

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRECISION PLANTING, LLC and AGCO CORP.,
Petitioner,

v.

DEERE & COMPANY,
Patent Owner.

IPR2019-01053
Patent 9,861,031 B2

Before BARRY L. GROSSMAN, JAMES A. TARTAL, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining No Challenged Claims Unpatentable
Denying in Part and Dismissing in Part Petitioner's Motion to Exclude
Dismissing Patent Owner's Motion to Exclude
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background and Summary

Precision Planting, LLC and AGCO Corp. (collectively, “Petitioner”) filed a Petition (Paper 4, “Pet.”) requesting *inter partes* review of claims 1–18 of U.S. Patent No. 9,861,031 B2 (Ex. 1001, “the ’031 patent”). Deere & Company (“Patent Owner”) filed a Preliminary Response. Paper 10. With our authorization, the parties filed additional pre-institution briefing. *See* Paper 11; Paper 13. We instituted an *inter partes* review on all claims on the sole ground asserted in the Petition. *See* Paper 18 (“Dec. on Inst.”). After institution of trial, Patent Owner filed a Patent Owner Response. (Paper 34, “PO Resp.”), Petitioner filed a Reply (Paper 56, “Pet. Reply”), and Patent Owner filed a Sur-Reply (Paper 68, “Sur-Reply”). We held a hearing on August 31, 2020, a transcript of which is included in the record. *See* Paper 92 (“Tr.”). The parties have also filed motions to exclude, which we address below in Section II.

We have authority under 35 U.S.C. § 6. Petitioner bears the burden of proving unpatentability of the challenged claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail, Petitioner must prove unpatentability by a preponderance of the evidence. *See* 35 U.S.C. § 316(e) (2018); 37 C.F.R. § 42.1(d) (2019). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, we determine that Petitioner has not shown by a preponderance of the evidence that claims 1–18 of the ’031 patent are unpatentable.

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B. Real Parties in Interest

Petitioner lists the following entities as real parties in interest: Precision Planting, LLC; AGCO Corp.; Monsanto Co.; and Bayer AG. *See* Pet. 7. Patent Owner lists only itself as a real party in interest. Paper 6, 1.

C. Related Matters

Patent Owner has asserted the '031 patent against Petitioner in *Deere & Company v. AGCO Corporation*, Civil Action No. 1:18-cv-00827-CFC in the U.S. District Court for the District of Delaware. Pet. 7; Paper 6, 1.

In addition, Petitioner lists the following Board proceedings as related matters:

Case No.	Challenged Patent
IPR2019-01044	U.S. Patent No. 8,813,663
IPR2019-01046	U.S. Patent No. 9,480,199
IPR2019-01047	U.S. Patent No. 9,510,502
IPR2019-01048	U.S. Patent No. 9,686,906
IPR2019-01050	U.S. Patent No. 9,807,922
IPR2019-01051	U.S. Patent No. 9,807,924
IPR2019-01052	U.S. Patent No. 9,820,429
IPR2019-01054	U.S. Patent No. 10,004,173
IPR2019-01055	U.S. Patent No. 9,699,955

Pet. 7.

D. The '031 Patent

The '031 patent issued on January 9, 2018, from an application filed February 9, 2015. Ex. 1001, at (45), (22). The '031 patent states that it is a continuation of Application No. 14/504,801, filed October 2, 2014, and a

continuation of Application No. 12/364,010, filed February 2, 2009. *Id.* at (63).

The '031 patent relates to a seeding machine having a seed metering system and a seed delivery system for delivering seed from the meter to the ground. Ex. 1001, 1:14–16. In the “Background of the Invention,” the '031 patent explains that in known seed delivery systems, differences in how individual seeds exit the metering system and drop through the seed delivery tubes cause undesirable variations in seed spacing. *Id.* at 1:62–65. The '031 patent describes that its system reduces seed spacing variability by capturing the seed, and then moving it, on a controlled descent, from the point at which it exits the metering system to a point near the bottom of the seed trench, so that the seed is discharged at a substantially zero horizontal speed relative to the ground. *Id.* at 2:24–40.

Referring to Figure 3 of the '031 patent (reproduced below), seed stored in a seed hopper is provided to a seed meter that uses vacuum disk 50 to meter the seed to seed delivery system 28 that carries the seed to a planting furrow. Ex. 1001, 3:21–25.

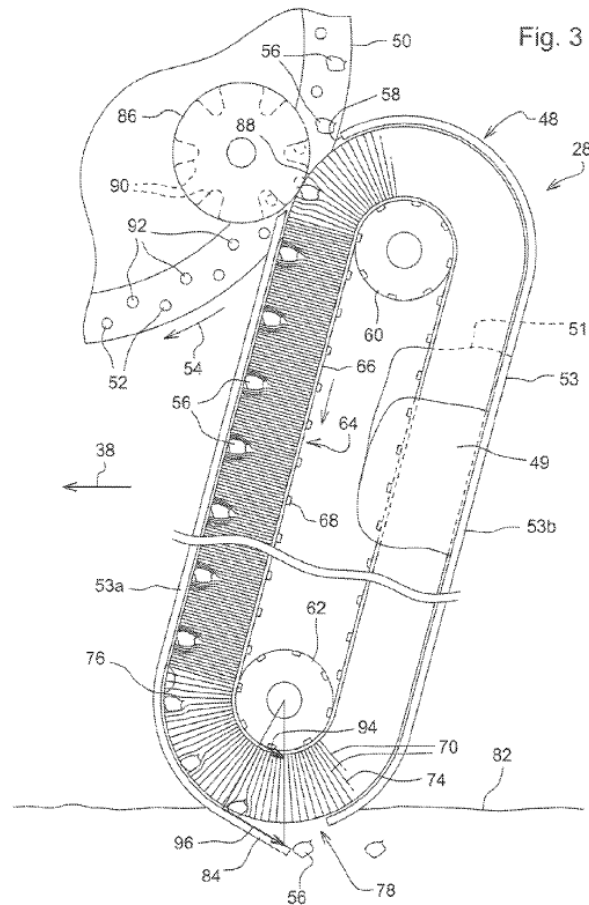


Figure 3 depicts an enlarged side view of a seed delivery system of one embodiment of the invention. Ex. 1001, 2:48–49.

Metering disk 50 is generally flat with a plurality of apertures 52 that collect seeds 56 from a seed pool, which “adhere to the disk by air pressure differential on the opposite sides of the disk 50 in a known manner.”

Ex. 1001, 3:42–47. Seed delivery system 28 “includes a housing 48 positioned adjacent the seed disk 50.” *Id.* at 3:40–42. Housing 48 includes upper opening 58 that “admits the seed from the metering disk 50 into the housing,” and “lower housing opening 78 . . . positioned as close to the bottom 80 of the seed trench as possible,” through which the seed is discharged into the seed trench. *Id.* at 3:52–55, 3:64–66, 4:45–46.

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