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**Datasheet for the decision
of 19 December 2023**

Case Number: T 2146/22 - 3.2.04

Application Number: 17208126.7

Publication Number: 3323282

IPC: A01D34/00, B62D33/06

Language of the proceedings: EN

Title of invention:

RIDING MOWER WITH AN OPERATOR PLATFORM ISOLATION SYSTEM

Applicant:

Husqvarna AB

Headword:

Relevant legal provisions:

EPC Art. 76(1), 123(2)

Keyword:

Amendments - allowable (no)

Decisions cited:

Catchword:



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Case Number: T 2146/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 19 December 2023

Appellant: Husqvarna AB
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 6 May 2022
refusing European patent application No.
17208126.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman S. Oechsner de Coninck
Members: C. Kujat
C. Heath

Summary of Facts and Submissions

- I. The appeal was filed by the applicant (appellant) against the decision of the examining division to refuse the patent application in suit.
- II. The examining division decided that the subject-matter of claim 1 according to the main request and auxiliary requests 1 to 3 extended beyond the content of the application as filed. It further found the subject-matter of claim 1 according to auxiliary request 2 to lack novelty in view of D2.
- III. In a communication following the summons to oral proceedings, the Board gave its provisional opinion regarding the requirements of Articles 123(2) and 76(1) EPC.
- IV. Oral proceedings were held on 19 December 2023 before the Board in form of a videoconference.
- V. The appellant requests cancellation of the decision under appeal and granting of a patent on the basis of the pending main request, alternatively on the basis of one of the auxiliary requests 1 to 3 re-filed with the grounds, and auxiliary request 4 first filed on 14 September 2022, auxiliary request 5 re-filed with the grounds or auxiliary request 6 filed with letter dated 25 October 2023, or auxiliary request 7 filed during oral proceedings before the Board.

VI. Claim 1 of the relevant requests reads as follows:

Main request (additions and deletions with respect to claim 1 as filed emphasised by the Board)

"A riding mower (1) comprising:
a chassis (2);
an operator platform (12) including space for footing;
and
a first isolation mechanism (42) and a second isolation mechanism (54) operably connected between the chassis and the operator platform (12), the isolation mechanisms (42, 54) to be placed either below, above or level with the platform ~~and at substantially opposite borders of the operator platform,~~
characterized in that wherein each isolation mechanism at least partially absorbs motion from the chassis and at least one of the first isolation mechanisms (42) comprises a rotating bar (49) pivotally coupled at a first point to the chassis and pivotally coupled at a second point to the operator platform (12) so as to movably couple the operator platform (12) to the chassis (2),
~~wherein at least one of the isolation mechanisms causes causing a the second point on the operator platform to move at a fixed distance about the chassis (2) and~~
wherein the second isolation mechanism (54) is located rearward of the first isolation mechanism (42) and comprises a biasing member (56), one end (57a, 57b) of the biasing member (56) being coupled to either the operator platform (12) or the chassis (2), wherein the other end (57a, 57b) is in contact to the other or is coupled to the other."

Auxiliary request 1

Claim 1 of this request substitutes the last four lines of claim 1 of the main request with following expressions:

"...and comprises a stabilizer bar (60) including telescopic members (62a, 62b), wherein one end (57a, 57b) of the stabilizer bar (60) is pivotally coupled to the operator platform (12) and the other end (57a, 57b) of the stabilizer bar (60) is pivotally coupled to the chassis (2)."

Auxiliary request 2 (additions and deletions with respect to claim 1 as filed emphasised by the Board)

"A riding mower (1) comprising:
a chassis (2);
an operator platform (12) including space for footing and an operator seat (14) configured to support a seated operator during operation of the riding mower (1), wherein the operator platform (12) has a stepped structure comprising a substantially planar lower area configured to support the feet of an operator, and a substantially planar upper area configured to support the operator seat (14), wherein the upper area is higher than the lower area, and wherein the upper area and lower area are joined together so that they are substantially fixed relative to each other; and
a first isolation mechanism (42) and a second isolation mechanism (54) operably connected between the chassis (2) and the operator platform (12), the isolation mechanisms (42, 54) to be placed either below, above or level with the platform and ~~at substantially opposite borders of the operator platform,~~

~~wherein each isolation mechanism at least partially absorbs motion from the chassis and at least one of the isolation mechanisms (42, 54) couples the operator platform (12) to the chassis (2), wherein at least one of the first or second isolation mechanisms (42, 54) causes a point on the operator platform to move at a fixed distance about the chassis comprises a biasing member (45, 56) or a dampening device (61) configured to at least partially absorb motion of the chassis (2) relative to the operator platform (12)."~~

Auxiliary request 3

Claim 1 of this request modifies the definition of the second isolation mechanism in last lines of claim 1 of the main request with following expression:

" and wherein the second isolation mechanism (54) comprises a telescopic member (44a, 44b, 62a, 62b) and a biasing member (45, 56), and wherein the second isolation mechanism (54) is pivotally coupled to the chassis (2) and pivotally coupled to the operator platform (12), and wherein the second isolation mechanism (54) is configured to at least partially absorb motion from the chassis (2)."

Auxiliary request 4

Claim 1 of this request adds to claim 1 as filed the following expression as its last features:

"(2), wherein at least one of the isolation mechanisms (42, 54) includes a plurality of telescopic members (44a, 44b, 62a, 62b) and a biasing member (45, 56) that intervenes with the telescopic members (44a, 44b, 62a, 62b) and wherein the isolating member of at least one

of the isolation mechanisms (42, 54) absorbs the chassis motion at a substantially non-vertical angle."

Auxiliary request 5

Claim 1 of this request adds to claim 1 of the main request the following expressions for the definition of the first and second isolation mechanism:

" is made up of two isolating members (43) that are made up of telescopic members (44a, 44b) and a biasing member (45) that intervenes the telescopic members (44a, 44b) and comprises a rotating bar (49) having a rear end (50b) pivotally coupled at a first point to the chassis and that pivotally ~~coupled~~ couples the front isolation mechanism (42)"

"...two sets of two adjacent ~~a~~-biasing members (56) all of which being in a substantially linear configuration and a stabilizer bar (60),..."

Auxiliary request 6

Claim 1 of this request amends claim 1 of the auxiliary request 5 as follows:

"a ~~first~~-front isolation mechanism (42) and a ~~second~~ rear isolation mechanism...

characterized in that the ~~first~~ front isolation mechanism...

which is perpendicularly bent at its front end (50a) and at its rear end (50b), ~~having a~~ wherein the rear end (50b)...

wherein the lower end (47b) of the isolating member (43) and the rear end (50b) of the rotating bar (49) maintain a fixed position on the chassis and wherein

the upper end (47a) of the isolating member (34) whose movement coincides with the front end (50a) of the rotating bar (49) is movable relative to the chassis (2) depending on the position of the operator platform (2), and wherein the upper end (47a) of the isolating member (43) is rotatable about the lower end (47b) of the isolating member (43) while also changing the distance from the lower end (47b), and wherein the upper end (47a) of the isolating member (43) is rotatable about the rear end (50b)...

and wherein the ~~second~~rear isolation mechanism (54) is located rearward of the ~~first~~front isolation..."

Auxiliary request 7

Claim 1 of this request contains the following additions and deletions with respect to claim 1 of the auxiliary request 6:

"characterized in that the front isolation mechanism (42) is made up of two isolating members (43) ~~that~~ are each of which is made up of two telescopic members (44a, 44b) and a one biasing member...

wherein the lower end (57b) of the biasing member (56) is secured to the chassis (2) and maintains a fixed position on the chassis (2) while the upper end (57a) of the biasing member (56) moves freely relative to the lower surface of the operator platform (12) since it is simply in contact with the lower surface of the operator platform."

- VII. The appellant's arguments can be summarised as follows:
- The features identified to lack in claim 1 of the main request according to the impugned decision are not essential. The definition in the claim of the rearward position makes it clear that the first mechanism is at the front of the platform. The provision of two rotating bars is not necessarily the only manner in which the technical problem can be solved. A single telescopic member can be inferred from the description and drawings and two members would thus not be necessary. The subject-matter of claim 1 as amended thus does not result in an unallowable intermediate generalisation.
 - The auxiliary requests 1 to 7 should be admitted into the proceedings and add the features required to overcome the objection of added subject-matter.

Reasons for the Decision

1. The appeal is admissible.
2. Subject-matter of the application
 - 2.1 The application concerns the mechanical isolation of an operator platform with respect to the chassis of a mower. It is sought to improve isolation of the operator from the motion of the chassis and to provide a smoother ride, page 1, lines 26-28 of the description as filed. As depicted in figure 2 the application broadly concerns a front isolation mechanism comprising a set of two telescopic arms and biasing members guided by two respective rotating bars, page 6, lines 6-9 and a rear isolation mechanism comprising a set of two biasing members and a telescopic stabilizer bar, page 7, lines 1-5.

3. Main request - added subject-matter - Articles 123(2) and 76(1) EPC
 - 3.1 The current application originated as a divisional application from the earlier parent application EP07718262.4 bearing the international publication number WO 2007/084524.
 - 3.2 Applicable principles
 - 3.2.1 According to established case law, the requirements laid down in Art. 123(2) EPC are understood to mean that an amendment may only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole content of the description, claims and drawings (see Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022 (CLBA), II.E. 1.3.1, with further reference to the "gold standard" cited in decision **G 2/10**). Since the wording of the two articles is nearly identical, for determining compliance of a divisional application with Article 76(1) EPC, second sentence, the same standard is to be applied (see CLBA, II.F.1).
 - 3.2.2 For a positive assessment of the allowability of an amendment to a divisional application both requirements of Article 123(2) and 76(1) must be met.
 - 3.3 Amendments
 - 3.3.1 Claim 1 as filed adds to claim 1 of the parent application as filed the expression "wherein at least one of the isolation mechanisms causes a point on the

operator platform to move at a fixed distance about the chassis" as its last feature.

3.3.2 As compared to its wording in the application as filed as well as to its wording in the parent application as filed, claim 1 according to the main request deletes the following features "and at substantially opposite borders of the operator platform," and "wherein each isolation mechanism at least partially absorbs motion from the chassis and at least one of..." from the definition of the isolation mechanisms.

3.3.3 Furthermore, a definition of a first and second isolation mechanisms has been added as follows:
"first isolation mechanism (42) comprises a rotating bar (49) pivotally coupled at a first point to the chassis and pivotally coupled at a second point to the operator platform (12) so as to movably couple..."
"and wherein the second isolation mechanism (54) is located rearward of the first isolation mechanism (42) and comprises a biasing member (56), one end (57a, 57b) of the biasing member (56) being coupled to either the operator platform (12) or the chassis (2), wherein the other end (57a, 57b) is in contact to the other or is coupled to the other."

3.4 No suitable basis for the amendments in the parent application as filed.

3.4.1 For the Board, the deletion of the position of the isolation mechanisms results in a broadening of the position and configuration of the isolation mechanisms defined by claim 1 that requires to be directly and unambiguously supported by the content of the whole parent application as filed (see CLBA, II.E.1.4.1). Furthermore an intermediate generalisation arises when

specifying further features of the first and second isolation mechanisms and omitting others from the context of the parent application as filed that contains the detailed disclosure of a sole embodiment.

3.4.2 The suspension according to this embodiment is shown in figures 2, 3A and 3B and contextually explained in the paragraph bridging pages 5 to 6 as well as the paragraph bridging pages 6 to 7 for the rear isolation mechanism. The whole content of both passages forms a contextual specific disclosure of how the different sub components of the front and rear isolation mechanisms are structurally arranged, and how they functionally cooperate so that the isolation mechanism, connected between the chassis and the platform in such a particular way, can provide isolation of the operator platform from the motion of the chassis that is caused as the wheels move over uneven terrain, page 5, last paragraph, second sentence.

3.4.3 As depicted in the exploded view of figure 2 the operator platform isolation system includes the following sub components which are configured as further disclosed in pages 5 to 6 of the parent application:

- The front isolation mechanism is made up of two isolating members 43 that are each made up of telescopic members 44a, 44b and a biasing member 45 that intervenes the telescopic members 44a, 44b, page 5, last paragraph. As visible in the figures the front isolation mechanism on each side of the platform has one such isolating member 43, that furthermore has its upper end 47a pivotally coupled to the operator platform 12 through a respective rotating bar 49 that is perpendicularly bent at the outer ends 50a, 50b,

page 6, lines 5-8. The front end 50a of each rotating bar 49 pivotally couples the front isolation mechanism 42 to the operator platform 12 while a rear end 50b of the rotating bar 49 is pivotally coupled to joints 52 of the chassis 2, page 6, lines 9-12.

Thus the skilled reader directly and unambiguously derives that the front isolation mechanism has at least the following structurally and functionally related features at the front border of the platform: two isolating members with the above configuration (**feature A**) and two rotating bars with the above specific shape (**feature B**) that pivotally couple the platform to the chassis (**feature C**).

- The rear isolation mechanism 54 is made up of two sets of two adjacent biasing members 56, all of which are in a substantially linear configuration and a stabilizer bar 60 (**feature D**), made up of telescopic members 62a, 62b with two ring-shaped ends 63a, 63b that contain ball-and-socket joints 64a, 64b, page 6, second paragraph, lines 13-25.

- 3.4.4 The Board disagrees that the function and arrangement of any of these sub-components is unrelated, in particular that the rotating bar can be isolated from the biasing function of the telescopic members and the biasing members. Indeed the description makes it quite clear in the first three sentences of the second paragraph on page 5 that the sets of isolation mechanisms contribute to the function of isolating the operator platform from the motion of the chassis. From this the skilled person using its technical understanding derives that the specific configuration of each of these sets of mechanisms front left, front right and rear described in the context of this paragraph inextricably cooperates to achieving the isolation function of the sole disclosed embodiment.

Except the statement retained in claim 1 of the main request that the location of the isolation mechanisms may be either below, level with, or even above the operator platform, no indication of variants or optional features is indicated in the context of this paragraph, nor has the appellant submitted that such basis in this passage could be found.

- 3.4.5 Contrary to the appellant's view the skilled person cannot obviously recognise that the omission especially of one of the left or right rotating bars and its shape with bent ends would still perform an isolation function. This is especially so as the bent front end 50a of both rotating bars 49 serves to connect both isolating members 43 with the platform 12. Removing one of these core aspects would not realise the connection and indirectly the suspension of the platform by the isolating members.
- 3.4.6 The Board disagrees with the appellant that the skilled person using their general knowledge would recognize from the teaching of the application that it is possible that one of the rotating bars, biasing members would be sufficient to provide an isolation function without the stabilizer bar and also without defining a specific number of sets of adjacent biasing members.
- 3.4.7 The Board in particular refers to established case law that makes a clear distinction between the questions whether a particular embodiment was disclosed by an application, be it explicitly or implicitly, or/and whether that embodiment was merely rendered obvious by the application's disclosure. A particular technical embodiment might be rendered obvious on the basis of the content of an application as filed without, however, belonging to its explicit or implicit

disclosure and therefore without serving as a valid basis for amendments complying with the requirements of Art. 123(2) EPC (see CLBA, II.E.1.3.4a)).

3.4.8 Indeed in the present case even if the skilled person could recognise that any of the above listed features could be omitted while keeping a suspension effect of the platform, for example by a single suspension at the front, as submitted, this would result in a different embodiment from what is clearly visible in the figures and thus includes modifications that are not supported by any statement in the description, as conceded by the appellant.

3.5 Thus, the Board confirms the conclusion of the examining division that the addition of the rotating bar was isolated from the context of the application as filed and also finds that the omission of all the above features A to D in the added definition of the first and second isolation mechanisms results in an unallowable intermediate generalisation and so adds subject-matter contrary to Articles 123(2) and 76(1) EPC.

4. Auxiliary requests

4.1 Auxiliary requests 1 to 3

4.1.1 In regard of these requests, the appellant made no further submissions during oral proceedings. In its communication in preparation to the oral proceedings, see item 3.6, the Board gave the following provisional opinion in respect of auxiliary requests 1 to 3:

"Turning to the question of added subject-matter of the auxiliary requests 1 to 3, the appellant simply makes

the following blank statement "the same arguments apply to the auxiliary request 1 to 3", page 7, third paragraph of the appellant's grounds. This fails to set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, and specify arguments and evidence relied on by the appellant's pursuant to Art 12(3) RPBA. It is not clear to the Board which further amendments have been made, and their significance to demonstrate that the decision's conclusions are wrong or overcome. This part of the appellant's appeal case is therefore unsubstantiated. The Board does not intend to admit any unsubstantiated argumentation pursuant to Article 12(5) and (3) RPBA."

4.1.2 Irrespective of the question of the admission into the proceedings of these requests for lack of substantiation, the Board observes that claim 1 of these requests also omits features A to C identified here above in relation to added subject-matter of the main request.

Therefore, the Board confirms the examining division's finding that claim 1 of auxiliary requests 1 to 3 adds subject-matter contrary to Articles 123(2) and 76(1) EPC.

4.2 Auxiliary request 4

4.2.1 In regard of this request, the appellant made no further submissions during oral proceedings. In its communication in preparation to the oral proceedings, see item 3.6, the Board gave the following provisional opinion in respect of auxiliary request 4:

"Auxiliary request 4 is filed for the first time in appeal and intended to replace previous auxiliary

request 4 filed during examination. This new request is to be regarded as an amendment of the appellant's case pursuant to Art. 12(2) and (4) RPBA. The appellant explains how these amendments would overcome the objection of added subject-matter and briefly addresses the questions of novelty and inventive step. However, the appellant fails to provide reasons for submitting this new request for the first time in the appeal proceedings. Nor does the Board recognise any reason for a further attempt to overcome the same question of added subject-matter raised during the written examination proceedings.

This request adds some features from claim 5 concerning one of the isolation mechanisms including a plurality of telescopic members, and a biasing member and absorbs the chassis motion at a substantially non-vertical angle from claim 9. This request thus follows a limitation path different from the previous path with first and second isolation mechanism and rotating bar and raises new issues on added subject-matter for selecting some features from dependent claim 5, without overcoming the added matter problems identified here above under item 3.5.

Thus the Board intends to exercise its discretion under Articles 12(2) and (4) RPBA 2020 not to admit the Auxiliary request 4 into the proceedings."

- 4.2.2 Irrespective of the question of the admission into the proceedings of this request first filed in appeal, which the appellant commented in their letter of reply, they however refrained to explain the support for omitting the second feature of claim 5 concerning the dampening device, and the Board thus concludes that claim 1 of auxiliary request 4 adds subject-matter contrary to Articles 123(2) and 76(1) EPC.

4.3 Auxiliary request 5

4.3.1 Auxiliary request 5 corresponds to auxiliary request 4 filed during examination. This request adds further features of the first and second isolation mechanisms, without identifying them as front and rear mechanisms and still omits at least the specific shape and number of rotating bars 49, feature B identified in item 3.4.3 above. In regard of this request, the appellant made no further submissions during oral proceedings.

Irrespective of the question of the admission of this request not maintained in the first instance proceedings and based on the reasoning for Auxiliary request 4, the Board finds that claim 1 of auxiliary request 5 also adds subject-matter contrary to Articles 123(2) and 76(1) EPC.

4.4 Auxiliary requests 6 and 7

4.4.1 Auxiliary request 6 was filed with letter of 25 October 2023, therefore after notification of the summons to oral proceedings and should in principle, not be taken into account pursuant to Art 13(2) RPBA. Claim 1 of this request defines further features on how the rotating bars maintain a fixed position on the chassis isolated from the context of another disjunct passage of the parent application as filed, on page 8, first paragraph. Irrespective of the question of its admission into the proceedings, the Board observes that claim 1 of this request still retains that the front isolation mechanism comprises a rotating bar instead of necessarily two as exposed in item 3.4.3 and 3.4.5 above. Therefore, as claim 1 also omits at least feature B its subject-matter extends beyond the content

of the parent application as filed contrary to Articles 123(2) and 76(1) EPC.

- 4.4.2 The same also applies to claim 1 according to auxiliary request 7 filed during oral proceedings. This request modifies the features of the two isolating members, feature A, without adding that the front isolating mechanism comprises two rotating bars, feature B. Further features concerning how the biasing members of the rear isolation mechanism operate, were isolated from the context of another separate passage of the parent application as filed, on page 8, first paragraph. Especially as it at least lacks feature B, this request also fails on the same grounds of Articles 123(2) and 76(1) EPC.
5. As no allowable requests remains, the Board can but confirm the impugned decision to refuse the application pursuant to Article 97(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



G. Magouliotis

S.Oechsner de Coninck

Decision electronically authenticated