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**D E C I S I O N**  
of 6 October 1994

**Case Number:** T 0717/92 - 3.2.4

**Application Number:** 82201644.0

**Publication Number:** 0083460

**IPC:** A01D 75/20

**Language of the proceedings:** EN

**Title of invention:**  
Agricultural implement

**Patentee:**  
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**Opponent:**  
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FELLA-WERKE GMBH  
Maschinenfabriken Bernhard Krone GmbH

**Headword:**  
Implement/VAN DER LELY

**Relevant legal norms:**  
EPC Art. 56, 123

**Keyword:**  
"Inventive step (yes)"

**Decisions cited:**  
T 0219/83

**Catchword:**  
-

**Case Number:** T 0717/92 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 6 October 1994**

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**Decision under appeal:** Decision of the Opposition Division of the European Patent Office dispatched on 10 June 1992 revoking European patent No. 0 083 460 pursuant to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** P. Petti  
J. P. B. Seitz

## Summary of Facts and Submissions

I. The European patent No. 83 460, whose proprietor is the Appellant, was opposed by Respondents I to IV based on Article 100(a) EPC. The patent was revoked by the Opposition Division in its decision dispatched on 10 June 1992.

The decision of the Opposition Division was based on an independent Claim 1 amended with respect to Claim 1 as granted.

II. On 28 July 1992 an appeal against this decision and a statement setting out the grounds of appeal were filed by the Appellant. On the same day, the appeal fee was paid.

III. Oral proceedings were held on 6 October 1994.

During the oral proceedings the Appellant filed an amended Claim 1 whose wording is as follows:

"1. An agricultural implement comprising a frame (2, 15) connectable to a tractor and constituted by an inner main frame beam (2) and further outer frame beams (15) pivotable with respect to said main frame beam (2) about pivot shafts (14) substantially in the direction (A) of operative travel, which main frame beam (2) and further frame beams (15) extend in a first, operative position in a substantially horizontal direction transverse to the direction (A) of operative travel, the implement further comprising tractor drivable inner and outer rake members (10), each of the rake members (10) comprising a plurality of spokes (12) to the ends

of which are secured groups of tines (13), the inner rake members being coupled to said main frame beam (2), the outer rake members being coupled to said further frame beams (15), and with said further frame beams (15) pivotable upwardly around said pivot shafts (14) in a second, transport position, the inner and outer rake members (10) in the first position being rotatable about upwardly directed rotary shafts (11), the implement still further comprising for each outer frame beam (15) at each side of the main frame beam (15) a protective member (22) which, with respect to the direction (A) of operative travel, protects in said first position of said rake members e.g. persons from contact with at least a foremost part of a rake member, connecting means (23, 24, 25, 26, 32, 30, 29) are provided between each protective member (22) and its corresponding outer rake member (10) to permit that said protective members (22) be moved into another position by moving the outer rake members into the second position, characterized in that each of the protective members (22) is rigid and embraces at least the foremost half of a respective rake member and that adjusting means (36, 37), different from the connecting means are provided, which limit the movement of the protective members caused by the outer rake members, such that the movement of the protective members is modified with respect to the movement which these would have if no adjusting means were provided, and such that the position of the protective members (22) relative to the respective outer rake members is automatically changed by moving the outer rake members hydraulically into the second position, the other position of the protective members (22) being forward and at least partially laterally outboard of the respective outer

rake members, whereby protection of e.g. persons from contact with at least a foremost part of the outer rake member is maintained."

IV. The following documents were mentioned in the appeal proceedings:

- D1: DE-U-1 998 710;
- D2: FR-A-1 480 616;
- D2': US-A-3 469 378 (corresponding to D2);
- D3: DE-A-1 482 104;
- D4: FR-A-2 063 497;
- D5: DE-A-3 031 837;
- D6: DE-B-2 127 739, submitted by Respondent I during the oral proceedings.

V. The Appellant essentially argued that the subject-matter of Claim 1 involved an inventive step with respect to document D3 which was considered as representing the closest prior art.

The Respondents essentially contested the Appellant's arguments by arguing that the subject-matter of Claim 1 did not involve an inventive step with respect to document D3 having regard to the content of documents D4, D2 and D1.

VI. The Appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

Claims: 1 to 3 filed during the oral proceedings.  
Description: pages 1 to 2 filed during the oral proceedings; column 1, lines 54 to 64 and column 2,

line 8 to column 6, line 62 of the patent as granted.  
Figures 1 to 7 of the patent as granted.

VII. The Respondents requested that the appeal be dismissed.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Feature analysis of Claim 1

Claim 1 is directed to an agricultural implement having the following features:

- A the implement comprising a frame;
- A1 the frame is connectable to a tractor;
- A2 the frame is constituted by an inner main frame beam and
- A3 by further outer frame beams;
- A31 the further frame beams are pivotable with respect to said main frame beam about pivot shafts substantially in the direction of operative travel;
- A4 the main frame beam and further frame beams extend in a first operative position in a substantially horizontal direction transverse to the direction of operative travel;
- B the implement further comprises tractor drivable inner and outer rake members;
- B1 each of the rake members comprises a plurality of spokes to the ends of which are secured groups of tines;



- B2 the inner rake members are coupled to said main frame beams;
- B3 the outer rake members are coupled to said further frame beams;
- B4 the further frame beams are pivotable upwardly around said pivot shafts in a second transport position;
- B5 the inner and outer rake members in the first position are rotatable about upwardly directed rotary shafts;
- C the implement still further comprises for each outer frame beam at each side of the main frame beam a protective member;
- C1 the protective members, with respect to the direction of operative travel, protects in said first position of the said rake members e.g. persons from contact with at least a foremost part of a rake member;
- C2 connecting means are provided between each protective member and its corresponding outer rake member to permit that the protective members be moved into another position
- C21 by moving the outer rake members into the second position;
- C22 each of the protective members is rigid and embraces at least the foremost half of a respective rake member;
- C3 adjusting means, different from the connecting means are provided;
- C31 the adjusting means limit the movement of the protective members caused by the outer rake members such that the movement of the protective members is modified with respect to the movement which these would have if no adjusting means were

provided, and such that the position of the protective members relative to the respective outer rake members is automatically changed by moving the outer rake members into the second position;

C32 the outer rake members are moved into the second position hydraulically;

C4 the other position of the protective members is forward and at least partially laterally outboard of the respective outer rake members;

C41 whereby protection of e.g. persons from contact with at least a foremost part of the outer rake member is maintained.

### 3. Admissibility of amendments

3.1 Claim 1 according to the Appellant's request has been amended with respect to Claim 1 as granted by the addition of the features A2, A3, A31, A4, B, B1, B2, B3, B4, B5, C, C1, C2, C21, C22, C3, C31, C32, C4 and C41.

The added features can unambiguously be derived from the originally filed drawings and from the translation in the English language of the original application (cf. Article 14(2) EPC), see particularly the drawings (Figures 1 to 7) and those parts of the translated description (page 2, line 30 to page 3, line 37; page 4, lines 21 to 25; page 5, line 26 to page 6, line 8; page 9, lines 8 to 24 and 31 to 35) which correspond to the following parts of the patent specification: column 2, lines 17 to 65; column 3, lines 22 to 27; column 4, lines 1 to 22; column 6, lines 7 to 24 and 31 to 35.

- 3.1.1 Respondent IV argued that feature C22 was not originally disclosed in so far as the protective members were not explicitly described in the original application as being "rigid".

The Board is of the opinion that the rigidity of the protective members is implicitly disclosed in the original documents which define the protective member as bracket-shaped (see particularly the translation of the original description, page 6, lines 2 to 5 corresponding to column 4, lines 15 to 19 of the patent specification) and which show in the drawings (Figures 1 and 7) a bracket indicated with the reference sign 22.

- 3.1.2 Respondents II to IV argued that feature C31 was not originally disclosed in so far as Claim 1 does not indicate that the adjusting means limit the movement of the protective members only after these have reached a certain position and that the protective members are urged into their second position by a resilient force. Respondents II to IV suggested that feature C31 be further amended by introducing into its wording the expression "after these have reached a certain position" as well as a statement relating to the "resilient force".

The Board is of the opinion that feature C31 represents a more precise definition of the term "adjusting means" which was already present in Claim 1 as granted. A basis for such a definition can be found in the original application, see particularly the translation of original description, page 9, lines 31 to 35

(corresponding to column 6, lines 31 to 35 of the patent specification) and Figure 7.

The expressions whose introduction into the wording of feature C31 is suggested by the Respondents represent features which would in view of the cited prior art unduly further limit the scope of Claim 1.

3.2 Claims 2 and 3 substantially correspond to Claims 2 and 3 as granted.

3.3 The amendments of the introductory part of the description and the excision of Figures 8 to 10 of the patent as granted as well as of the detailed description of the embodiments according to these figures constitute the adaptation of the description and the drawings to the new claims.

3.4 The amendments therefore do not infringe the requirements of Article 123 EPC.

#### 4. *Novelty*

The subject-matter of Claim 1 is novel with respect to the cited prior art. In fact, novelty has not been disputed.

#### 5. *The closest prior art*

The Board, in agreement with the parties, considers that the embodiment according to Figure 5 of document D3 represents the closest prior art.

#### 6. *Problem and solution*

6.1 The closest prior art discloses an agricultural implement having the features specified in the preamble of Claim 1. In particular, it describes (see the embodiment according to Figure 5) a hay making machine in which protective members associated to the outer frame beams 18 and 19 are constituted by rigid brackets 14 and by flexible elements 20. Each of the rigid brackets 14 embraces the side half of and, thus, extends over a forward quarter of the outermost rake member; the flexible elements 20 extend, in the working position of the implement, between the rigid brackets 14 of the outer frame beams 18 and 19. In the transport position of the implement, in which the relative position of each rigid bracket 14 with respect to its associated outer frame beam does not change, the flexible elements 20 assume a pending position between the rigid brackets 14. While in the working position of the implement a person standing at the front or at the side of the outermost rake members can be prevented from contacting the tines, in the transport position of the implement, neither the rigid brackets nor the flexible element may ensure that a person standing at the front or at the side of the outermost rake members is prevented from contact with a foremost portion of the outer rake members.

6.2 The subject-matter of Claim 1 differs from this closest prior art by the features specified in the characterising portion of the claim.

The main effect obtained by the characterising features is clearly described in the patent specification and also specified in Claim 1 (features C4 and C41), namely that persons located at the front or at the side of the

travelling combination of tractor and hay-making machine are protected from contact with the tine ends of the outermost rake members.

6.3 Therefore, the problem to be solved is to improve the agricultural implement with respect to its protection performance in its transport position.

6.4 The Board is satisfied that this problem is solved by the combination of features recited in Claim 1.

7. *Inventive step*

7.1 The solution according to Claim 1 is based on the idea of providing adjusting means, different from the connecting means which positively forces the protective member to be moved together with the rake member of the implement during the movement of the rake member towards its transport position, which (adjusting means) permit that the protective member, due to a forced deviation by the adjusting means from its otherwise movement, continues to ensure protection when the rake member is brought into the transport position.

7.2 Document D2 (as well as its corresponding US patent D'2) concerns a mowing machine (see particularly the embodiment according to Figures 12 to 14) in which a support beam 1 carries four cutting discs which are covered and thus protected by a steel cap 146 connected not only to support beam 1 in parallelogram fashion by means of links 147 and 148 but also to a support arm 141. The support beam 1 is connected to the tractor by means of an articulated linkage comprising said support arm 141 which can pivot with respect to the tractor, a

pivoting arm 149 linked to the support arm 141 and to the steel cap 146, the steel cap 146, and the links 147 and 148 so that the support beam 1 carrying the cutting discs can move from a working position in which it lies horizontally into a transport position in which it is arranged vertically. During the movement from the working to the transport position, the parallelogram formed by the support beam 1, the links 147 and 148 and the steel cap 146 is flattened with the help of the pivoting arm 149 such that it can be said that the position of the steel cap 146 relative to the support beam 1 is changed. The technical effect obtained by this construction is the reduction of the space occupied by the machine in the transport position (see particularly page 7, left-hand column, lines 19 to 23).

Document D1 (see particularly the embodiments according to Figures 1 and 4) also concerns a mowing machine in which a support 6, 6' for the cutting discs ("Mähwerk"), a protection bracket 7, 7' ("Schutzbügel") and a support arm 5, 5' ("Auslegearm") which is pivotable with respect to the tractor are connected to each other, such that the position of the bracket 7, 7' relative to the support 6, 6' is changed by moving the support arm from the working position to its transport position. The technical effect obtained by this construction is the reduction of the space occupied by the machine in the transport position (see particularly page 1, last paragraph, 2nd and 3rd sentences).

Both documents D1 and D2 are concerned with the problem of reducing the space occupied by the machine in its transport position. The problem of improving the protection performance of the mowing machine in its

transport position is mentioned in neither document D2 nor document D1.

It is true that in the mowing machine according to either document D2 or document D1 the position of the protective member relative to the cutting discs is changed by moving the cutting discs in their transport position. However, this relative movement is not caused by a separate, additional means but by the normal linkage connecting the protective member to the support arm of the cutting discs.

Therefore, neither document D2 nor document D1 suggests the solution, in so far as these documents do not describe additional adjusting means as defined in the characterising portion of Claim 1.

- 7.2.1 According to the analysis of document D2 made by the Respondents, the articulated parallelogram formed by the support beam 1, the links 147 and 148 and the steel cap 146 is to be considered as an adjusting means which permits that the movement of the steel cap 146 be modified with respect to the movement which this would have if no adjusting means were provided. In particular, Respondent III compared the links 147 and 148 of the mowing machine according to D2 with the adjusting means according to Claim 1.

Such a comparative analysis of the prior art with respect to Claim 1 is not correct and moreover based on an ex-post facto analysis. It is clear from the present Claim 1 that the adjusting means are **different** from the connecting means. Indeed, connecting means between the support beam on the one hand and the covering steel cap



146 on the other hand, link these two elements such that a movement of the support beam operates an unequivocally defined movement of the covering steel cap. In the embodiment according to Figures 12 to 14 of document D2, it is obvious that the elements 141, 149, 147 and 148 form part of that linkage needed to have a technically relevant and workable connection between support beam and covering steel cap to permit their common movement. Without the elements 149 or the elements 147 to 148 however there would not seem to be a technically relevant and workable connection, so that the connection between support beam and covering steel cap as represented in the above-mentioned figures is for a person skilled in the art a normal technical entity which necessarily has **all** its constituting features, and which generates a normal uniform movement from a starting to an end point for each of these elements. A forced deviation from an unequivocally defined movement is not present here, so that it cannot be stated that adjusting means in the meaning of the patent in suit are present in document D2.

- 7.2.2 The same reasoning applies for the connection between the support 6, 6' and the protection bracket according to document D1.
  
- 7.3 Document D4 (see particularly the embodiment according to Figures 1 to 5) discloses a hay-making machine provided with rake members 8 having pivoting tines and with pivoting protective brackets 10. In order to bring the machine into the transport position, the outermost tines of the rake members and the protective bracket are pivoted upwardly independently of each other. Since the pivot axis of bracket 10 is different from the

pivot axis of each tine, the position of the bracket relative to the rake member will change by bringing the machine from the working to the transport position.

The hay-making machine described in the context of Figures 1 to 5 of document D4 is neither provided with adjusting means which modify the normal movement of the protective brackets nor described as ensuring protection even in the transport position.

According to Claim 4 of document D4 the protection elements of the machine can be linked to some parts of the machine such that the movement of these parts of the machine causes the movement of the protection elements. However, Claim 4 of document D4 does not appear to be supported by the embodiment according to Figures 1 to 5 but appears to relate rather to the embodiment according to Figures 8 and 9 of document D4. In any case, even if the content of Claim 4 were to be considered in the context of the embodiment according to Figures 1 to 5, this would only imply the disclosure of connecting means between the protective bracket 10 and the pivoting tines. This would not imply that the machine described in relation to Figures 1 to 5 is provided with "adjusting means" as defined in Claim 1, nor that it would provide protection in the transport position.

- 7.4 Document D5 concerns a hay-making machine which is not provided with any protective members at all, either in the working position or in the transport position. Therefore, this document, which represents a less close prior art than document D3, cannot deliver any

information with respect to either the technical problem to be solved or to its solution.

- 7.5 Respondent II - in order to challenge the inventiveness of the subject-matter of Claim 1 - interpreted document D3 as disclosing an agricultural implement having not only all the features specified in the preamble but also some features specified in the characterising portion of Claim 1. In particular - after having pointed out that a part of the description of document D3 (page 2, last paragraph to page 3, first paragraph) describes a machine in which protective elements ("Schutzglieder") extend between rigid brackets ("Bügel") associated with the outer rake members ("Zinkenkörben") and that, according to this part of the description, said protective elements can be either flexible or rigid - he combined this part of the description with the detailed description of the embodiment according to Figures 1 to 5 and asserted that this embodiment also concerns a machine provided with rigid protective members. Moreover, in his comparative analysis of the subject-matter of Claim 1 with respect to document D3, Respondent II compared the "adjusting means" according to Claim 1 with the rigid protective brackets 14 of the machine according to document D3.

The Board cannot accept this interpretation of document D3 because there is no unequivocal indication in document D3 that the rigid protective elements ("starre Schutzglieder") defined in the general description also relate to the embodiment according to Figures 1 to 5.

Furthermore, since the only specific rigid protective means mentioned in document D3, namely telescopic tubes, are explicitly disclosed to be dismountable (and not foldable) such an embodiment points away from the present claimed subject-matter. Moreover, the comparative analysis made by Respondent II represents an ex post facto consideration in so far as he attributes to the bracket 14 the function of "adjusting means", a function that cannot be unequivocally derived from document D3. In any case brackets 14 are not only protective members, but could also be considered as connecting means between the protective elements 20 and the outer frame beams 18, 19, allowing thereby the generation of a movement of these protective elements 20 when the outer frame beams are put into their transport position. No forced deviation from that movement is taking place, so that no adjusting means in the meaning of the patent in suit is present.

7.6 Having regard to the above considerations, the available prior art does not explicitly refer to the technical problem to be solved. Moreover, it does not provide a suggestion towards either the general idea on which the solution is based (see section 7.1 above) or the features which distinguish the agricultural implement according to Claim 1 from the content of document D3.

Thus, even if the skilled person were to combine the disclosure of document D2 or D1 or D4 with the closest prior art according to document D3, he would not arrive at an agricultural implement falling within the terms of Claim 1.

Therefore, the Board considers the subject-matter of Claim 1 as involving an inventive step with respect to the above mentioned prior art documents.

8. Document D6 was presented at a very late stage of the proceedings. The Board, after having examined the relevance of this late introduced citation, came to the conclusion that it does not prejudice the patentability of the subject-matter of Claim 1, particularly since it does not refer to the problem to be solved (protection during transport), let alone to upwardly pivotable frame beams.
9. The patent can therefore be maintained in amended form on the basis of Claim 1.
10. At the end of the oral proceedings, the parties had an opportunity to present their comments on the amended text of the patent submitted by the Appellant. It is therefore not necessary to issue a communication pursuant to Rule 58(4) EPC (cf. decision T 219/83, OJ EPO 1986, 211).

## **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 with the order to maintain the patent in the following version:

Claims: 1 to 3 filed during the oral proceedings.

Description: pages 1 to 2 filed during the oral proceedings, column 1, lines 54 to 64 and column 2, lines 8 to column 6, line 62 of the patent as granted. Figures 1 to 7 of the patent as granted.

The Registrar:

The Chairman

N. Maslin

C. Andries