

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 21 April 2026**

**Case Number:** T 0636/24 - 3.2.03

**Application Number:** 21169159.7

**Publication Number:** 3912443

**IPC:** A01B39/08, A01B39/16,  
A01B61/04, A01B63/02

**Language of the proceedings:** EN

**Title of invention:**

SOIL-DRIVEN ROTARY HOE FOR TILLAGE OF PLANT SPACINGS

**Patent Proprietor:**

Vadkert-Agrotechnika Kft.

**Opponent:**

Horváth, Benedek

**Headword:**

**Relevant legal provisions:**

RPBA 2020 Art. 12(4), 13(2)  
EPC Art. 54

**Keyword:**

Amendment to case - evidence - amendment within meaning of Art.  
12(4) RPBA 2020 - amendment admitted (no)  
Amendment after summons - exceptional circumstances (no) -  
taken into account (no)  
Novelty - public prior use (no) - insufficient evidence  
Apportionment of costs - (no)

**Decisions cited:**

T 2482/22, T 0472/92, T 2451/13

**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

Case Number: T 0636/24 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 21 April 2026**

**Appellant:** Horváth, Benedek  
(Opponent) Szirom U. 26  
6000 Kecskemét (HU)

**Representative:** Danubia Patent & Law Office LLC  
Bajcsy-Zsilinszky út 16  
1051 Budapest (HU)

**Respondent:** Vadkert-Agrotechnika Kft.  
(Patent Proprietor) Kiss E. utca 57.  
6230 Soltvadkert (HU)

**Representative:** Kacsuk, Zsófia  
Kacsukpatent Kft.  
Üteg u. 11/a  
1139 Budapest (HU)

**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 15 March 2024 rejecting the opposition filed against European patent No. 3912443 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** C. Herberhold  
**Members:** B. Miller  
F. Bostedt

## Summary of Facts and Submissions

I. European patent No. 3 912 443 B1 (the patent) relates to a soil-driven rotary hoe.

II. An opposition against the patent was filed on the ground under Article 100(a) EPC in conjunction with Article 54 EPC.

The opposition division concluded that the ground for opposition under Article 100(a) EPC did not prejudice the maintenance of the patent and rejected the opposition.

This decision was appealed by the opponent (the appellant).

III. Cited evidence

(a) The following documents were cited during the opposition proceedings and formed the basis of the contested decision:

D1: Notary Certificate prepared by Dr Gergely Kovács (in Hungarian and English) including:  
Annex 1: screenshot of the Facebook page of Vadkert-Agrotechnika Kft. with a link to a video:  
<https://fb.watch/iq8M4rJybC/>  
Annex 2: snapshot of the video after 1 minute and 1 second  
Annex 3: Photo No. 3 of D3  
Annex 4: Photo No. 3 of D3 with file properties

D2: emails between Dr József Markó and a sales manager from HUNGEXPO Zrt. (in Hungarian and English)

D3: photographic evidence by Mr Bence Horváth

(b) D1 refers to four annexes. In the version of D1 that was filed with the notice of opposition and that formed the basis of the contested decision, the intended Annex 2 (snapshot of the video after 7 seconds) was omitted, and Annex 3 was incorrectly attached in its place. With a letter dated 21 March 2024 (i.e. after the opposition division had handed the decision over to the postal service), the appellant submitted the correct version of Annex 2.

D1 as considered during the appeal proceedings can therefore be summarised as:

D1: Notary Certificate prepared by Dr Gergely Kovács (in Hungarian and English) including:  
Annex 1: screenshot of the Facebook page of Vadkert-Agrotechnika Kft. with a link to a video:  
<https://fb.watch/iq8M4rJybC/>  
Annex 2: snapshot of the video after 7 seconds  
Annex 3: snapshot of the video after 1 minute and 1 second  
Annex 4: Photo No. 3 of D3 and Photo No. 3 of D3 with file properties

(c) In appeal proceedings, the appellant further submitted the following additional evidence:

- with its letter setting out the grounds of appeal:

D4: expert opinion prepared by Mr Gábor Sándor, a registered independent Hungarian judicial IT expert

- with the submission dated 2 April 2026:

Annex 260402: witness testimony by Mr Jenő Ádám including:

Annex 1: pictures of D3

Annex 2: snapshot of a video recorded by Mr Ádám at the AGROmash EXPO 2020 agricultural exhibition (time stamp 00:09)

Annex 3: layout plan of the exhibition

Annex 4: pictures taken by Mr Jenő Ádám during the exhibition

(d) The respondent submitted with its reply to the statement of grounds of appeal:

Annex 1a: Facebook Help Centre: "Change the audience of a post on Facebook"

Annex 2a: User Guide of the Panasonic DMC-SZ3 camera

Annex 3a: Quick Setup Guide for Nikon D5200 camera

IV. Wording of claim 1 as granted

"A soil-driven rotary hoe (10), in particular for vine and fruit row cultivation, comprising

a support structure (12) configured to be suspended on a power machine or a towed structure and at least one hoe body (16) fixed to the support structure (12) by means of a fixing mechanism (14), said hoe body (16) having a hoe wheel (18) which is rotatably embedded about a rotation axis (t), the plane of rotation of the hoe wheel (18) is at a first angle ( $\alpha$ ) of between 5 and 70° with the surface of the soil to be cultivated, and the intersection (m) of the plane of rotation with the plane of the surface of the soil (100) is at a second angle ( $\beta$ ) of between 5 and 80° with the direction of advance of the rotary hoe, the hoe wheel (18) has blades (24) projecting from the direction of the rotation axis (t) and inclined backwards with respect to the natural direction of rotation (A) of the hoe wheel (18), wherein the fixing mechanism (14) comprises a first spring deflection mechanism (28) for forcing the at least one hoe body (16) along a first axis (t1) towards the surface (100) of the soil to be cultivated and the at least one hoe wheel (18) is arranged such that in the maximum deflection position of the first spring deflection mechanism (28) towards the soil to be cultivated, the hoe wheel (18) extends into the soil to a given cultivation depth, and characterized in that the fixing mechanism (14) further comprises a second spring deflection mechanism (30) for forcing the at least one hoe body (16) laterally along a second axis (t2) transversal to the direction of advance (h) of the rotary hoe (10), and the at least one hoe wheel (18) is further arranged such that in the maximum lateral deflection position of the second spring deflection mechanism (30), the hoe wheel (18) extends laterally beyond the support structure (12) and the fixing mechanism (14)."

V. Oral proceedings were held on 21 April 2026.

At the end of the oral proceedings, the following requests were maintained by the parties.

(a) The appellant requested that the decision under appeal be set aside and that the patent be revoked. Moreover, it requested that the respondent be ordered to:

- reimburse the costs incurred in the opposition and appeal proceedings
- submit the original video uploaded to the Facebook page of Vadkert-Agrotechnika Kft. (<https://fb.watch/iq8M4rJybC/>) and subsequently deleted

(b) The respondent requested that the appeal be dismissed and that the patent be maintained as granted.

(c) Both parties further filed requests for the admittance or, respectively, non-admittance of:

- the arguments and the corrected Annex 2 of D1, filed in opposition proceedings by letter dated 21 March 2024. This letter was submitted after the opposition division had handed the contested decision over to the postal service (decision date 15 March 2024)
- expert opinion D4
- arguments and evidence (Annex 260402) filed by the appellant with the letter dated 2 April 2026

VI. The appellant's arguments relevant for this decision can be summarised as follows.

(a) Admittance of arguments and corrected Annex 2 of D1, both as filed by letter dated 21 March 2024

The opposition division issued its decision too quickly. Annex 2 of D1 was omitted by mistake when the notice of opposition was filed. Although the correct version of Annex 2 had been filed with the letter dated 21 March 2024 after the contested decision had been issued, it had been intended to be considered in the opposition proceedings and should therefore be considered in appeal proceedings. The same applied to the further arguments submitted with the letter dated 21 March 2024.

(b) Admittance of the expert opinion D4

The filing of D4 was in response to the reasoning in the contested decision. D4 was based on a notarised, electronically certified e-file of D1. The omission of Annex 2 of D1 when filing the notice of opposition had been a mistake. This did not discredit the credibility of the notary certificate D1 or the expert opinion D4 based on it.

(c) Admittance of Annex 260402

The late filing of Annex 26 April 2002, as well as the arguments based on it, was justified due to the exceptional circumstances of the case. This was because:

- the submission did not introduce new facts but provided solely *prima facie* relevant evidence
- the appellant was forced to appoint a new

professional representative after having been left without representation by its former representative. It was only then that it became apparent to the appellant that the opposition division had not properly considered and evaluated the facts and circumstances in relation to the cited evidence

- witnesses were not identifiable and reachable until the late stage of the appeal proceedings
- the Board had presented new arguments in its communication under Article 15(1) RPBA

(d) Novelty - D1

Annex 1 of D1 demonstrated that the rotary hoe according to claim 1 had been disclosed in a video posted on the Facebook page of the respondent. Notary certificate D1 confirmed that the video was publicly available on Facebook.

(e) Novelty - public prior use at AGROmash EXPO 2020

A soil-driven rotary hoe according to claim 1 was presented to the public at AGROmash EXPO 2020 in Budapest, from 22 to 25 January 2020.

The organiser of AGROmash EXPO 2020 confirmed in document D2 that the respondent participated at the exhibition as an exhibitor.

The public presentation during AGROmash EXPO 2020 was proven by a notary certificate (D1) referring to a video posted on the respondent's Facebook page in combination with the photographic evidence (D3) taken by Mr Bence Horváth during the exhibition.

The expert opinion D4 confirmed that the photographic evidence D3 corresponded with the evidence reported in D1 by comparing specific identifiable items in both items of evidence: the snapshots of Annexes 2 and 3 of D1 and the pictures in D3. The expert opinion D4 further confirmed that the content of the pictures of D3 had not been manipulated.

The respondent did not present any counter-evidence to show that it did not disclose the rotary hoe according to claim 1 at AGROMash EXPO 2020. The respondent did not act in accordance with the principle of good faith.

The pictures of D3 could only have been taken at AGROMash EXPO 2020 because the exhibition did not take place in 2021 and was not held in an outdoor tent in subsequent years. Reproducing such a detailed setting at a later time for taking photos as in D3 was impossible.

(f) Request for hearing witnesses

Mr Bence Horváth and Mr Jenő Ádám, who were participants at AGROMash EXPO 2020, could testify as witnesses that the rotary hoe according to claim 1 was exhibited at the exhibition. Mr Jenő Ádám also took photos and videos at the exhibition demonstrating that the rotary hoe according to claim 1 was presented there, see Annex 260402.

VII. The respondent's corresponding arguments can be summarised as follows.

(a) Admittance of arguments and Annex 2 of D1, both as filed by letter dated 21 March 2024

Annex 2 of D1 could and should have been filed with the notice of opposition. More than four months elapsed between the filing of the response to the opposition (2 November 2023) and the date of the decision (15 March 2024). The appellant had had ample opportunity to submit further evidence or request oral proceedings during the opposition proceedings. Moreover, it was not credible that Annex 2 of D1 had been omitted at the time of filing the notice of opposition given that the pages of a notary certificate were usually physically bound together by a notary cord.

(b) Admittance of the expert opinion D4

D4 could and should have been filed during the opposition proceedings. D4 was also not convincing since there were various inconsistencies between the snapshots of Annexes 2 and 3 of D1 and the pictures in D3 that were not addressed by D4. The omission of Annex 2 of D1 raised questions about which version of D1 formed the basis of D4.

(c) Admittance of Annex 260402

The late filing of Annex 260402, along with the arguments based on it, constituted an amendment to the appeal case. None of the arguments presented by the appellant constituted exceptional circumstances that justified such an amendment shortly before the oral proceedings before the Board.

(d) Novelty - D1

The snapshots from the Facebook video (Annexes 2 and 3 of D1) did not allow the features of a rotary hoe as defined by claim 1 to be identified.

The settings as to who can view a Facebook post (audience of a post) could be changed at any time (see Annex 1a). Hence, D1 only proved that the video was public on 3 February 2023 and not before the patent's priority date.

Therefore, D1 did not prove the public presentation of a rotary hoe according to claim 1 on the respondent's Facebook page.

(e) Novelty - public prior use during AGROMash  
EXPO 2020

Although the organiser of AGROMash EXPO 2020, HUNGEXPO Zrt., confirmed that the respondent was an exhibitor (see D2), it did not confirm that a rotary hoe according to claim 1 was exhibited at the exhibition.

The snapshots of Annexes 2 and 3 of D1 (as considered in the appeal proceedings, see point III.b above) did not disclose a rotary hoe for which the features according to claim 1 could be identified.

This was only possible in the pictures of D3. However, it could not be proven that the pictures of D3 were taken at AGROMash EXPO 2020. Evidence D3 was evaluated by a notary after the patent's priority date. The date of the pictures could not be relied upon, as demonstrated by Annexes 2a and 3a, because the date stamps of the photos corresponded to a date and time previously set by the user.

Expert opinion D4 confirmed that the content of the pictures had not been manipulated. However, this was not contested. D4 did not conclusively demonstrate that the pictures were taken at AGROmash EXPO 2020. Several differences could be identified between the video snapshots (Annexes 2 and 3 of D1) and the photos (Picture3.JPG to Picture6.JPG based on the photos according to D3) analysed in D4.

Neither D4 nor the appellant could explain these inconsistencies.

The conclusions in D4 were based on an analysis of the machinery and decorations identifiable in the photos of D3 and the snapshots in D1. However, the respondent exhibited the same machinery, together with the same decoration, at every exhibition, year after year.

The appellant's argument that the pictures of D3 could only have been taken at AGROmash EXPO 2020 given that the exhibition was held in outdoor tents, as could be seen in the pictures of D3, was based on speculation and not factual evidence. Indeed, blue carpets and thujas were widely used at various exhibitions and had no probative value to link the D3 images to AGROmash EXPO 2020.

The further late-filed evidence Annex 260402 was inconsistent with the previously filed evidence D1 and D3 and could not contribute to resolve the observed inconsistencies between the snapshots referred to in D1 and the pictures in D3.

(f) Request for hearing witnesses

The hearing of witnesses, the evaluation of their credibility, and further steps required for the taking of evidence should have been conducted during opposition proceedings. However, the appellant failed to offer any witness evidence during opposition proceedings, relying solely on the alleged correspondence between the images in D1 and D3. Hearing the witnesses would create new evidence and fundamentally change the case. This was not the purpose of the appeal proceedings.

### **Reasons for the Decision**

1. Admittance of new arguments and Annex 2 of D1, both filed by letter dated 21 March 2024

The letter dated 21 March 2024, together with the correct version of Annex 2 of D1, was submitted after the opposition division had handed the decision over to the postal service (decision date 15 March 2024). Although these submissions were filed too late to be considered by the opposition division, the filing of the correct version of Annex 2 of D1, along with the additional arguments, constitutes a response to the arguments of the other party. They relate to the same public prior use and supplement the argument relied upon during the opposition proceedings.

Although the pages of a notary certificate are usually physically bound together by a notary cord in Hungary (as submitted by the respondent), the Board sees no

reason to doubt that it was a mistake by the appellant at the time of filing the notice of opposition to omit Annex 2 in the version as filed later with the letter dated 21 March 2024. This is because the snapshot in Annex 2 is consistent with its description in point 2 on page 2 of D1.

Therefore, the Board decided to admit the new arguments and Annex 2 of D1, both as filed by letter dated 21 March 2024, into the proceedings while exercising its discretion under Article 12(4) RPBA.

2. Admittance of the expert opinion D4

D4 was filed together with the statement setting out the grounds of appeal and constitutes a response to the reasoning of the contested decision which questioned whether the pictures of D3 were taken at AGROMash EXPO 2020 and were linked to the evidence presented in D1. D4 relates to the same public prior use as discussed during opposition proceedings and supplements the arguments relied upon during the opposition proceedings.

D4 is based on a notarised, electronically certified e-file of D1. D1's pictures and excerpts used in D4 are consistent with the snapshots of Annexes 2 and 3 of the complete D1 (see point 1 and III.b above).

The erroneous omission of Annex 2 of D1 when filing the notice of opposition does not discredit the credibility of the notary certificate D1 or the expert opinion D4 based on it.

Therefore, the Board decided to admit D4 into the proceedings under Article 12(4) RPBA.

3. Admittance of Annex 260402

3.1 Annex 260402 was filed with a letter dated 2 April 2026 shortly before the date of oral proceedings before the Board, after receipt of the communication of the Board under Article 15(1) RPBA.

It includes multiple items of evidence concerning the alleged prior use taking place during AGROMash EXPO 2020 and is therefore an amendment to the appellant's appeal case.

3.2 The Board decided not to admit this late-filed evidence, exercising its discretion under Article 13(2) RPBA, for the following reasons.

3.3 Article 13(2) RPBA stipulates that any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA is, as a rule, not to be taken into account unless there are exceptional circumstances justified with cogent reasons by the party concerned.

3.4 The appellant asserted that the late filing of Annex 260402, as well as the arguments based on it, was justified due to the following exceptional circumstances of the case:

- the submission did not introduce new facts but provided solely *prima facie* relevant evidence
- the appellant, having been left without representation by its previous representative (see letter of the representative dated 10 January 2026), was forced to appoint a new professional representative. It was only on their appointment that it became apparent that the

opposition division had not properly considered and evaluated the facts and circumstances in relation to the cited evidence

- witnesses were not identifiable and reachable until the late stage of the appeal proceedings
- the Board presented new arguments in its communication under Article 15(1) RPBA

However, these arguments do not demonstrate exceptional circumstances which justify the admittance of the new evidence.

- 3.4.1 As indicated above, Annex 260402 contains multiple items of new evidence (a new notarial certificate from a person not previously identified, a new offer of witness evidence, and new annexes including photographs, snapshots from a further video and a layout plan).

This new evidence is accompanied by new factual allegations which the appellant failed to present in opposition proceedings or the statement of grounds of appeal. Therefore, it does not constitute a refinement of the case previously on file but a considerable addition to the initial appeal case.

- 3.4.2 The late-filed evidence is also not *prima facie* relevant to the assessment of the prior use based on the evidence provided by D1 and D3.

This is because:

- a) various inconsistencies exist between the snapshot in Annex 2 of Annex 260402 and the snapshots in Annexes 2 and 3 of D1, for example:
- in Annex 2 of Annex 260402, a large yellow

agricultural machine can be seen directly next to the respondent's booth which cannot be found in the snapshots in Annexes 2 and 3 of D1

- in Annex 2 in Annex 260402, a white flag and a screen in the respondent's booth cannot be found in the same position as in the snapshots in Annexes 2 and 3 of D1

- b) the quality of Annex 2 of Annex 260402 is so poor that the rotary hoe as well as any other concrete details of the respondent's booth, such as the blue carpets, cannot be clearly determined
- c) the remaining photos of Annex 4 of Annex 260402 either do not show the respondent's booth or suffer from the same inconsistencies and quality issues as mentioned in points a) and b) above

3.4.3 Contrary to the appellant's view, exceptional circumstances within the meaning of Article 13(2) RPBA generally only concern new or unforeseen developments in the appeal proceedings and not circumstances outside the appeal proceedings, such as a change of representative (see, for example, T 2482/22, Reasons 3, cited in Case Law of the Boards of Appeal of the EPO, 11th edn., 2025, Chapter V.A.4.5.1.e). This principle applies irrespective of who is responsible for the change of representative, i.e. whether the party was forced to change representative. Moreover, the possibility that a new representative may evaluate various aspects of the case differently does not justify amending the appeal case by filing new evidence in appeal proceedings, whose primary purpose is to review the first-instance proceedings (see Article 12(2) RPBA).

3.4.4 The appellant had ample opportunity to identify and contact witnesses when preparing the opposition and

during the opposition proceedings. Mr Bence Horváth was even an employee of the appellant and provided the pictures of D3. However, during the opposition proceedings, including in the late-filed submission of 21 March 2024, the appellant neither offered any witnesses (such as Mr Bence Horváth) nor indicated that it was trying to identify further witnesses (such as Mr Jenő Ádám), nor did it request more time to do so. Instead, it chose to base its case solely on the alleged correspondence between the Facebook video referred to in D1 and the images of D3. There is also no apparent reason why the owner of the booth opposite the respondent's booth at AGROMash EXPO 2020 could not have been identified and contacted during the preparation and duration of the opposition proceedings.

Hence, the alleged inability to identify and contact witnesses in the case at hand does not constitute an exceptional circumstance within the meaning of Article 13(2) RPBA.

- 3.4.5 Nor do exceptional circumstances exist merely because in its communication under Article 15(1) RPBA the Board agreed with and further elaborated on the respondent's argument (see point 3.14 of the reply to appeal) that D4 did not dispel the doubts that the pictures of D3 were taken at AGROMash EXPO 2020 and linked to the pictures in Annexes 2 and 3 of D1 due to various inconsistencies (see point 4.6.2 of the communication).

Therefore, the Board's communication did not create a new situation for the appellant, nor did it create exceptional circumstances that justified filing new allegations of facts or evidence.

Even if it were accepted in the appellant's favour that the various inconsistencies identified by the Board in its communication under Article 15(1) RPBA extended beyond the respondent's previously presented arguments, Annex 260402 does not address these inconsistencies. This is because the late-filed further Annex 260402 does not show the critical parts in the pictures of D3 and D1 (Annexes 2 and 3). Annex 260402 instead provides pictures taken from a completely different angle, far away from the rotary hoe in question, having further inconsistencies with Annexes 2 and 3 of D1 (see point 3.4.2 above) and being of such poor quality that the rotary hoe cannot even unambiguously be identified.

4. Novelty

4.1 The opposition division concluded that D1 to D3 did not prove that the subject-matter of claim 1 as granted had been disclosed before the patent's priority date by a public prior use or by the disclosure of a video on the respondent's Facebook page as demonstrated by D1 (see point II.8 of the contested decision).

4.2 The appellant challenged the contested decision, arguing that the claimed subject-matter was not novel because the rotary hoe defined in claim 1 had been disclosed before the patent's priority date by:

- a video presented on the respondent's Facebook page (D1 taken alone, see grounds of appeal, page 2, last sentence) or
- the public presentation of the rotary hoe at the AGROmash EXPO 2020 exhibition in Budapest, from 22 to 25 January 2020 (demonstrated by the combination of D1 to D4)

- 4.3 Based on the evidence on file, the Board is not convinced by the appellant's arguments.
- 4.4 D1 taken alone
  - 4.4.1 D1 demonstrates that on 3 February 2023 the notary Dr Gergely Kovács watched a video downloaded from the Facebook page of the patent proprietor and respondent, Vadkert-Agrotechnika Kft., and took snapshots of it (the link indicated, <https://fb.watch/iq8M4rJybC/>, was no longer available at the time of writing of this decision). However, the upload date in Annex 1 does not prove that the video was publicly available before 21 May 2020 (the patent's priority date) as the Facebook audience may have been set to "public" at a later date, possibly after the priority date (see Annex 1a of the respondent).
  - 4.4.2 Furthermore, the snapshots taken from the video referred to in D1 (Annexes 2 and 3) do not show the claimed device with enough detail to identify all the features of claim 1.
  - 4.4.3 The Board therefore concludes that the appellant has not demonstrated that the rotary hoe according to claim 1 was disclosed in a video that was publicly available on the respondent's Facebook page before the patent's priority date.
- 4.5 Prior use at AGROmash EXPO 2020 - evaluation of the items of evidence D1 to D3
  - 4.5.1 As indicated above, the snapshots taken of the video referred to in D1 (Annexes 2 and 3) do not show the claimed device with enough detail to identify all the features of claim 1.

Annex 4 of D1 is a photograph provided by the opponent. Although the notary confirmed the image's metadata, this alone cannot be considered sufficient proof. As shown in Annexes 2a and 3a, which were provided by the respondent, the file properties depend on the entered date and can be manually changed by the camera user. Hence, the date saved in the metadata of a digital camera cannot be used to demonstrate when the picture was taken.

4.5.2 D2 confirms that the AGROMash EXPO 2020 exhibition took place between 22 and 25 January 2020 and that the respondent, Vadkert-Agrotechnika, was present as an exhibitor. However, D2 does not specify which devices were exhibited.

4.5.3 The photographic evidence (D3) taken by Mr Bence Horváth does not provide information regarding when and under what circumstances the pictures were taken.

The appellant merely asserts - using the alleged correspondence between the pictures of D3 and the video of D1 as proof (see below) - that the pictures of D3 were taken by Mr Bence Horváth, an employee of the appellant, at AGROMash EXPO 2020.

However, the appellant's assertion has not been proven. The appellant has not provided any evidence to support this allegation. For example, there is no documentary evidence confirming Mr Bence Horváth's attendance at the exhibition, nor any affidavit, witness statement or other evidence confirming that Mr Bence Horváth took the photos during the exhibition. Witness evidence of Mr Horváth was offered only in appeal, such that no witness hearing took place during the opposition

proceedings. Given that Mr Bence Horváth was an employee of the opponent, it does not appear that there was any obstacle to obtaining an affidavit in opposition proceedings. Nor has the opponent argued otherwise.

4.5.4 Hence, none of the evidence D1 to D3 proves the public prior use of the rotary hoe according to claim 1 as granted when considered individually, in line with the reasoning in point II.8 of the contested decision.

4.6 Prior use at AGROMash EXPO 2020 - evaluation of the items of evidence in combination

4.6.1 The appellant argued that the combination of the items of evidence D1 to D3 demonstrated that the rotary hoe according to claim 1 had been displayed by the respondent at AGROMash EXPO 2020.

To support the assertion that the photos of D3 were taken at AGROMash EXPO 2020, the appellant submitted that:

- a) the environment in the snapshots in Annexes 2 and 3 of D1 was the same as that in the photos in D3
- b) AGROMash EXPO 2020 was unique in that the exhibition was partially held in an outdoor tent on a gravel floor in the courtyard of the fairground as the exhibition halls were under reconstruction and in that AGROMash EXPO did not take place under the same circumstances in subsequent years, being held virtually or indoor

- c) the respondent did not file evidence to demonstrate what it had exhibited at the AGROMash EXPO 2020 exhibition. Therefore, the respondent did not act in accordance with the principle of good faith in line with Article 125 EPC
  
- d) the expert opinion D4 confirmed that the photographic evidence D3 corresponded with the evidence reported in D1 and had not been manipulated

The Board is not convinced by the appellant's arguments.

#### 4.6.2 Argument a)

The pictures in D3 show a rotary hoe on a blue carpet with thujas placed in its corners.

The appellant has not provided any evidence which demonstrates that this form of decoration was unique to the AGROMash EXPO 2020 exhibition.

In fact, the respondent pointed out that these are standard exhibition decorations used by it, with carpets being used as walkways between the exhibited machinery, and thujas often arranged at the corners of the carpets to hold them down.

The photos in D3 are focused on the details of the machine and only allow conclusions to be drawn about the overall setting in which the machine was presented to a very limited extent - namely only regarding the presence of blue carpets and thujas on a gravel environment. D3 does not show any tent structures, details of neighbouring machines or other aspects of

the setting of Annex 2 of D1. Regarding the detail of the television stand in Photos No. 1 and 2 of D3, there appears to even be an inconsistency with Annex 2 of D3 (see below).

Therefore, the Board concludes that the mere presence of blue carpets and thujas in the pictures in D3 does not prove that they were taken at AGROmash EXPO 2020 and not at a later date at any other trade fair or exhibition.

#### 4.6.3 Argument b)

The appellant's argument regarding the alleged uniqueness of the environment recognisable in D3 at AGROmash EXPO 2020 is not convincing to the Board.

D4 merely states that AGROmash EXPO 2020 took place virtually or in a different format in subsequent years. However, the video referred to in D4 to support this argument ([https://www.youtube.com/watch?v=WQi\\_2m5negs](https://www.youtube.com/watch?v=WQi_2m5negs)) is not available to the Board.

Given that AGROmash EXPO is not the only exhibition on agricultural machinery in Hungary or any other country, the evidence offered by the appellant is insufficient.

#### 4.6.4 Argument c)

In inter partes proceedings, each party is responsible for providing the evidence on which it wishes to rely and for substantiating its objections by verifiable facts.

The Board cannot see any conflict with the principles of procedural law generally recognised in the

contracting states (Article 125 EPC), as argued by the appellant.

The fact that the respondent did not submit a list of equipment which had been exhibited by it at AGROMash EXPO 2020 does not mean that the rotary hoe according to claim 1 was presented at the exhibition.

#### 4.6.5 Argument d)

Expert opinion D4 attempts to link the photos of D3 with the snapshots in Annexes 2 and 3 of D1 (with Annex 2 corresponding to the version submitted with the letter dated 21 March 2024 and Annex 3 corresponding to Annex 2 as originally filed).

However, there appear to be differences between the snapshots in D1 and the photos of D3.

For example, as the respondent pointed out, Picture4.JPG and Picture5.JPG in D4 show that the V-shaped part of the machinery, marked with No. 5 on pages 7 and 8 of D4, is entirely on the carpet. However, approximately one third of the allegedly corresponding part No. 5 in Annex 3 (see page 7 of D4) extends to the soil.

Moreover, the blue carpet behind the machinery in Annex 2 of D1 (see "Image excerpt from Annex 2" on page 6 of D4, line 4) extends further to the right than the allegedly same blue carpet in the foreground of Photo No. 1 of D3 (here seen from the opposite direction and extending to the left). Therefore, the position of the blue carpet relative to the rotary hoe appears to differ. In Photo No. 1 of D3, the blue

carpet appears to end closer to the front end of the machine than would be expected based on D1, Annex 2.

The Board also has difficulty identifying the image excerpt from Picture3.jpg on page 7 of D4 in the image excerpt from Annex 3 of D1 on the same page of D4. While Picture3.jpg shows the blades of the hoe wheel entangled with a stand structure (a TV stand), Annex 3 of D1 does not appear to show a hoe wheel in this position.

These inconsistencies cannot be explained by the fact that the pictures of D3 and the video of D1 were taken from different perspectives. Thus, while D1, in particular Annex 2, may provide details (such as the flag with the initials of the proprietor and the tent environment) linking the still images of the video to AGROMash EXPO 2020, these details are not discernible in the pictures of D3 alone. Therefore, the alleged link between D1 and D3 has not been proven.

Therefore, the Board is not convinced by D4 that the pictures of D3 were taken at AGROMash EXPO 2020.

4.7 The appellant also argued by reference to T 472/92 and T 2451/13 that it was not required to demonstrate the public prior use beyond any reasonable doubt but that the applicable standard was the balance of probabilities.

Considering the evidence on file even when applying the standard of balance of probabilities, the Board is nevertheless not convinced by the presented evidence on file that the rotary hoe according to claim 1 was publicly presented at AGROMash EXPO 2020 in Budapest.

4.8 Therefore, in view of the submitted evidence D1 to D4, the Board concludes that the subject-matter of claim 1 is novel.

Consequently, the ground for opposition pursuant to Article 100(a) EPC does not prejudice the maintenance of the patent.

5. Offer to hear Mr Bence Horváth as a witness

5.1 In a side remark in point 19 of the statement of grounds of appeal, the appellant offered that Mr Bence Horváth be heard as a witness to testify that he took the pictures in D3 at AGROmash EXPO 2020. This offer to hear Mr Bence Horváth as a witness constitutes an amendment to the appeal case since it was not submitted in the opposition proceedings.

Admittance of this amendment to the case is at the discretion of the Board (Article 12(4) RPBA).

5.2 The key issue in the current case was, from the outset, whether the photos in D3 - which undisputedly depict a rotary hoe according to claim 1 of the patent - were indeed taken at AGROmash EXPO 2020. If so, the device photographed in D3 would have been made available to the public at the exhibition. Various items of evidence were submitted to support this allegation, which had been brought forward in the notice of opposition (evidence D1 to D3 as discussed in points 3 and 5 of the notice of opposition) and in the grounds of appeal (evidence D4).

The appellant's evidence and argument consistently relied on a Facebook video which was allegedly available on the patent proprietor's Facebook page to

demonstrate that "the tillage machine according to the challenged patent was exhibited earlier by the patentee at the AGROMASHEXPO 2020", i.e. that the photos in D3 were taken at that exhibition. As mentioned above, even though Mr Bence Horváth was an employee of the appellant and thus easy to contact, neither an affidavit nor an offer of witness evidence had been submitted in opposition proceedings.

For the reasons set out in point 4.6 above, the arguments presented in the opposition proceedings and in the statement setting out the grounds of appeal are not convincing, even when considering D4 and the corrected version of D1 including Annex 2 as submitted with the letter dated 21 March 2024.

The further evidence in the form of a witness hearing, as proposed by the appellant on appeal, would shift the focus of the discussion from the evaluation of the evidence submitted to the opposition division and on which the decision under appeal was based to entirely different issues, namely the content of the witness testimony and the witness's credibility. Both of these would be evaluated for the first time on appeal.

Hence, hearing the witness would amount to a new case.

Accordingly, this is not in accordance with Article 12(2) RPBA, which states that "in view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based".

The Board considers that an additional fact-finding process involving the hearing of a witness, which was not offered during the opposition proceedings, is beyond the remit of appeal proceedings. Indeed, all the evidence required to demonstrate the public prior use should have been submitted in the opposition proceedings to enable the Board to review the opposition division's reasoning with regard to this evidence.

The fact that the video referred to in D1 (and in D4) is no longer available on the respondent's Facebook page is not reason enough to change the basis of the discussion or to hear a witness for the first time in appeal proceedings.

Therefore, the Board decided not to summon Mr Bence Horváth as a witness under Article 12 (4) RPBA.

6. Request to hear Mr Jenő Ádám as a witness

6.1 With a letter dated 02 April 2026, shortly before the date of oral proceedings before the Board and after receipt of the communication of the Board under Article 15(1) RPBA, the appellant filed Annex 260402 and requested that Mr Jenő Ádám be heard as a witness.

The Board decided not to admit the late-filed evidence under Article 13(2) RPBA (see point 3. above). The reasons for not admitting Annex 260402 also apply for the non-admittance of the request to hear Mr Jenő Ádám as a witness. Moreover, the reasoning as set out in point 5. above also applies to the request to hear Mr Jenő Ádám as a witness.

6.2 Therefore, the Board decided not to summon Mr Jenő Ádám as a witness under Article 13 (2) RPBA.

7. Request to oblige the respondent to present the video referred to in Annex 1 of D1

The appellant requested that the Board oblige the respondent to present the original video on AGROMash EXPO 2020 uploaded to the respondent's Facebook page (see D1, Annex 1) and subsequently deleted.

However, the Board is unable to grant this request since in inter partes proceedings each party is responsible for providing the evidence on which it relies.

Even assuming in favour of the appellant that the video showed more details of the rotary hoe in question, it would still have been the duty of the opponent to take the corresponding snapshots of the video (or to make a copy of the video) and submit them in the opposition proceedings to support its case.

8. Request for different apportionment of costs

The appellant requested that the respondent be ordered to reimburse the costs incurred in the opposition and appeal proceedings. However, this request was only listed in its notice of appeal but not further substantiated, neither in the notice of appeal nor in the statement setting out the grounds of appeal or any subsequent submission.

Therefore, the Board decided to refuse it.

## Order

### For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for a different apportionment of costs is refused.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated