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Datasheet for the decision of 15 October 2024

Case Number: T 2632/22 - 3.2.04

Application Number: 18000391.5

Publication Number: 3395142

IPC: A01B79/00

Language of the proceedings: EN

Title of invention:
GRASS MANAGEMENT SYSTEM

Patent Proprietor:
KUBOTA CORPORATION

Opponent:
Deere & Company/John Deere GmbH & Co. KG

Headword:

Relevant legal provisions:
EPC R. 99(2)
EPC Art. 56

Keyword:
Admissibility of appeal - Yes
Inventive step - Yes

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 2632/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 15 October 2024

Appellant: (Opponent)	Deere & Company/John Deere GmbH & Co. KG One John Deere Place/John-Deere-Str. 70 Moline, IL 61265/US/68163 Mannheim/DE (US)
Representative:	Holst, Sönke John Deere GmbH & Co. KG Mannheim Regional Center Global Intellectual Property Services John-Deere-Strasse 70 68163 Mannheim (DE)
Respondent: (Patent Proprietor)	KUBOTA CORPORATION 1-2-47 Shikitsuhigashi Naniwa-ku Osaka-shi, Osaka 556-8601 (JP)
Representative:	Müller-Boré & Partner Patentanwälte PartG mbB Friedenheimer Brücke 21 80639 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 9 December 2022 rejecting the opposition filed against European patent No. 3395142 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	A. Pieracci
Members:	J. Wright
	C. Almberg

Summary of Facts and Submissions

I. The appeal was filed by the opponent against the decision of the opposition division to reject the opposition filed against the patent in suit.

II. The opposition division decided that the subject-matter of the claims as granted involved an inventive step.

III. In preparation for oral proceedings before the Board, which duly took place on 15 October 2024, the Board issued a communication dated 11 September 2023 setting out its preliminary opinion on the relevant matters.

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

The respondent-proprietor requests that the appeal be dismissed, i.e. that the patent be maintained as granted. In the alternative, that the patent be maintained on the basis of one of auxiliary requests 1 to 3, filed with the reply to the appeal.

V. Claim 1 of the main request reads as follows:

"A grass management system including a plurality of working machines (1A, 1B, 1C, 1D), wherein at least one of the plurality of working machines is a mower (1A), the grass management system comprising:

a first moisture-obtaining device (81) configured to obtain a first moisture value of grass in a mowing operation performed by the mower (1A); and a position-detecting device (60A) configured to detect a mowing position of the mower (1A);

the grass management system being characterized in that another one of the plurality of working machines is a tedder (1B) configured to perform a tedding operation, a rake (1C) configured to perform a raking operation or a roll baler (1D) configured to perform a baling operation, and in that the grass management system comprises a creation supporting part (85) configured to support creation of an operation plan for the another one of the plurality of working machines based on the first moisture value and the mowing position by setting a traveling route (R1) of the another one of the plurality of working machines sequentially from a position where the first moisture value is low to another position where the first moisture value is high".

VI. In the present decision, reference is made to the following documents:
D2: DE 10 2016 216 736 A1
D3: WO 2010/003421 A1
D7: DE 197 06 614 A1

VII. The relevant arguments of the parties are dealt with in the reasons for the decision.

Reasons for the Decision

1. Admissibility of the appeal

In its reply to the appeal of 2 May 2023, section A.1 the respondent-proprietor argued that the appeal should be rejected as inadmissible.

The Board addressed this point in its communication (see section 2) and came to the preliminary opinion that the appeal was admissible. The Board wrote the following:

"2. Admissibility of the appeal

2.1 The impugned decision is appealable, and adversely affects the appellant-opponent, Articles 106 and 107 EPC. The appellant-opponent filed a notice of appeal and a statement of grounds of appeal within the prescribed time limits, meeting the formal requirements of Article 108 and Rule 99 EPC.

2.2 In its reply to the appeal, the respondent-proprietor has argued that the grounds of appeal do not indicate the reasons for setting aside the impugned decision or the extent to which the decision is to be amended, as well as the facts and evidence relied upon. The Board disagrees.

2.3 The appellant-opponent requests the revocation of the patent in both its notice of appeal and the statement of grounds (see last sentence). Therefore, the extent to which the decision is to be amended is indicated. Moreover the statement of grounds sets out the facts relied upon (lack of inventive step of the various requests - see pages 2 to 5) as well as the evidence (see page 1). In this regard, the Board notes that the evidence referred to was already in the opposition proceedings. Therefore, there is no obligation on the part of the opponent to refile these in appeal (see Article 12(2)(a) RPBA 2020).

2.4 Moreover, the Board is satisfied that the appellant-opponent has set out the reasons for

reversing the impugned decision. In this regard the Board first notes that, as was pointed out in T922/05, reasons 2, sufficiency of grounds is not a mere question of form, but of substance. Thus, the grounds are not required to refer to specific parts of the decision in order to address a particular issue and thus pass the threshold of Article 108 EPC (see the same decision, reasons 7).

2.5 In the present case, the appellant-opponent details (see pages 2 to 5) why it considers the subject matter of granted claim I to lack inventive step starting from D3 in combination with D2 or D7. Amongst other things it addresses (see statement of grounds, pages 4 and 5) the issue of why it considered the idea of a route following a sequence from a low to a high moisture content to be rendered obvious by this combination, and thereby challenges what appears to have been considered an important issue by the opposition division (see impugned decision, reasons, paragraph bridging pages 5 and 6). Therefore, contrary to how the respondent-proprietor has argued, the Board is satisfied that there is a clear link between the appellant-opponent's reasoning and the impugned decision, whether or not certain text passages in the statement of grounds may repeat passages of the opposition notice. By the same token, in addressing this aspect of the impugned decision, the appellant-opponent does more than only repeat its arguments in the opposition notice or merely state that the impugned decision was wrong without saying why, therefore the present case is not comparable with that of T395/12 (see reasons 1.1 and 1.2), as the respondent proprietor has suggested.

2.6 For these reasons, the Board has no doubt that the appeal of the opponent is admissible.

Neither in written proceedings nor at the oral proceedings did the parties comment on this opinion. Having considered the issue again during deliberation at the oral proceedings, the Board sees no reason to revise its preliminary opinion. Therefore, it confirms that the appeal is admissible.

2. Background

The invention (see published patent specification paragraphs [0002], [0006], [0011] and [0012]) relates to a grass [harvesting] management system. The system includes a moisture-obtaining device for obtaining a moisture value of grass when a mower mows grass, a position-detecting device that detects the position of the mower, and a part that is configured to support creation of an operation plan for a [further] working machine that carries out an operation on the already mown grass.

3. Main request, claim 1, inventive step starting from D3

It is not disputed that D3 discloses a grass management system including a plurality of working machines (see abstract and figure 1 with page 1, lines 11 to 14 - describing steps a) to c)). The first machine shown in figure 1 cuts grass so it is a mower (reference 102 - see page 5, lines 17 to 19). The system also comprising a first moisture-obtaining device that is configured to obtain a first moisture value of grass in a mowing operation (see page 5, lines 24 and figures 1 to 3, reference 106). Moreover, it is implicit that the mower is provided with a position-detecting device that detects where the mower is mowing as it measures moisture content, since the system generates a spatial

map of crop moisture content (see page 2, lines 29 to 31, page 5, lines 30 to 39). One of the other working machines 116 gathers or spreads the crop on the field (see page 5, lines 18 to 22 figure 1 and page 6, lines 1 to 4), thus, although figure 1 shows a rake for gathering cut grass into swaths it may alternatively be a tedder for spreading.

D3 also discloses a computer (creation supporting part in the words of the claim) that supports the creation of an operational plan based on the first moisture value (see page 6, lines 12 to 28 and claim 1) - the optimal drying time between cutting and gathering or spreading. Thus, this is a plan for one of the system's other machines, namely the tedder or rake.

It is common ground that the opposition division (see impugned decision, reasons, page 5, first complete paragraph) was correct in finding that the subject matter of claim 1 differs from D3 in the feature of creating the plan being supported by:

setting a travelling route of the another one of the plurality of working machines sequentially from a position where the first moisture value is low to another position where the first moisture value is high.

4. The combinations of D3 with D2, or D3 with D2 and D7

D2 also relates to a grass management system. The system involves cutting grass, gathering it into swaths which are dried in the sun before being pressed into bales of crop with a desired moisture content (see paragraph [0002]).

The appellant-opponent has argued that the skilled person would combine the teachings of D3 and D2 and thus arrive at the claimed subject matter. In particular it explained, with reference to D2, paragraph [0014], that D2 teaches to define a sequence with which to gather the swaths of grass on a field according to estimated moisture content and argued that the skilled person would apply this teaching to D3's measured moisture contents. Moreover, it argued that in creating such a sequence it would be implicit to prioritise the gathering of the drier crop over the wetter in order to reduce moisture content, making it more evenly distributed. Thus, so the argument goes, the skilled person would arrive at the differing feature (setting a travelling route of a following machine sequentially from a low to high moisture value positions). The Board disagrees.

4.1 Howsoever obvious the combination of D3's teaching with that of D2 might have been, the moisture content values D3 is concerned with are measured *in real time* as the crop is cut (see page 5, lines 30 to 35). Thus, these are the moisture values of the crop before any drying has taken place.

4.1.1 D2 (see paragraph [0014]) discloses an estimator (Schätzer 50) that *estimates moisture content values* of the crop. These estimated values flow into a rule generator 52 which sets rules for the sequence of recovering and baling of individual swaths. As the appellant-opponent has explained with reference to D2's paragraph [0024] (cf. figure 3, step 314), the rule generator *either* uses the estimated values or actual moisture values measured by the sensor 13, [mounted] for example on the baler press, to maintain or revise the rules for the sequential recovery of the swaths.

Thus, the estimated moisture content used by D2 is not that of the grass as it is being cut but of grass that has been dried and is about to be baled.

4.1.2 In the Board's view, whatever D2 teaches about deciding a working sequence for operating a machine that gathers in swaths of crop, the (estimated or measured) moisture content parameter used for this purpose is that of the *dried crop*. The skilled person would not have seen D3's measured moisture content *before drying* parameter as being compatible with D2's moisture level *after drying* parameter for the purpose of setting a machine working sequence. Indeed D3's moisture content values (at cutting) are diametrically opposed to those of D2 (after drying) in terms of the drying process. Therefore, had the skilled person applied D2's teaching of directing a machine to gather in swaths according to a certain sequence to D3, at most they would have done so using D2's moisture content values after drying parameter, but not D3's moisture content (at cutting) parameter.

4.2 In the light of the foregoing, the Board considers that the teachings of D3 and D2 would not have led the skilled person to the subject matter of claim 1 as a matter of obviousness.

4.3 In view of the above there is no need to address the arguments of the appellant-opponent that D2 can be seen as implicitly disclosing the order in which swaths are gathered in to be a sequence starting at low moisture content value and going to a higher value and that, in any case, the claim does not exclude there being factors other than moisture content which could influence the sequence of working the crop, because

such an approach (further based on the weather) is explained in the description of the patent.

4.4 The further questions as to whether, in defining a certain sequence in which to gather in swaths, D2 implicitly discloses to set a travelling route and, if this were not so, whether it would have been obvious to set one by applying the teaching of D7 or common general knowledge, can therefore also be left undecided.

5. Main request, claim 1, inventive step starting from D3 with D7

In the Board's view, the combination of D3 and D7's teachings, however obvious, would not have led the skilled person to the subject matter of claim 1.

D7 discloses generating a map for an agricultural vehicle (see abstract and figure). D7 is also concerned with crop harvesting (see for example column 2, line 59 to column 3, line 8). D7 (see column 3, lines 1 to 8) teaches that soil moisture level is an important parameter for the quality of harvesting operations. For example, based on map information, a user can choose a favourable route whereby the drier areas of the field are worked first before processing the wetter areas.

In the Board's view, starting from D3, if the skilled person were, at the time, to apply D7's teaching, at most they would have made an operational plan that processed the dried/drying crop with a machine such as a tedder or rake by starting from where *the soil* was driest to where it was wettest, possibly to prevent the vehicle from slipping as the respondent-proprietor has speculated. However, this would not have led them to

using the moisture values *of the crop*, let alone as they had been when being cut, to set a particular travelling route for the machine. Therefore, the combination of D3 and D7 would also not have led the person skilled in the art to the subject matter of claim 1, as a matter of obviousness.

6. As explained above, the Board is not convinced by the appellant-opponent's arguments that the opposition division was wrong to conclude (see impugned decision, section 2) that the subject matter of claim 1 involved an inventive step in the light of the combined teachings of D3 with D2 and/or D7.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

G. Magouliotis A. Pieracci

Decision electronically authenticated