Roj: SAP B 2817/2024 - ECLI:EN:APB:2024:2817

Icl Cendoj: 08019370152024100052 Organ: Audiencia Provincial (Provincial Court) Headquarters: Barcelona Section: 15 Date: 07/03/2024 Appeal No.: 2949/2022 Resolution No.: 58/2024 Proceedings: Appeal Speaker: MANUEL DIAZ MUYOR Type of Resolution: Judgment

Case decisions: SJMer, Barcelona, no. 4, 03-05-2022 (proc. 125/2020), SAP B 2817/2024

Section n° 15 of the Provincial Court of Barcelona. Civil Calle Roger de Flor, 62-68 - Barcelona - C.P.: 08071 TEL.: 93829445J FAX: 938294458 EMAIL;aps15.barcelona@xij.gencat.cat N.I.G.: 0801947120208001240 Appeal 2949/2022 -1 Subject Matter: Ordinary lawsuit Court of origin: Commercial Court No. 04 of Barcelona Proceeding of origin:Ordinary proceeding 125/2020 Banking entity BANCO SANTANDER: For cash receipts. Concept: 0661000012294922 Payments by bank transfer' IBAN ES55 0049 3569 9200 0500 1274. Beneficiary: Section n° 15 of the Provincial Court of Barcelona. Civil Concept: 0661000012294922 Appellant/applicant: MA9UINARIA AGRICOL A SOLA S.L. Procurador/a: Daniel Font Berkhemer Attorney at Law: RICARDO LUIS GUERRAS MAZÓN Respondent: LARROSA ARNAL S.L. Attorney at Law: Marta Pradera Rivero Lawyer: Antonio Vargas Vilardosa Issues. Patents. Lack of inventive step. Infringement. JUDGMENT NO. 58/2024 MAGISTRATES

JUAN F. GARNICA MARTIN LUIS RODRIGUEZ VEGA MANUEL DIAZ MUYOR In Barcelona, on the seventh day of March, two thousand and twenty-four. Appellant: MAQUINARIA AGRÍCOLA SOLÁ, S. L, Respondent: LARROSA ARNAL, S.L, Decision appealed: Judgment Date: May 3, 2022 Plaintiff: LARROSA ARNAL, S.L. Defendant: MAQUINARIA AGRÍCOLA SOLÁ, S. L.

FACTUAL BACKGROUND

FIRST. The operative part of the appealed decision is the following: "WE FULLY APPROVE the claim of JO 1667/2020-d filed by the procedural representation of Larrosa Arnal, S.L., therefore, we DETERMINE THE NULLITY for lack of inventive step of all the claims of patent ES 2.570.57], owned by Maqujnaria Agrícola Solá, S. L." and, consequently, we order the cancellation of said claims at the Spanish Patent and Trademark Office. Likewise, the costs of the lawsuit are imposed on the defendant, the entity Maquinaria Agricola Solá, S. L.

WE FULLY AMEND the claim of JO 125/2020-X filed by the legal representation of Larrora Arnal, S.L., and therefore DECLARE that the activity of commercialization, marketing and distribution of Larrosa Arnal seeding machines does not infringe patent Efi: 2.570.671. Likewise, the costs of the claim are imposed to the defendant Maquinaria Agrícola Solá, S. L.

WE DISMISS in its entirety the counterclaim of JO J25/2020-X filed by the procedural representation of the entity Maquinaria Agrícola Solá, S. L." and, therefore, we ABSOLVE the entity Larrosa Arnal, S.L., of the pronouncements deduced on the contrary, with express imposition of the costs of the counterclaim to the counterclaimant, the entity Maquinaria Agrícola Solá, S. L.".

SECOND. MAQUINARIA AGRICOLA SOLÁ, S.L. filed an appeal against said judgment, which was transferred to the opposing party, who opposed the same. The proceedings were brought before this Section 15[^] of the Court of Appeals of Barcelona, and the date for deliberation and judgment was set for September 29, 2022.

Presiding Judge: Manuel Díaz Muyor.

LEGAL BASIS

FIRST. Parties and actions brought

1. LARROSA ARNAL, S.L. (hereinafter LARROSA) is a company engaged in the manufacture of seed drills, seed drills and other farm implements.

2. This company filed a lawsuit claiming a denial action under art. 121 SPA against MAQUINARIA AGRICOLA SOLA, S.L, (hereinafter SOLA), and that its activity did not infringe IR of the ES 571 patent. This gave rise to the ordinary proceeding 125/2020. The defendant filed a counterclaim for infringement of patent ES 2,570,571 and an action for damages.

3. LARROSA subsequently filed an action for invalidity of European patent EP 2,742,787, validated in Spain as ES 2,570,571, (hereinafter ES*571) whose wording is "*Frame for a cereal planter and cereal planter including said frame*", against SOLA.

4. This lawsuit, which was also filed in the Commercial Court 4 of Barcelona, gave rise to the ordinary proceeding 1667/2020, where by order dated May 13, 2021, it was ordered to be joined to the ordinary proceeding 125/2020.

5. The lower court decision upheld the claim in ordinary proceedings 1667/2020-X filed by LARRQSA and declared the nullity for lack of inventive step of all the claims of patent ES'571, owned by SOLÁ. LARROSA's claim in which the denial action was exercised was upheld, and it declared

that the activity of manufacturing, marketing and distributing seeding machines that it carries out does not infringe the aforementioned patent.

6. Finally, the judgment dismissed the claim for recovery of the ordinary proceeding 125/2020-X filed by the procedural representation of the SOLA entity in which an action for infringement and damages was brought.

7. The judgment was appealed by SOLA, in the terms to be stated, an appeal opposed by LARROSA.

SECOND: The following facts are relevant to resolve the present litigation and are not disputed in this instance:

1. LARROSA ARNAL, S.L. is a family company that focuses *its* activity on the manufacture of seed drills, ploughs and other implements for the field, which it manufactures with its own design and apparently singularized. Specifically, it manufactures and commercializes seed drills with a special configuration of its wheels, with which advantages are obtained in the sowing operations, with important saving of seed and traditional fertilizer.

The entity Maquinaria Agrícola Solá, S. L., is the holder of the European Patent EP 2742787, applied for on 20.11.2013 and granted on February 3, 2016, whose publication in Spain bears the number ES 2. fii70.571 (hereinafter, ES571), entitled "Frame for a cereal seeder and cereal seeder including said frame". The aforementioned patent consists of fourteen product claims, the first and eleventh being independent and the rest dependent or multidependent. It claims as priority the Spanish patent ES 201231922 of 11.12.2012.

1.3 The first reividication protects: "Frame (J) for a cereal seed drill of the type of which the seeds are distributed from the hopper (9) to the soleus by gravity, comprising a chassis (2a,2b) provided with a plurality of seeding elements (4), said supporting arms (3) being arranged substantially parallel in the same horizontal plane, each seeding element (4) of said supporting arms (3) determining a seeding line of said seed drill, characterized by the fact that said arms comprise at least one telescopic section (3a) capable of being horizontally extended from a transport position to an extended working position and by the fact that said frame (1) includes at least one fluid-dynamic cylinder (5) for driving said telescopic section (3a)".

1.4 The technical characteristics of said claim are as follows:

C.1: Frame (J) for a cereal seed drill of the type where the seeds are distributed from the hopper (9).

C.2: a chassis (2a,2b) provided with a plurality of seeding elements (4) of said seed drill

C.3: the chassis (2a,2b) also comprises a plurality of arms (3) supporting said seeding elements (4)

C.4: the support arms (3) are arranged substantially parallel in the same horizontal plane,

C.5: each seeding element (4) of said support arms (3) determines a seeding line of said seeder

C.6: the arms comprise at *least one* telescopic section (3a) capable of *being* extended horizontally from a transport position to an extended working position

C.7: and the frame (1) includes at least one fluid-dynamic cylinder (5) for actuating said telescopic section (3").

1.5. LARROSA received several requests from SOLA to cease the manufacture and commercialization of machinery that, according to SOLA, infringed its patent rights. LARROSA responded by rejecting these requests, on the grounds that its machines were different from those already existing in the market. In turn, it informed SOLA that its patent ES'571 lacked novelty and inventive step.

1.6. On November 18, 2014, SOLA proceeded to send a new injunction in similar terms, i.e., reiterating that LARROSA infringed *its* patent rights.

1.7. LARROSA stopped marketing the product in question after these requirements, and started to manufacture a telescopic seeder different from SOLA's, covered by its patent P204 430 971, publication number ES 2 555 356, which has a favorable prior art report and is in force.

1.8 Finally, on October 21, 2019 LARROSA requested the defendant's representatives to give their opinion on the compatibility between SOLA's invention patent and the industrial exploitation that LARROSA had been carrying out. SOLA did not provide any answer.

1.9. On January 13, 2020, **LARROSA** filed a patent denial action under article 121 SPA against SOLA, on the grounds that its patent rights were not being infringed, which resulted in the opening of the ordinary proceeding 120/2020.

1.10 As we have said, ES'571 claims as priority that of the national patent application with application number 201 231 922 that had been filed with the SPTO on December 11, 2012. Regarding the latter patent, the SPTO issued a prior art report according to which the patent was novel but all its claims lacked inventive step based on documents ES 2 466 990 A1 and ES 2 466 990 B1.

THIRD. Judgment appealed and arguments of the parties in this instance.

1. The lower court judgment, which annulled SOLA's patent and also upheld the action for refusal, first distinguished between mechanical and pneumatic cereal seed drills. The former distribute the cereal seeds from the hopper to the furrow by the mere effect of gravity. Pneumatic seed drills use, to feed their seeding elements, a pneumatic system placed between the seed hopper and the seeding elements.

2. Both mechanical (gravity) and pneumatic seed drills can be either single-grain or single-grain. The seed drop planters are those in which the seeds fall from the central storage hopper to the furrow, in a continuous way and forming a constant seeding line. Single-grain seed drills are those that deposit the seeds in the furrow, grain by grain, intermittently, leaving a determined distance between the grains.

3. That said, the lower court ruling states that ES'571 claims a gravity (mechanical) cereal seeder where the seeds are distributed from the hopper to the furrow by gravity, which does not distinguish whether the sowing is by spurting or single-grain, since none of this is determined by the patent in its scope of protection.

4. The judgment addresses the existence of the inventive step requirement of patent ES'571, starting from document ES'2344818 (hereinafter D3) entitled "agricultural *apparatus* with a *retractable access device"*, which was published before the priority date claimed by ES'571.

5. The judgment under appeal understands that this document discloses a frame apparatus for a cereal seeder in which the seeds are distributed from the hopper to the furrow by gravity, the frame comprising a chassis provided with a plurality of seeding elements of said seeder, an arm supporting said seeding elements and wherein each seeding element of said arm generates a seeding line, with a section capable of being horizontally deployed from a transport position to an extended working position, with one or more jacks allowing said horizontal displacement of the seeding elements on the arm. It concludes that the person skilled in the art, with the above knowledge and after reading document D3, would deduce that R1 lacks inventive step.

6. Regarding the dependent claims and the lack of inventive step that can be attributed to them in ES'571, it considers that they are features known in isolation and already in the prior art, and therefore there is no inventive step in R2 to R14, they simply specify various design options:

7. With respect to the lack of novelty, it omits to enter into assessments given the estimation of the lack of inventive step, and therefore, since the patent is null and void, the infringement action or the denial action on a right that has not existed cannot be upheld, imposing the costs on the defendant.

Arguments of the appellant

8. The appellant considers that the lower court decision did not take into account the technical problem solved by the patent, nor the patent specification as a whole, and made an incorrect interpretation of the scope of the patent. The judgment holds that the object of protection are the extendable frames, and that R1 must be interpreted indistinctly both for a "jet" planter and for a "single-grain" planter, identifying an object of protection different from the one claimed by the invention.

9. The appellant admits that the extendable frames were known in other types of seed drills intended for single-grain seeding, but what it explicitly proposes in its patent is the development of an improved frame, for cereal seed drills of the type that distribute the seeds from the hopper to the furrow by gravity. Its particularity is that it includes a plurality of arms arranged in parallel, in which the numerous seeding elements are distributed and where each one of them determines a seeding line, as shown in the following figure:



10. In the following figure (Figure 4) a side view is given with a plurality of arms arranged substantially parallel and the tubes (6) leading by gravity the seeds from the central hopper directly to the furrow.



11. This last figure shows the rear part of the planter.



12. También cuestiona la parte apelante que en la sentencia no se reconozca actividad inventiva a la patente de la demandada, alegando que D3 no es un documento apto para cuestionar la actividad inventiva pues se refiere a un bastidor para sembradoras con una configuración estructural sustancialmente distinta.

13. Finally, the appellant refers to the lack of allegations *and* proof of the alleged lack of inventive step of the dependent claims of ES571 since **LARROSA** does not carry out an examination of the scope of the claims 2 to 14, nor the slightest argumentation or expert evidence of why they would lack inventive step.

GUARANTEE: Scope of protection

1. Before analyzing the novelty and inventive step of the first claim (R1) of ES'571, i.e., the patent that is the subject of this litigation. We have to specify its scope of protection, since the parties differ on its scope.

2. As its owner explains in the answer to the complaint: "Patent ES'571 has 14 claims of which only claim 1 is independent and refers to a frame for a cereal seeder. Claims 2 to 10 are frame claims dependent on claim 1. Claims 11 to 14 refer to a seeder incorporating a frame according to claims 1 to 10" (Victor Manuel report, p. 14, lines 14 to 19).

3. We start from the plaintiff's explanation, which on the basis of annexes 5.1 and 5.2 of the report of the plaintiff's expert Mr. Luis Pedro, distinguishes between two main groups of seed drills: single-grain seed drills and single-grain seed drills:

Sowing machines are those in which the seeds fall from the central storage hopper to the *furrow, in* a continuous way and forming a constant seeding line.

Single-grain planters: are those that deposit the seeds in the furrow, grain by grain, one at a time, intermittently and leaving a certain distance between grains.

4. Depending on the type of feed used to feed seeds to their seeding elements, these two main groups (seed drills and single-grain seed drills) can be mechanical or pneumatic:

Mechanical: are those cereal seed drills in which the seeds are distributed from the hopper to the furrow by gravity.

Pneumatic: these are those that do not feed their seeding elements from the hopper by gravity, but through a pneumatic system that is always placed between the seed hopper and the seeding elements.

5. The plaintiff argues that RI of ES'571 protects mechanical seed drills, without distinguishing whether they are single-row or single-grain, while the defendant and patent holder maintains that it only protects mechanical seed drills.

6. The first claim protects:

C.1: Frame (1) for a cereal seed drill of the type in which the seeds are distributed from the hopper (9) to the furrow by gravity, comprising:

C.2: a chassis (2a,2b) provided with a plurality of seeding elements (4) of said seed drill

C.3: the chassis (2a,2b) also comprises a plurality of arms (3) supporting said seeding elements (4)

C.4: the support arms (3) are arranged substantially parallel in the same horizontal plane,

C.5: each seeding element (4) of said support arms (3) determines a seeding line of said seeder

C.6: the arms comprise at least one telescopic section (3a) capable of being extended horizontally from a transport position to an extended working position

C.7: and the frame (1) includes at least one fluid-dynamic cylinder (5) for driving said telescopic section (3').

7. The technical discussion focuses on the interpretation of the IC element: "Frame (1) for a cereal seeder of the type where the seeds are distributed from the hopper (9) to the furrow by gravity".

8. Larrosa argues that from the wording of the claim a skilled person would understand that by referring to "cereal seed drills of the type in which the seeds are distributed from the hopper to the furrow by gravity" mechanical seed drills were protected, including the two main types of seed drills, single-grain and seed drills. The plaintiff maintains this interpretation since neither the wording of the claim nor even the description limits protection to mechanical seed drills.

9. However, the expert Mr. Victor IV]anuel, at the request of the defendant Sola, convincingly for this Court, argues that it can be deduced from the description that the patent protects only mechanical grain seed drills.

10. Indeed, the expert faced with the interpretation of R1, would start from reading the description and the drawings as it results from art. 69 CEP, but the expert would also be perfectly aware of the difference between the seed drills and the single-grain seed drills.

11. First of all, the description, in explaining the background of the invention, on page 2, lines 16 to 37, states that:

"The seed drills in which the seeds are distributed to the furrow by gravity are well known. These seed drills are suitable for sowing cereal seeds by "dribbling" and for this purpose they have plastic pipes that carry the seeds from the dosing hopper to each of the sowing elements provided on the frame chassis.

12. If we turn to figure 4 of the patent we will see *those* plastic tubes (6) that lead the seeds from the hopper to each of the sowing elements:



13. In his description, he goes on to say that;

The aforementioned cereal seed drills have many advantages over other types of seed drills that use pneumatic seed distribution systems. For example, the gravity distribution system is less complex than the pneumatic system and requires less energy consumption and maintenance. In addition, the gravity distribution system reduces seed jams and facilitates visual seed control. DE3627801 describes one of these existing grain seed drills".

14. Well, DE3 627 801, to which the description refers, is also a seed drill.

15. The description adds that:

However, existing cereal seed drills such as the one described in document DE3627801 have the disadvantage that their working width is limited to the road transport width, since the seeding of cereals requires a very small distance between seeding elements that leaves very little margin for the application of folding and un-folding systems of the chassis used in other types of seed drills intended for "single-grain" seeding.

In particular, it has been observed that, in cereal seed drills, the distance between sowing elements of the same chassis is too small to allow the extended sowing elements to be collected within the maximum width of three meters for transport. On the other hand, it has also been observed that any increase in the number of seeding units leads to seed transport problems, since the gravity distribution system is not as efficient as the pneumatic system.

16. Next, in the section describing the invention, in order to describe the problem it solves, it begins by stating that:

"The objective of the present invention is to solve the mentioned drawbacks, by developing a frame for a cereal planter which allows to enlarge the width of Iratio of said planter."

17. From the reading of these paragraphs of the description, together with figure 4, the skilled person would understand that the aim of the invention is to solve the disadvantages previously mentioned, those disadvantages refer to the mechanical and jet seed drills, neither to the pneumatic ones nor to the single-grain. Specifically, the description adds that "they have the disadvantage that their working width is limited to the road transport width". It goes on to state that "the sowing of cereals requires a very small distance between sowing elements, which leaves very little margin for the application of folding and unfolding systems of the chassis used in other types of seed drills intended for "single-grain" sowing, i.e. single-grain seed drills had already solved this problem.

18. The interpretation of the claim requires, in general, a straight, intelligent and reasonable reading of the QOhjunto of the document. Straight means that it should not be biased by the interest of declaring the patent null and void, as the plaintiff has. It must also be a technical and intelligent reading, not reduced to what a layman would do, but what an expert would do. And, finally, a reasonable reading, which tries to make sense of all the claims and the description and does not forget, inevitably, important technical data, which must be given meaning in the document as a whole.

19, This type of interpretation of the description leads us to conclude that what the headline does is to contrast, on the one hand, the disadvantages of pneumatic seed drills with those of mechanical seed drills and, within the latter, single-grain seed drills with those of the single-grain seed drills. In short, the technical problem he is trying to solve is how to increase the working width of mechanical seed drills, which is limited by the transport width.

on the road. The description recognizes that this problem was already solved for single-grain mechanical seed drills, with folding and unfolding systems, but that its application to mechanical seed drills faced the problem of the short distance between the seeding elements.

20. The description explains the technical solution offered to that problem:

The frame of the present invention has the advantage that it allows to modify the working width "A" of the machine (greater number of sowing rows per pass), while guaranteeing a width "b" for transport of not more than three meters.

In fact, since the seeding elements are arranged in several support arms and these arms have a reachable section, it is possible to gain distance between the seeding elements of the same arm to allow the folding of a reachable section within the maximum width of three meters of transport. 60

This results in a seed drill that allows sowing cereals with the required distance "d" between rows or rows of seed, while being able to acquire a working width "A" equal to or greater than four meters in the extended position of the frame or a width "D" of three meters for transport (folded position of the frame)'.

21. We do not agree with the magistrate of first instance that this interpretation implies an undue limitation of the scope of R1.

22. First of all, the textual reading of the claims referred to in the Interpretative Protocol refers to the reading of an expert, who therefore knows the difference between mechanical seed drills and single-grain seed drills.

23. Secondly, such a reading must be made in the light of the description and the drawings, so that the skilled person would assume that the technical problem that the patent is trying to solve (extending the working width beyond the transport width limit). Therefore, he would know that it can only refer to mechanical seed drills, since the type of single-grain mechanical seed drills had that problem solved, by means of folding and unfolding systems, whose installation did not pose the problems derived from the short distance between the seeding elements of the mechanical grain seed drills and seed drills.

24. Thirdly, the interpretation proposed in the judgment is an interpretation that disregards the description and drawings.

25. Fourthly, as we have said in some judgments, a specific representation or example of the description cannot be interpreted as limiting the scope of protection of the challenged claim, but this is not the case. The part of the description on which we are descending, refers to the object of the invention and not to a concrete realization, therefore, it cannot be disregarded in order to interpret an element whose scope is doubtful.

26. The second major argument for this interpretation is reflected in the different characteristics of the singlegrain and the single-grain seed drills.

27. In the article entitled "Technical Characteristics of Conventional Seeding Machines" in Mundo Rural Magazine, provided as Annex 6, incompletely, in the expert report of Mr. Luis Pedro, the following is specified in relation to seeding machines: "Single-grain seeding machines. In this type of machinery, an essential element is the metering mechanism designed to deposit the seeds individually, one after the other, at regular intervals. There are mechanical (vertical plate, oblique plate, horizontal plate and belt) and pneumatic (vacuum or overpressure) metering devices. These machines are characterized by the arrangement of independent seeding units mounted on the same frame (photo 8); in each seeding unit there is a hopper and a metering mechanism.

28. The above article condenses what would be a part of the common general knowledge that an expert would have. As Sola explains in its answer to the lawsuit "the single grain seeder requires a metering plate (mechanical or pneumatic), in vertical or horizontal position, integrated and normally located under the individual hoppers. This metering plate retains the seeds before they fall, preventing them from falling directly, and allows for blow-by-blow or precision sowing".

19. Well, the patent expert, who knows that all single-grain seed drills have a metering unit, would not find this metering unit on the R1. And, since this part is essential on single-grain seed drills, its absence would lead him to understand that R1 protects a mechanical seed drill.

FIFTH. New in ES'571.



1. The plaintiff alleges nullity for lack of novelty and inventive step. The logical thing to do is to analyze first the novelty and then the inventive step. The first instance judgment does not follow the logical order, it unduly analyzes the inventive step, ignoring the allegations of lack of novelty. In the appeal, given that the judgment declaring the nullity has been challenged, we must recover the logical order and analyze novelty before inventive step. Otherwise, we would have to first analyze the inventive step and if we consider that there was an inventive step, we would analyze novelty, inverting the logical order of the analysis of the patentability requirements.

2. As we have said, the plaintiff seeks a declaration of invalidity of patent EP 2,742,787 (EP'787), validated in Spain as ES 2,570,571, (hereinafter ES'571) whose wording is "Frame for a cereal planter and cereal planter including said frame", which claims the priority of December 11, 2012 patent application P201231922 (published application ES 2 466 990 AI). Therefore, the relevant date will be the priority date, since the *plaintiff does not 'na formally* challenged the effectiveness of that date. It should be noted that the plaintiff has limited itself to claiming that the EIT prepared by the SPTO in relation to that application is negative due to lack of inventive step, but formally the claimed priority date has not been challenged, as a consequence of a possible invalidity of ES 2 466 990 B1.

3. Article 54.2 EPC establishes that "the state of the art is constituted by everything which, before the filing date of the European patent application, has been made available to the public by a written or oral description, use or by any other means". Therefore, as a general rule, one must start from the state of the art at the filing date of the application, however, if the applicant makes use of the priority right recognized by art. 87 EPC, the relevant date to determine the state of the art will be the date of the first application of the invention, whose priority is claimed, as provided for in art. 89 EPC, which states that "by virtue of the exercise of the right of priority, the date of priority shall be considered as the filing date of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2".

4. As we know, a claim is new when there is no precedent in the prior art, prior to the priority date, that simultaneously includes all its technical features.

5, Well, in this case, the plaintiff argues that the novelty of R1 of ES'571 is impaired by two anticipations, the seeders marketed in Spain by JJBroch SJ, according to a catalog printed in 2012, and those marketed by Julio Gil Agueda e Hijos SL, according to a magazine article from 2001.

6, Now, without further consideration, and based on the interpretation that we have made of R1, none of said antecedents prejudices the nullity of RI, since both refer to single-grain planters, for which the description itself recognizes that it had already solved the problem solved by R1.

SIXTH - Inventive activity,

A) Determination of the nearest state of the art.

1, LARROSA, on *the basis of* Mr. Luis Pedro's report, argues that the closest prior art document is the one we will call D3. It corresponds to patent ES 2 344 818 (ES'818 or D3) which is part of the prior art.

2. In this document it is claimed: Agricultural apparatus (1) comprising a chassis (2), working tools (4) distributed on the chassis (2) according to a defined and adjustable spacing (e) between a minimum and a maximum spacing, a storage hopper (9) arranged on the chassis (2) and an access device (12) to the storage hopper (9), each working tool (4) having a volume in width (L1) and comprising at least one planting device (7, 10), said access device consisting of.

(12) on at least one plate forming a stirrup with a width (L2), said access device (12) extending between an open position allowing access to the storage hopper (9) and a folded position, said access device (12) remaining substantially in the volume of said agricultural apparatus (1), characterized in that said access device (12) extends between two working tools (4) next to each other in their open position.

3. In its description, it is said to be an agricultural apparatus with a retractable access device. It relates to the general technical field of agricultural machinery, and particularly to an agricultural apparatus comprising a chassis, working tools arranged on the chassis according to a defined and adjustable spacing between a minimum and a maximum spacing, a storage hopper arranged on said chassis and an access device to the storage hopper, each working tool having a volume in width and comprising at least one planting device.

4. The field of application of the invention lies in particular in precision seed drills or distributors, for example, single-grain precision seed drills.

5. SOLA considers, on the basis of Mr. Victor Manuel's report, that the most promising prior art document is, for the appellant, the one we will call D4, which is patent document DE 3627801, discarding D3 as a suitable document to challenge the lack of incentive activity.

6. D4 describes a "seeder, preferably for the cerotallaje method, for spreading seeds and fertilizers, having at least one frame supported on the ground by wheels, at least one storage container for seeds and fertilizers and seed coulters arranged in rows, with seeds and fertilizers in adjustable quantities, fed by tubular conduits, preferably by gravity, for introduction into the soil, characterized in that it is provided with at least one frame (11) preferably rigid on which are arranged the spring-loaded coulters (12), and that the frame (11) is adjustable in height with respect to the wheels (4,5) and can be fixed in different positions". The representation of D4 follows



7. En el método problema-solución que aplicamos para valorar la actividad inventiva, el documento de partida, según las Guidelines for Examination, es aquel que, en una sola referencia, divulga la combinación de características que constituye el punto de partida más prometedor para un desarrollo que conduce a la invención.

8. In order to select that prior art, first of all, it must be taken into account that it must be directed to a purpose or produce an effect similar to that of the invention or at least belong to the same technical field or to a technical field closely related to that of the claimed invention. In practice, the closest prior art is generally that which corresponds to a similar use and requires the minimum of structural and functional modifications to arrive at the claimed invention (see T 606/89) [The closest prior art is that which in one single reference discloses the combination of features which constitutes the most promising starting point for a development leading to the invention. In practice, the closest prior art, the first consideration is that it must be directed to a similar purpose or effect as the invention or at least belong to the same or a closely related technical field as the claimed invention. In practice, the closest prior art is generally that which corresponds to a similar use and requires the minimum of structural and function al modifications to arrive at the claimed invention in the European Patent Office. March 2023 edition. Part G Patentability. Chapter VII Inventive step, 5. Problem-solution approach. 5.1 Determination of the closest prior art].

9. As we have explained, the contested patent ES'571 claims a mechanical seed drill. Well, D3 contemplates a seeder, which in its description, it is said that its "field of application of the invention is found in particular in precision seed drills or distributors, for example single-grain precision seed drills", while in D4, as stated by the expert Mr. Victor Manuel ," /the seed and fertilizer are jntroduced into the seeding coulters J2 separately from the hopper units 2 and 3, respectively, through the tubular feeding ducts 18 by means of gravity.

10. D4, in its description (page 2, lines 26 to 3J) refers to single-grain seed drills. 2, lines 26 to 3J) refers to single-grain seed drills, in which the seed is sown one by one and a metering plate or disc is used to retain the seed before it falls into the furrow, and it is further stated that folding seed drills for single-grain seed drills are known in the state of the art, However, due to the fact that the type of seeds to be cultivated in seed drills in which the seed falls directly from the hopper into the furrow requires a reduced distance between seeding elements, there is little margin for applying folding systems with the solutions known for single-grain seed drills, precisely because of the use of these distributing or metering elements.

11. This dispenser, which appears in D3, is not found in D4, which allows us to consider that this is a structural difference that supports the thesis that D4 must be the document that should set the state of the nearest technique, since this element (the dispenser) is not in the seeder protected by RI.

12. This argument would suffice to demolish the plaintiff's argument of nullity and, therefore, to uphold the appeal on this point and dismiss the nullity action.

13. However, even if we were to accept the hypothesis that D3 was the starting document for an expert, we would reach the same conclusion in the next step of the applied method.

B) The formulation of the objective technical problem.

14. The formulation of the objective technical problem, the second step of the method applied to analyze the inventive step, involves, first, comparing D3 with R1, the independent claim of the challenged patent to determine the differences, second, identifying the technical function of those differences, and, based on those technical functions, formulating the objective technical problem that the skilled person would pose, and finally, analyzing the obviousness.

15. The plaintiff assumes that there are practically no differences between D3 and R1, however, we believe that in the first place D3 does not disclose either CI or C3, since it shows a single-grain machine, with a single support arm, which does not disclose RI characteristics.

16. Mr. Victor Manuel explains that D3 does not disclose a system in which the frame for the cereal seeder is of the type in which the seeds are distributed from the hopper directly to the furrow by gravity. In D3 the seeds pass from the hoppers (6) to a metering disc, which distributes the seeds one at a time before falling into the furrow.

17. Nowhere in the description of D3 is there the slightest reference to seed drills of the type in which the seed passes from the hopper into the furrow by gravity, nor is there any indication that this embodiment is such a machine.

18. In addition, the description repeatedly states that the invention of D3 refers to precision seeding machines, in particular single-grain seed drills (D3, p.2, paragraph 1; p.3, paragraph 6; p.3, last paragraph).

19. Once again, we must separate ourselves from the claimant's argument of nullity, since we have found more differences between D3 and RI than those identified by the claimant's expert Mr. Luis Pedro, which leads us to reject, for this second reason, the nullity action.

20. Finally, if we recognize inventive step in IR, we must recognize it in the dependent claims.

SEVENTH. On the infringement action brought by SOLA on counterclaim

1. SOLA brings a counterclaim for infringement of European patent EP'787. The infringing conduct alleged against LARROSA is the manufacture, marketing and distribution of a telescopic seed drill for cereals of the same type -extensible telescopic seed drills or model ARCO4000SD- which would reproduce the characteristics of the claims of ES'571.



2. The main feature, which is not found in other seed drills of this type, is that it consists of a telescopic chassis with several arms, incorporating the seeding elements, which allows to extend the seeding width.

The width of the seeding arms can be reduced to, for example, 4 meters by telescoping them to, for example, 3 meters, thus allowing them to be transported by road.

3. For the estimation of the infringement action, a comparison of the characteristics of claim 1 with respect to the characteristics of the seeder marketed by the plaintiff and counterclaimant must be carried out. LARROSA argues that its seed drills do not reproduce the characteristics c1 and C3.

4. As we have already said elsewhere in this resolution, ES'571 essentially protects a chassis for a cereal seed drill in which the seeds are distributed from the hopper to the furrow by gravity, i.e. from an upper hopper to the furrow dispensing with pneumatic distribution systems. These seed drills are suitable for sowing cereal seeds, e.g. wheat, oats, barley, etc., which are stored in the upper hopper. This type of "seed sowing requires a very small row spacing - between 120 mm and 165 mm - in contrast to "single grain" sowing, which requires much larger row spacings between 200 mm and 400 mm ("single grain" sowing), which is used for seeds such as mafz.

5. LARROSA's seeding machine is presented in its catalog as "*Telescopic* mechanical *direct coulter seeder*", which contains a frame (1) with an upper hopper (9) supported on a chassis (2). The position of the hopper (9) allows the seeds to fall by gravity through tubes (6) into the furrow created by the seeding elements (4)". The following is a picture of the seeder in question



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6. The chassis (2) has a plurality of arms (3) supporting the seeding elements (4), which are in the same horizontal plane (P). Each of the seeding elements (4) corresponds to a seeding line, as shown in the following figure. In addition, the arms (3) have telescopic sections 3a that allow them to be extended horizontally from a transport position as shown in figure 6 to a wide detached position. The following picture shows the seeder in question in working position



7. In ES'571, C1 defines" a *chassis (2',2b)* provided with a *plurality of e/elements (4}* of seeding *of said seeding machine*" corresponding to the already described realization, in this case formed by two aligned subchassis:



8. This is the first objection made **by LARROSA** to reject the existence of infringement. It alleges that, as can be seen in the previous image, there are two coupled chassis (2a and 2b), while in the realization that it commercializes, there is only one chassis.

9. This argument cannot be shared. The wording of R1 is conclusive:" a *chassis* (2°, 2ó} prov/sto of a *plurality of* e/emenfos {4} of s/emóra of *said seeder,...-,* without there being place to understand that R1 protects only seeders in which its chassis is formed by two pieces.

10. On the other hand, C3 refers to "*the said* six (3) support *arms being* substantially parallel in the *same* horizontal plane". SOLA considers that the seeder marketed by I.ARROSA presents this characteristic. **LARROSA** maintains that this characteristic is not met, given the arched shape of the chassis of its planter.

1J. LARROSA maintains that the frame of its seeder is slightly bent, as can be seen in the following images, and therefore the support arms are not "in the same horizontal plane", as required by the RJ:





12. The two figures below show, respectively, the difference between the slightly curved frame used by LARROSA and the SOLA frame (fig. 4).





13. The expert Mr. Victor Manuel specifies in this regard, and says that at least, the two outer arms of **LARROSA's** realization are arranged in the same horizontal plane (P) and the inner arms would be in a different horizontal plane and somewhat higher, and that therefore there is a literal reproduction of C3 of RI, since C3 does not specify that the number of arms must be in the "same horizontal plane \mathbb{M} .

14. We cannot share Mr. Victor Manuel's assessment, if there are two horizontal planes, the claim is not literally reproduced. It requires all "support arms (3) substantially parallel in the same horizontal plane", i.e. all support arms must be in the same horizontal plane.

15. Regarding the possible infringement by equivalence, the SC, in STS October 20, 2023 (ROJ: STS 4412/2023 - ECLI;ES;TS:2023:4412) recalls that "The infringement trial involves a comparison between the invention and the challenged embodiment, which must be made element by element. Only when all the elements of the patented invention are reproduced by the challenged embodiment will there have been an infringement of the right conferred by the latter. And this reproduction of all the elements of the patented invention, which is necessary for the challenged embodiment to be considered infringing, may occur by identity (literal infringement) or by equivalence (infringement by equivalence).

16. And the SC goes on to say that: "There is no single method that can be used to carry out the equivalence test in all cases, but the most appropriate one must be used in each case. In the case of relatively simple mechanical patents (patents claiming a mechanism described by parts and not a function itself), the triple identity test, which requires the same function, the same *modus operandi* and the same result, can be used.

17. This involves determining, in this case, whether a frame with four substantially parallel support arms and in which the two outer arms are in a first horizontal plane and the two intermediate arms are in a second horizontal plane, higher than the first horizontal plane is a solution equivalent to: A frame in which the four arms are substantially parallel and furthermore all lie in one and the same horizontal plane, as claimed in R2 of ES 57a.

18. The so-called equivalence test requires resolving 3 questions: a) whether the allegedly infringing process substantially alters the operation of the invention described in the patent, b) whether the alternative was obvious or predictable and c) whether this same person skilled in the art, in view of the wording of the claims and the description of the patent would have understood that the owner intended that subjection to the strict meaning of the terms of the claim was an essential requirement of the invention.

19. The expert Mr. Victor Manuel admits in his report that in the **LARROSA** frame the two outer arms are in a first horizontal plane and the intermediate arms are in a second horizontal plane slightly higher than the previous one, but concludes that this configuration does not imply an alteration in the operation of the frame since in both cases the extension of the arms is carried out in the same way. It considers that what is important is not the plane in which the arms are anchored but whether they are parallel to each other, so that they do not get stuck in the maneuvers or operations of extension or retrocession of the arms.

20. However, we do not share this position. LARROSA, when registering patent ES'356, already describes a cereal planter with "arched, *slotted and extensible* chassis", and in the antecedents of said invention it is stated that "The present way of constructing the chassis of the planters with the beams in the same plane and without slots, is less advantageous than with the new form presented here, because it takes more material and, in addition, the machine is heavier, and this difference in weight makes it more difficult for the machine to be used in the field".

makes it less competitive, since more force is needed both when transporting it and when working with it, with a consequent increase in energy consumption and pollution."

21, It is therefore not a mere aesthetic modification of the LARROSA chassis, but a substantial difference, which prevents us from speaking of an equivalent solution in this case, which leads us to reject the infringement action.

EIGHTH: Costs of the proceedings

1. Given the dismissal of the nullity action filed by the legal representation of **Larrosa** Arnal, S.L., for lack of inventive step of all the claims of patent ES 2,570,571, owned by Maquinaria Agrícola Solá, S. L., the costs incurred in said proceeding should be imposed on the plaintiff.

2. Since the denial of infringement brought by Larrosa Arnal SL is upheld, the defendant must be ordered to pay the costs.

3. Given the dismissal of the counterclaim (JO 125/2020-X) filed by the procedural representation of Maquinaria Agrícola Solá, S.L., Sola must be ordered to pay the costs derived from said counterclaim.

4. Given that the appeal filed by MAQUINARIA AGRICOLA SOLA, S.L. has been partially upheld, the costs incurred in this instance should not be imposed on any of the parties.

ENACTING PART

The appeal filed by MAQUINARIA AGRICOLA SOLA, S.L. against the judgment dated May 3, 2022 issued by the Commercial Court 4 of Barcelona in the proceedings from which this roll is derived, which is revoked in the sense of:

Dismiss the action filed by **LARROSA ARNAL**, S.L. for nullity due to lack of novelty and inventive step of all the claims of patent ES 2.570.571 with imposition to the plaintiff of the costs derived from this action.

To uphold the denial and non-infringement action filed by **LARROSA ARNAL**, S.L." with the imposition of the costs to the defendant.

The infringement action brought by MACIUINARIA AGRICO LA SOLA, S.L. is dismissed, with the imposition on the latter of the costs of first instance caused by said counterclaim.

Without imposition of costs in this instance and with reimbursement of the deposit deposited for appeal.

The parties entitled to file a cassation appeal against this decision before this court, within twenty days from the date of its notification, in accordance with the applicable legal and jurisprudential criteria.

Refer the case files to the Court of origin with testimony of this Judgment, once final, for the pertinent effects.

Thus, by this our Judgment, of which certification will be included in the Roll, we, the illustrious magistrates of this court, pronounce, order and sign it.