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D E C I S I O N
of 2 October 2001

Case Number: T 0288/99 - 3.2.4

Application Number: 92201719.9

Publication Number: 0506210

IPC: A01C 15/00

Language of the proceedings: EN

Title of invention:
A device for spreading material

Patentee:
MAASLAND N.V.

Opponents:
Amazonen-Werke H. Dreyer GmbH & Co. KG
KUHN S.A.

Headword:
Seed drill and rotary harrow/MAASLAND

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0288/99 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 2 OCtober 2001

Appellant I: (Opponent I)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 2 March 1999 rejecting the oppositions filed against European patent No. 0 506 210 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: C. A. J Andries
Members: P. Petti
C. Holtz

Summary of Facts and Submissions

I. The European patent No. 506 210 results from the European patent application No. 92 201 719.9 filed as a divisional application of the earlier European patent application No. 87 201 103.6 filed on 11 June 1987.

II. Two oppositions filed against this patent were rejected by the decision of the opposition division dispatched on 2 March 1999.

The decision of the opposition division refers *inter alia* to the following documents:

D1: Copies of the review "Power Farming, Volume 64, No. 8, August 1985, pages 3 and 26; and

D2: DE-U-8 104 256.

Document D1 refers to the exposition "Royal Show" of 1985 and to a machine called "Loadspreader" presented by the firm A.C. Bamlett Ltd at this exposition. During the opposition proceedings appellant I also filed five photos (document D9) relating to a machine made by the firm A.C. Bamlett Ltd and alleged that these photos were taken at the "Royal Show" in July 1985. The opposition division in its decision disregarded document D9, "since the statement in the notice of opposition concerning D9 [did] not fulfil the requirements of Guidelines D-V,3.1.2" (see page 2).

III. On 17 March 1999 the first opponent (Amazonen-Werke H. Dreyer GmbH & Co. KG, hereinafter appellant I) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of

appeal was received on 7 July 1999.

On 26 April 1999 the second opponent (Kuhn S.A., hereinafter appellant II) lodged a further appeal for which the appeal fee had been paid on 23 April 1999. A statement setting out the grounds of appeal was received on 19 June 1999.

IV. With the statement setting out the grounds of appeal appellant I filed *inter alia* the following new documents:

D9a: Photos No. 1 to 5 as in document D9 and a statement of Mr. Hartmut Hartmann which refers to the five photos;

D9b: Enlargement of the photo No. 4 of document D9 (D9a);

D10: Copy of a leaflet of Lely (UK) Ltd with the heading *"Front Transfer Hopper FH 2000"*, 4 pages;

D11: Copy of the review "Power Farming", January 1986, pages 26 and 36.

Documents D10 and D11 were also filed by appellant II with its statement setting out the grounds of appeal.

V. With the letter dated 8 August 2001 the proprietor of the patent (hereinafter respondent) filed an amended Claim 1. This Claim 1 reads as follows:

"A combination of a tractor and device for spreading material or the like comprising a first hopper (42) for the material, a frame having connecting means by which the device can be coupled to a three point hitch of the tractor, a further hopper (43) separated from the first hopper (42) and a transport element (45) which is present between the further hopper (43) and the first

hopper (42) for feeding, during operation of the device, material from said further hopper to said first hopper, transport means being provided near the further hopper to transport the material from the further hopper via the transport element to the first hopper, whereas the transport means near said further hopper encloses a fan means (44) to produce an air stream capable of conveying material from the further hopper (43) to said first hopper (42), the further hopper (43) being coupled in front of the tractor (1) by which the device for spreading the material is pulled, **characterized in that** the device for spreading the material is a seed drill which is provided with means for conveying said materials from the first hopper to coulter (10) and in that between said tractor and said device a power-driven rotary harrow is arranged and that the device via the power-driven rotary harrow is coupled to the threepoint linkage of the tractor and in that the device for spreading seed material or the like is coupled with said rotary harrow, and wherein said first hopper (42) is connected to and arranged substantially behind said cultivating machine and is, during use, supported on its own groundsupporting means (26)."

VI. Oral proceedings were held on 2 October 2001.

Both appellants argued that the subject-matter of the amended Claim 1 filed with the respondent's letter of 8 August 2001 did not involve an inventive step. Appellant I based its argumentation on the combination of documents D2 and D1, while appellant II referred to the combination of documents D2 and D11.

The respondent contested the arguments of the

appellants.

During the oral proceedings reference was made not only to documents D1, D2 and D11 but also to documents D9, D9a and D10.

VII. Both appellants requested that the decision under appeal be set aside and that the patent be revoked.

The respondent requested that the decision under appeal be set aside and that the patent be maintained on the following basis:

Claims: 1 to 4 as submitted with letter of 8 August 2001,

Description: pages 2 and 3 of the patent as granted,

Figures: Figures 1 to 9 of the patent as granted.

Moreover, the respondent requested that the case be remitted to the first instance if documents D9a, D9b, D10 and D11 were admitted into the proceedings.

Reasons for the Decision

1. The appeals are admissible.

2. The claimed subject-matter and the amendments

2.1 Claim 1 is directed to a combination of a tractor and a device for spreading material or the like, having the following features:

(A) the combination comprises a first hopper (42) for the material;

(B) the combination comprises a frame;

(B1) the frame has connecting means by which the device can be coupled to a three point hitch of the tractor;

(C) the combination comprises a further hopper (43) separated from the first hopper (42);

(H) the combination comprises a transport element (45);

(H1) the transport element (45) is present between the further hopper (43) and the first hopper (42);

(H2) the transport element (45) is suitable for feeding, during operation of the device, material from said further hopper to said first hopper;

(E) transport means are provided to transport the material form the further hopper via the transport element to the first hopper;

(E1) the transport means are provided near the further hopper;

(E2) the transport means encloses a fan means (44) to produce an air stream capable of conveying material from the further hopper (43) to said first hopper (42);

(C1) the further hopper (43) is coupled in front of the tractor by which the device for spreading the material is pulled;

(F) the device for spreading material is a seed drill;

(F1) the seed drill is provided with means for conveying said material from the first hopper to coulters (10);

(G) the combination comprises a power-driven rotary harrow;

(G1) the power-driven rotary harrow is arranged between the tractor and said device for spreading material;

(G2) the device via the power-driven rotary harrow is coupled to the three-point linkage of the tractor;

(G3) the device for spreading said material or the like is coupled with said rotary harrow;

(A1) the first hopper (42) is connected to said cultivating machine;

(A2) the first hopper (42) is arranged substantially behind said cultivating machine;

(A3) the first hopper (42) is, during use, supported on its own ground supporting means (26).

2.1.1 The expression "said cultivating machine" in features A1 to A3 is not referred to in the previous features of Claim 1. Claim 1 refers to a seed drill (see feature F) as a machine for spreading material and to a power-driven rotary harrow. The description of the patent (see column 3, lines 18 to 21) refers to "a soil cultivating machine, e.g. a power-driven rotary harrow". Therefore, it is understood that the cultivating machine referred to in features A1 to A3 is the rotary harrow defined in feature G.

2.1.2 Feature A2 gives some information relating to the spatial position of the cultivating machine with respect to the first hopper. The description of the patent refers to this feature only in the statement of invention in column 1, lines 29 to 38 (see particularly lines 36 and 37). Figure 7 is the only drawing showing

a rotary harrow, ie a device provided with harrow tines 35 rotating about vertical axes. Figure 7 has to be analysed with Figure 8 which shows a combination provided *inter alia* with a hopper 43, a trestle connected to the three-point hitch 2/3 of the tractor and a small storage bin 42 which replaces the hopper 4 shown in Figure 7. It has to be assumed that the combination defined in Claim 1 corresponds to an embodiment similar to that of Figure 8 in which the rotary harrow represented in Figure 7 replaces the trestle.

Having regard to Figure 7 (analysed in conjunction with Figure 8), feature A2 has to be construed as defining the position of the rotary harrow relative to the hopper 42 with respect to the travel direction of the tractor.

Moreover, according to Figures 1 and 2 and to the corresponding description of the patent as granted, the hopper 4 and the drill coulters of the seed drill are connected to a frame having beams 14/15/16, this frame being connected "via an intermediate trestle 31" to the three-point hitch of the tractor (see column 3, lines 11 to 13). In other words, it is clear that the trestle 31 - in a side view of the combination - is in an intermediate position between the three-point hitch and the frame supporting the hopper 4.

According to Claim 1, the combination comprises a frame having connecting means by which the device can be coupled to the tractor (feature B and B1), a rotary harrow coupled to the three-point hitch of the tractor (feature G1), the seed drill being coupled with to rotary harrow, the hopper 42 being connected to the

harrow (feature A1).

In other words, feature A2, in conjunction with features G1 and A1, means that the rotary harrow is in an intermediate position between the three-point hitch and the first hopper.

2.1.3 The terms "transport element" and "transport means" have to be interpreted in the context of features H1, E, E2 in so far as these features make it clear that the material is transported from the further hopper to the first hopper **by** the transport means **via** the transport element (see particularly feature E). In other words, the transport element defines the transport line between the hoppers (see feature H1) while the transport means refers to the fan means defined by feature E2.

3. Concerning the amendments

The amendments with respect to Claim 1 as granted concern features B1, F1 and G2. No objections to the amendments were raised by the appellants. The board is satisfied that the amendments do not contravene Article 123 EPC.

4. *Concerning the documents filed by the appellants during the appeal proceedings*

4.1 The statement of Mr Hartmann (document D9a) was filed with the intention of proving that the photos according to document D9 were taken at the Royal Show in 1985. Document D9b was filed in order to prove that the "Loadspreader" referred to in document D1 is provided with a fan arranged near the hopper (feature E1),ie as

a reaction to the findings of the opposition division in the decision under appeal that feature E1 could not be derived from document D1.

In other words, documents D9a and D9b were filed in order to complete the teaching of document D1, under the assumption that the machine shown in the photos is the same as the machine referred to in document D1, ie with the assumption that documents D1, D9 and D9b define a unitary prior art.

4.1.1 It can be derived from the statement of Mr Hartmann that the photos according to document D9 were made at the Royal Show in July 1985. Moreover, it is clear that the photos relate to a machine of the firm Bamlett. However, it is not proven that the machine referred to in document D1 is the same as the machine shown in the photos D9 (D9a). Thus, it cannot be assumed that the photos D9 and document D1 form a unitary source of information.

Having regard to the comments above, documents D9, D9a and D9b have to be disregarded.

4.2 In the communication annexed to the summons to attend oral proceedings dispatched on 4 May 2001 the board drew the attention of the appellants to the fact that none of the copies of the leaflet D10 submitted by the appellants permitted the printing date to be clearly read and requested the appellants to provide the board with the original leaflet.

Since no original leaflet has been submitted, document D10 has to be disregarded.

4.3 Document D11 was discussed during the oral proceedings and considered by the board. However, this document did not influence the decision of the board.

5. *Novelty*

The subject-matter of Claim 1 is novel (Article 54 EPC) with respect to the cited prior art.

6. Inventive step

6.1 Document D2 discloses a combination of a device for spreading material and a rotary harrow, having the following features:

(A) the combination comprises a hopper (4) for the material;

(B) the combination comprises a frame;

(B1) the frame has connecting means by which the device can be coupled to a three point hitch of the tractor;

(F) the device for spreading material is a seed drill;

(F1) the seed drill is provided with means for conveying said material from the hopper to coulters;

(G) the combination comprises a power-driven rotary harrow (1);

(G1) the power-driven rotary harrow is arranged between the tractor and the device for spreading material;

(G2) the device for spreading material is coupled to the three-point linkage of the tractor via the power-driven rotary harrow;

(G3) the device for spreading material is coupled with the rotary harrow;

(A1) the hopper (4) is connected to said cultivating machine, ie to the rotary harrow;

(A2) the hopper (4) is arranged substantially behind said cultivating machine;

(A3) the hopper (4) is, during use, supported on its own ground supporting means (26).

6.2 The machine disclosed in document D2 is mounted to the rear of a tractor and is provided with a single hopper for the material to be spread.

The claimed subject-matter is distinguished from the prior art disclosed in document D2 by features C, C1, H, H1, H2, E, E1 and E2, which concern the arrangement of the further hopper for the material to be spread (C and C1) and of the devices ensuring the transport of the material from the further hopper to the first hopper (H, H1, H2, E, E1 and E2).

These distinguishing features result in increasing the capacity of the device in terms of total weight of material to be spread (because of the increased total volume of the hoppers) and in distributing the weight of the machine on both the rear and the front part of the tractor. The increased weight of material transported allows an increase in the work rate in so far as the machine can work for a longer time without supplying the hopper with material while the improved weight distribution is favourable for the movement of the tractor, especially when the seed drill and the rotary harrow are supported only by the rear lifting hitch of the tractor, ie during transportation (on the

road) and during the phases of turning on the ground area to be cultivated and seeded.

Thus, the problem to be solved is "to provide a combination which is able to cultivate and seed a large area of ground without the need to fill the device for spreading the seed material and whereby the different parts of the combination are in good relation to one another to be moved in a favourable way over the area of ground" (see description of the patent, column 1, lines 23 to 28).

6.3 Document D1 refers on page 26, which is headed "Royal Show Review", to a rear mounted drill or spreader called "Loadspreader" made by the firm A.C. Bamlett Ltd and shows a picture of the front mounted hopper.

Document D1 makes it clear that a front-mounted hopper of the "Loadspreader" is "designed to increase workrate and improve weight distribution when using a rear mounted spreader or drill" and that the material is transferred to the rear of the tractor by an airstream provided by a hydraulically-driven fan.

It is therefore assumed that this document discloses a combination of a tractor and a device for spreading material having the following features:

- the combination comprises a first hopper for the material for a rear mounted drill;

- the combination comprises a frame;

- the frame has connecting means by which the rear mounted drill can be coupled to a three point

hitch of the tractor;

- the combination comprises a further hopper separated from the first hopper;

- the further hopper is coupled in front of the tractor by which the device for spreading the material, ie the rear mounted drill, is pulled;

- the combination comprises a transport element;

- the transport element is present between the further hopper and the first hopper;

- the transport element is suitable for feeding, during operation of the device, material from the further hopper to the first hopper;

- transport means are provided to transport the material from the further hopper via the transport element to the first hopper;

- the transport means encloses a fan means to produce an air stream capable of conveying material from the further hopper to the first hopper.

6.4 Starting from the prior art known from document D2, the skilled person would find in document D1 an explicit indication of the problem to be solved, in so far as this document refers to an increase in work rate and to an improvement in the weight distribution.

Moreover, document D1 would also explicitly indicate to the skilled person the features concerning the arrangement of a further hopper on the front side of the tractor (ie features C and C1), the features concerning the arrangement of a transport line between the hoppers (ie features H, H1 and H2) and the features concerning the arrangement of a fan providing an

airstream for transporting the material from the further hopper to the first hopper (ie features E and E2). Therefore, the skilled person would apply these features to the machine known from document D2 without exercising any inventive skill.

In cannot be established from the picture on page 26 of document D1 whether the fan is mounted near the front hopper or not. Therefore, it cannot be assumed that document D1 also suggests feature E1.

However, the skilled person when applying the teaching of document D1 to the machine according to document D2 has in practice no other choice than to arrange the fan near the front hopper, particularly since it is not only the simplest but also the most logical technical solution to transfer the material from the front to the rear hopper by arranging the fan so that it blows directly towards the discharge opening of the front hopper. Moreover, it would be obvious for the skilled person who also wants to improve the weight distribution to arrange on the front side of the tractor those elements - as the fan - which must not be necessarily arranged on the rear side.

6.5 The respondent argued that the skilled person would not combine the disclosures D2 and D1 because they are not compatible with each other. In this context, the respondent referred - on the one hand - to document D2 in so far as Figure 2 shows a rear mounted seed drill and harrow in which the rear hopper can be lifted so that it moves upwardly and forwardly and - on the other hand - to document D1 in so far as it relates to a machine in which the rear hopper cannot be moved relative to the tractor and thus to the front hopper.

The respondent argued that the application of the teaching of document D1 to such a rear-mounted machine would result in damaging the transport elements connecting the hoppers during the lifting of the rear hopper.

In these respects, appellant I argued as follows:

> In the "Loadspreader" according to document D1 both hoppers are coupled to the lifting hitch of the tractor and therefore may be moved with respect to each other. Document D1 refers to "a rear-mounted spreader or drill". Normally, a spreader is movable in order to be adjusted in height and a drill is also movable in height for transport purposes. Therefore the disclosure of document D1 implies a certain flexibility of the transport element, ie it implicitly discloses a flexible transport pipe connecting the hoppers.

The board cannot accept the argument of the respondent because it is based on the assumption that the hoppers of the "Loadspreader" according to document D1 cannot be moved relative to each other and that the pipe connecting the hoppers is rigid. The board considers the argument submitted in this respect by appellant I as being more credible.

In any case, it has to be noted that Claim 1 does not specify either whether the rear mounted hopper is movable or fixed or whether the transport element is flexible or rigid. In other words, even if there were to be an incompatibility between the disclosures D1 and D2, this incompatibility would not relate to essential features, ie to features which are specified in

Claim 1.

6.6 Having regard to the above comments, it would be obvious for the skilled person to arrive at a combination having all the features specified in Claim 1.

7. *The request for remittal to the first instance*

Considering that none of the new documents D9 to D11 has influenced the present decision, the request of the respondent to remit the case to the first instance cannot be allowed.

8. Therefore, the patent has to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Magouliotis C. Andries