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**Datasheet for the decision  
of 26 July 2023**

**Case Number:** T 1996/21 - 3.2.04

**Application Number:** 14714538.7

**Publication Number:** 2966965

**IPC:** A01C7/20, A01C7/08, A01C15/00

**Language of the proceedings:** EN

**Title of invention:**  
AGRICULTURAL IMPLEMENT WITH PARTICULATE DISTRIBUTION SYSTEM

**Patent Proprietor:**  
AGCO-Amity JV, LLC

**Opponent:**  
Amazonen-Werke H. Dreyer SE & Co. KG

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54(2)  
RPBA 2020 Art. 13(2)

**Keyword:**  
Novelty - (no)  
Amendment after summons - exceptional circumstances (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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**Case Number: T 1996/21 - 3.2.04**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 26 July 2023**

**Appellant:** Amazonen-Werke H. Dreyer SE & Co. KG  
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**Representative:** Downing, Michael Philip  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
2 September 2021 concerning maintenance of the  
European Patent No. 2966965 in amended form.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
C. Heath

## **Summary of Facts and Submissions**

- I. The appeal was filed by the appellant opponent against the interlocutory decision of the opposition division to maintain the patent in amended form.
- II. The division held inter alia that the amended claims were new over D1.
- III. In preparation for oral proceedings the board issued a communication setting out its provisional opinion on the relevant issues.

Oral proceedings were held on 26 July 2023 before the Board.

- IV. The appellant opponent requests that the decision under appeal be set aside and the patent revoked.

The respondent proprietor requests that the appeal be dismissed, or auxiliarily that the decision under appeal be set aside and the patent maintained according to one of auxiliary requests 1-5 filed on 7 March 2023.

- V. Independent claim 1 of the requests relevant to this appeal are as follows:

(a) Main request (as maintained by the opposition division):

"An agricultural implement (102) comprising:  
a distribution assembly (132, 302, 500) configured to receive particulate material from a source (120, 111,

124, 304, 504), and to distribute the particulate material to a plurality of remote locations, and a plurality of seeding units (312) configured to inject particulate material into a ground surface, characterised in that:

at each of the plurality of remote locations, a metering module (110, 308, 1200) is provided, comprising a metering roller (314, 1208) controllable independently of the other metering modules (110, 308, 1200) to selectively meter a flow of the particulate material into a plurality of venturi cups (1240) of the metering module (110, 308, 1200), and a hollow air box (1214) arranged to supply air to the plurality of venturi cups (1240);

a plurality of lines (112, 1210) are connected to the plurality of venturi cups (1240), wherein one of the plurality of lines (112, 1210) is connected to one of the plurality of venturi cups (1240), and wherein each seeding unit (312) is connected to one of the plurality of lines (112, 1210)."

(b) First and second auxiliary requests

Claim 1 as in the main request in both requests.

(c) Third to fifth auxiliary requests

Claim 1 is identical for these three requests and reads as in the main request with the following amendments (emphasis by the Board to indicate amended text):

"...at each of the plurality of remote locations, a metering module (110, 308, 1200) is provided, comprising a metering roller (314, 1208) controllable independently of the other metering modules (110, 308, 1200) to increase or decrease the rotational speed of

the metering roller (314, 1208) to selectively meter-a  
adjust the flow rate of the particulate material into a  
plurality of venturi cups (1240)..."

VI. In the present decision, reference is made to the  
following document:

(D1) DE 689 04 879 T2

VII. The appellant's arguments can be summarised as follows:

Claim 1 of all requests is new over the cited  
documents. There are special circumstances in the sense  
of Art 13(2) RPBA that justify admission of the  
auxiliary requests.

VIII. The respondent's arguments can be summarised as  
follows:

Claim 1 of the main request lacks novelty over D1. The  
auxiliary requests are late filed without special  
circumstances that justify their admission, Art 13(2)  
RPBA.

## **Reasons for the Decision**

1. The appeal is admissible.
2. Background.

The invention is directed to an agricultural implement and method for placement of particulate material - seed or fertilizer - in the furrows, cf. description paragraph [0001]. A distribution assembly distributes the particulate material from a source to a plurality of remote locations. Each remote location is provided with a metering module. Each metering module comprises a metering roller that is controllable independent of the other modules, cf. para [0010]. The roller meters a flow of particulate material (seed or fertilizer) into a plurality of venturi cups to further distribute the material to a set of several seeding units (one set for each metering module/remote location). The seeding units inject the material into the ground, cf. para. [0005].

3. Main request (as upheld) - Novelty
  - 3.1 The appellant contests the division's conclusion that claim 1 is new over D1, see section 5 of the impugned decision.
  - 3.2 It is not in dispute that D1 discloses an agricultural implement with a distribution assembly that distributes seed to remote seeding locations from seeding devices at 15, and that comprises a plurality of metering modules 2, page 3, ln.9-16. Each of the plurality of metering modules 2, one of which is shown in figures 1 (in cross-section) and 2 (from above), is fed seed from

a central seed tank 1 and has a plurality of seeding units 15 and an array of metering rollers or stub wheel 10 (page 3 in. 26-30). Each metering module is individually driven by a 12V direct current motor, paragraph bridging pages 4 and 5. Each metering module 2 supplies a seeding unit 15 through a corresponding line 14, cf. Figs. 1 and 2 and page 3 ln. 14-16.

- 3.3 The division held that the metering rollers (stub wheels 10) of D1 are not controllable independently, cf. section 5.2.a) of the impugned decision. The Board disagrees. Firstly, the claim does not require that all metering rollers are independently controllable of each other; rather the claim wording requires that each metering module has a metering roller that is independently controllable of (that of) the other metering modules. While the patent specification describes complex controls in the form of, for example, flow rate adjustment, it also describes simply stopping selected seeding units, cf. para 0045, last but one sentence. Thus, the claimed control covers also a simple control resulting in stopping seed flow to selected seeding units of a measuring module. Such a simple control is disclosed by D1. D1 describes on page 6, ln. 21-28, locking selected stub wheels in order to leave tracks without seeding that can later be used as driving tracks when driving over the field. This kind of metering module control is obviously done only at those metering modules where rolling tracks for the tractor or implement are needed. These modules thus have metering rollers that are independently controlled of (those of) the other metering modules, as claimed.

3.4 The division also held that D1 does not disclose Venturi cups in the sense of the contested claim, cf. section 5.2.b) of the decision. The Board disagrees. Though the terms "Venturi" and "cup" are well known per se, the combined expression has no recognized special meaning and does not denote any particular known constructional element, in contrast to other known standard expressions that include the term "Venturi", e.g. "Venturi valve" or "Venturi meter". Thus no implicit limitation can be derived from the combined term. On the other hand the individual terms "Venturi" and "cup", as stated, are well known and have clear normal meanings. Thus, in the Board's understanding the feature "Venturi cup", according to the normal meaning of the terms and in the claim context, denotes a Venturi effect assisted seed delivery element that has a cup form. Such an element can be identified in D1 as the the part of dosing chamber 9 supplied by pressurized air from air box 13 and supply 16 passing in front of stub wheel 10 where it tapers into the individual seed lines 14.

The well known Venturi effect refers to the reduction of fluid pressure that results when a fluid flows through a constricted section. The fluid in D1 flows from hollow air box 13 towards seed line 14. The fluid is constricted when flowing through tapered dosing chamber 9 into line 14 which necessarily gives rise to a reduction in pressure at the narrowest section, a Venturi effect. This occurs in the vicinity of the inlet of each individual tube 14, where the flowpath from the chamber 13 into the tube must become narrower, and can be seen to act to assist seed delivery into seed line 14 from the seed chamber 12 via the cam wheel 10. The area of the dosing chamber 9 where it opens into each individual line 14, and which in the cross-

section of figure 1 taken along one line 14 is shown as tapered can be considered cup shaped in the broadest sense of the term.

- 3.5 The division, at point 5.2 b) of their decision, argued that the term "Venturi" necessarily implies a flow expansion following the constriction. In the Board's view, as stated previously, the term may merely refer to the Venturi effect, which refers to nothing more than the reduction in fluid pressure that results from a constriction in the flow path. It may be that in various known applications of this effect, such as in Venturi valves, Venturi ejectors, or Venturi tubes, the constriction is followed by a widening of the flow path; this is however not inherent in or necessary for the effect. A further expansion is thus not needed to obtain a Venturi effect. Nor is the Board convinced by the argument of the respondent in the oral proceedings, that the term Venturi cup must be read in the context of the patent itself and thus implies further limitations derivable from the embodiment of Figs. 12-16 and paragraphs 0064 and 0065 of the patent. The venturi cup 1240 (which collects seeds from metering roller 1208) opens into the constriction or choke area of a venturi tube (in the proper sense of this term) 1244 through which pressurized air flows to produce there, in the tube a Venturi effect. If the respondent had wanted to limit the claim to this specific arrangement of cup with Venturi tube it should have formulated the claim accordingly. The Board has no reason to believe that the term "Venturi cup", which appears nowhere else in the literature, would be shorthand for the entire such arrangement. The cited passages themselves identify the Venturi cup as something separate from the venturi tube, even if together they form that arrangement.

3.6 The respondent further argued during the oral proceedings that D1 does not disclose a plurality of Venturi cups. Fig. 1 of D1 represents a section of dosing chamber 9. There would be no representation of the dosing chamber toward the back or of any visible separation between contiguous cam wheels 10. It could only be inferred that chamber 9 is continuous without discrete partitions for each individual set of cam wheel 10 and line 14. Fig. 2 is a top view from the outside and does not provide any further information in this respect. Therefore, there would only be one continuous chamber or cup 9 feeding the plurality of lines 14.

However, document D1 specifically describes on page 4, ln. 9-11 that one seed line 14 runs from each cam wheel 10. As convincingly argued by the appellant during the oral proceedings, page 5, ln. 1-5 of D1 describes that the cam wheels meter a given amount of seed material into an associated seed line 14 (".. in einen zugehörigen Saatschlauch"). This implies that the metering of each cam wheel 10 must be individually delivered to its corresponding seed line 14 without cross-delivery to adjacent seed lines. This is in particular so, if a certain amount is to be metered into that line ("eine bestimmte Menge .... dosieren"). This must be achieved in the agricultural device of D1, in normal use driven over fields with irregularities and inclined surfaces. The only way that the Board can imagine that this is achieved is by the provision of discrete tapered reception areas 9 and thus by the provision of a plurality of discrete cups, as put forward by the appellant.

3.7 The Board therefore concludes that all claimed features are disclosed by D1 and that therefore upheld claim 1 lacks novelty, Art. 54(2) EPC, contrary to the division's conclusions. The impugned decision must be set aside.

4. Auxiliary requests 1-2.

Claim 1 of these requests is identical to claim 1 of the main request. The same lack of novelty conclusion applies, regardless of their admissibility.

5. Auxiliary requests 3-5 - Admission

5.1 These auxiliary requests were filed by the respondent proprietor after the summons to oral proceedings. They therefore represent an amendment to the proprietor's case in the sense of Art 13 RPBA, so that their admission is at the discretion of the Board, Art 13(2) RPBA. According to this rule, the Board should in principle not take such an amendment into account unless there are exceptional circumstances which have been justified with cogent reasons.

5.2 The justifications submitted by the respondent are not convincing.

The respondent has argued that auxiliary requests 3-5 would be a direct response to the Board's preliminary opinion of lack of novelty objection over D1.

However, the Board notes that the objection of novelty over D1 was part of the contested decision, even if the opposition division was not convinced by it. This particular objection - lack of novelty over D1 - has

been pursued by the appellant opponent from the outset of the opposition and again in these appeal proceedings. Thus, the respondent cannot reasonably have been taken by surprise by the objection and it is clear that they have had ample opportunity to file fall back positions by way of amendment in the event the division or after it, the board, might be convinced by the objection.

5.3 They submit that the Board's preliminary opinion included a new argument concerning independent control. This is however not so. The division's novelty assessment included already the discussion of whether D1 discloses independent control of the metering rollers with reference to the mention of fixing individual cam wheels at page 6, ln. 21-28 of D1, cf. section 5.2.a) of the impugned decision, points 5.1 a) and 5.2 a). That the Board comes to a different conclusion than the division is a possible and foreseeable outcome and thus does not constitute an exceptional circumstance.

5.4 The respondent further submits that the appellant, in their grounds of appeal, only referred to the page 6 of D1 in the context of inventive step but not where they challenged novelty. The Board does not see how this can amount to an exceptional circumstance that justifies the late filing of requests. It rather highlights that the passage of D1 is relevant to the contested feature, all the more so, as the same passage was considered in the decision under appeal in the context of novelty, see above.

5.5 Finally, the respondent proprietor submitted during the oral proceedings that late filing of these requests would be equitable from the point of view of procedural economy, in agreement with the principles in the RPBA 2020. It could not fairly be expected from the respondent to file immediately, in response to the grounds of appeal, fall back positions for each of the objections raised, nine different ones in all. That would have meant filing a large number of requests, in the present case hundreds of requests. This would run counter to procedural economy. Better for all to wait until it had become clear from the Board's preliminary opinion which of the objections might succeed.

This behaviour is however contrary to the "convergent approach" of the RPBA. According to that approach, the possibilities for parties of amending their case become increasingly limited as the appeal proceedings progress, cf. Case Law of the Boards of Appeal, 10th edition 2022 (CLBA), V.A.4.1.1.b) and V.A.4.1.2. At the first level of convergence, Art 12(3) RPBA stipulates that a respondent's reply to the grounds shall contain their complete case, specifying all requests and the reasons why the decision should be correspondingly amended. In the third level of convergence, Art 13(2) RPBA, which is the applicable provision to the present requests, the amendments shall, in principle, not be taken into account, unless exceptional circumstances apply. Therefore, the RPBA provisions do not justify late filing of auxiliary request, but to the contrary, the filing of requests as early as possible.

Moreover, one of the fundamental principles of European patent law is that the responsibility for defining the subject-matter of a patent rests with the patent

proprietor, cf. CLBA III.I.3.1. It is thus their responsibility to decide how to pursue their case, including deciding what requests to submit and how many, in a number that is adequate and proportionate to the case. By waiting for and then adapting their response to the preliminary assessment of the Board, the patent proprietor is attempting to offload their responsibility onto the Board. The Board notes that in this case, it does not help that the respondent did not make any attempt by timely amendment to address any of the objections raised in appeal against the independent claim 1.

- 5.6 In the light of the above, the Board decided not to admit auxiliary requests 3-5, Art 13(2) RPBA.
  
6. For the above reasons, the Board finds that the decision was wrong in concluding novelty for the upheld claims (present main request) and that therefore it must set the decision aside. The remaining requests also fail for lack of novelty, and therefore do not meet the requirements of the Convention, or are not admissible. The Board must thus revoke the patent pursuant to Article 101(3)(b) EPC.

**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

A. de Vries

Decision electronically authenticated