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**Datasheet for the decision
of 11 June 2026**

Case Number: T 1141/24 - 3.2.03

Application Number: 18200784.9

Publication Number: 3469889

IPC: A01G18/62, A01G18/70

Language of the proceedings: EN

Title of invention:
MUSHROOM CULTIVATION APPARATUS

Patent Proprietor:
Muzzroom bvba

Opponent:
GTL-Europe Engineering B.V.

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 12(4)

Keyword:

Contextual determination of the disclosure of the application
as filed

Amendments - extension beyond the content of the application
as filed (yes) - allowable (no) - intermediate generalisation

Amendment to case - amendment admitted (yes) - amendment
within meaning of Art. 12(4) RPBA 2020 - evidence

Decisions cited:

T 0367/20, T 0873/23, T 0847/24, T 0450/20



Beschwerdekammern

Boards of Appeal

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Case Number: T 1141/24 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 11 June 2026

Appellant:
(Patent Proprietor)

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(Opponent)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted/electronically
transmitted on 1 July 2024 revoking European
patent No. 3469889 pursuant to Article 101(3) (b)
EPC.**

Composition of the Board:

Chairman C. Herberhold
Members: R. Baltanás y Jorge
N. Obrovski

Summary of Facts and Submissions

- I. European patent No. 3 469 889 B1 relates to a mushroom cultivation apparatus.
- II. An opposition was filed against the patent based on Article 100(c), 100(b) and 100(a) EPC in conjunction with Articles 54 and 56 EPC.
- III. This appeal is against the opposition division's decision to revoke the patent.

The patent proprietor (appellant) appealed against this decision.

- IV. In a communication pursuant to Article 15(1) RPBA, the Board indicated its preliminary opinion.

Oral proceedings were held on 11 June 2026.

- V. Requests

At the end of the oral proceedings the requests were as follows.

The appellant requested that the decision under appeal be set aside and that the case be remitted to the opposition division on the basis of the main request (patent as granted) for patentability to be assessed.

The opponent (respondent) requested that the appeal be dismissed or, as an auxiliary measure, that the case be remitted to the opposition division for novelty and inventive step to be discussed.

VI. Claim 1 as granted (main request in the appeal proceedings), including the numbering of its features as adopted by the parties, reads as follows (amendments with respect to claim 1 as originally filed are marked in bold):

- a) An apparatus **(100)** for cultivating ~~plants and/or~~ fungi,
- b) preferably mushrooms, comprising
- c) at least one tilt-able [sic] ~~plant cultivation module~~ **fungi cultivation module (104)**
- d) coupled to at least one horizontal support unit **(106) by at least one**
 - e1) **hydraulic,**
 - e2) **manual,**
 - e3) **pneumatic**
 - e4) **or electrical**
- e) **drive system (108),**
- f) **characterized in that said tilt-able fungi cultivation module can be tilted to an angle from 60° to 85°.**

VII. Prior art

The appellant filed the following document for the first time with its statement setting out the grounds of appeal:

D16: "Basic hydraulics and components", Yuken Kogyo Co., Ltd., March 2006

VIII. The appellant's arguments relevant to this decision can be summarised as follows.

Claims had to be interpreted in the context of the patent as a whole from the perspective of a skilled person willing to understand and in a way which made technical sense of the technical terms. Starting from this principle, the skilled person would understand that the alternative drive systems disclosed in paragraph [0026] (manual, pneumatic, electrical) were intended to replace the hydraulic drive system as a whole, i.e. including any "hydraulic unit" it may comprise.

Alternatively, the skilled person would read paragraph [0011] of the patent application as a whole and would therefore understand that the role of the hydraulic unit was to couple the cultivation module and the horizontal support unit, whereas the role of the drive system (any of them) was to actively displace the assembly comprising the hydraulic unit and the tiltable fungi cultivation module as a whole. The skilled person would thus understand that the hydraulic unit was an implicit component of all the proposed drive systems. Since the hydraulic unit was implicitly defined in all the drive systems defined in claim 1, the alleged omission of the hydraulic unit did not lead to an unallowable extension of the subject-matter.

IX. The respondent's arguments relevant to this decision can be summarised as follows.

The admittance of D16 was not formally contested.

Claim 1 as granted contained an unallowable extension of subject-matter due to the omission of the feature "hydraulic unit".

There were multiple indications that the hydraulic unit and the hydraulic drive system were different features, the first being their different names. In any case, paragraph [0011] of the application as originally filed did not mention any coupling of the proposed drive systems to a horizontal support unit. The description as originally filed, and in particular paragraph [0024], made it unambiguously clear that the hydraulic unit was a passive element, meaning that a different drive system (including manual actuation by an operator) impelled the cultivation unit while the hydraulic unit merely kept it in place. The hydraulic unit and the drive system - in whichever form - were disclosed as distinct elements. Due to its particular role, the hydraulic unit could not be omitted from the claimed subject-matter without extending beyond the original disclosure.

Reasons for the Decision

1. Admittance of D16 - Article 12(4) RPBA

Document D16 was submitted for the first time with the statement setting out the grounds of appeal. It is therefore an amendment within the meaning of Article 12(4), first sentence, RPBA, the admittance of which is at the Board's discretion (Article 12(4), second sentence, RPBA).

The respondent explicitly did not contest the admittance of D16 into the appeal proceedings.

In view of these circumstances, and since D16 stems from a textbook providing an introduction to hydraulics (see "Preface") which may be assumed to represent the common general knowledge of the skilled person, with the respondent also having used D16 in this manner, the Board sees no reason not to admit D16 into the appeal proceedings.

2. Main request, added subject-matter - Article 100(c) EPC
- 2.1 First line of argument - disclosure of the hydraulic unit allegedly linked specifically to the hydraulic drive system embodiment
 - 2.1.1 The appellant argued that claims had to be interpreted in the context of the patent as a whole from the perspective of a skilled person willing to understand and in a way which made technical sense of the technical terms, including consulting the description. In a second step, it had to be assessed whether the claimed subject-matter was disclosed in the application as filed.
 - 2.1.2 The respondent did not contest this statement (see page 4 of the reply), and the Board agrees with it too (see also T 367/20, catchword, and T 873/23, Reasons 1.6.1).
 - 2.1.3 In respect of the first line of argument, the main point of contention between the parties concerns not the first step, i.e. the determination of the claimed subject-matter, but the second step, i.e. the determination of what is disclosed in the application as originally filed. In particular, the parties

disagree on the meaning of the term "hydraulic unit", which is used in the application as filed but not present in claim 1.

- 2.1.4 Under the gold standard, it must be assessed whether the person skilled in the art would consider the claimed subject-matter directly and unambiguously disclosed, using common general knowledge, in the application as filed as a whole. Hence, while the determination of what is disclosed in the application as originally filed is distinct from claim interpretation, the meaning of a term used in the application as filed must - like in claim interpretation (see T 847/24, Reasons 3.2) - be determined not in the abstract on the basis of the skilled person's common general knowledge alone, but taking into account the specific context in which the term is used.
- 2.1.5 The appellant submitted that the skilled person reading the application as originally filed would understand that the "hydraulic unit" referred to in paragraph [0011] (column 2, lines 28 to 32; all references relating to the A1 publication) amounted to or was at least a sub-part of the "hydraulic drive system" disclosed later in that paragraph; see column 2, lines 48 to 50. Other, alternative drive systems were disclosed separately in column 2, lines 50 to 54.

Accordingly, the skilled person would understand that the fungi cultivation module was preferably coupled to the at least one horizontal support unit by a "hydraulic drive system", with the "hydraulic unit" being a specific (sub-)component of - and thus implicit in - a hydraulic drive system of this kind, as was well known to the skilled person (see Figures 1.2 and 12.1

of D16). The appellant thus concluded that the skilled person would understand that the disclosed alternative drive systems (manual, pneumatic, electrical) were intended to replace the hydraulic drive system as a whole, i.e. including its "hydraulic unit". Therefore, omitting the hydraulic unit when claiming the other drive systems did not extend beyond the content of the application as filed.

- 2.1.6 This is not persuasive. The term "hydraulic unit" in the application as filed could be understood as alleged by the appellant, i.e. as necessarily referring to a sub-element of a "hydraulic (drive) system", only if read in isolation. If the term is assessed in the specific context in which it is used in the application as filed (see point 2.1.4 above), the person skilled in the art understands it differently. In particular, as explained in the following, the application as filed discloses the "hydraulic unit" and the "(hydraulic) drive system" as two separate elements with distinct roles.
- 2.1.7 The patent application discloses several drawbacks of the prior art, such as the tiring manual operation related to rotating cultivation trays (see column 1, lines 42 to 45), the problems related to constantly moving trays (see column 1, lines 51 to 56) and the lack of proper retention of the trays at their harvesting position (see column 2, lines 5 to 9). According to the patent application, its aim is to eliminate these shortcomings in the prior art (see paragraphs [0009] and [0010]).
- 2.1.8 The skilled person learns from paragraph [0011] that *"the present invention relates to an apparatus [...], comprising at least one tilt-able plant **cultivation***

module coupled to at least one horizontal support unit by at least one hydraulic unit" (emphasis added). This means that the connection of the plant cultivation module to the horizontal support unit by the at least one hydraulic unit is disclosed as being at the core of the invention intended to address the above-mentioned drawbacks.

- 2.1.9 The patent application discloses the role of this hydraulic unit, namely to allow the tiltable plant cultivation module to tilt at a desirable angle which makes the plant harvesting process easy and convenient (see column 2, lines 36 to 40).
- 2.1.10 This is confirmed by the description of the particular embodiment, which discloses the same information (see column 4, lines 3 to 7 and 11 to 14).
- 2.1.11 The patent application discloses several ways of actuating the module, and thus the hydraulic unit which enables these functionalities. In particular, paragraph [0024] discloses that the hydraulic unit allowing the tiltable plant cultivation module to tilt at a desired angle can be actuated manually (see column 5, lines 36 to 42). Paragraph [0024] further discloses that the hydraulic unit also allows the tiltable plant cultivation module to stay at the desired position (see column 5, lines 44 to 45), this being the solution to a drawback discussed in relation to the prior art (see column 2, lines 5 to 9). This is independent of the manual actuation aspect, i.e. the particular drive system used.
- 2.1.12 Hence, the term "hydraulic unit" in the application as filed cannot be understood as only referring to an "active" hydraulic unit (i.e. a hydraulic unit being

actively supplied with pressurised fluid). Rather, it also encompasses the kind of "passive" hydraulic damper typically used to secure a position once a force has been exerted (see again paragraph [0024] of the patent application), as was correctly considered by the opposition division (see last two paragraphs of page 12 of the contested decision). The figures of the patent also support this interpretation. A passive hydraulic unit is compatible with pneumatic, manual (see paragraph [0024] of the application as originally filed) and electrical drive systems, and so the skilled person would have no reason to believe that adopting a non-hydraulic drive system implies that the hydraulic unit is or can be omitted. On the contrary, due to the roles indicated above, the hydraulic unit is functionally and structurally linked to the tiltable fungi cultivation module and the horizontal support unit (see point 2.1.13 below).

- 2.1.13 Paragraph [0011] discloses that the "module" (i.e. the plant cultivation module introduced earlier in that paragraph) is preferably coupled to a "hydraulic drive system", and that other alternative drive systems are disclosed, such as manual, pneumatic or electrical systems (see column 2, lines 48 to 54). However, the skilled person has no reason to believe that the hydraulic unit is only intended to be present when a hydraulic drive system is provided, let alone that the assembly consisting of both can be replaced as a whole by the other envisaged alternative drive systems, thereby omitting the hydraulic unit. Paragraph [0024] also confirms that any of the drive systems can be used with the envisaged hydraulic unit, since the disclosed manual drive system does not replace the hydraulic unit but merely "actuates" it.

- 2.1.14 According to paragraph [0011], the tiltable plant cultivation module is coupled to the at least one horizontal support unit by **at least one** hydraulic unit, the hydraulic unit thus being mandatory. On the other hand, the module is only "preferably" coupled to a hydraulic drive system, the presence of a hydraulic drive system thus being optional. Manual, pneumatic or electrical drive systems are disclosed as possible alternative drive systems. As set out above, these other possible drive systems are also disclosed in combination with a hydraulic unit.
- 2.1.15 Consequently, paragraph [0011] does not support the combination of features c) to e), i.e. a tiltable fungi cultivation module coupled to at least one horizontal support unit by at least one hydraulic, manual, pneumatic or electrical drive system, since the application as originally filed only discloses such coupling by means of a hydraulic unit, independently of the drive system chosen. Consequently, omitting the hydraulic unit - which is disclosed as having a particular role in the context of the movement between the cultivation module and the horizontal support unit and which is thus functionally and structurally linked to them - from the subject-matter of claim 1 results in an unallowable intermediate generalisation.
- 2.2 Second line of argument - hydraulic unit allegedly implicit in the drive systems of claim 1
- 2.2.1 At the oral proceedings before the Board, the appellant argued in a second line of argument that the skilled person would read paragraph [0011] of the patent application and the sentences in lines 30 to 32 (coupling of the cultivation module and the horizontal support unit by a hydraulic unit) and lines 48 to 54

(available drive systems) such that the role of the hydraulic unit was to couple the cultivation module and the horizontal support unit, whereas the role of the drive system (i.e. any of them) was to actively displace the assembly comprising the hydraulic unit and the tiltable fungi cultivation module as a whole. The appellant concluded that the skilled person would understand that the hydraulic unit was thus an implicit component of all the proposed drive systems due to its role, which was necessary in all cases. The appellant therefore was of the opinion that the hydraulic unit was implicitly defined in claim 1 and that the alleged omission of the hydraulic unit did not lead to any unallowable extension of subject-matter.

2.2.2 This is not persuasive. The Board notes that this argument relates to the first step indicated in point 2.1.2 above, i.e. to the determination of the claimed subject-matter. In essence, the appellant is saying that the hydraulic unit is an implicit feature of claim 1. The Board further notes that the application as filed is not to be used in claim interpretation (see T 450/20, Reasons 2.16, last sentence). However, in the appellant's favour, the Board takes the appellant's references to the application as filed for the purpose of claim interpretation to be references to corresponding passages in the description of the patent.

2.2.3 In any case, features d) to e) in claim 1 merely specify that the tiltable "*fungi cultivation module [is] coupled to at least one horizontal support unit by at least one hydraulic, manual, pneumatic or electrical drive system*". This does not imply that a hydraulic unit must be present in each of the defined drive systems, since at least the manual, pneumatic and

electrical drive systems do not comprise any such element by default. Consulting the description and the drawings does not result in any different interpretation. Rather, as expressed, for example, in paragraph [0011] of the description of the patent, the necessary presence of a hydraulic unit is consistently expressed in the description by an explicit reference to that unit, which is missing in claim 1.

- 2.3 In view of the above, the subject-matter of claim 1 of the main request extends beyond the content of the application as filed in an unallowable manner (Article 100(c) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated