposition ground under Art. 100(a) EPC 1973. It referred to the following documents of the opposition proceedings

A3: WO-A-92/10390,

A4: DE-U1-94 06 572,

A5: US-A-3502165,

A7/A8/A12/A13: Bundle of documents comprising the Abstract of JP-A-2000335457 (A7) with computer translation of JP-A-2000335457 (A8), the Japanese Patent application JP-A-2000335457 (A12) with its English translation (A13), hereinafter referred to as A13

A9: Technical drawing "MBB 71.005.1" of the undercarriage of the wood chipper of the alleged prior use

and reiterated its objections of lack of novelty and inventive step.

IV. After his statement setting out the grounds of appeal, the Appellant filed with letter dated 17 April 2014 the following documents

A15: Photograph of trade-fair premise with an exposed wood chipper;

A16: Official Gazette of the Federal Republic of Germany, 1992, Part I, pages 2016 and 2017;;

A17: Decision of the German Patent and Trademark Office, file number 203 20 936 Lö/ 161/06;

A18: Decision of the German Federal Patent Court, file number 35W (pat) 451/08

and proposed that Mr Hansen and Mr Bölle be heard by the Board as witnesses in support of the submission that a wood chipper according to the photograph A15 was exposed by MBB at the trade-fair "Ligna Hannover 1993" from the 19th to the 25th May 1993 and was equipped with the undercarriage according to the technical drawing A9.

V. With letter dated 21 August 2014, the Appellant additionally filed document

A19: DE-U1-299 16 346.

VI. Oral proceedings were held on 26 September 2014.

The Appellant (Opponent) requested that the decision to reject the opposition be set aside and that the patent be revoked. The Appellant clarified that, while reference had been made to other prior uses in the written proceedings on appeal, only the prior use based on A9 was relied upon as prior art. Regarding this prior use, it requested that the witness Hansen be again heard to clarify his testimony before the Board.

The Respondent (Patent Proprietor) requested the dismissal of the appeal (maintenance of the patent as granted).

VII. Claim 1 as granted reads as follows (delimitation of features made by the Opposition Division):

- a A wood chipper, shredder for brushwood or combined wood chipper and shredder for brushwood (10) having a body (12),
- b a first track laying assembly (26) and a second track laying assembly (28)
- c spaced apart from the first track laying assembly in a direction transverse to the running direction of the track to define a track distance,
- d each track laying assembly being carried by a respective arm (32, 34),
- e the arms being moveably mounted to the body, and
- f actuation means (36, 36a, 38, 38a) for moving the respective arms so as to move the respective track laying assemblies relative to the body,
- g the movement of the assemblies relative to the body being such that the ground clearance of the body and the track distance between the track laying assemblies are adjustable, characterised in that

h each arm is arranged relative to a notional
horizontal plane of the body at a fixed angle
i in a range of 10-60 degrees relative to the
notional horizontal plane,
j the arms being mounted to the body in a slideable
fashion so as to effect the movement.

VIII. The Appellant's submissions may be summarised as follows:

The Opposition Division wrongly dismissed the prior use A9. The Opposition Division based its decision that the alleged prior use A9 was not sufficiently proven on grounds which contradicted the testimony of the witness, Mr Hansen. The conclusion of the Opposition Division that a wood chipper according to the drawing A9 was developed with MBB under a tacit agreement to secrecy or under conditions of confidentiality were in contradiction with the testimony of Mr Hansen.

Although the witness Mr Hansen made extensive explanations proving that the prior use according to A9 effectively took place, the Opposition Division had nevertheless decided against this testimony and apparently, considered it not credible. There was, however, no reason to question the credibility of the witness. Documents A15 to A18 were cited to further underpin the credibility of Mr Hansen. These documents could not be introduced at an earlier point in the proceedings because they were a reaction to the belated issuance of the minutes of the hearing of Mr Hansen, the minutes having been issued by the Opposition Division only in the course of the appeal proceedings on 5th June 2014. These documents were also very relevant, as they demonstrated that a wood chipper of the kind shown in the drawing A9 was in existence before A9 was handed over to MBB and that, as a

consequence, the information contained in A9 could not be regarded as confidential.

