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**Datasheet for the decision  
of 18 July 2018**

**Case Number:** T 1734/13 - 3.2.04

**Application Number:** 08154449.6

**Publication Number:** 1935238

**IPC:** A01K5/00, A01F29/00

**Language of the proceedings:** EN

**Title of invention:**

Apparatus and method for separating and mixing feed for live-  
stock

**Patent Proprietor:**

Trioliet Mullos B.V.

**Opponent:**

GEA Farm Technologies GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

RPBA Art. 12(4)

**Keyword:**

Inventive step - (yes)

Late-filed evidence - submitted with the statement of grounds  
of appeal - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1734/13 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 18 July 2018**

**Appellant:** GEA Farm Technologies GmbH  
(Opponent) Siemensstrasse 25-27  
59199 Bönen (DE)

**Representative:** KNH Patentanwälte Neumann Heine Taruttis PartG  
mbH  
Postfach 10 33 63  
40024 Düsseldorf (DE)

**Respondent:** Trioliet Mullos B.V.  
(Patent Proprietor) Hinmanweg 19  
7575 BE Oldenzaal (NL)

**Representative:** De Vries & Metman  
Overschiestraat 180  
1062 XK Amsterdam (NL)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 30 May 2013  
rejecting the opposition filed against European  
patent No. 1935238 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
W. Van der Eijk

## **Summary of Facts and Submissions**

- I. The appellant-opponent lodged an appeal, received on 24 July 2013, against the decision of the Opposition Division of the European Patent Office posted on 30 May 2013 rejecting the opposition filed against European patent No. 1 935 238 pursuant to Article 101(2) EPC and at the same time paid the prescribed fee. The statement setting out the grounds of appeal was received on 27 September 2013.
- II. Opposition was filed against the patent as a whole and based on Article 100(a) in combination with Article 56 for lack of inventive step, on Article 100(b) for insufficiency of disclosure and on Article 100(c) together with Article 76(1) for unallowable extension of subject-matter.

In its decision the Division considered the following documents, amongst others:

- (D1) US 3,830,438 A
- (E1) GB 1 315 507 A
- (E2) DE 36 02 403 A1
- (E3) SU 923437
- (E9) Dubbel, Taschenbuch für den Maschinenbau,  
14. Auflage, 1981. Pages XXX, 1149-1151.
- (E13) DE 43 19 507 A1

III. The appellant-opponent filed the following further evidence with the statement of grounds:

- (E17) EP 1 625 787 A2
- (E18) DE 34 38 612 A1
- (E19) US 4,712,511
- (E20) A.H. Ipema and J. Frederiks: "Volledig automatisch voeren van opfokstieren",  
Landbouwmechanisatie 37 (1986) 2 (February)
- (E21) MIX FEEDER, Owner's Manual Program Version  
MUL17
- (E22) Instruksjonsbok "Rundballenkutter RBK 1202"
- (E23a) Delivery note of 26 February 1999
- (E23b) German translation of E23a
- (E24a) Delivery note of 10 March 1999
- (E24b) German translation of E24a
- (E25) Technical drawing. Plant delivered to Mr.  
Hevelplund with translation (E25b)
- (E26a) O. Christensen: "Robot overtager fodringer",  
Landsbladet Agro, 3 September 1999
- (E26b) German translation of B26a
- (E27) AU-A1-48,902/79

IV. Oral proceedings were held before the Board on 18 July 2018.

V. The appellant-opponent requests cancellation of the decision under appeal and revocation of the patent in its entirety.

The respondent-proprietor requests dismissal of the appeal and maintenance of the patent as granted, or alternatively, cancellation of the decision under appeal and maintenance of the patent in amended form according to one of auxiliary requests 1 and 2 filed with letter of 18 June 2018.

VI. The wording of the independent claims as granted (main request) reads as follows:

"1. An apparatus for separating and mixing feed for live stock, comprising at least one unit (1) for processing feed, which unit comprises a conveyor alley (2) for receiving one or more bales (3) of feed, which conveyor alley comprises conveying means (5) for conveying the received bale(s) of feed from an inlet side to a discharge side, and separating means for separating feed from a bale that has been conveyed to the discharge side, said apparatus furthermore comprising a mixing bin (26) for mixing feed components into a feed mixture and discharge unit (18) for supplying separated feed to the mixing bin, wherein the separating element is configured as a cutting unit arranged for separating a slice of feed from the end facing towards the discharge side of the bale that is present at the discharge side **characterized in that** the discharge unit (18) for supplying separated feed to the mixing bin comprise a conveying element (24) for conveying feed to the mixing bin, said conveying element comprising a portion (30) that extends under the discharge side(s) (12) of the conveyor alley(s)."

"21. A method for separating and mixing feed for live stock, wherein one or more bales (3) of feed is(are) placed on one or more conveyor alleys (2), the bale(s) placed on the conveyor alley(s) are conveyed from an inlet, side to a discharge side, and feed is separated from a bale that has been conveyed to the discharge side, which separated feed is mixed into a feed mixture in a mixing bin (26), wherein a slice of feed is separated from the end facing towards the discharge side of the bale that is present at the discharge side

**characterized in that** the separated feed is supplied to the mixing bin (26) by means (18) comprising a conveying element (24) for conveying feed to the mixing bin, said conveying element comprising a portion (30) that extends under the discharge side(s) (12) of the conveyor alley(s)."

VII. The appellant-opponent argues as follows:

The subject-matter of claims 1 and 21 lacks an inventive step in the light of documents D1 or E13 in combination with E1, E2, E3, E9 or common general knowledge. Late filed evidence E17-E27 is highly relevant for inventive step and should be admitted. In particular, the intermediate document of the respondent-proprietor E17, bearing an earlier priority date, already disclosed the contested invention as claimed, thus also depriving the contested patent of a valid priority. As a consequence, claims 1 and 21 lack novelty and also, alternatively, lack inventive step in the light of E17.

VIII. The respondent-proprietor argues as follows:

The subject-matter of claims 1 and 21 involves an inventive step in the light of D1, E1, E2, E3, E9, E13 and common general knowledge. Late filed documents E17-E27 should not be admitted. Consent is not given for the introduction of novelty (based on E17, filed with the appeal) as new opposition ground.

## **Reasons for the Decision**

1. The appeal is admissible.
  
2. The invention is concerned with separating and mixing feed for livestock from bales. The machine and method make use of a conveyor alley for incoming bales having a cutting unit at the discharge side of the conveyor for separating a slice of feed from the bale. Separated feed is in turn transported to a mixing bin by a discharge unit comprising a conveying element. A problem associated with separating feed from a bale, which is a compacted unit, is that it tends to come off in chunks instead of loose long stems as with feed cut from a stack or a silo. This complicates precise cutting and increases the risk of spillage of separated feed, compromising accurate dosing. To address this problem, feed is cut from the end of the bale that *is present* at the discharge side of the bale conveyor alley. Additionally, the conveying element of the discharge unit has a portion extending under the discharge side of the bales conveyor alley - i.e. under the location where the cutting of the bale takes place. This construction avoids undesired spillage and also helps ensure that all separated feed from the conveyor alley will be received in the discharge unit and delivered to the mixing bin while the rest of the bale is kept intact, see patent specification paragraph [0032], achieving the desired more accurate dosing while maintaining high rates of preservability of feed in the remaining part of the bale, see paragraph [0007].



3. Inventive step - main request

The appellant-opponent contests the inventive step findings of the Opposition Division. In particular in respect of combinations starting with D1 or E13 as closest prior art for both independent claims 1 and 21.

3.1 D1 as closest prior art

3.1.1 D1 describes a machine and method for processing feed from a stack 24, comprising a conveyor alley 16, a cutting unit 36 for separating feed from the stack 24 and a conveying element 50 for conveying feed towards a further processing step, see D1, column 3, lines 38-49 and figures. It is undisputed, as also identified by the Opposition Division in section 3.4 of the impugned decision, that D1 neither discloses the feature of a mixing bin for mixing feed components nor the feature that a portion of the conveying element extends under the discharge side of the conveyor alley.

3.1.2 The distinguishing feature of the overlapping conveyors prevents possible spillage of separated food and helps ensure that all separated feed will be received in the discharge unit and delivered to the mixing bin, see patent specification paragraph [0032], so achieving accurate metering and dosing. The associated technical problem can thus be expressed as how to make the machine of D1 suitable for preparing feed mixtures with accurate metering. Evidence E1-E3, E9, and common general knowledge are cited in this context. They generally teach transferring loose matter between overlapping conveyors to avoid spillage.

- 3.1.3 The Opposition Division however held that the skilled person, though possibly aware of the teachings of E1,E2,E3,E9 and common general knowledge of providing overlapping to avoid spillage, would nonetheless not apply these teachings to modify the machine of D1 as a matter of obviousness, see impugned decision, section 3.5.
- 3.1.4 From the Board's understanding of D1, if conveyor 50 of D1 were to be modified to extend below conveyor alley 16, the platform 52 attached to the side of conveyor 50 would lose its position at the lower end of the reciprocating path of cutting mechanism 36. This position of platform 52 is however indispensable for achieving proper cutting action in the machine of D1. As it is immediately apparent from the teachings in D1, e.g. in column 2, lines 28-41, or claims 4 and 9, platform 52 acts as counter-element for the shearing action of reciprocating cutting head 36. More particularly, platform 52 also serves to support "the overhanging portion to facilitate said shearing action" of feed stack 24, see D1, claim 9. Platform 52 would need to be dispensed with and its function thus lost if conveyor element 50 were to be lowered from its current position and extended below alley 16. How this function could be replaced is neither taught by the adduced prior art documents nor can it be considered by the Board as emanating from common general knowledge of the skilled person without need of further inventive activity.
- 3.1.5 The appellant-opponent contends that no replacement is needed as it would be immediately apparent from D1 that platform 52 is an optional feature. In particular, cutting head 36 includes two reciprocating cutting bars 38, 42 which are comparable to cutting mechanisms used

with mowers that would not need any further counter-element, see D1, column 2, lines 3-14, and figure 3. Furthermore, platform 52 is claimed in a dependent claim, which would indicate that it is not indispensable for the invention described in D1.

The Board is not convinced by this argument. Although a reciprocating cutting head, as cutting head 36 of D1, is able to perform autonomous cutting action in general, in the specific use of D1 the overhanging part of the stack 24, which is a relatively loose structure, would still need support to avoid yielding and ensure proper cutting, especially during the lowermost part of the cutting head trajectory. Thus, in the specific embodiment of D1 it cannot be dispensed with so easily. Consequently, dispensing with such a supporting platform cannot be regarded as an obvious measure for the skilled person. The further submission that such a platform is claimed in a dependent claim, can only be considered by the Board to suggest that the proprietor of D1 did not consider that feature crucial or essential for the aspect of the invention that the applicant of D1 wanted to protect with independent claim 1. Whether a working embodiment could function without it and without replacement cannot be derived from this fact. On the contrary, in the present case, as explained above, removing platform 52 without replacement would run contrary to the specific technical teaching of D1 regarding this feature, rather than being immediately apparent as submitted by the appellant-opponent.

3.1.6 In view of the above, the Board can but confirm the conclusion of the impugned decision that the skilled person would not modify, as a matter of obviousness,

the machine of D1 so that conveying element 50 extends below conveyor alley 16.

3.2 E13 as closest prior art

3.2.1 The impugned decision found that, amongst other differentiating features, E13 did not disclose a cutting unit at the discharge side of the conveyor alley 16, as is required by the contested claims as they call for separating a slice of feed from the end facing towards the discharge side of the bale *that is present at the discharge side*.

3.2.2 Indeed, in the Board's understanding of E13 the cutting unit 7 (22 or 29 of the embodiments of figures 3 and 4) of E13 breaks a bale down, whether in slices or differently, in an intermediate position on the conveyor alley 16, before feeding the broken down or sliced bale on conveyor 16 to a milling roll 18 situated at discharge end of the conveyor for further discharge. The machine of E13 thus represents a fundamentally different device, wherein already broken down or separated feed is milled at the discharge side of the alley.

3.2.3 The appellant-opponent argues that the cutting unit 7, 22 or 29 is movable in a direction approaching the discharge side, see e.g. E13, claim 4. The document would therefore disclose that the cutting unit can be placed at the discharge side and so would anticipate the disputed feature. This argument is however not convincing because, firstly, E13 does not describe that cutting unit 7, 22 or 29 can be moved that far so as to be positioned at the discharge side. Furthermore, that position is occupied by the milling roller, which is described as an essential feature of the machine in

E13, so that it is immediately apparent for the skilled person that the cutting unit 7, 22, 29 cannot be moved that far.

The appellant-opponent also argues that the feature "*a bale that is present at the discharge side*" is merely a functional definition and only describes the side of the bale that is facing the cutting unit, the bale otherwise being located anywhere on the conveyor alley. The Board is unconvinced by this argument. It is unequivocally clear not only from the wording of the feature alone but also from the feature read in the context of the whole patent, that it defines the exact location of the transition between the bale conveyor alley and the subsequent conveying element where the separated food is discharged. In E13, this location is occupied by the milling roller.

- 3.2.4 In the Board's view if the skilled person would chose to start from a type of device as disclosed in E13 he will be bound by that choice, such that any further obvious development would always be within the constraints of that particular type, see also CLBA, 8th edition 2016, I.D.3.4.3. It thus holds that it is well outside the routine abilities of the skilled person to redesign the device E13, which is of a fundamentally different type, such that it conveys the bale to a discharge side where it separates a slice of feed from the discharge side of the bale. Regardless of whether or not he would as a matter of obviousness combine its teaching with any of the other combination documents that are adduced as teaching mixing bins or overlapping conveyors, it follows immediately that any of the alleged combinations, would not lead to the subject-matter of contested claims 1 or 21.

3.3 In view of the above, the Board confirms the decision's finding, see section 3.5 of the decision, that the subject-matter of claims 1 and 21 involves an inventive step in the light of documents D1, E1, E2, E3, E9, E13 and of common general knowledge.

4. New evidence E17-E27 - admissibility

The admission of this new evidence is at the discretion of the Board under Article 12(4) EPC.

4.1 With respect to the question whether the new evidence could have been submitted already in first instance, the Board indicated in its written communication that prior use E20-E26 appears to arise from Mullerup, which is an affiliate to the appellant-opponent. The Boards apply strict standards for admission of late filed evidence of prior use, see Case Law of the Boards of Appeal, 8th edition 2016 (CLBA), IV.C.13.17, especially when it relates to a party's own activities. Documents E17-E19 and E27 are patent literature that, in the Board's view, could have been found by the opponent during a search in preparation for the opposition and submitted in first instance. In this respect, the appellant-opponent was unable to provide a justification for the late filing of any of the above cited evidence.

4.2 In respect of relevance, the Board already indicated in the written communication in respect of the alleged prior use E21-E26, that at least the characterizing feature of claims 1 and 21 that the conveying element extends under the bales conveyor alley cannot be directly and unambiguously derived from the photo of E26, as alleged by the appellant-opponent. The Board

also indicated that documents E18-E20 and E27 do not appear to be more relevant than the documents already on file. E18-E20, E27 also do not appear to teach the characterizing feature of overlapping conveyors.

Absent any further comment from the appellant-opponent, either in writing or at the oral proceedings regarding E18 - E27, the Board sees no reason to modify its preliminary opinion that this evidence is *prima facie* not highly relevant for the subject-matter of claims 1 and 21 of the main request.

4.3 At the oral proceedings before the Board the appellant-opponent only submitted arguments why E17 would be *prima facie* highly relevant and should be admitted into the proceedings.

4.3.1 New document E17 is an intermediate document published between the priority and the filing date of the contested patent, and is cited by the appellant-opponent as relevant for novelty and, arguing that the patent's priority is not valid, also for inventive step. In particular, as earlier application E17 filed by the respondent proprietor would already disclose the same invention, the application from which the contested patent derives would not be the first filing and could not enjoy its claimed priority, Article 87(b) EPC.

Whether cited against novelty or inventive step due to invalid priority, relevance of E17 hinges on whether it discloses the claimed invention.

- 4.3.2 In the Board's opinion, it is at first sight apparent that E17 does not disclose the invention as claimed by the contested patent and can therefore neither deprive it of the priority right nor of novelty, contrary to the submissions of the appellant-opponent. Document E17 only describes reducing means 6 in the form of an endless belt 10 provided with projecting pins that separates feed by scrapping it from one side of the bale, see column 4, lines 1-10 and figures 1-6. No other example of separating means is apparent in the document. Thus at least a cutting unit or a method step that separates a *slice of feed*, as required by contested claims 1 and 21, is not disclosed by this new evidence. Without this feature either contention - lack of novelty or lack of inventive step due to invalid priority - is highly unlikely to succeed.
- 4.3.3 In summary, without prejudice to the question of admissibility of novelty as a new ground for opposition, the Board considers E17 not to be *prima facie* relevant.
- 4.4 In view of the above the Board decided not to admit new evidence E17-E27 into the appeal proceedings in the exercise of its discretion under Article 12(4) RPBA.
5. In conclusion, as all objections raised by the appellant-opponent fail, the Board confirms the decision of the Opposition Division.



**Order**

**For these reasons it is decided that:**

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated