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D E C I S I O N
of 25 June 1999

Case Number: T 0536/98 - 3.2.4

Application Number: 94200646.1

Publication Number: 0616761

IPC: A01D 80/02

Language of the proceedings: EN

Title of invention:

A construction for processing crop residues lying on the field

Applicant:

Maasland N.V.

Opponent:

-

Headword:

Hay making machine/MAASLAND

Relevant legal provisions:

EPC Art. 54, 123, 111

Keyword:

"Novelty (yes, after amendment) remittal"

Decisions cited:

-

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0536/98 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 25 June 1999

Appellant: Maasland N.V.
Weverskade 10
3155 PD Maasland (NL)

Representative: Corten, Maurice Jean F.M.
Octrooibureau Van der Lely N.V.
Weverskade 10
3155 PD Maasland (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 March 1998
refusing European patent application
No. 94 200 646.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
M. Lewenton

Summary of Facts and Submissions

- I. The European patent application No. 94 200 646.1 was refused by a decision of the examining division dispatched on 17 March 1998.

The reasons the examining division gave for the refusal were that the subject-matter of the independent Claim 1 filed with the letter of 10 September 1997 contained subject-matter extending beyond the content of the application as originally filed and that the subject-matter of Claim 1 lacked novelty with respect to document GB-A-1 217 392 (D1).

- II. The appellant lodged an appeal on 28 April 1998 against this decision and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was filed on 15 May 1998.

- III. In the statement setting out the grounds of appeal the appellant expressed *inter alia* the view that some procedural aspects concerning the examination proceedings before the examining division were incorrect.

In this respect, the board expressed the view in a communication dispatched on 2 July 1998 that the decision under appeal was based on a ground on which the appellant had had the opportunity of presenting its comments.

- IV. In the communication dispatched on 2 July 1998, the board also objected to the independent Claim 1 with respect to Articles 123(2) and 84 EPC and invited the

appellant to file amendments.

With this communication the appellant was also informed that, if the board - having regard to the nature and to the extent of the amendments which the appellant would have made - were to come to the opinion that the reasons given in the decision under appeal did not apply any longer for the application as amended, then the case could be remitted to the first instance for further prosecution according to Article 111(1) EPC.

- V. In response to a further communication of the board, the appellant filed with the letter dated 7 June 1999 an amended Claim 1, which reads as follows:

"1. A hay making machine, comprising at least one carrier element which is rotatably drivable about an at least predominantly upwardly directed shaft and to which working members are attached via arms (2), each working member (1) being provided with a connecting member (4) which is secured to an arm section (5) with the aid of a clamping member (6), wherein the clamping member (6) is provided with a projection (14) which in cooperation with the connecting member (4) of the working member (1) counteracts in one direction any displacement of the working member (1) transversely to the direction of the clamping force, characterized in that each working member (1) includes further connecting means (7, 11), with the aid of which the respective working member (1) can be adjusted to a finite number of positions relative to an arm section (5), the connecting means (7, 11) comprising a connecting element (11) provided with a plurality of apertures (12), which connecting element (11) relative

to the arm section (5) is locked against sliding in or opposite to the direction of rotation of the carrier element, whereby each working member (1) can be adjusted in said finite number of positions with respect to the arm section (5)."

VI. 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 7 June 1999;
2 to 6 as filed with the letter of 10 September 1997;

Description: pages 1 to 5 as filed with the letter of 10 September 1997;

Drawings: Figures 1 to 4 as originally filed.

Reasons for the Decision

1. The appeal is admissible.
2. *Procedural matter*

With the communication dispatched on 2 July 1998 the board expressed the view that the decision under appeal was based on a ground on which the appellant had had the opportunity to present its comments. With its subsequent submissions the appellant did not object any

longer to the correctness of the examination proceedings before the examining division.

Therefore, the board sees no reason to change its view in these respects.

3. *Concerning the amendments to Claim 1*

The combination of features specified in Claim 1 differs from the combination of features specified in Claims 1 to 3 of the application as originally filed (see English translation) in that (see particularly the parts in bold print)

- (a) The expression "construction for processing crop residues lying on the field, such as hay" (in Claim 1 as originally filed) has been changed to **"hay making machine"**;
- (b) the expression "pivotal and drivable" (in Claim 1 as originally filed) has been changed to **"rotatably drivable"**;
- (c) the feature "a working member (1) being provided with a connecting member ... " (in Claim 1 as originally filed) has been changed to **"each** working member (1) being provided with a connecting member ... "
- (c') the expression "...with the aid of which a working member ..." (in Claim 1 as originally filed) has been changed to "...with the aid of which a **respective** working member ...";

- (c") the expression "the further connecting means comprise a connecting element" (in Claim 3 as originally filed) has been changed to "**each** further connecting means comprising a connecting element";
- (d) the expression "**whereby each working member (1) can be adjusted in said finite number of positions with respect to the arm section (5)**" has been added after the feature "the further connecting means (7, 11) comprises a connecting element ... which is locked against sliding in or opposite to the direction of rotation of the carrier element".

The amendment according to item (a) has a basis in the description of the application as originally filed, see page 4, lines 8 to 13.

The clarification according to item (b) has a basis in a sentence of the description of the application as originally filed, see page 3, lines 8 to 10, in so far as this sentence refers to "the rotary shaft for the carrier".

The amendments according to items (c), (c') and (c") make it clear that for each working member 1 there is a connecting member 4 and a further connecting means 7/11. This can be unequivocally derived from the drawings of the application as originally filed (Figures 1 and 2).

The amendment according to item (d) makes it clear that the apertures contribute to allow the adjustment of a respective working member. This can be derived from the

description and the drawings of the application as originally filed (see page 4, lines 35 to 37; Figure 3).

The board therefore comes to the conclusion that Claim 1 does not contravene Article 123(2) EPC.

4. *Concerning the prior art*

4.1 Document D1, which is the only document referred to in the decision under appeal, discloses a hay making machine comprising at least one carrier element (see Figure 4) which is **rotatably** drivable about an at least predominantly upwardly directed shaft and to which working members 2 are attached via arms 1, **each** working member being provided with a connecting member 11 which is **secured** to an arm section with the aid of a clamping member 7, the clamping member being provided with a projection 9 which in co-operation with the connecting member 11 of the **working member** counteracts in one direction any displacement of the working member transversely to the direction of the clamping force (see Figure 1 and 2).

The connecting member 11 of each working member is provided with an aperture through which a bolt 8 is passed.

According to the description (page 1, lines 45 to 49) and to Claim 4 of document D1, this known hay making machine can be provided with a plurality of interchangeable connecting members (clamping blocks), each being provided with an aperture, with the aid of which a working member can be secured to the arm

section in an additional (finite) number of positions with respect to the arm section so as to obtain an adjustment in the direction of rotations of the carrier element.

- 4.2 The subject-matter of Claim 1 is distinguished from the hay making machine according to document D1 by the features specified in the characterising portion of the claim. It has to be noted, in this context, that the interchangeable clamping blocks referred to in document D1 cannot be compared with the **further** connecting means (7, 11) referred in the characterising portion of Claim 1. It is clear from the present Claim 1 that the connecting element (11) of the further connecting means always co-operates with the clamping member (6) in order to hold the working member in a predetermined position. Besides, it is clear from the document D1 that - in order to adjust the working member in a different angular position - one of the interchangeable clamping blocks referred to in Claim 4 has to be mounted instead of the clamping block 7 shown in Figures 1 to 3.

5. *Novelty*

Having regard to the comments in the above section 4.2, the subject-matter of Claim 1 as presently amended is novel with respect to document D1.

6. Having regard to the comments in the above sections 3 and 5, the objections in sections 1 to 3 of the decision under appeal, which were the only objections upon which the decision to reject the patent was based, no longer apply for Claim 1 as presently amended.

Therefore the board considers it to be appropriate to set aside the decision under appeal and, in the exercise of its discretion under Article 111(1), to remit the case to the examining division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairman:

N. Maslin

C. Andries