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**Datasheet for the decision
of 30 March 2023**

Case Number: T 1651/20 - 3.2.07

Application Number: 13165513.6

Publication Number: 2659986

IPC: B05B1/16

Language of the proceedings: EN

Title of invention:
Sprayer nozzle cartridge

Patent Proprietor:
Deere & Company

Opponent:
Lechler GmbH

Headword:

Relevant legal provisions:
EPC Art. 54, 83, 100(a), 100(b)
RPBA 2020 Art. 15(1)

Keyword:
Novelty - (yes)
Sufficiency of disclosure - (yes)

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 1651/20 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 30 March 2023

Appellant: Deere & Company
(Patent Proprietor) One John Deere Place
Moline, IL 61265 (US)

Representative: Reichert, Christian
John Deere GmbH & Co. KG
Global Intellectual Property Services
John-Deere-Straße 70
68163 Mannheim (DE)

Respondent: Lechler GmbH
(Opponent) Ulmer Strasse 128
72555 Metzingen (DE)

Representative: Patentanwälte
Ruff, Wilhelm, Beier, Dauster & Partner mbB
Postfach 10 40 36
70035 Stuttgart (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 9 June 2020
revoking European patent No. 2659986 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Pieracci
A. Cano Palmero

Summary of Facts and Submissions

- I. An appeal was filed by the patent proprietor in the prescribed form and within the prescribed time limit against the decision of the opposition division revoking European patent No. 2 659 986.
- II. The opposition division found that the subject-matter of claim 1 of the patent as granted (main request) and of the first auxiliary request is not new and that the subject-matter of claim 1 of the second auxiliary request is not inventive.
- III. In preparation for oral proceedings the Board communicated its preliminary assessment of the case in a communication pursuant to Article 15(1) RPBA 2020 to which the opponent responded in substance.
- IV. Oral proceedings before the Board took place on 30 March 2023.
At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes.
- V. The final requests of the parties are as follows:
for the patent proprietor (appellant):

that the appealed decision be set aside and
that the patent be maintained as granted, or,
in the alternative,
that the patent be maintained on the basis of the
set of claims according to one of auxiliary
requests 1 and 2 filed with the statement setting
out the grounds of appeal,

for the opponent (respondent):

that the appeal be dismissed.

VI. The arguments of the parties are dealt with in detail in the reasons for the decision.

VII. Claim 1 of the main request, *i.e.* according to the patent as granted, reads as follows (the feature analysis corresponds to that of the appealed decision, page 6, point 2.2) :

- 1.1 A sprayer apparatus (10)
- 1.2 comprising an apparatus housing (15) for supporting
- 1.3 a nozzle connector (30) and
- 1.4 a control element (20) configured to control fluid flow,
- 1.5 a sprayer nozzle cartridge (50) adapted for coupling to the nozzle connector (30) of the sprayer nozzle apparatus (10) and for receiving a fluid from the sprayer nozzle apparatus (10), the sprayer nozzle cartridge (50) comprising:
- 1.6 a cartridge housing (55);
- 1.7 a first nozzle tip (60) comprising a first flow path (65),
- 1.8 the first nozzle tip (60) coupled to the cartridge housing (55); and
- 1.9 a second nozzle tip (75) comprising a second flow path (80),
- 1.10 the second nozzle tip (75) coupled to the cartridge housing (55);
- 1.11 wherein the control element (20) selectively communicates fluid to at least one of the first flow path (65) and the second flow path (80),
- 1.12 and wherein the control element (20) is

configured to selectively communicate fluid to both the first flow path (65) and the second flow path (80).

VIII. As the auxiliary requests do not form part of this decision there is no need to reproduce the claims of these requests here.

Reasons for the Decision

1. Novelty of the subject-matter of claim 1 of the patent as granted in view of E2 (Articles 100(a) and 54 EPC)

1.1 The Board concurs with the patent proprietor (see point 3.2 of the statement setting out the grounds of appeal, in particular pages 4 and 5 of the same) that features 1.2 to 1.4 of claim 1 (see point VII above), namely:

- 1.2 an apparatus housing
- 1.3 for supporting a nozzle connector and
- 1.4 a control element configured to control fluid flow,

are not disclosed in E2, contrary to the finding of the opposition division which indicated the apparatus housing with the reference sign 1 of E2 as anticipating the apparatus housing according to claim 1 as granted (see point 2.4, third paragraph, of the reasons for the decision).

1.2 The Board concurs with the patent proprietor that in paragraph [0014] of E2 with the reference sign 1 is indicated as the whole sprayer apparatus and that an apparatus housing for supporting a nozzle connector and

a control element configured to control fluid flow is apparently not to be found in E2.

1.3 The Board also shares the view of the patent proprietor that, should item 10 of E2, instead of reference sign 1 in figure 2, be seen as being the apparatus housing, then this element cannot be seen as being also the sprayer nozzle cartridge and the cartridge housing as indicated by the opposition division for features 1.5 and 1.6 (see point 2.4 of the reasons for the decision with reference to these features).

1.4 The Board also concurs with the patent proprietor (see page 7, first full paragraph of the statement setting out the grounds of appeal) that contrary to the finding of the opposition division (see page 7, last paragraph - page 8, first paragraph of the reasons for the decision) a control element according to features 1.11 and 1.12 of claim 1, namely:

1.11 wherein the control element selectively communicates fluid to at least one of the first flow path and the second flow path,

1.12 and wherein the control element is configured to selectively communicate fluid to both the first flow path and the second flow path,

is not shown in E2 in which two control elements (18) are used instead.

1.5 The Board cannot follow the argument of the opponent (see the letter dated 24 June 2022, page 1, last paragraph - to page 2, second paragraph) that according to the example of figures 7 to 9 and paragraph [0025] of the patent in suit a control element (220) consists of three poppets (221) and that therefore according to

the teaching of the opposed patent, claim 1 should be interpreted such that a control element does not need to be made of a single element.

1.6 The Board considers the wording of the claim to be unambiguous and not warranting any interpretation. Furthermore the description cannot be used to give a different meaning to a claim feature which in itself imparts a clear credible technical teaching to the skilled reader (see the Case Law of the Boards of Appeal [CLB], 10th edition, 2022, II.A.6.3.4, third paragraph). Claim 1 of the patent requires a control element performing the functions outlined in features 1.11 and 1.12 above and since two elements are shown in E2 to be necessary for performing these functions, features 1.11 and 1.12 are not disclosed in E2.

1.7 The Board cannot follow the argument of the opponent (see the reply to the statement setting out the grounds of appeal, page 5, fourth paragraph) that feature 1.5 of claim 1 namely

1.5 a sprayer nozzle cartridge adapted for coupling to the nozzle connector of the sprayer nozzle apparatus and for receiving fluid from the sprayer nozzle apparatus,

is disclosed in document E2 since the "Ventilkörper (10)" of E2 can be seen at the same time as the nozzle connector and as the sprayer nozzle cartridge.

1.8 According to the opponent (see the reply to the statement setting out the grounds of appeal, page 4, fourth to seventh paragraph) this is the case because the claim does not require that the sprayer nozzle cartridge and the nozzle connector are separate

elements. This is even more the case since in some examples of the opposed patent (see paragraph [0018] in combination with Figure 2 and paragraph [0026] in combination with figure 7) the sprayer nozzle cartridge and the nozzle connector are shown as being made in one piece or to be irremovably connected.

1.9 The Board notes that, as discussed in point 1.6 above, the description cannot be used to give a different meaning to a claim feature which in itself imparts a clear credible technical teaching to the skilled reader. The fact that the sprayer nozzle cartridge and the nozzle connector are separate elements is clearly derivable by the skilled person from the wording of feature 1.5 of the claim itself, due to the fact that the sprayer nozzle cartridge is adapted for coupling to the nozzle connector.

The corresponding argumentation of lack of novelty of the opponent (see the statement setting out the grounds of appeal, page 5, second to penultimate paragraph) is therefore not convincing.

1.10 The Board is therefore convinced by the line of argument of the patent proprietor that the subject-matter of claim 1 is not deprived of novelty by document E2.

2. Insufficiency of disclosure (Articles 100(b) and 83 EPC)

2.1 The Board cannot follow the argument of the opponent (see page 2, last paragraph of the reply to the statement setting out the grounds of appeal) that the person skilled in the art would not be in the position of carrying out the invention according to claim 6 and 7 of the patent in suit taking into account figure 4

and the corresponding part of the description and in particular the examples of figures 3 to 6 in combination with paragraphs [0020] to [0023] of the description, because it would not be possible to direct the fluid in more than one direction at the same time with the valve 134 of figure 4 (see the reply to the statement setting out the grounds of appeal, page 3, fourth paragraph).

2.2 The Board notes that the question whether the valve 134 of figure 4 is capable of directing the fluid in more than one direction at the same time is not conclusive for assessing the sufficiency of disclosure of the claimed invention.

2.3 It is established jurisprudence of the Boards of Appeal that an objection of lack of sufficient disclosure presupposes that there are serious doubts substantiated by verifiable facts. The burden of proof is upon the opponent to establish on the balance of probabilities that a skilled reader of the patent, using his common general knowledge, would be unable to carry out the invention (see CLB, *supra*, II.C.9, first paragraph).

2.4 In the present case the Board is of the opinion that the objection of insufficiency of disclosure raised by the opponent is not based on serious doubts nor substantiated by verifiable facts.

2.5 In fact, it has not been shown that the person skilled in the art could not carry out the claimed invention according to claims 6 and 7 with the teaching of the patent in combination with the common general knowledge. The argument of the opponent based on the embodiment on figures 3 to 6 of the patent in suit

could at most indicate that that example is not according to claims 6 and 7.

2.6 The Board thus concludes that the opponent has not discharged its burden of proof and is not convinced that the opposition division erred in its finding that the claimed invention is sufficiently disclosed.

3. Conclusion

The patent proprietor has thus convincingly demonstrated the incorrectness of the decision of the opposition division, that the subject-matter of claim 1 of the patent as granted lacks novelty in view of E2, whereas the opponent has not convincingly demonstrated that the opposition division erred in finding the claimed invention to be sufficiently disclosed.

As no other ground for opposition and objection to the patent as granted has been raised, it follows from the above that the appealed decision should be set aside and the patent be maintained as granted.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated