

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRECISION PLANTING LLC, AGCO CORPORATION,
Petitioner,

v.

DEERE & COMPANY,
Patent Owner.

IPR2019-01047
Patent 9,510,502 B2

Before MICHAEL W. KIM, BARRY L. GROSSMAN, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background*

Precision Planting LLC and AGCO Corporation (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–22 of U.S. Patent No. 9,510,502 B2 (Ex. 1001, “the ’502 patent”). Paper 4 (“Pet.”). Deere & Company (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). With Board authorization, Petitioner filed a Reply (Paper 10) and Patent Owner filed a Sur-Reply (Paper 11).

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see also* 37 C.F.R. § 42.4(a) (“The Board institutes the trial on behalf of the Director.”). “In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d).

Upon consideration of the record before us, we are persuaded that we should exercise our discretion and deny institution because “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d) (informing authority to institute under 35 U.S.C. § 314(a)). Therefore, we do not institute an *inter partes* review on any claim or ground.

B. Related Proceedings

Petitioner and Patent Owner identify the following district court proceeding concerning the '502 Patent: *Deere & Co. v. AGCO Corp.*, No. 1:18-cv-827-CFC (D. Del.); and *Deere & Co. v. Precision Planting LLC*, No. 1:18-cv-828-CFC (D. Del.). Pet. 6; Paper 6, 1. “In addition, U.S. Patent Application No. 15/799,617, filed October 31, 2017, is an application for reissue of U.S. Patent No. 9,510,502 and is currently pending before the Central Reexamination Unit [(“the '617 reissue examination”).]” Paper 6, 1.

C. The '502 Patent

The '502 patent relates to seeding machines called “planters” used by farmers to plant seeds in a field. Ex. 1001, 3:16–40. In a typical configuration, the planter is attached to a tractor that pulls the planter across the field. The planter has a main hopper that holds seeds and individual “row units” that take the seeds from the main hopper, place them in an auxiliary hopper, and deliver the seeds to the ground. Ex. 1001, 3:17–40. Each row unit digs a trench, or “furrow,” in the ground, deposits seeds in the furrow, and covers the seeds with soil. Ex. 1001, 3:32–38.

The '502 patent asserts that prior art seeding systems did not space seeds with sufficient accuracy or uniformity. Ex. 1001, 1:53–62. The patent states that prior art systems did not sufficiently control the movement of the seed from the hopper to a discharge point or from the discharge point to the ground. Ex. 1001, 1:56–62. The patent states, for example, that prior art row units that allowed seeds to fall by gravity resulted in inaccurate seed spacing. Ex. 1001, 1:50–53.

The patent also states that systems that used flighted belts to deliver the seeds from the meter to the ground—such as the flighted belt in

Sauder—could not discharge the seeds at the desired horizontal velocity to control movement of the seed upon discharge. Ex. 1001, 9:34–58 (discharging seed at a speed “that is approximately equal to, but in the opposite direction of, the seeding machine forward velocity” is not possible “with other seed delivery systems, such as that disclosed in U.S. Pat. No. 6,681,706 [Sauder] where the delivery system . . . has a belt with flights to carry the seed.”). Specifically, the patent explains that the speed of the flighted belt “must be timed to the seed meter speed to ensure” that each seed that is discharged from the meter is placed into a flight. Ex. 1001, 9:34–58. The patent asserts that this prevented such systems from discharging seeds at the optimal horizontal velocity to control the seeds as they were discharged. Ex. 1001, 9:34–58. The ’502 patent thus states that there is a need for a system that provides better control of seeds from meter to the ground. Ex. 1001, 1:53–55.

The ’502 patent purports to solve these problems using a row unit that allegedly provides more control over the seeds as they are conveyed from the seed meter to the discharge point and discharges seeds at the desired velocity to minimize movement of the seeds after they have been discharged. Ex. 1001, 9:34–42 (“At discharge . . . [t]he belt is operated at a speed to produce a horizontal velocity component V_H that is approximately equal to, but in the opposite direction of, the seeding machine forward velocity show by arrow 408. As a result, the horizontal velocity of the seed relative to the ground is zero or approximately zero. This minimizes rolling of the seed in the seed trench.”).

The row unit includes a seed meter that takes seeds sequentially from the auxiliary seed hopper and delivers them to a seed delivery apparatus. Ex.

1001, 5:42–53. The “seed delivery apparatus” uses an “endless member” to deliver seed from the seed meter to the discharge point. Ex. 1001, 13:31–37. The patent explains that the “endless member” is in the form of a brush belt with bristles that grip the seed. Ex. 1001, 5:64–6:15, 10:57–60 (“The seed delivery system 1210 is like seed delivery system 400 described above containing a brush belt 1312 to grip and carry seed.”), 12:53–64 (“The seed delivery system 1210 includes an endless member. . . . The endless member is shown in the form of a brush belt 1312 having bristles 1314 that sweep across the face 1251 of the belt 1250 to remove the seed therefrom.”). The seeds are inserted into the bristles of the brush belt so they can be carried in a controlled manner to the furrow in the ground. Ex. 1001, 9:3–12 (“[O]nce seed is captured or trapped in the bristles 428, the delivery system controls the movement of seed from the seed meter to the discharge location. The seeds are held in the bristles such that the seeds can not [sic] move vertically relative to the bristles 428 or relative to other seeds in the delivery system.”), 9:14–17 (“The seed is carried by the bristles from the upper opening 416 to the lower opening 418 with the movement of the seed controlled at all times from the upper opening to the lower opening.”).

The patent explains that the brush belt is contained within a housing to further maintain control of the seeds as they are carried to the furrow. Ex. 1001, 13:3–9 (seed moves from the seed meter to “the interior of the delivery system housing where the seed is trapped by the brush bristles and the interior surface of the delivery system housing 1322”). The housing has a first upper opening and a second lower opening. The brush belt receives individual seeds from the seed meter at the upper opening and carries the seeds to the lower opening. Then, the brush belt discharges the seeds into the

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