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D E C I S I O N
of 23 July 1997

Case Number: T 0855/94 - 3.2.4

Application Number: 86201861.1

Publication Number: 0264497

IPC: A01F 15/04

Language of the proceedings: EN

Title of invention:

Bale-discharge means on an agricultural baler

Patentee:

FORD NEW HOLLAND N.V.

Opponent:

CLAAS OHG

Headword:

Baler/FORD N.H.

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0855/94 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 23 July 1997

Appellant:
(Proprietor of the patent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 5 September 1994
revoking European patent No. 0 264 497 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
J. P. B. Seitz
R. E. Gryc
M. Lewenton

Summary of Facts and Submissions

- I. The European patent No. 264 497, against which an opposition based upon Article 100(a) EPC was filed, was revoked by the decision of the opposition division dispatched on 5 September 1994.

In the decision under appeal the subject-matter of the amended Claim 1 was considered as lacking inventive step in view of a prior use for which witnesses were heard by the opposition division.

- II. On 3 November 1994 the appellant (proprietor of the patent) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 13 January 1995.
- III. With the letter dated 5 March 1996 the opponent withdrew its opposition.
- IV. In response to a communication of the board, the appellant filed with the letter dated 21 March 1997 an amended Claim 1 upon which its request is based. This Claim 1 reads as follows:

"1. An agricultural baler comprising a bale case (6) including a forward portion (14) with fixed dimensions and a rearward portion (16) with variable dimensions connected with its input end to the output end of the forward portion (14), and a plunger (7) reciprocable in the forward portion (14) of the bale case (6) for, in use of the baler, forming crop material into bales and moving said bales along the bale case (6) towards the discharge end thereof for ultimate discharge therefrom, the arrangement being such that already formed bales within the bale case (6) are pushed further along the

bale case (6) by a new bale during the formation thereof, the baler further also comprising bale-discharge means (88) associated with the bale case (6) and operable along substantially the whole length of the rearward portion (16) of the bale case (6), said bale discharge means (88) being suitable, on the one hand, for being kept inoperative during normal baling operation and, on the other hand, for being operated, after the end of a baling session and after actuating a knotter mechanism for wrapping any formed or partially formed bale in the bale case with twine or the like and whilst the plunger (7) is inoperative, to engage a formed and/or partially formed bale in the bale case (6) and move it therealong towards the discharge end thereof until the last bale in the bale case is discharged."

V. The appellant requested that the impugned decision be set aside and a patent be granted on the basis of the following documents:

- Claim 1 as filed with the letter dated 21 March 1997, Claims 2 to 8 and 10 to 15 as granted, Claim 9 as filed with the statement setting out the grounds of appeal;
- Description, columns 1 to 19 as granted wherein column 2, lines 1 to 21 are replaced by page 1 filed with the letter dated 21 March 1997 (replacement of column 2 ...);
- Drawings, Figures 1 to 7 as granted.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

2.1 The present Claim 1 has been amended with respect to Claim 1 of the patent as granted by the addition of the following features:

The bale case comprises

(a) a forward portion with fixed dimensions

(b) and a rearward portion

(b1) with variable dimensions

(b2) connected with its input end to the output end of the forward portion.

The plunger is reciprocable

(c) in the forward portion.

(d) The arrangement is such that already formed bales within the bale case are pushed further along the bale case by a new bale during formation thereof.

The bale discharge means are operable

(e) along substantially the whole length of the rearward portion of the bale case.

(f) The bale discharge means are suitable, on the one hand, for being kept inoperative during normal baling operation,

(g) and, on the other hand, for being operated

(g1) after the end of a baling session

(g2) and after actuating a knotter mechanism for wrapping any formed or partially formed bale in the bale case with twine or the like ...

(g3) to engage a ... bale and move it ... until the last bale in the bale case is discharged.

(h) Moreover, the word "and/or" has been introduced in the third to last line between the words "formed" and "partially formed" instead of the word "or".

2.1.1 Features (a) and (b) can be clearly derived from a passage on page 5 (lines 15 to 19) of the description of the application as filed (see the patent specification, column 3, line 64 to column 4, line 3).

Feature (b1) can be derived from a passage on page 5, line 15 to page 6, line 10 and from page 6 last paragraph to page 7, line 8 of the description of the application as filed (see the patent specification, column 4, lines 23 to 38) and from Figure 1.

Features (b2), (c) and (e) can be derived unequivocally from the drawings (see particularly Figures 1 and 2).

Feature (d) can be derived from a passage on page 1 (lines 4 to 16) of the description of the application as filed (see the patent specification, column 1,

lines 7 to 24). Although this feature is disclosed in the context of a "conventional" rectangular baler, it is clear that it also applies for the baler "according to the invention", see for instance page 5, lines 6 to 10.

Features (f), (g), (g1), (g2) and (g3) can be derived from various passages of the description of the application as filed, see particularly page 13, lines 8 to 21; page 15, lines 3 to 7; page 5, lines 9 and 10; page 19, lines 6 to 11 (corresponding to column 9, lines 37 to 54; column 10, lines 58 to 62; column 3, lines 57 to 59; column 13, lines 56 to 63 of the patent specification).

The amendment according to item (h) has a basis in a passage on page 2 (lines 15 to 18) of the application as filed (see the patent specification, column 1, lines 61 to 65). Moreover, a skilled person reading the description of the application as filed (or that of the patent as granted) will immediately realize that the bale discharge means, which extend along substantially the whole length of the rearward portion of the bale case, can engage more than one bale if the bale length is less than the length of the rearward portion of the bale case.

- 2.1.2 According to Claim 1 as granted the bale discharge means were suitable for engaging a formed **or** partially formed bale. However, the word "or" in the context of Claim 1 as granted did not indicate the exclusive division between only two alternatives ("formed bale"/"partially formed bale") but only the equivalent character of the two alternatives. In other words, the expression "means for engaging a formed **or** partially

formed bale" did not exclude that the means are also suitable for engaging a formed bale and a partially formed bale. Therefore, the amendment according to item (h) does not extend the protection determined by the terms of Claim 1 (Article 123(3) EPC).

2.2 The amendment to Claim 9 merely corrects a printing error.

2.3 The amendments to the description concern its adaptation to the amended Claim 1.

2.4 Having regard to the above comments, there is no objection under Article 123 EPC.

3. *The prior art*

3.1 The prior use for which the witnesses T. Daamen and A. Nicolassen were heard by the opposition division concerns an agricultural baler referred to in the minutes of the hearing of the witnesses (see Annexes I and II to the decision under appeal) as a Freeman baler ("Freeman-Press" or "Freeman-Maschine"). According to the opposition division this baler is part of the state of the art according to Article 54(2) EPC. This is no longer contested by the appellant.

According to the board the Freeman baler - as identified on the basis of the minutes of the hearing of the witnesses - is the most relevant prior art with respect to subject-matter of Claim 1.

The minutes of the hearing of the witnesses also refer to six photographs, filed by the opponent during the opposition proceedings and showing a baler and details of the discharge means of this baler. According to testimony of T. Daamen the photographs relate to a Freeman baler (see Annex I, page 1, last paragraph, 1st sentence).

- 3.2 It can be deduced from the minutes mentioned above that the Freeman baler comprises a bale case and a plunger reciprocating in the bale case for forming crop material into bales and moving said bales along the bale case towards the discharge end thereof for ultimate discharge thereof, the arrangement being such that already formed bales within the bale case are pushed further along the bale case by a new bale during the formation thereof. The baler further also comprises bale discharge-means ("Ausstoßvorrichtung") associated with the bale case and extending over a distance of about 1 metre from the end of the rearward portion of the bale case. The bale discharge means are suitable for being kept inoperative during the normal baling operation and for being operated after the end of a baling session (see Annexe I, page 3, 2nd paragraph, 5th sentence: " Der Vorschubmechanismus wird erst nach Abschluß... betätigt"). Moreover, the bale discharge means can be operated after wrapping the completely formed bale with wrapping material (see Annexe I, page 2, last line to page 3, line 1: "Durch die Ausstoßvorrichtung kann der letzte geknüpft Ballen ausgestoßen werden, ...") in order to avoid damage of a non-wrapped bale (see Annexe I, page 3, 2nd paragraph, 7th and 8th sentences) and while the plunger was inoperative (see Annexe I, page 3, 2nd paragraph, 10th sentence: "Der Mechanismus konnte.... das macht aber .. keinen Sinn"). It is also clear that the bale discharge

means were suitable to engage a completely formed bale in the bale case and move it therealong towards the discharge end thereof.

Although not explicitly stated in the minutes of the hearing of the witnesses, the opposition division asserted in the decision under appeal (page 5, section 19) that the baler was provided with forward and rearward portions as defined by features (a) to (c) as mentioned in above section 2.1. The appellant accepted that the baler according to the prior art was provided with these features (see letter dated 21 March 1997, page 5, section 3.2, first sentence).

Since the feature that the baler is suitable for wrapping twine also around an incompletely formed bale cannot be unequivocally derived from the minutes of the taking of evidence, the board has to consider the baler "Freemann-Press" as being not provided with this feature.

4. *Novelty*

Having regard to the comments in section 3.2 above, the subject-matter of Claim 1 differs from the baler referred to as "Freeman-Press" essentially in that

- (i) the bale discharge means is operable **along substantially the whole length of the rearward portion of the bale case.**
- (ii) Moreover, the knotter mechanism of the baler according to Claim 1 is also **suitable for wrapping a partially formed bale.**

Therefore, the subject-matter of Claim 1 is novel (Articles 52(1) and 54 EPC) with respect to the most relevant prior art.

5. *Problem and solution*

5.1 The bale discharge means of the Freeman baler extends over a distance of about 1 metre from the end of the rearward portion of the bale case. According to the testimony of the witness T. Daamen, the discharge means could discharge the last bale formed in the bale case (without crop material leaving in the bale case) only if the bale has a particular length (see Annex I, page 6, 2nd paragraph, 2nd sentence).

However, it is clear from the minutes of the witnesses that crop for at most a bale remains in the bale case after removal of the last wrapped bale (see Annex I, sentence bridging pages 2 and 3; Annex II, sentence bridging pages 2 and 3). Therefore, the bale discharge means of the Freeman baler was not suitable for emptying completely the bale case at the end of each baling session.

According to the testimony of witnesses, the fact that a partially formed bale remains in the bale case is not disadvantageous because the remaining material creates the counter pressure necessary for starting the next baling session (see for instance Annex II, page 3, 3rd paragraph, 6th sentence).

However, it is clear that the material remaining in the bale case has to be extracted manually at the end of the harvesting season (see for instance Annex II, page 4, 2nd paragraph).

- 5.2 Features (i) and (ii), both mentioned in section 4, result in providing a baler permitting easy removal of a formed or partially formed bale from the bale case at the end of each baling session, ie permitting removal of the last bale formed in the bale case independently of the length of the bale.

Thus, the emptying of the bale case at the end of the harvesting season can be made easier. Moreover, when the baler is operated for a plurality of farmers, the last bale formed in the bale (even if it is a partially formed bale) can be discharged, such that practically no harvested material will be lost for the farmer for which the baler has been operated.

- 5.3 Thus, the problem to be solved is to improve the baler with respect to the removal of the last bale formed in the bale case.

The board is satisfied that this problem is solved by the combination of features specified in Claim 1.

6. *Inventive step*

- 6.1 The bale discharge means referred to in Claim 1 are embodied as reciprocable slide members on which are mounted, at regular intervals along the length of the slides, tines or sprags which are suitable for engaging a bale, the slide members extending along substantially the whole length of the rearward portion of the bale case (see for instance Claim 4 and Figures 1 and 2).

Having regard to the photographs relating to the Freeman baler, the bale discharge means of that baler, analogously to that of the baler according to the patent, also comprise slide members and tines. The only

structural difference with regard to the discharge means according to the patent in suit is that the slide members do not extend over the whole length of the rearward portion of the bale case.

The idea of arranging the front end of the bale discharge means so close to the output end of the forward portion of the bale case that also a partially formed bale can be engaged is not suggested either by the prior art concerning the Freemann baler or by the remaining documents referred to in opposition proceedings, which are considered as being less relevant than the Freeman baler.

- 6.2 According to the minutes of the hearing of the witnesses, the bale discharge means ("Ausstoßmechanismus") should not extend along the whole length of the rearward portion of the bale case in order to avoid damage of a non-wrapped bale (see Annex II, page 3, 3rd paragraph, 6th sentence: "Weiter vorne sollte [der Ausstoßmechanismus] ... nicht greifen, weil er dann einen noch nicht fertigen, insbesondere noch nicht geknoteten Ballen miterfassen würde"; and Annex I, page 3, 2nd paragraph, 8th sentence; "Wenn [der Ausstoßmechanismus]... betätigt wird, solange ein ungeknüpfter Ballen im Schacht ist, wird dieser von den Mitnehmern auseinandergerissen, jedenfalls wenn diese zu nahe an den Preßkolben kommen").
- 6.3 Having regard to the above comments, the skilled person, starting from a Freeman baler (as it can be identified on the basis of the available evidence), when confronted with the technical problem to be solved, would be dissuaded from arranging the front end

of the slide members of the bale discharge means close to the output end of the forward portion of the bale case such that the discharge means extend along substantially the whole length of the rearward portion of the bale case.

Moreover, the fact that it is advantageous that some crop material remains in the rearward portion of the bale case for creating the counter pressure necessary for starting the next baling session will also contribute to dissuade the skilled person.

6.4 Therefore, the subject-matter of Claim 1 would not be obvious for a skilled person, so that it meets the requirements of Article 56 EPC.

7. The patent can therefore be maintained on the basis of Claim 1 and of dependent Claims 2 to 15, which concern particular embodiments of the invention defined in Claim 1.

Order

For these reasons it is decided that:

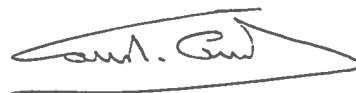
1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent in the following version:
 - Claim 1 as filed with the letter dated 21 March 1997, Claims 2 to 8 and 10 to 15 as granted, Claim 9 as filed with the statement setting out the grounds of appeal;
 - Description, columns 1 to 19 as granted wherein column 2, lines 1 to 21 are replaced by page 1 filed with the letter dated 21 March 1997 (replacement of column 2 ...);
 - Drawings, Figures 1 to 7 as granted.

The Registrar:



N. Maslin

The Chairman:



C. Andries

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RQ

