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D E C I S I O N
of 29 June 2000

Case Number: T 0415/98 - 3.2.4

Application Number: 92200920.4

Publication Number: 0507408

IPC: A01D 75/20

Language of the proceedings: EN

Title of invention:
An agricultural machine

Patentee:
MAASLAND N.V.

Opponent:
KUHN S.A.

Headword:
Hay-making machine/MAASLAND

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0415/98 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 29 June 2000

Respondent: (Opponent)
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Representative:
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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 11 February 1998 concerning maintenance of European patent No. 0 507 408 in amended form.**

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
C. Rennie-Smith

Summary of Facts and Submissions

I. An opposition based upon Article 100(a) EPC was filed against European patent No. 507 408. By the interlocutory decision of the opposition division dispatched on 11 February 1998, the patent was maintained in an amended version based upon Claim 1 of the first auxiliary request submitted with the proprietor's letter dated 17 December 1997.

The opposition division found in its decision that the subject-matter of Claim 1 of the main request submitted by the proprietor with letter dated 17 December 1997 did not involve an inventive step with regard to the information derivable from the leaflet "*Kuhn Girostar® GRS 25 N*" , 9202521 - © KUHN 1989 (D1).

II. On 3 April 1998 the proprietor of the patent (appellant) lodged an appeal against this decision of the opposition division and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 11 June 1998.

III. With its reply to the grounds of appeal, the respondent (opponent) filed documents FR-A-2 063 497 (D3) and FR-A-2 179 024 (D4).

IV. Oral proceedings were held on 29 June 2000.

During the oral proceedings the appellant filed two amended versions of independent claim 1 upon which its main and auxiliary requests were based.

Claim 1 according to the main request of the appellant reads as follows:

"1. An agricultural machine, a hay-making machine in particular, having a frame (1) which is couplable to a three-point lifting hitch of a tractor and includes a frame portion (12 to 15) which supports working members (2, 3) and, relative to a further portion (6, 9) of the frame, is pivotal about an upwardly directed pivotal shaft (11) together with the working members (2, 3) from an operating position to a transport position and vice versa, wherein it has one protection member (31) arranged in such a manner between the pivotal frame portion (12 to 15) and the further portion (6, 9) of the frame that when the frame portion (12 to 15) supporting the working members (2, 3) pivots from the operating position to the transport position and vice versa, the protection member (31) automatically moves from a position in which it shields one of the working members (2) to a more inwardly located position and vice versa, the machine having a second protection member (30) shielding another working member (3), characterized in that
also the second protection member (30) is movably arranged between the pivotal frame portion (12-15) and the further frame portion (6, 9) of the frame, such that when the frame portion (12, 15) pivots from the operating position to the transport position the second protection member (30) automatically moves from a position in which it shields said other working member (3) into a more inwardly located position and vice versa."

V. The respondent argued that the subject-matter of Claim 1 according to either the main or the auxiliary

request of the appellant did not involve an inventive step having regard to the content of document D1 and to the ability of the skilled person.

VI. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the following documents (main request):

Claims: 1 to 8 filed as the main request during the oral proceedings;

Description: Columns 1 and 2 as maintained by the opposition division and columns 3 to 7 as granted;

Drawings: Figures 1 to 4 as granted.

Alternatively, the appellant requested that the patent be maintained on the basis of Claim 1 filed as auxiliary request during the oral proceedings.

VII. The respondent requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

2. *The claimed subject-matter and the amendments (main request)*

2.1 Claim 1 refers to two protection members. According to the wording of the claim both protection members are **arranged** between the pivotal frame portion and the further frame portion and, when the pivotal frame

portion pivots from the operating position to the transport position, each protection member automatically moves into a **more inwardly located position**.

2.1.1 Having regard to the wording of Claim 1 and to the drawings of the patent, the expression "more inwardly located position" has to be construed as defining a position which is more inwardly located with respect to the position in which each protection member is located when the working members are in the operating position of the machine.

2.1.2 As admitted by the appellant, the expression "protection member arranged between the pivotal frame portion and the further frame portion" has to be construed as defining a protection member **connected** between the pivotal frame portion and the further frame portion.

2.2 Claim 1 differs from Claim 1 as granted in that the feature that "[the machine] has **at least one protection member (30, 31)** arranged in such a manner between the pivotal frame portion (12 to 15) and the further portion (6, 9) of the frame that when the frame portion (12 to 15) supporting the working members (2, 3) pivots from the operating position to the transport position and vice versa, the protection member (30, 31) automatically moves from a position in which it shields the working members (2, 3) to a more inwardly located position and vice versa" (emphasis added) has been replaced by the following features:

(i) "[the machine] has **one protection member (31)** arranged in such a manner between the pivotal

frame portion (12 to 15) and the further portion (6, 9) of the frame that when the frame portion (12 to 15) supporting the working members (2, 3) pivots from the operating position to the transport position and vice versa, the protection member (31) automatically moves from a position in which it shields **one of** the working members **(2)** to a more inwardly located position and vice versa"(emphasis added), and

(ii) "the machine having **a second protection member (30)** shielding **another** working member **(3)**, characterised in that also the second protection member (30) is **movably** arranged between the pivotal frame portion (12, 15) and the further frame portion (6, 9) of the frame, such that when the frame portion (12, 15) pivots from the operating position to the transport position the **second** protection member (30, 31) automatically moves from a position in which it shields **said other** working member **(3)** into a more inwardly located position and vice versa" (emphasis added).

Features (i) and (ii) can be derived from Claim 1 of the application as originally filed when read in conjunction with the drawings, as Figures 1 and 2 show two protection members 30 and 31.

2.3 Dependent Claims 2 to 8 are identical with Claims 2 to 8 of the patent as granted.

2.4 The amendments to the description concern its adaptation to the amended Claim 1 and reference to the background art.

2.5 The amendments therefore do no contravene the requirements of Article 123 EPC.

3. *The prior art*

Document D1 (see in particular the pictures on pages 2 and 3 as annotated with manuscript numbers) shows an agriculture machine which can be connected to a three-point lifting hitch of a tractor and includes a first frame portion 1 which supports right-hand and left-hand working members 2 and 3 and, relative to a second frame portion 4, is pivotally moveable about an upwardly directed pivotal shaft 5 together with the working members 2 and 3 from a first operating position to a second operating position (which is also a transport position) and vice versa. This machine also has a first protection device 6 arranged in such a manner between the first pivotal frame portion 1 and the second frame portion 4 that when the frame portion 1 supporting the working members 2 and 3 pivots from the first operating position to the second operating position and vice versa, the protection device 6 automatically moves from a first position in which it shields the right-hand working member 3 to a second position, which is located more inwardly with respect to said right-hand working member.

Moreover, this machine has a second protection device shielding the left-hand working member 2, said second protection device comprising a first protection member fixedly connected to the first frame portion 1 and a separate second protection member fixedly connected to the second frame portion 4.

The second frame portion 4 comprises a first element

extending longitudinally with respect to the tractor (said first element being pivotally connected to the first frame portion 1) and a second element connected to the three-point lifting hitch of the tractor, wherein the first element is pivotable with respect to the second element.

The first protection device 6 comprises a protection member 7 which is pivotal about a vertical shaft 8 with respect to the second element of the second frame portion 4 and is connected to the first frame portion 1 by means of a link 10.

It can be derived from the pictures on pages 2 and 3 and from the explanation given by the respondent that when the working members 2, 3 move from their first operating position to their second operating position, the protection member 7 of the first protection device 6 is caused to rotate not only in a clockwise direction around shaft 8 due to the rotation of the first frame portion 1 relative to the first element of the second frame portion 4 but also in an anticlockwise direction around shaft 8 due to the rotation of the first element of the second frame portion 4 relative to the second element of the second frame portion 4.

4. *Novelty (main request)*

The subject-matter of Claim 1 is novel within the meaning of Article 54(2) EPC. This was not disputed.

5. *Inventive step (main request)*

5.1 Document D1 was considered to disclose the closest prior art.

5.2 The respondent asserted that the machine shown in document D1 corresponds to machines which were actually manufactured and sold before the priority date of the patent in suit. The respondent also asserted that in those machines the protection member 7 of the first protection device 6 in the second operating (and transport) position of the working members is located more inwardly relative to the position in which it is located when the working members are in the first operating position.

Thus, according to the respondent the claimed subject-matter differs from the closest prior art only by the characterising features of Claim 1.

In this respect, the respondent argued as follows:

- It is known in the prior art that the protection devices for the working members of an agricultural machine can be arranged symmetrically with respect to the longitudinal axis of the tractor.

- The problem to be solved consists in reducing the width of the machine in the transport position.

- The skilled person looking at document D1 will understand that the pivotal arrangement of the right-hand protection member 7 of the machine shown in this document contributes to reducing the width of the machine. Thus, it is obvious for the skilled person wishing to further reduce the width of the machine to modify the hay-making machine shown in document D1 in such a manner that the left-hand protection device is also movably arranged between the first pivotal frame portion

and the second frame portion such that when the first frame portion pivots from the first operating position to the second operating (and transport) position the left-hand protection device also moves into a more inwardly located position. In other words, the skilled person confronted with the problem of reducing the transport width of the machine shown in document D1 could easily reproduce the solution adopted for the right-hand side of the machine on the left-hand side and thus arrive at the claimed subject-matter without exercising any inventive skill.

In order to support these arguments, the respondent referred to four drawings submitted during the oral proceedings. Two of these drawings represent a machine of the type GRS 25 N as shown in document D1, the first drawing showing the machine in the position "fanage" and the second drawing showing the same machine in the position "andainage et transport". The remaining two drawings represent a machine of the same type but modified in such a manner that the left-hand protection member is movably arranged in the same manner as the right-hand protection member, the third drawing showing the modified machine in the position "fanage" and the fourth drawing showing this machine in the position "andainage et transport".

5.2.1 The appellant contested these arguments of the respondent. In particular the appellant asserted that it is not clear from document D1 whether the machine shown in this document was provided with the feature that the protection member 7 of the first protection

device 6 in the second operating (and transport) position of the working members is located more inwardly relative to the position in which it is located when the working members are in the first operating position. Moreover, it was argued that, although machines of the type shown in document D1 were still manufactured and sold by the respondent, no clear evidence had been submitted proving that these machines were provided with this feature.

5.3 The board cannot accept the arguments of the respondent for the following reasons:

Starting from a machine according to document D1 and assuming that - as alleged by the respondent - the subject-matter of Claim 1 differs from this machine only by the features specified in the characterising portion of the claim, the problem to be solved would be to reduce the width of the machine in the transport position.

It must be observed that the working members of the machine shown in document D1 are not symmetrical with respect to the longitudinal axis of the machine. Thus, even if the prior art (see for instance documents D3 and D4) discloses agricultural machines having symmetrically arranged working members with symmetrically arranged protection members, this teaching cannot be applied directly to the machine shown in document D1.

Moreover, the skilled person does not find in document D1 any encouragement to apply the manner in which the right-hand protection member is connected to the machine to the left-hand protection member in order to

reduce the width of the machine. In this respect, it has to be noted that the machine shown in document D1 already has a reduced transport width. This can be derived not only from document D1 (page 4) which refers to a "largeur en position de fanage" of 3,45 m and to a "largeur hors-tout au transport" of 2,60 m, but also from the drawings submitted by the respondent (see section 5.2 above). In particular the width of the machine in the position shown in the second drawing is at least 15% less then the width of the machine in the position shown in the first drawing.

This reduction in the width of the machine, due to its switching from the first operating position to the second operating (and transport) position, seems to result largely from the movement of the left hand protection member towards the centerline of the machine during the switching movement of the whole machine, and to result less (if at all) from the movement of the right hand protection member towards that centerline, so that it would not be obvious for a person skilled in the art to modify that part which contributed the most to the reduction and replace it by a system which is not so promising.

Indeed, even if the skilled person were to try to modify the left-hand protection member of the machine shown in document D1 as suggested by the respondent, he would not necessarily arrive at a machine having a lesser transport width than that of the known machine: he might also arrive at a machine having an increased transport width. This can be clearly derived from the fourth drawing submitted by the respondent (see section 5.2 above) which represents a machine having a transport width which is at least 6% greater than the

transport width of the machine represented in the second drawing. Thus, because of the geometrical structure of the machine shown in document D1, the skilled person would be discouraged from applying the connection adopted for the right-hand protection member for use with the left-hand protection member.

5.4 The board finds that although the pictures on pages 2 and 3 of document D1 show that the extent of rotation of the first element of the second frame portion 4 relative to the second element is very small (see section 3. above, last paragraph), it cannot be established unequivocally from these pictures whether or not the machine shown in document D1 was provided with the feature that the right-hand protection member in the second operating (and transport) position of the working members is located more inwardly relative to the position in which it is located when the working members are in the first operating position, particularly since, as explained by the respondent, the switching from the first operating position to the second operating (and transport) position was the result of two movements, one being a counter clockwise movement of the first frame portion 1 around first shaft 5, the other movement being the counter clockwise movement of the whole machine (excluding the second element of the second frame portion 4 which is connected to the three-point lifting hitch of the tractor) around a pivot point between the first and second elements of the second frame portion 4. The board also finds that no evidence was submitted proving that machines as shown in document D1 were actually provided with this feature.

However, having regard to the observations in section

5.3 above, these findings are not determinative for the present decision.

5.5 Having regard to the comments in sections 5.1 to 5.3 above, the subject-matter of Claim l, upon which the main request of the appellant is based, would not be obvious to a skilled person, so that it meets the requirements of Article 56 EPC.

6. Therefore, the patent can be maintained on the basis of the appellant's main request.

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 8 filed as the main request during the oral proceedings.

Description: Columns 1 and 2 as maintained by the Opposition Division and columns 3 to 7 as granted.

Drawings: Figures 1 to 4 as granted.

The Registrar: The Chairman:

G. Magouliotis C. Andries