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D E C I S I O N
of 28 October 1998

Case Number: T 0364/97 - 3.2.4

Application Number: 92917733.5

Publication Number: 0593681

IPC: A01D 45/00

Language of the proceedings: EN

Title of invention:
Device for harvesting crops

Patentee:
Nic Sosef B.V.

Opponent:
Baggermans Transport- en Machinefabriek B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 56, 83, 123

Keyword:
"Extension of subject-matter - no"
"Insufficient disclosure - no"
"Inventive step - yes"

Decisions cited:
T 0383/88, T 0288/92, T 0749/94, T 0187/91, G 0001/93

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0364/97 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 28 October 1998

Appellant:
(Opponent) Baggermans Transport- en Machinefabriek B.V.
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Respondent:
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Representative:
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 5 February 1997
rejecting the opposition filed against European
patent No. 0 593 681 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: M. G. Hatherly
W. Moser

Summary of Facts and Submissions

- I. The decision of the opposition division to reject the opposition against European patent No. 0 593 681 was dispatched on 5 February 1997.

On 29 March 1997 the appellants (opponents) filed an appeal against this decision and paid the appeal fee. The statement of grounds of appeal was received on 2 June 1997.

- II. The following prior art documents were relied upon during the appeal proceedings:

- D1: FR-A-2 539 948
D2: FR-A-2 398 442
D3: DE-U-85 18 092.0
D4: "Gemüse" 12/1988, pages 474 to 476
D5: "Het Loonbedrijf" No. 2 (26 February 1993),
pages 53 to 55
D5t: Translation of parts of D5
D6: EP-A-0 053 994
D7: JP-A-1-265818 with translation
D8: JP-A-1-191616
D9: JP-A-1-296916
D10: JP-A-1-153011
D11: JP-Y-55-38332 with translation
D12: JP-Y-58-31478 with translation
D13a: Facsimile of 14 April 1998 from Central
Commercial Co., Chuo Boeki Goshi Kaisha, 9-29
Matsugamoto-Cho, Ibaraki, Osaka 567, Japan to
the appellants
D13b: Manufacturer's Final Inspection Certificate of
17 July 1989 by Suzue Agricultural Machinery
Co., Ltd., 144-2 Gomen-cho, Nakoku-shi, Kochi-
ken 783, Japan for the Suzue Binder Model
BX300S, Serial No. 690464

- D13c: Official Observation Report dated 30 September 1998, in Dutch with an English translation, by Johannes Dirk Kuik, bailiff at the District Court in Den Bosch and the Cantonal Court in Eindhoven, The Netherlands, of the Suzue machine BX300S, Serial No. 690464.
- D13d: Videotape made during the observation of 30 September 1998 referred to in D13c
- D14: Prospectus of Shibaura agricultural machines bearing the number 1861, and a conversion table to show that 1861 corresponds to the date 1986.

III. Oral proceedings were held on 28 October 1998 in the presence of the appellants and the respondents (proprietors).

In the appeal proceedings the appellants argued that the words "which serve to operate an automatic guidance system" in claim 1 as granted led to an objection under Article 100(c) EPC since they could not directly and unambiguously be deduced from the patent application as filed. Neither the patent application as filed nor the patent as granted explained how the locating means served to operate an automatic guidance system leading to an objection under Article 100(b) EPC. The subject-matter of claim 1 of each request then on file was obvious starting from either D1 or D13d, leading to an objection under Article 100(a) EPC.

In the appeal proceedings the respondents countered the appellants' arguments and filed, during the oral proceedings, amended claims for a main request and an auxiliary request.

IV. Claim 1 of the main request reads:

"Device for harvesting crops, comprising a feed means, a cutting means and a conveyor means for parts cut away, and a drive for moving the device over the ground, while control means are present and are designed to adapt the speed of the conveyor means to the speed of travel of the device over the ground in such a way that the cut crop in the conveyor means is essentially not moved relative to the ground, characterised in that at the front side, viewed in the direction of movement, the device is provided with locating means, which engage either the crop to be harvested, or its root ball or the furrow between the crops and which serve to operate an automatic guidance system, in order to determine the path of the device, the device is self-propelling, battery driven and has a height lower than 1.30 m and is designed for simultaneous cutting of a number of rows of plants."

Claim 1 of the auxiliary request adds to claim 1 of the main request the words "said conveyor means comprising two adjacent driven belts to held the crop in between".

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

The respondents requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request or the auxiliary request:

Main request:

Claims: 1 submitted during the oral proceedings
as the main request
2 to 7 as granted

Description: columns 1 to 5 submitted during the oral proceedings

Drawings: Figures 1 to 6 as granted

Auxiliary request:

Claims: 1 to 6 submitted during the oral proceedings as the auxiliary request

Reasons for the Decision

1. The appeal is admissible.
2. *Claim 1 of the main request - "locating means ... engage ... serve to operate an automatic guidance system"*
 - 2.1 Claim 1 of the main request, like claim 1 as granted, adds to the originally filed claim 1 that the locating means "serve to operate an automatic guidance system", but the quoted wording is nowhere to be found as such in the originally filed application.
 - 2.2 The appellants argue that the prefix word "an" implies that the automatic guidance system is an element that is separate from the locating means, the device or any other part mentioned earlier in the claim. In the preferred embodiment the slides 15 automatically locate the front of the device in the correct position relative to the crops. However the rigid location of the slides relative to the chassis does not provide even a system, let alone an automatic guidance system, it merely provides an automatically guided device (which could also be called a passively automatically guided device as opposed to an actively automatically guided device).

The appellants further argue that the deliberate amendment made by the respondents to the originally filed claim 1 to state that the locating means "serve to operate an automatic guidance system" must have been intended to have a restrictive effect and that therefore the skilled reader will consider that claim 1 is restricted to an actively automatically guided device. This gives rise to two comments. Firstly, the guides-in-furrows device described in columns 4 and 5 of the patent specification and shown in its Figures is not covered by the claim. Secondly, an actively automatically guided device cannot be derived directly and unambiguously from the original application (and not from the "light and sound guides and other established positioning means" mentioned on page 3, lines 16 and 17 of the originally filed description).

2.3 On the one hand a claim needs to be clear (Article 84 EPC) but, on the other hand, lack of clarity is not a ground for opposition under Article 100 EPC. Therefore in order to be able to discuss whether the subject-matter of a granted claim is novel and inventive, the claim has to be interpreted, not freely but within the framework of the application as filed.

2.4 The granted claim 1 (like claim 1 of the main request) specifies that locating means determine the path of the device. It is thus clear that some type of locating means detects something in some way and that the result is used in some way to determine the path of the device. The skilled reader will turn to the rest of the patent specification to form an idea of what specifically might be meant by this broad term "locating means" and how these might determine the path of the device. He sees in column 3, lines 5 to 13 that "The locating means can comprise all means known in the

prior art, such as light and sound guides and other established positioning means. According to an advantageous embodiment, use is made of a number of slides ... (which) ... lie in the furrows."

He thus realises that the "engaging" can be a direct physical object-to-object contact (e.g. the specified engagement of the slides in the furrows) but can also be a contactless engagement or interaction (the specified light and sound guides).

2.5 First the slides-in-furrows device will be considered.

It can sometimes happen that the independent claim is restricted during the course of examination in some way but that a mention of an arrangement which clearly falls outside the scope of the new claim is carelessly left in the description. In such a case, after grant, the claim cannot be interpreted as covering that arrangement that clearly should not even be present in the patent specification.

However in the present case, the slides-in-furrows device is called in the patent as granted both "an embodiment" (column 3, lines 45 and 46) and "the device according to the invention" (column 3, line 49) and this device is extensively described in column 4, line 3 to column 5, line 27 of the description and depicted in Figures 1 to 6. Such an extensive disclosure could not have remained in the granted patent by carelessness, it could not have been the intention of the respondents to remove this embodiment and relinquish protection therefor. Further it does not seem reasonable that the primary examiner could have considered that the claim 1 he sent for grant was not meant to cover this slides-in-furrows device. Indeed, the term "automatic guidance system" first appears in the final paragraph of sheet 1 of a PCT written opinion

dated 21 April 1993. This paragraph commences "Even if Claim 1 were to be amended to clearly define that the locating means served to operate an automatic guidance system," and continues with the words "as described in the embodiment" thus indicating that the examiner certainly considered that the slides-in-furrows device involved an automatic guidance system.

As the opposition division observed in section 1.2 of their decision, "The rigid location of the slides relative to the chassis provides an automatic guidance system since, if the guides are caused by the furrow to move to one side, the chassis is caused to follow." This device is thus a passively automatically guided device. To put it another way, where the slides go, the rest of the device automatically follows because the rest of the device is constrained to follow the slides. To put it in yet another way, the chassis is necessarily or automatically guided by the slides, without human control.

2.6 Next the use of light and sound guides will be considered.

Control systems which process incoming signals and perform an action using electrical, hydraulic or pneumatic actuators are well known to the skilled person. In the present case the skilled person knows from the originally filed application that there are locating means and that these determine the path of the device. It is clear to him that when the "engaging" is a contactless engagement or interaction, then the passive automatic guiding achieved by the slides-in-furrows device cannot occur but that a detection signal will be generated which must then be processed by

something and then used to determine the path of the device. He would readily term such an arrangement "an automatic guidance system". He does not need to be given specific details in the patent application of such an automatic guidance system.

This automatic guidance system, expressed as it is in the most general terms, can thus be deduced directly and unambiguously from the originally filed application documents, in line with the principles for allowable amendments outlined in decisions T 383/88, T 288/92, T 749/94 (none published in OJ) and T 187/91 (OJ EPO 1994, 572).

3. *Claim 1 of the main request - Article 123 EPC*

3.1 For the reasons given in the above section 2, the board cannot agree with the appellants that the subject-matter of the patent in its present form has been extended beyond that of the originally filed application by adding an automatic guidance system in claim 1 (Articles 100(c) and 123(2) EPC). The passive automatic guidance system is disclosed in detail in the originally filed application as the preferred embodiment. The active automatic guidance system is implicit to the skilled person once he is informed by the originally filed application that the locating means are light or sound guides and that these features must be able to determine the path of the device.

3.2 Claim 1 as granted specifies that locating means "engage at least one of the crop to be harvested, its root ball or the furrow between the crops". Engaging the furrow was added to the originally filed claim 1 on the basis of page 3, lines 16 to 22 of the originally filed description. However no basis can be found in the originally filed application for more than one of these three alternatives being engaged by the locating means.

To overcome an Article 123(2) EPC objection, the present claim 1 of the main request specifies that the locating means "engage either the crop to be harvested, or its root ball or the furrow between the crops". Since the scope of the claim is not broadened, there is no objection under Article 123(3) EPC.

3.3 Claim 1 of the main request, like claim 1 as granted, specifies that the device's height is "lower than 1.30 m" whereas page 2, lines 9 and 10 of the originally filed description states that "the maximum height of the device is 1.30m." The exclusion from protection of devices which are **exactly** 1.30 m high is therefore not to be found in the originally filed application. However the board does not object to this amendment, in practice minimal, under Article 123(2) EPC since, see section 16 of decision G 1/93 (OJ EPO 1994, 541), the amendment merely excludes protection for part of the subject-matter of the claimed invention as covered by the application as filed, gives no advantage to the patentee and does not adversely affect the interests of third parties.

3.4 The addition to claim 1 as granted that the device is battery driven is based on page 3, line 31 or page 5, line 33 of the originally filed application (column 3, line 26 or column 5, lines 17 and 18 of the patent in suit as granted).

The wording added to claim 1 as granted that the device is designed for simultaneous cutting of a number of rows of plants is to be found in the sentence bridging pages 3 and 4 of the originally filed application (column 3, lines 37 to 39 of the patent in suit as granted).

These two amendments thus do not contravene Article 123(2) EPC and, since they restrict the scope of the claim as granted, do not contravene Article 123(3) EPC.

3.5 Thus the board finds that claim 1 of the main request does not contravene Article 123 EPC.

3.6 Claims 2 to 7 of the main request correspond exactly to claims 2 to 7 as granted and as originally filed. The only amendments made to the description after original filing are those for adapting it to the independent claim 1. The Figures are unchanged since original filing.

3.7 Thus the patent in suit according to the main request does not contravene Article 123 EPC.

4. *Insufficient disclosure, Article 100(b) EPC*

The appellants argue that neither the patent application as filed nor the patent in suit as granted explains how the locating means serve to operate an automatic guidance system leading to an objection under Article 100(b) EPC (Article 83 EPC).

As well as a sufficient disclosure of the slides-in-furrows device (see the above section 2.5), also the automatic guidance system, expressed as it is in the most general terms, can be deduced directly and unambiguously from the originally filed application documents, as set out in the above section 2.6, when the skilled person, who possesses a basic technical knowledge of control systems in general, reads that the locating means comprise light and sound guides.

Thus the board considers that there is no objection under Article 100(b) EPC to the feature of an automatic guidance system referred to in claim 1 of the main request.

5. *Novelty - claim 1 of the main request*

It is not disputed that the subject-matter of claim 1 of the main request is novel (Article 54 EPC), in particular because of the claimed device being battery driven.

6. *Inventive step - claim 1 of the main request - starting from document D1*

6.1 The respondents consider that the closest prior art or starting point for the invention is the machine for harvesting leaf vegetables disclosed by D1 because this machine has the most features in common with claim 1 of the main request. It is not in dispute that this machine has all the features of the precharacterising portion of said claim, including the unusual feature of essentially not moving the cut crop in the conveyor means relative to the ground, a feature which is necessary when harvesting chrysanthemums which are growing through a net (see column 2, lines 23 to 34 of the description of the patent in suit).

6.2 When starting from D1, the appellants argue that the problem facing the skilled person wishing to harvest under a net is simply that the D1 machine is too high. It is totally self-evident to him that the solution to his problem is to reduce the height of D1 machine i.e. make it smaller. However it is clear that the tractor driver and the two persons on the footboard 26 (see Figure 4 and page 3, lines 37 to 40) would prevent reduction of the working machine to a height less than 1.30 m. Thus the difficulty is in fact the tractor and

the personnel, and it is evident that these must be removed. Essentially then, only the left-hand part on Figure 4 of D1 with the parts 10 holding the belts 2 and the dividing beak 1 would remain. It is clear that once the tractor is no longer present the dividing beak will orient itself according to the stems of the crop and it is clear that it will need to be made self-propelling. Duplicating the dividing beak and the conveyor belt arrangement to be able to simultaneously cut a number of rows of plants plainly presents no difficulty to the skilled person.

6.3 Claim 1 is directed to a device and makes no mention of chrysanthemums or a net or a greenhouse. Nevertheless the claim does specify that the device's height is less than 1.30 m which is a clear restriction which makes no sense unless the device is to pass underneath something. Thus the scene is set in general terms for the task that the device is to carry out. The ability to travel along a predetermined path (without the help of a human operator), being self-propelled and its low height enable the device to travel under a low net while the feature of the speed matching stops the crop being moved against the net.

6.4 Harvesting under a low net is a task for which the D1 machine is plainly unsuitable. While the appellants argue that this would lead the skilled person to reduce the size of the D1 machine until it fitted under the net, the board tends to the view that the skilled person would merely conclude that the D1 machine was much too large for his task and would move on elsewhere to search for a more suitable machine.

6.5 If however the skilled person were to select the D1 machine then the board cannot see any reason why he would then start to remove what would appear to be essential parts of it in the wholesale way advocated by the appellants that would in fact result in a radical redesign of the machine.

6.6 The board interprets the statement in lines 29 and 30 of page 1 of D1 that the dividing beak is adjustable in all directions for adaptation to the different types of crop as meaning that an adjustment is made before starting to harvest a particular crop. Lines 28 and 29 of page 1 state that the dividing beak 1 channels the row which is to be harvested towards the entrance of the belts 2. It is clear that the position of the beak is determined by the tractor, there is no information in D1 that the beak swings from side to side to accommodate out of line crop.

Moreover, since it is the dividing beak 1 which channels the row of crop, it is the dividing beak which corresponds to the feature "feed means" in claim 1 of the main request. This claim however specifies both locating means which determine the path of the device and feed means. In D1 the locating means is the tractor (but this does not engage the crop, root ball or furrow to determine the path of the machine; rather, the path decider is the tractor driver).

6.7 If the tractor were to be removed from the D1 machine, then the remaining left-hand part on Figure 4 of D1 (with the parts 10 holding the belts 2 and the dividing beak 1) would not be self-propelling. For the skilled person to arrive at a device satisfying the definition of claim 1 of the main request he would need to add a drive (indeed a battery drive) as well as a locating means to determine the device's path. To argue that the

beak itself would be the locating means would be incorrect since it is in fact the feed means. Moreover, the device would need at least to be doubled in order to cope with a number of rows of plants simultaneously.

6.8 While the features to be added are known individually (e.g. a battery-powered domestic lawnmower and the multiple row vegetable harvester of D4) the board can see no reason why the skilled person, if he did persevere with the D1 machine, would be led to arrive at a device satisfying claim 1 of the main request. The board considers the appellants' arguments to be an ex post facto analysis.

6.9 Of the other documents cited by the appellants in these proceedings, D2 to D5 do not contain any hints as to why their disclosure might be combined with that of D1, they moreover do not disclose low devices (e.g. people sit around the sorting table 45 of D2 and people work in the machine of D4). D5 was in any case published after the priority date and, while it refers to an earlier event, this event concerns a planting machine not the lettuce harvester relied upon by the appellants.

Referring to D6, the appellants compared the furrow width with the machine height in Figure 11 and concluded that the machine is low. However this Figure is schematic and in any case the machine is of such a completely different type to D1 that its combination therewith would not be obvious.

The appellants cited D7 to D10 as examples of passively guided vehicles and D11 as an example of an actively guided vehicle. D12 was cited by the respondents. All these documents concern small agricultural machines with a handle at the rear and were not relied on in detail by the appellants in the oral proceedings since

their content brought no more than the machine on the videotape D13d (which will be dealt with in section 7 below). The board sees no reason why any of these documents should be combined with the teaching of D1 and sees no obvious way in which the skilled person could proceed therefrom to the subject-matter of claim 1 of the main request.

7. *Inventive step - claim 1 of the main request - starting from D13*

7.1 The appellants consider that the closest prior art or starting point for the invention is the Suzue BX 300S machine with the serial number 690464 shown in a videotape D13d.

7.2 The appellants allege that this particular machine was constructed in 1989 (see D13b) and was sold to a company in England from whom the appellants purchased it in 1998 (see D13c, page 1, last paragraph but one of the Dutch original). The respondents do not dispute that this particular machine was publicly available before the present patent's priority date, but have reservations about whether the machine might have been modified after it was made. Since the respondents however do not give any specific reasons for these reservations and since the board considers that the operation of the machine on the videotape is broadly in line with what might be expected from it, given the pre-published documents D7 to D12 describing other similar small harvesting machines, the board proceeds on the basis that the videotape shows the machine approximately as existing before the priority date.

7.3 The binding machine shown on the videotape D13d comprises transversely extending fingers which move backwards and upwards relative to the device as the machine moves forwards over the ground. A human

operator manoeuvres the machine using its handle to the start of a row of crops and then releases the machine that thereafter proceeds on its own along the row. A crop stem that is not quite in line with the others contacts one of two parallel slides at the front of the machine and so causes the machine to swing slightly i.e. the crop stems have a guiding effect on the machine. A cutter bar cuts the stems near the ground and a bundle of stems is periodically ejected from the machine (unbound on the videotape due to a defective binding mechanism). At the end of the row the human operator again takes hold of the handle, turns the machine and aligns it with a further row before letting the machine go again.

- 7.4 The appellants maintain that this machine has all the features set out in claim 1 of the main request except that of being battery driven (which would not be inventive in view of e.g. page 5, lines 11 and 12 of D6 which state that the chassis of the asparagus cutter is provided with a source of electrical energy) and being able to cut a number of rows simultaneously (which was known e.g. from the similar machine Skyroad G1 Series HF52 shown in the prospectus D14).

The board does not need to consider the latter arguments closely (including whether it would have been obvious to use a battery drive, whether the prospectus D14 was publicly available before the priority date and whether a combination of its teaching with that of D13d would be obvious) because the board has doubts about whether the D13d machine fits the claim in various other ways.

- 7.5 The videotape D13d clearly shows the machine proceeding unaided along the row but, in view of the handle provided on the machine, the board has doubts as to whether it was really intended that the machine should

operate unaided. The appellants argued during the oral proceedings that this indeed was what such machines were designed to do since not walking behind the machine was less messy and lessened the damage to the field, the handles being merely for turning the machine around at the end of the row.

The board cannot help but feel that it is uneconomic for the operator to merely walk the length of the field to turn the machine around at each end and that the possibility put forward by the appellants of having an operator at each end of the field to turn the machine would merely double the necessary manpower. Moreover D11, which also concerns a small harvester, refers in the middle of page 2 of the English translation to the operator of a conventional harvester needing to be highly skilled to operate for long periods between meandering rows and proposes to automatically steer the harvester but does not say that as a result an operator is unnecessary or that he is only necessary to turn the machine at the end of the row, it merely states in the middle of the third page of the English translation that "there is absolutely no need for the operator to correct the steering to follow the meander".

If indeed the D13d machine was intended to work the rows with an operator holding the handle then the fact that the machine on its own is lower than the 1.30 m specified in claim 1 of the main request becomes irrelevant because the machine plus operator would exceed this limit and bar the machine from operating under a net.

The board cannot rule out that the appellants' allegation might be correct that the D13d machine really was intended to be self-propelled but considers that it was up to the appellants to provide evidence of this and not merely to allege it. To have offered the

appellants a chance at the oral proceedings to provide evidence on this point would have entailed delaying a final decision on the case, which would have been unfair on the respondents since D13a to D13d were first mentioned in the appellants' letter of 9 October 1998 that arrived in the EPO on 12 October 1998, i.e. well after the end of the nine month period after mention of grant for filing an opposition and indeed only just over two weeks before the oral proceedings in the opposition appeal proceedings.

7.6 The D13d machine has two parallel slides at its forward end which as stated in section 7.3 above correct the direction of the machine on encountering an out-of-line stem. These slides therefore might be seen as the locating means referred to in claim 1 of the main request, however this claim also specifies a feed means and the board can see no feed means functionally and/or physically separate from the locating means in the D13d machine.

7.7 Claim 1 of the main request specifies that the speed of the conveyor means is adapted to the speed of travel of the device over the ground in such a way that the cut crop in the conveyor means is essentially not moved relative to the ground. Thus, as the device is moved forwards relative to the ground, the cut crop is moved backwards relative to the chassis of the device.

As the D13d machine moves forwards relative to the ground, the parallel slides move either side of a crop stem, this remains fixed at its base relative to the ground (but it is not yet a cut stem, it is still fixed in the ground). The cutter is situated well back in the machine and once a stem is cut it moves only a very short distance (backwards relative to the machine) into the binding area where it must stop relative to the machine (and thus move forwards relative to the

ground), the short distance travelled by a particular stem depending on whether it is e.g. the first or the last stem of a bundle. The D13d machine arrangement thus does not achieve the result set out in claim 1 of the main request where there is no movement of the cut crop relative to the ground in order to aid its removal upwards despite the presence of a net. Due to the D13d machine being a binder, it does not seem obvious to modify it in order to obtain a machine satisfying the definition of claim 1 of the main request.

Moreover claim 1 of the main request specifies that the speed adaptation is performed by control means. If in the D13d machine the forward movement of the machine does match the horizontal component of the motion of the transversely extending fingers then this would appear to be achieved by the operator adjusting the throttle levers on the machine handle and not by a control means guaranteeing speed matching.

7.8 Thus for the reasons given in the above sections 7.5 to 7.7 the board does not consider that the skilled person starting from the binding machine shown on the videotape D13d would have arrived in an obvious manner at the device set out in claim 1 of the main request.

D7 to D12 cited in these proceedings bring nothing more than the D13d machine. Moreover the board sees no reason why the skilled person should adapt the D13d machine using the teachings of any one or more of the other documents D1 to D6. The comments made in the above section 6.9 apply in general once more.

8. The subject-matter of claim 1 of the main request is thus patentable as required by Article 52 EPC. The patent may therefore be maintained amended, based on this allowable independent claim 1, claims 2 to 7 as granted which are dependent thereon, the adapted description and the drawings.
9. Consideration of the respondents' auxiliary request is therefore unnecessary.

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 on the basis of the following documents:

Claims: 1 submitted during the oral proceedings
as the main request
2 to 7 as granted

Description: columns 1 to 5 submitted during the oral
proceedings

Drawings: Figures 1 to 6 as granted

The Registrar:



S. Fabiani

The Chairman:



C. Andries