

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PRECISION PLANTING, LLC and AGCO CORP.,  
Petitioner,

v.

DEERE & COMPANY,  
Patent Owner.

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IPR2019-01055  
Patent 9,699,955 B2

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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 1–8, 10, 12–17, 19, and 20 of U.S. Patent No. 9,699,955 B2 (Ex. 1001, “the ’955 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 19 (“Dec. on Inst.”). After institution of trial, Patent Owner filed a Patent Owner Response. (Paper 34, “PO Resp.”), Petitioner filed a Reply (Paper 59, “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 1–8, 10, 12–17, 19, and 20 of the ’955 patent are unpatentable.

*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. 9. Patent Owner lists only itself as a real party in interest. Paper 5, 1.

*C. Related Matters*

Patent Owner has asserted the '955 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. 9; Paper 5, 1.

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

<b>Case No.</b>	<b>Challenged Patent</b>
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
IPR2019-01053	U.S. Patent No. 9,861,031
IPR2019-01054	U.S. Patent No. 10,004,173

Pet. 9.

*D. The '955 Patent*

The '955 patent issued on July 11, 2017, from an application filed May 5, 2015. Ex. 1001, at codes (45), (22). The '955 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 code (63).

The '955 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 '955 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 '955 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 2:24–39.

Referring to Figure 3 of the '955 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, 3:20–25.



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