Photograph A15 showed the wood chipper which was exposed at the trade-fair "Ligna Hannover 1993". This photograph did not represent a new allegation of prior use, but only further substantiated the already submitted facts that a wood chipper having the features contained in the drawing A9 was in existence even before A9 was handed over to MBB, i.e. that the information contained in A9 could not be under secrecy. Document A16 was only a substantiation of the undisputed and obvious fact that the fair "Ligna Hannover 1993" actually took place in 1993. Documents A17 and A18 were decisions of the German Patent and Trademark Office, respectively of the German Federal Patent Court, in proceedings to which the Patentee had himself been a party. These documents were known to the Patentee and, for this reason, could not be a surprise to it in the present proceedings. It was furthermore requested that the Board again hear Mr Hansen. His further testimony would clarify the meaning of the statements made before the Opposition Division.

The subject-matter of claim 1 as granted lacked novelty over document A3. The Opposition Division wrongly considered that the features h, i and j were not disclosed in A3. There was indeed in Fig. 8 of A3 a sliding arm 5 which was mounted to the body 1 of the chipper in a slidable fashion (see telescopic elements 11,12 of the arm 5, mentioned at the bottom of page 6). The patentee interpreted the word "fixed" in feature h such that both a ground clearance adjustment and a track width adjustment was reachable only by a telescoping of the arms 5 and without change of the angle of the arm relative to a notional horizontal plane. This was exactly what was implemented in A3. As

shown in Fig.8 of A3, the arm 5 was mounted to the body in a slidable fashion so as to effect, by a telescopic displacement of its elements 11,12, not only an adjustment of the ground clearance but also an adjustment of the track distance. The latter was due to the compulsory guiding function of the link 7 which cooperated with the parallelogram mechanism 16 shown in Figures 6 and 7 and described on page 9 of A3. During the displacement, the once set angle between the arm 5 and a fictitious horizontal plane of the vehicle during operation could be fixedly held, e.g. at about 32° as shown in Fig. 3.

The subject-matter of claim 1 was obviously derivable from the prior art described in paragraph [0003] of the patent specification in combination with the teaching of document A13, if it were considered that the chipper according to claim 1 differed from that prior art by the features h, i and j and by the fact that the ground clearance of the body was also adjustable (part of feature g). Under consideration of the effects achieved by these distinguishing features, the problem to be solved could be formulated as to provide the known chipper with an increased ground clearance in addition to the gauge widening which was already achievable by the horizontal sliding motion of rams carrying the track assemblies (cf. paragraph [0007] of the patent specification). The person skilled in mechanical engineering and confronted with this problem would consult the relevant technical field and come across document A13 which referred to a work vehicle and its ability to be driven on uneven terrain (see [0001] of A13). In order to provide the necessary stability and ground clearance for travelling across difficult terrain (see [0003] of A13), the vehicle of A13 proposed telescopic arms which were inclined relative

to a notional horizontal plane of the body of the vehicle (see Fig. 1 and 2). On the basis of this teaching, the skilled person would design the rams of the prior art as inclined telescopic arms at the bottom of the vehicle body. A13 did not mention any particular value for the inclination's angle of the arms. Claim 1 required that the angle be in a range of 10-60 degrees. This was not a deliberate choice which would be associated with unforeseen effects and/or benefits. Feature i of claim 1 therefore simply meant that the angle could be chosen such as to be adapted to the various operating circumstances. It would be usual craftsmanship from the skilled person to select the adapted value for that angle depending on the operating circumstances. Thus, there was nothing inventive in claiming a range of 10-60 degrees.

In a similar manner, the subject-matter of claim 1 was obviously derivable from the prior art described in paragraph [0003] of the patent specification in combination with the teaching of document A4. The skilled person who started from the known wood chipper with its horizontally sliding rams which carried the track assemblies to provide for adequate gauge widening and who searched for means enabling an increase of the ground clearance, would realise, when regarding at the inclined hydraulic cylinder 1 which adjusted at the same time the track width and the ground clearance (cf. Fig.1 of A4), that the problem could be solved by departing from the horizontal for the direction of action of the known hydraulic rams and inclining that direction as suggested by the direction of action of the cylinder of Fig. 1 of A4.

Furthermore, the subject-matter of claim 1 lacked an inventive step in view of the combination of the prior

art described in paragraph [0003] of the patent specification and document A5, or in view of the teaching of document A4 and common general knowledge, or in view of the combinations of documents A3 with A13 or the combination of A4 with A3 and A13.

IX. The counter arguments of the Respondent may be summarized as follows:

Invoked prior use of a wood chipper mounted on a chassis built in accordance with technical drawing A9

Referring to the detailed minutes of the witness hearing, the witness had no clear recollection of whether the drawing A9 was passed to MBB (bottom half of page 4/9). Furthermore, the witness admitted that he had not been involved in the drafting of the drawing A9 (page 3/9). The witness later confirmed in response to a question from the Respondent's representative, that the drawing A9 had remained within Peter Jensen (page 8/9). In short, the witness could not even definitely state whether A9 was passed to MBB as he had not had first-hand knowledge of this. Further, the witness confirmed that Peter Jensen and MBB were collaborating on a prototype (pages 7/9 and 8/9), which strongly suggested that, if the document A9 was shared with MBB at all, it would have been under conditions of confidentiality as asserted by the Opposition Division in section 2.3.3 of the Reasons for the decision.

Documents A15 to A18 and new offer to hear the witness Hansen

New evidence A15 to A18, cited for the first time with the letter dated 17 April 2014 by the Appellant, should not be admitted into the proceedings at this late

stage. These documents all had been in the possession of the Appellant since 2009 at the latest. There was no reason for this very late submission of evidence. In any case, A15 to A18 were not able to prove that the drawing A9 was available to the public. The offer to hear again Mr Hansen should also be rejected since the witness was given ample opportunities to explain what he knew.

Novelty over A3

Claim 1 was novel over A3 because A3 did not disclose the features h, i, and j, identified in Section 2.4.1 of the decision of the Opposition Division. With respect to features h and i, the arms 5 were not fixed at all, since they were rotatable about the pivot axis 6, as shown by the difference between Fig. 2 and 3. With respect to feature j, the sliding of the arms did not affect "the movement" defined earlier in claim 1 as "...the movement of the assemblies relative to the body being such that the ground clearance of the body and the track distance between the track laying assemblies are adjustable...". The claim required that in order to effect "the movement", the sliding motion had to adjust both ground clearance and transverse track distance. In A3, the track distance was adjustable by the parallelogram mechanism 16 of Figures 6 and 7 which was wholly separated from the telescopic movement. A3 also did not disclose a chipper, nor did it disclose a track laying assembly within the meaning of claim 1.

Inventive step over a known chipper according to para. [0003] of the patent in suit and A13

The skilled person would not refer to A13 when faced with the objective technical problem of traversing

rough ground and providing stability in a known chipper. A13 was concerned with large, manned earth-moving equipment. Chippers were small unmanned devices for arboreal work. There was no reason why the skilled person would consult such a remote technical field for inspiration. Notwithstanding this, A13 was concerned with keeping the cab 4 at horizontal level for the comfort of the operator (cf. [0003] of A13). A13 was silent on the relationship between leg width and ground clearance. The entire document was concerned with adjustment of the legs for cab levelling. The skilled person, faced with a problem associated with a chipper would not look to a levelling solution for a manned excavator. Furthermore, even if the features of A13 had been imported into a known chipper, the legs were not within the angle range of claim 1 (i.e. 10 to 60 degrees). Therefore the skilled person would have to make a further modification to the combined apparatus to arrive at claim 1.

Since also the other lines of argumentation submitted by the Appellant were not convincing, the subject-matter of claim 1 involved an inventive step.

Reasons for the Decision

1. The appeal is admissible.
2. Alleged public prior use of a wood chipper mounted on a chassis built in accordance with technical drawing A9
 - 2.1 Availability to the public

- 2.1.1 As evidence adduced for proving the invoked public prior use in opposition proceedings, the Appellant relied upon the drawing A9 and the testimony of Mr Hansen, made before the Opposition Division. As noted by the Opposition Division and the Respondent (see point 2.3.5 of the Reasons for the decision), the nominated witness not only explained the circumstances of the prior use but also supplied technical facts which were not directly supported by document A9.
- 2.1.2 The minutes of the hearing of the witness, Mr. Hansen, were sent to the parties with letter of 5 June 2014. This testimony was recorded verbatim and directly, using technical means. Questioned by the Opposition Division with respect to the alleged transmission of the drawing A9 to the company MBB, a client of the company Peter Jensen for which Mr Hansen worked as employee, the witness explicitly admitted that he had no knowledge of when, or to whom the drawing A9 was handed over (see the lower part of page 4/9 of the detailed minutes of the witness hearing: "Das weiß ich nicht mehr"). Moreover, Mr Hansen did not draft the drawing A9 himself. The witness stated that it was Mr Carstensen, another employee of the company Peter Jensen, who drafted A9. In fact, Mr Hansen did not testify that he experienced first hand the actual handing over of A9 but only stated what he thought had happened ("ich denke auch, dass die Firma MBB eine Kopie davon erhalten hat" see page 4/9 of the minutes of the witness hearing). The statement of Mr Hansen must therefore be regarded as the expression of an opinion, inference, impression, or conclusion drawn from his experience as employee of the company Peter Jensen rather than a statement related to the experience of a concrete fact. As a consequence, the Board cannot find that the Opposition Division was

mistaken when it came to the conclusion that the testimony of Mr Hansen is not sufficient proof of the fact that document A9 was effectively handed over to MBB, and thus (assuming MBB was part of the public) made available to the public before the priority date of the patent-in-suit. Thus, the Board has no reason to set aside the evaluation of evidence by the Opposition Division and to come to a different conclusion.

2.1.3 The issue of whether there was or not an agreement on confidentiality between the companies MBB and Peter Jensen becomes irrelevant as this issue would only play a role in case it would be proven that A9 was effectively handed over to MBB (if there was an agreement on confidentiality then MBB was not part of the public).

2.2 Documents A15 to A18 and the request to rehear Mr Hansen

2.2.1 At the oral proceedings before the board the Appellant declared that the only prior use it relied upon was that based on document A9 being handed over to MBB and that documents A15 to A18 had been filed for the sole purpose of supporting the credibility of the witness Mr Hansen, in particular as regards the statement that there was no agreement on confidentiality between the companies MBB and Peter Jansen.

2.2.2 In view of the explicit statement of the Appellant at the oral proceedings before the board that it was not intended with A15 to A18 to make further allegations of public prior uses, there is no need for the Board to investigate the appellant's allegations of prior uses based on these documents that were made in writing. In particular, there is no need for the Board to hear the

witness Bølle, who was offered to confirm that a device according to A9 and as shown in A15 was presented at a fair in 1993.

2.2.3 Moreover, documents A15 to A18 are irrelevant as regards the issue of the credibility of the witness. As a matter of fact, the above conclusion as regards the absence of proof of A9 being handed over to MBB is reached by taking the relevant passages of the testimony at their face value. As regards the issue of confidentiality, it is irrelevant for the reasons explained above.

2.2.4 As regards the request for a renewed hearing of the witness Hansen it must be noted that the Appellant does not request that the witness be heard again to supplement his testimony by corroborating facts but only to clarify the statements made before the Opposition Division. However, the statements made by the witness as to whether document A9 was handed over to MBB are clear and unambiguous (see above). Under these circumstances, the Board judges that the request is not justified. The Appellant also submitted that the witness, if heard, would have had the opportunity of explaining how his previous statements should be interpreted. However, the relevant statements do not leave room for interpretation (see above). Moreover, the professional representatives of both parties were given the opportunity to question the witness in oral proceedings before the opposition division, whereby the opponent's representative could have asked the witness to clarify relevant statements, should the need arise. The request to rehear Mr Hansen is therefore rejected.

3. Novelty

It was disputed, *inter alia*, whether document A3 discloses the features h, i and j of claim 1. This point is to be assessed by construing the contested features in connection with the other features of the claim. For the Board the objection of lack of novelty relies on an interpretation of the claim which does not make an objective assessment of all the claimed features and of their technical relationship. This applies in particular to the Appellant's interpretation of the term "fixed angle". In the Board's view, when giving the normal meaning to the terms of the claim, claim 1 is understood by the skilled reader as defining arms arranged at a predetermined angle which cannot be varied (i.e. fixed), the angle being in a range of 10 to 60° degrees. This reading of claim 1 is confirmed by the description and the drawings (see e.g. Figures 2 and 3). Accordingly, the Board judges that claim 1 cannot be read as defining that the arms can be arranged at any angle in the range of 10 to 60° degrees and then fixed at an angle of choice. Since in A3 the arms 5 are at an angle with respect to the horizontal plane which can be varied, the arms are not arranged at a fixed angle in accordance with the definition of the claim. Already for this reason, the Board shares the conclusion of the Opposition Division that the subject-matter of claim 1 is novel over the content of document A3.

Moreover, even if the Board were to follow Appellant's interpretation of the term "fixed" in feature h, it cannot share the conclusion of the Appellant. There is nothing in document A3 which indicates that the mounting of the telescopic arm 5 in a slidable fashion is such that it is possible to effect a relative movement of the assembly 14 such that the ground clearance of the body **and** (emphasis by the Board) the

track distance between the assemblies 14 are adjustable, while fulfilling feature h (arm at fixed angle). According to pages 9-10 of A3, the length variation of the pivot arm 5 is controlled by power member 13, the lateral displacement of the wheel is controlled by the power member 25 acting on the parallelogram mechanism 16 and the pivoting action of the pivot arm 5 is controlled by the power member 7. In A3, these power members 7, 13 and 25 operate separately and independently from one another. In connection with the construction shown in Fig. 8 of A3, there is no indication that, if a telescopic extension of the sliding arm 5,11,12 is combined with a lateral displacement of the wheel, the arm 5 remains at a fixed angle relative to the notional horizontal plane. The argument that a constant length of the power link 7 would impose a fixed angle on the arm, is not supported by the content of A3. A fixed angle would require a very specific compensation movement of at least one of the power members 7,13. Such a compensating movement is not disclosed in A3. Thus, features h, i and j are not disclosed in A3.

4. Inventive step

During oral proceedings the representatives of the Appellant limited their pleading to the combinations of a known chipper with A13 and a known chipper with A4.

4.1 Inventive step over a known chipper according to paragraph [0003] of the patent specification and A13

4.1.1 Claim 1 has been delimited with respect to the prior art described in paragraph [0003] of the patent specification, which is considered by the Board to represent the closest prior art. Concerning the

formulation of the objective problem, the Board takes the view that it is correctly formulated in the patent specification: "to improve the known wood chipper" (paragraph [0005]). That the improvement could concern the ground clearance might well be one of a multiplicity of aspects the skilled person could take into consideration. There is, however, no objective element in the prior art allowing the conclusion that the ground clearance is a specific aspect that needs to be improved. Accordingly, the formulation of the problem as made by the Appellant, which refers specifically to the ground clearance, introduces an element of hindsight as it includes a pointer to the solution.

4.1.2 Document A13 itself refers to a work vehicle having a frame on which is installed a rotating body provided with the work device, e.g. a hydraulic shovel, and a driver compartment. In order to solve the problem of working with and driving this vehicle on uneven terrain, which includes sharp slopes and irregular ground surfaces, as well as improving the operability and the comfort of the operator (see paragraphs [0003] and [0004] of A13), this document proposes to arrange, at the bottom part of the chassis, four telescopic arms each carrying a wheeled driving device (see claim 1).

4.1.3 Firstly, even if the problem to be solved was to increase the ground clearance of the known chipper, there are obvious and conventional solutions to this problem, such as increasing the diameter of the driving wheels of the track laying assemblies, which would not require the skilled person to look in the field of work vehicles performing earth moving (cf. [0001] of A13) in order to solve this problem. Therefore, it is questionable whether the skilled person would even

consider A13. In any case, the Board takes the view that there is no straightforward way of applying the teaching of A13 to the above-mentioned known wood chipper such as to arrive at the chipper of claim 1. Features b and c of claim 1 specify that the wood chipper has two track laying assemblies which define a track distance in a direction transverse to the running direction of the track. Because of the possibility of adjusting individually and separately the extended position of the driving device at the extremity of each of the four telescopic arms (paragraph [0006] of A13), there is no such track distance described, or even clearly definable, in document A13. For the same reason, there is also no clearly definable ground clearance. A13 is silent on the relationship between leg width and ground clearance. Although this document discloses a vehicle in which the chassis can be raised at various distances from the ground, it is still mainly concerned with adjustment of the legs for levelling the operator's cabin. The skilled person would not find in the levelling for the platform of the manned excavator of A13 a direct and obvious application to a chipper. In particular, there is no hint for the skilled person that the levelling of the platform could be used advantageously in a wood chipper. In fact, the levelling of the platform would rather be regarded as an unneeded and superfluous feature for a wood chipper.

Furthermore, even if some features of A13 were imported into the known chipper, the legs are not within the angle range of feature i of claim 1 (i.e. 10 to 60 degrees) and A13 is silent about their inclination to the horizontal plane of the platform. Therefore the skilled person would have to make a further modification to the combined apparatus to arrive at the chipper of claim 1.

4.2 Inventive step over a known chipper according to paragraph [0003] of the patent specification and A4

The teaching of A4 is to mount the track assembly on a parallelogram swinging mechanism 2 actuated by a power element 1. The carrying function for the track assembly is taken over by the parallelogram mechanism and the power element 1 does not remain at a fixed angle during actuation (feature h of claim 1). The implementation of the teaching of A4 in the known chipper would lead to a chipper having track assemblies as shown in A4, which does not correspond to a wood chipper in accordance with claim 1 of the patent in suit, in particular because the modified wood chipper would not be provided with arms for carrying the track assemblies that are arranged at a fixed angle.

4.3 Inventive step starting from A4 or A13

The Board shares the view of the Opposition Division that A4 or A13 would clearly not form a suitable starting point from which to arrive at the present invention because they do not disclose a wood chipper. In fact, A4 relates generally to a chassis, in particular for a working apparatus such as a movable crane (see page 1 and Fig. 2), and A13 relates to a bulldozer or hydraulic excavator (see [0002] of A8). Considering that these documents do not render obvious the subject-matter of claim 1 when starting from the appropriate prior art (a known wood chipper, see above), A4 and A13 *a fortiori* do not render obvious the claimed subject-matter when they are taken as starting points.

- 4.4 Inventive step over a known chipper according to paragraph [0003] of the patent specification and document A5

The Board also shares the conclusion of the Opposition Division that starting from a known chipper, confronted with the objective technical problem of traversing rough ground, the skilled person would not look to the automobile of A5. A5 is concerned with switching between engine powered and electrically powered wheels. It does not teach anything about ground clearance, and in effect the ground clearance of the vehicle does not appreciably change moving from one set of wheels B' to the other C' (cf. Figs. 4 and 7). Instead, the document teaches to lift wheels out of contact with the ground.

- 4.5 Inventive step starting from A3

A3 already solves the problem of traversing rough ground by increasing ground clearance as well as track width. Thus, there is no incentive for the skilled person to make further modifications in this respect. In particular, the skilled person would not consider arranging the arms 5 at a fixed angle, as this would impair the desired flexibility of the apparatus and would thus be against the main teaching of A3 (see page 2, second and third paragraphs), or would require drastic modifications of the known apparatus which are not rendered obvious by the prior art.

- 4.5.1 As regards document A19, the Appellant explicitly stated during the oral proceedings that it had been filed as a precaution only, in the event that the respondent contested that a device as described in paragraph [0003] of the patent in suit was not prior art. Since this was not contested by the respondent

there is no need for the Board to consider A19 for the issue of inventive step. In any case, considering that the Appellant did not argue that A19 would be more relevant than the prior art described in paragraph [0003] of the patent in suit, even if it were taken into consideration, it is not apparent how A19 might lead to different conclusions than the above.

4.5.2 The Board therefore comes to the conclusion that the subject-matter of claim 1 involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated