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**Datasheet for the decision  
of 7 September 2018**

**Case Number:** T 0286/15 - 3.2.04

**Application Number:** 10175443.0

**Publication Number:** 2292085

**IPC:** A01F15/08

**Language of the proceedings:** EN

**Title of invention:**

Implement initiated control of tractor power take-off (PTO).

**Patent Proprietor:**

CNH Industrial Italia S.p.A.

**Opponent:**

Octrooibureau Van der Lely N.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(3)

**Keyword:**

Amendments - broadening of claim (no)

**Decisions cited:**

G 0003/14

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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Case Number: T 0286/15 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 7 September 2018**

**Appellant:** CNH Industrial Italia S.p.A.  
(Patent Proprietor) Via Plava 80  
10135 Torino (IT)

**Representative:** CNH Industrial IP Department  
CNH Belgium NV  
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**Respondent:** Octrooibureau Van der Lely N.V.  
(Opponent) Weverskade 110  
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**Representative:** AGCO Intellectual Property Department  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 2 February 2015  
revoking European patent No. 2292085 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** J. Wright  
C. Heath

## Summary of Facts and Submissions

I. The appellant-proprietor lodged an appeal, received 10 February 2015, against the decision of the Opposition Division posted on 2 February 2015 revoking European patent No. 2292085 pursuant to Article 101(3) (b) EPC. The appeal fee was paid at the same time. Their statement setting out the grounds of appeal was filed on 29 May 2015.

II. Opposition was based, *inter alia*, on lack of inventive step.

The Opposition Division held that the subject matter of claim 1 of the main request, submitted during oral proceedings, did not meet the requirements of Article 123(3) EPC. Since this was the only request on file at the end of the proceedings, the Opposition Division revoked the patent.

III. Oral proceedings before the Board were duly held on 7 September 2018. During the oral proceedings, the appellant-proprietor withdrew their main and auxiliary request 1, leaving only the second auxiliary request on file. The respondent-opponent withdrew their objection to the second auxiliary request being admitted into the proceedings and their objection that claim 1 of this request lacked clarity.

IV. The appellant-proprietor requests that the decision under appeal be set aside and that patent be remitted to the previous instance for further prosecution on the basis of auxiliary request 2, filed with the grounds of appeal.

V. The respondent-opponent requests that the case be remitted to the department of first instance for further prosecution.

VI. Claim 1 of the second auxiliary request reads as follows:

"A combination of an agricultural tractor (10) and a round baler (50) connected thereto, the combination comprising a control system for managing the operation of a power take-off (20) on an the agricultural tractor (10), the agricultural tractor powering the round baler (50). said power take-off (20) operable between an engaged and a dis-engaged state, said control system comprising:

- an actuator disposed on said tractor (10) for shifting said power take-off (20) between said engaged state and said dis-engaged state;
- a first controller (100) disposed on said tractor (10) and configured to initiate an actuator signal which causes said actuator to shift between said engaged and dis-engaged states;
- at least one movable part position sensor (220, 230, 240, 250) disposed on the round baler (50), said at least one position sensor (220, 230, 240, 250) configured to initiate an implement position signal corresponding to changes in an implement part position between a first position and a second position;
- a second controller (200) disposed on the round baler (50), said second controller system configured to receive said implement position signal from said at least one position sensor (220, 230, 240, 250) and

generate at least one implement output signal in response; and

characterized in that said control system further comprises a communication bus (150) connecting said first controller (100) and said second controller (200) and configured to transmit signals between said first and second controllers (100, 200), whereby said first controller (100) is configured to receive said at least one implement output signal and, in response thereto, initiate a change in the state of the power take-off (20); the round baler (50) having a crop pick-up apparatus (56), said pickup apparatus being movable between raised and lowered positions, said at least one position sensor (230) is configured to sense said pickup apparatus position, and wherein said raised and lowered positions correspond to said first and second positions, respectively".

VII. The appellant-proprietor argued as follows:

The case should be remitted to the department of first instance for consideration of the opposition ground of inventive step.

VIII. The opponent-respondent argued as follows:

Article 123(3) EPC is not an issue. The case should be remitted to the department of first instance for consideration of the opposition ground of inventive step.

## **Reasons for the Decision**

1. The appeal is admissible.

2. Background

The patent concerns a round baler attached to an agricultural tractor (see paragraph [0001]).

3. Admissibility of the second auxiliary request

Admission of this request is no longer contested. Nor does the Board see any reason why it should not be admitted into the proceedings.

4. Second auxiliary request, clarity

The respondent-opponent has withdrawn their objection to lack of clarity of claim 1 arising from the word "corresponding" in the characterising part of claim 1. Nor, in any case does the Board have the power to consider this issue since the word, in the same context, was already present in the claims as granted (see G3/14, point 85).

5. Second auxiliary request, Article 123(3) EPC

In a communication in preparation for the oral proceedings dated 26 April 2018, the Board gave the following positive preliminary opinion regarding compliance of the second auxiliary request with Article 123(3) EPC (see section 5):

"Claim 1 contains all features of claim 1 as granted, except that the term "connected implement" has been

replaced by "round baler" and the disclaimer "and wherein said movable part position sensor is not a manually operated cover position sensor" has been deleted.

In respect of the above replacement, the Board notes that a "round baler" is a specific type of connected implement, therefore the Board sees no extension of subject matter beyond claim 1 as granted in respect of this amendment. With respect to the deleted disclaimer, claim 1 has also been amended to define that the round baler has a crop pick-up apparatus, movable between raised and lowered positions and that the at least one position sensor is configured to sense the pickup apparatus position. Thus the claimed sensor is now defined as a particular type of sensor, sensing pickup apparatus position (raised/lowered). In the Board's view, this specific sensor excludes its being a manually operated cover position sensor. Therefore this amendment appears not to extend the protection conferred beyond that of granted claim 1, nor has this been argued by the respondent-opponent".

Since the parties have presented no further arguments in this regard, and the respondent-opponent does not see Article 123(3) EPC as being an issue, the Board has no reason to deviate from this preliminary opinion. Therefore the Board concludes that claim 1 meets the requirements of Article 123(3) EPC.



6. Remittal

The impugned decision only considered the issue of Article 123(3) EPC. It did not examine the opposition ground of inventive step, a ground that is also raised by the respondent-opponent against the present 2nd auxiliary request (novelty is not contested).

In the present case, the Board considers it appropriate to remit the case to the opposition division for further prosecution, in accordance with both parties' wishes. This will allow for a first instance consideration of this remaining opposition ground.

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the previous instance for further prosecution.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated