

UPC_CFI_513/2024
Decision by Default
of the Court of First Instance of the Unified Patent Court
delivered on 08 July 2025

Headnotes:

Before issuing a decision by default when the defendant did not even enter proceedings, factors other than the lack of opposition must be considered. Rule 355.2 RoP has a broader scope than Rule 171.2 RoP and must be interpreted in light of the front-loaded nature of UPC proceedings. This implies that, in a decision by default the Court is required to verify whether the claimant has put forward all elements in its possession to justify the legal relief sought. The claimant must therefore provide sufficient evidence to demonstrate to be entitled to the relief sought (page 13).

The requirements of Art. 26 UPCA regarding the so-called “double territoriality” are satisfied when the offer and the act of putting into effect are established with respect to the territory of the contracting member states where the EP is valid. Neither the offer nor the act of putting into effect need to refer to the same contracting member state, even for “bundle patents. This is clear from the wording of Art. 26 UPCA (“therein”/ “auf diesem Gebiet”/ “sur cette territoire”) (page 25).

CLAIMANT

Maschio Gaspardo S.p.A.

(Main proceeding party - Claimant) - Via Marcello, 73 - 35011 - Campodarsego (PD) – IT

Represented by Davide Locas

DEFENDANT

Spiridonakis Bros GP

(Main proceeding party - Defendant) - 11th km Thessaloniki Katerini -
54700 - Sindos – GR- Statement of claim served on 02/01/2025

in absentia

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP1998604	Maschio Gaspardo S.p.A.

COMPOSITION OF PANEL – FULL PANEL

Presiding judge and JR	Andrea Postiglione
Legally qualified judge	Anna-Lena Klein
Technically qualified judge	Bernard Ledebøer

LANGUAGE OF PROCEEDINGS: English

Summary of the facts

On 5 September 2024, MASCHIO GASPARDO s.p.a. (in the following MG), an Italian multinational company active in the development, production, and marketing of agricultural equipment for soil cultivation, sowing, crop treatment, green maintenance, and haymaking, filed with the CD Milan an action for patent infringement against the Greek company Spiridonakis Brothers¹.

The claimant stated that the defendant offered for sale, distributed, and advertised a product under the name 'Bellota tool', which was a mere counterfeit of its patented product.

The requests of the claimant in the statute of infringement

Maschio Gaspardo requests that the Central Division of Milan issue a decision by default per R. 355(1) RoP where the Defendant fails to file written submissions within the relevant time limit (R. 355(1)(a) RoP) or fails to appear at the oral hearing (R. 355(1)(b) RoP) and:

- 1) grant a permanent injunction by Article 63(1) UPCA to prohibit the continuation of direct and/or indirect infringement of claims 1, 2, 3, 5, 6, 9 and 10, aimed at prohibiting the continuation of the infringement within the territory of UPC Member States;
- 2) to fix a recurring penalty in case of non-compliance with the injunction granted following art. 63(2) UPCA;
- 3) issue a declaration of infringement according to art. 64(2)(a) that the contested products infringe EP '604;
- 4) order Defendant to communicate, by Article 67(1) UPCA, any information concerning the origin and distribution channels of the infringing products (i.e. upstream and downstream commerce channels), the quantities produced, manufactured, delivered, received or ordered and the prices correlated to the infringing products and the identity of any third person involved in the production or the distribution of the infringing products;

¹ VAT 999305000 11th km NR Thessaloniki Katerini 54700 – Sindos, Thessaloniki GREECE

5) that the Defendant bear legal costs and other expenses incurred by the Claimant.

The claimant's representative explained during the oral hearing that the injunction is only requested concerning those contracting member states where the EP is valid. Additional requests were withdrawn during the hearing.

The patent at issue

Maschio Gaspardo is the owner of EP 1 998 604 (hereinafter "EP '604"), which was filed on 29 March 2007 in the name of MG (the grant of the patent was published on 2 May 2012).

EP '604, titled "Reversible tool for agricultural subsoilers and the like", concerns a reversible tool for agricultural subsoilers and derives from international application no. PCT/EP2007/002788 filed on 29 March 2007, claiming IT priorities of the Italian patent applications IT PD20060111 and IT PD20060285 dated 30 March 2006 and 12 July 2006, respectively.

EP '604 is validated in France, Turkey, Italy, Germany, Romania, and the Czech Republic, and for the scope of these proceedings, also in Bulgaria².

A 'reversible tool for agricultural subsoilers' is typically a reversible chisel or shank that can be mounted on an anchor member of the subsoiler's frame. These tools are designed to penetrate and break up compacted soil layers deep below the surface, improving soil drainage and root growth. The "reversible" aspect means that the chisel or shank can be flipped or rotated to use both edges, when the first one is worn out, extending the tool's lifespan before it needs replacement.

The patent contains 10 claims, of which claim 1 is the only independent claim.

The Technical Problem

According to the description of the patent in the technical field of toothed cultivators and of agricultural subsoilers, it is known to use reversible tools including a plate-like body at the longitudinally opposed ends of which chisels are defined. The chisels may be presented alternatively in the working position on the anchor member of the subsoiler by turning them 180°.

Such tools are normally fixed to the respective anchor members or blades of the subsoiler using pins and bolt connections, fitting into holes provided on the plate-like body and into corresponding holes provided in a similar position on the anchor member of the subsoiler. The advantage of these tools lies mainly in the fact that, once one of the two chisels is worn, the tool can be re-used a second time by removing it from the anchor member and fixing it again in a position turned 180°.

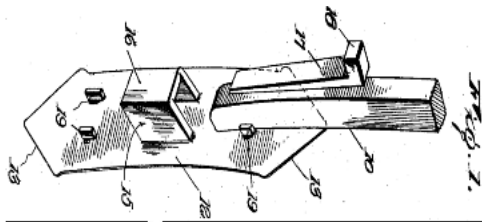
The tools are designed to penetrate and break up compacted soil layers deep below the surface, improving soil structure, drainage, and root growth. The chisels serve to cut into the soil and to break it up. The tools are fastened to the machine by fasteners. Using quick-release fasteners of the standard type is common practice because they facilitate the tool reversal and replacement operations.

² The validation of the patent in Bulgaria is reported by the Bulgarian patent bulletin attached in the claim as Exhibit 04a (copy of the original) and Exhibit 04b (translation)

However, a main drawback of the use of fastening bolts or pins is that, because of continued impact with the soil during use, they become worn and consequently difficult to remove.

According to para. [0005] of the patent description, the problem underlying the patent at issue is the difficulty of reversal and exchange of the chisels owing to the wear on the heads of the fixing bolts, caused by the fact that the heads are located in proximity to the working surfaces of the tool itself and are subjected to continuous contact with the soil which is being worked. In all cases in which the wear on the heads of the bolts is such as to prevent normal operation of the bolts to unscrew them with a suitable spanner, it is necessary to resort to cutting them, with an adverse effect on the time spent by the operator on the removal of the tools.

US-A-1345209 discloses a reversible tool according to the preamble of claim 1 that includes a wedge, which is not compatible with quick release connectors of the standard type.



Therefore, the technical problem to be solved by EP '604 is to provide a reversible tool for agricultural subsoilers, that is compatible with quick-release fasteners of the standard type that are protected from wear. If so, they wear less and are therefore easier to replace, and replacement times are reduced.

Patent claims

EP '604 presents a reversible tool for agricultural subsoilers that solves this problem with claim 1

Claim 1 reads as follows: "A reversible tool (6) for agricultural subsoilers and the like, including an elongate plate-like body (7) at the opposite ends of which respective chisels (8a, 8b) are defined, and fixing means for the tool (6) for fixing said body (7) to the free end (3a) of an anchor member (3) of a subsoiler (1) reversibly so as to present in the working position one or the other of said chisels (8a, 8b), said fixing, means comprising quick-release connectors, wherein said fixing means comprise a pair of parallel and spaced plates (9a, 9b) between which a seat for coupling with said anchor member (3) is defined, said plates (9a, 9b) being fixed on the same side of said body (7), intermediate between said chisels (8a, 8b), and characterized in that said plates (9a, 9b) are provided with at least two pairs of coaxial apertures (10a, 10b, 11a, 11b), at least one of said pairs being intended to receive a respective pin (14) or bolt (16a) of the quick-release type".

Claim 1 of the patent at issue may be visualized as follows. Figure 1 is a diagrammatic view of a subsoiler.

Figure 2 is an axonometric exploded view of a detail of the agricultural subsoiler of Fig. 1.

Figure 3 is an axonometric view of a reversible tool for agricultural subsoilers.

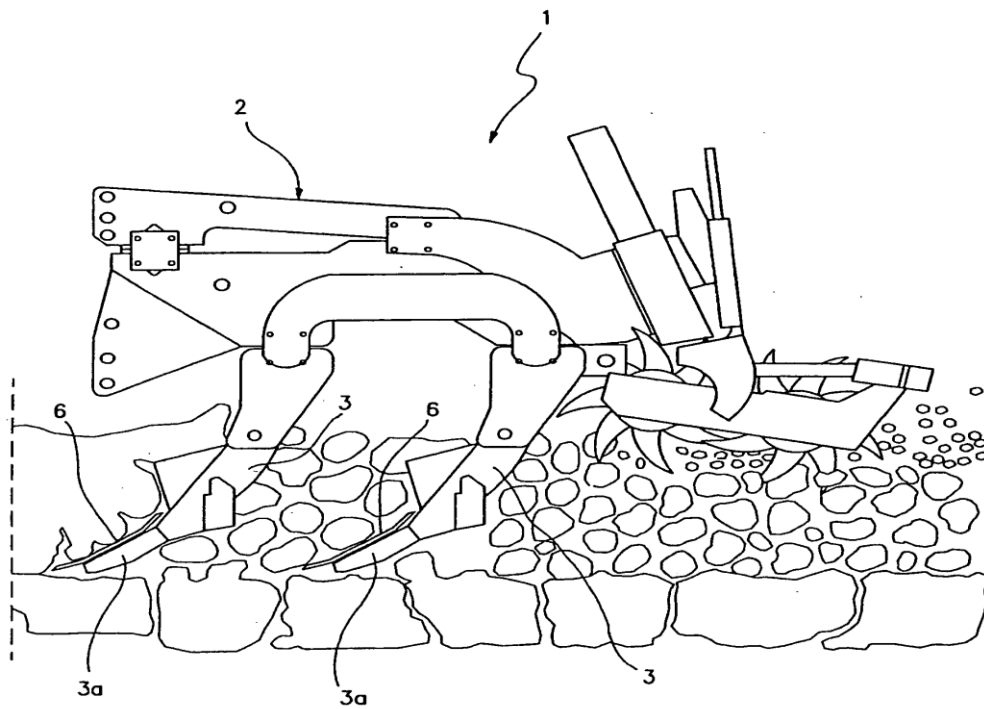


Fig. 1

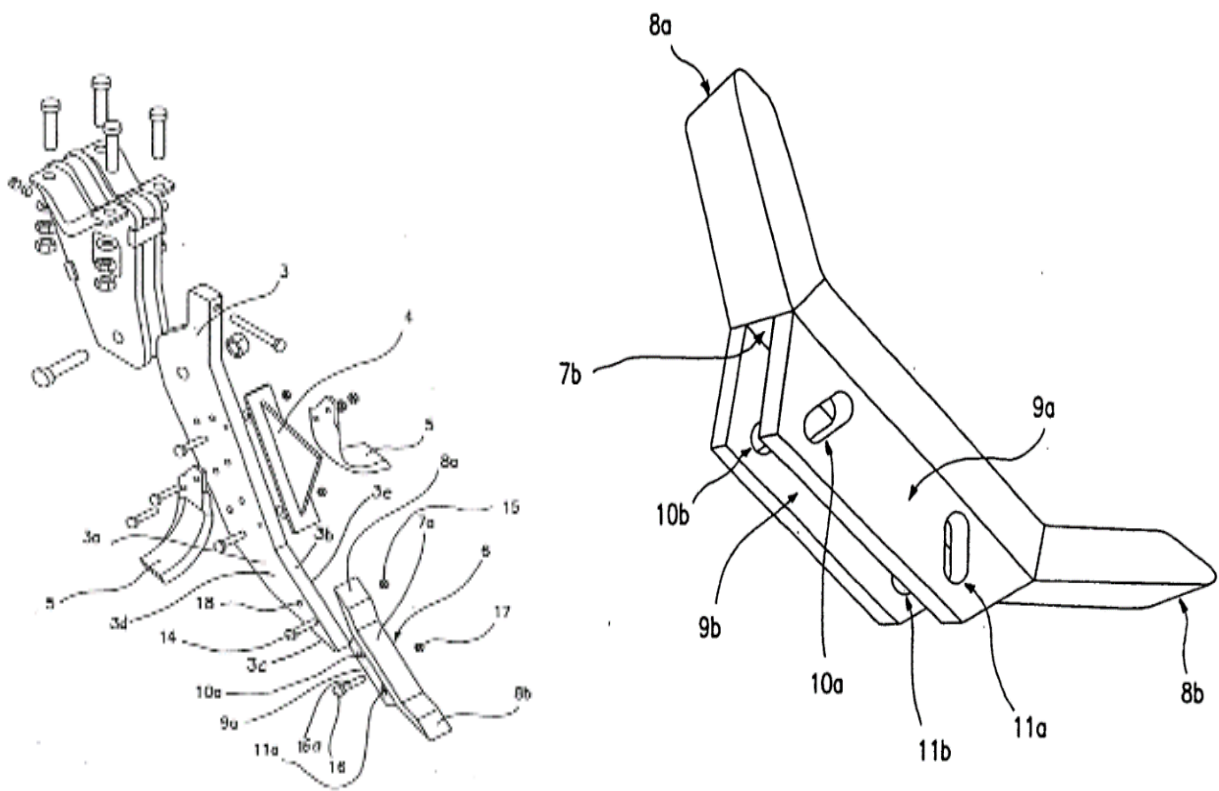


Fig. 2

Fig. 3

Claim 2 describes a tool according to claim 1 wherein the plates are provided with two pairs of coaxial apertures (10a, 10b and 11a, 11b), each pair intended to receive a respective pin (14) or bolt (16a) of the quick-release type.

Claim 3 describes a tool according to claim 2, wherein the apertures on each plate are arranged in symmetrical mirror image and are slot-like with major axes converging near said plate-like body.

Claim 4 describes a tool according to claim 2 or 3, wherein the apertures (10a, 10b, 11a, 11b) are arranged, with respect to said anchor member, such that in both the reversible positions of said tool a pair of apertures is aligned with a through-hole (18, 118) in said anchor member (3) and the other pair of apertures is aligned with a tangent to a back part (3c) of said anchor member.

Claim 5 describes a tool according to claim 1, wherein said apertures are through-holes (10a, 10b, 11a, 11b) in corresponding positions such that when the tool (6) is mounted on the anchor member (3) in either of the two operating positions, corresponding holes on the two plates are coaxial with the same hole (18, 118) of the end portion (3a) of the anchor member in order to receive therein a retaining pin or a connection of the screw (114) and nut (115) type.

Claim 6 describes a tool according to claim 1, wherein on at least one of said plates (9a, 9b) locating means are provided, extending into said seat for locating a back surface (3c) of said anchor member (3) when said tool (6) is mounted in one or the other of said operating positions.

Claim 7 describes a tool according to claim 6, wherein said locating means comprise two protuberances (116b, 116c) standing up from the respective plates (9a, 9b) in said seat.

Claim 8 describes a tool according to claim 7, wherein said protuberances (116b, 116c) are coaxial.

Claim 9 describes a tool according to claim 6 (incorrectly indicated according to claim 7), wherein said locating means comprise a pin (116) extending from one to the other of said plates.

Claim 10 describes a tool according to claim 9, wherein said pin (116) is of the peg or screw and nut type.

Parties' submissions

During the oral hearing, which was preceded by a site visit to allow the panel to allow the panel to assess the properties of the attacked embodiment and compare the patented tool with the allegedly infringing one, MG's attorneys clarified that the patent claim had been rewritten following the search report of July 8, 2007, considering the patent not novel over US-A 1345209 as to claim 1. Consequently, the new claim 1 of EP '604 derives from the combination of original claims 1 and 2 of the corresponding international application PCT/EP2007/002788.

MG then incorporated the previous claim 2 into claim 1 and used more restrictive terms. Thus, alongside the more general terms "plate-like bodies (7)" and fixing means (6), also "coaxial apertures 10a, 10b, 11a, 11b) was introduced into claim 1.

The term 'through hole (18, 118)' in claims 4 and 5 was also discussed. It was clarified by the claimant to be a single hole in the anchor member of the subsoiler, not part of the tool claimed.

The sets of apertures in the plates of the tool were specified in claims 4 and 5 to be positioned relative to the through-hole of the anchor member of the subsoiler such that, when the tool is mounted in either of the two operating positions, a retaining pin or a connection of the screw and nut type passing through the upper pair of coaxial apertures in the plates of the tool traverses the through hole of the anchor member to retain the tool on the anchor member.

Further, it was discussed that when claims 1 and 2 as filed were combined during examination into claim 1 as granted, the claim numbering of original dependent claims 3-11 as filed was updated to 2-10. The reference of original claim 10 to claim 7, however, was erroneously not updated to claim 6.

Claim 9 as granted, which literally refers to claim 7, should according to the claimant therefore be interpreted as referring to claim 6. This erroneous reference would be clear to the skilled person from the description, as Claims 7 and 8 as granted refer, in fact, to another type of embodiment, which has two parallel protuberances instead of a single bolt or pin.

MG's lawyers emphasized that the terms in claim 1, 'fixing means', 'quick release connectors' and 'coaxial apertures' should be considered uniformly and functionally. The expert in the field would understand the fixing means to be the parts used to obtain the fixing of the tool to the agricultural machine. The fixing means are specified in the claim to include a pair of plates. As per the claim, the fixing means would comprise 'quick release connectors'. The 'quick release connectors' would be a part of the fixing means.

MG's legal team then argued that the term 'fixing means' was to be understood in a functional sense, while the term 'coaxial apertures' (10, 11) referred to the same holes also defined as quick-release connectors, specifying its shape and purpose.

So, the term "quick-release connectors" explained the functionality of the openings as those points where the pins and bolts used to anchor the embodiment to the machine could be attached.

At the hearing, the claimant also explained that by embodying the fixing means as parallel and spaced plates on the same side of the body of the tool intermediate between the chisels, between which plates a seat of coupling with the anchor member is defined, and by embodying the quick release connectors as two pairs of coaxial apertures in the plates, a protected position is offered to a pin or bolt of the quick release type that is in use received in the apertures, behind the face of the tool and away from the working chisel tip.

Finally, the claimant stipulated that the person skilled in the art for EP1998604 is a mechanical engineer with work experience in the design of agricultural machines, having knowledge of fastening constructions, in general, and of fastening constructions for work implements to agricultural machines, in particular.

THE CLAIM IS WELL-FOUNDED

Jurisdiction of the Court

This Court has jurisdiction over the case at hand.

Considering that Bulgaria, as a Contracting Member State of the Unified Patent Court Agreement, does not host a local division and does not participate in a regional division, the Infringement Action at issue is correctly brought before the Central Division by Article 33(1) [paragraph 04] UPCA³.

Furthermore, the Defendant has his residence and principal place of business in Greece, which is outside the territory of the Contracting Member States following Articles 1 and 2 UPCA, thus enhancing the reasons to bring the Action before the CENTRAL DIVISION by Article 33(1) [paragraph 03] UPCA⁴.

The patent is in class A) and falls, therefore, within the jurisdiction of Milan Central Division (Annex II UPCA).

Since the claimant clarified that the requests refer only to contracting member states where the patent is valid, there is no need to address the question of the UPC's jurisdiction with regard to patents valid outside the territory of the UPC.

The person skilled in the art.

The Court bases its decision on the following technical meaning of the features from the point of view, as at the priority date, of the person skilled in the art.

The panel agrees with the claimant that the person skilled in the art – according to whom the interpretation of the claim has to be carried out – has to be identified in an engineer with a university degree who has several years of practical experience in the design and implementation of agricultural tool and experience in fastening constructions in the fields of agricultural machines.

Claim construction

Claim construction is a matter of law (CoA 768/2024 APL_64374/2024 Eoflow/INSULET). Claim features must always be interpreted in the light of the claim as a whole (UPC Court of Appeal, 13 May 2024 UPC_CoA_1/2024 para. 29 - Hanshow). The person skilled in the art will not only consider the literal meaning of a certain word used in the patent claim but will also claim the technical function of a certain part addressed in the patent claim (cf. LD Duesseldorf, ACT 58084/2023, decision of 31 October 2024).

The patent description generally presents the patent's "lexicon" (cf. LD Duesseldorf, ACT 58084/2023, decision of 31 October 2024). When identical terms are used in a claim, they generally have the same meaning. However, 'claim language' does not forbid the use of different words for identical parts of a tool. It is only for certain parts of a device addressed in the claim that different terms are used.

The determination of the technical meaning of features from the point of view of the person skilled in the art can, if necessary, concentrate on the features in dispute between the parties.

³ 'If the Contracting Member State concerned does not host a local division and does not participate in a regional division, actions shall be brought before the central division'.

⁴ 'Actions against defendants having their residence, or principal place of business or, in the absence of residence or principal place of business, their place of business, outside the territory of the Contracting Member States shall be brought before the local or regional division in accordance with point (a) of the first subparagraph or before the central division'.

EP '604 relates to a tool for agricultural machines, in particular to a reversible tool for an agricultural subsoiler. The tool is designed to penetrate and break up compacted soil layers some decimeters below the surface, to improve soil structure, drainage, and root growth. Specifically, the tool includes an elongate plate body (7) with chisels (8a, 8b) on opposite ends and with fixing means (6) that allow the tool to be reversibly mounted on an anchor member of the frame of a subsoiler.

Claim 1 may be divided into the following features (page 28 statement of claim).

(a)	<i>A reversible tool (6) for agricultural subsoilers and the like, including an elongate plate-like body (7) at the opposite ends of which respective chisels (8a, 8b) are defined, and</i>
(b)	<i>fixing means for the tool (6) for fixing said body (7) to the free end (3a) of an anchor member (3) of a subsoiler (1) reversibly so as to present in the working position one or the other of said chisels (8a, 8b),</i>
(c)	<i>said fixing means comprising quick-release connectors,</i>
(d)	<i>wherein said fixing means comprise a pair of parallel and spaced plates (9a, 9b) between which a seat for coupling with said anchor member (3) is defined,</i>
(e)	<i>said plates (9a, 9b) being fixed on the same side of said body (7), intermediate between said chisels (8a, 8b), and</i>
(f)	<i>characterized in that said plates (9a, 9b) are provided with at least two pairs of coaxial apertures (10a, 10b, 11a, 11b), at least one of said pairs being intended to receive a respective pin (14) or bolt (16a) of the quick-release type.</i>

The Court considers the description [15] referring to the fixing means as the means that enable the plate-like body (7) to be firmly laid down on the anchor member (3). The fastening is performed by inserting a pin or bolt (14 or 16a) through the coaxial apertures of the plates of the body into the hole (18) located in the anchor member (3).

The Court interprets the 'fixing means' as not only the plate-like body (7), but also the plates with coaxial apertures (10a, 10b, 11a, 11b) that function as 'quick release connectors' for the agricultural machine. This is clear in fig. 3 and 4:

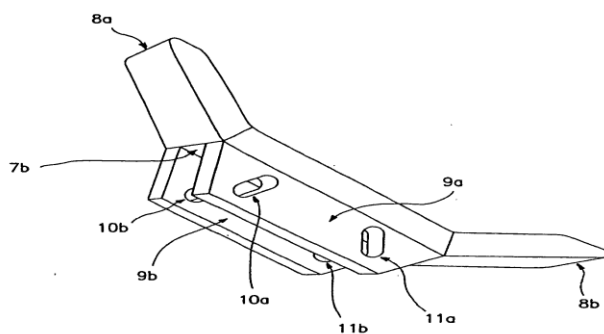


Fig. 3

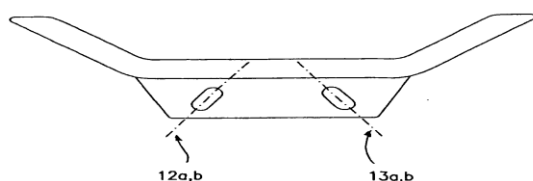


Fig. 4

It is also explicitly set out in [0016] of the description. Pins and bolts in the sense of claim 1 are therefore not (necessarily) part of the fixing means. This is evident from claim 2, which specifies that the coaxial apertures (10, 11) are intended to receive a pin or a bolt. This intention expresses the ability for the fixing means to accommodate a pin and a bolt so that these latter elements are logically not part of the fixing means themselves.

The tool (6) includes, thus, a body (7⁵) and fixing means.

The fixing means comprise quick-release connectors (the coaxial apertures 10a, 11a, 10b, 11b) and a pair of plates (9a,9b), the quick release connectors being embodied as at least two pairs of coaxial apertures (10a, 10b, 11a, 11b) provided in the plates (9a,9b).

The coaxial apertures (10a, 10b, 11a, 11b) are intended to in use receive a pin (14) or bolt (16a) of the quick-release type, which itself is not part of the entity claimed.

Figure 5 confirms this interpretation. Fig. 5 is an axonometric exploded view of the agricultural subsoiler in Fig. 1

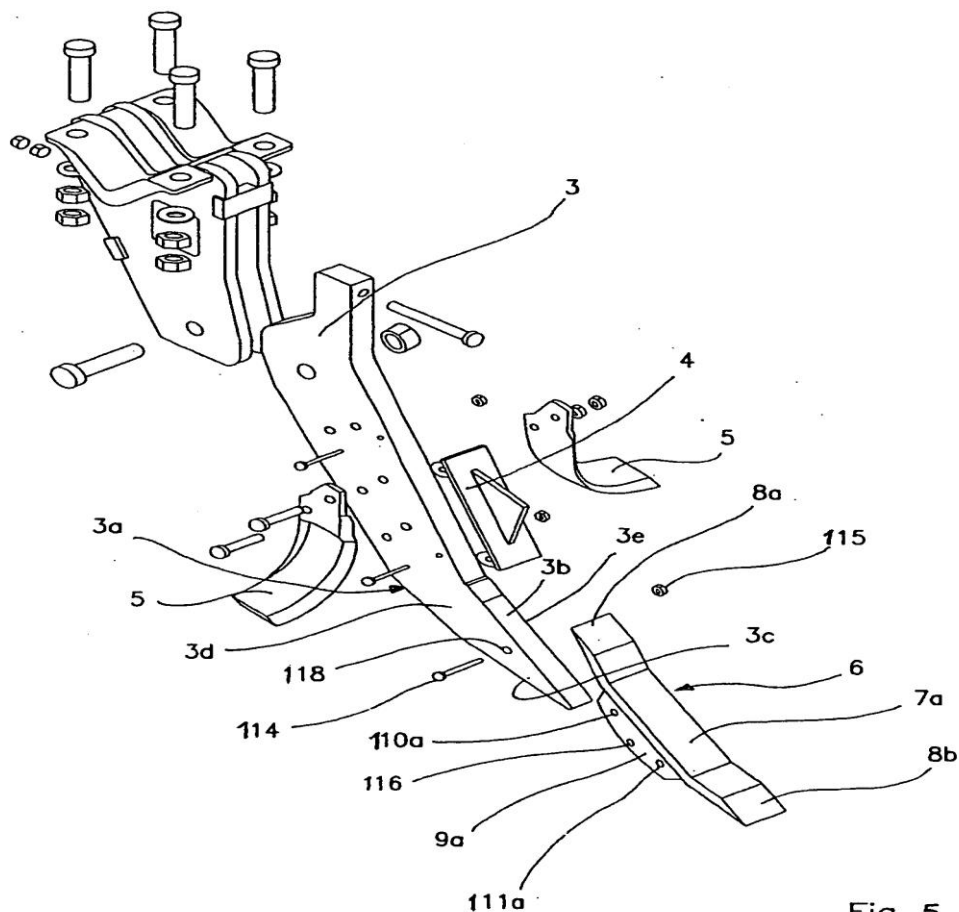


Fig. 5

In this figure, clearly, pin (14) enters the through hole of the embodiment as an external element both to the tool and to the anchor member (3) and can fit in aperture (110a) or (111a) depending on the orientation of the chisel of the tool. This also clarifies that only one fastening element (pin

⁵ Claimant explained that in Figure n. 2 the tool (7) was mistakenly indicated as (7a) whereas (7a) and (7b) refer specifically to the two sides of the same plate-like body.

or bolt) is required to implement the patent, rather than two. In this sense, description [18] ⁶ is to be understood (*two bolts may be used*).

The problem solved by the characterizing features (f) of claim 1 is achieved so by positioning the coupling means between the anchor member (3) and the tool (6) on protected surfaces, that is to say the plates 9a and 9b (page 8, paragraph 3 statement of claim) being lateral to the movement of the earth and therefore less exposed to direct friction and stress.

In fact, in the description [16] the fixing means do not comprehend but rather comprise (*said fixing means comprising quick-release connectors*) two plates 9a and 9b parallel to each other and welded on the plate body (7). This means that the fixing means could be embodied in the coaxial openings, also described as through-holes, i.e. holes suitable for receiving the pegs that couple them to the anchor member (pins and/or bolts).

The description [18] and [26] also refer to 'fixing means that include a quick-release pin (14), or a bolt.

The Court holds that both description [19] and [26] and claim 1 must be interpreted as meaning that the fixing means of the tool do not include such fastening members but that at the level of the system in which the tool is fastened onto the anchor member of the subsoiler the pin or bolt can be part of the fixing means.

In the opinion of this court, 'pins and bolts' are not part of the 'fixing means' claimed in claim 1 of the patent. The fixing means, therefore, correspond only to the coaxial apertures of claims 2 and 4 and to the through-holes of claim 5 as clarified in feature f) of claim 1.

On the merits (Default of defendant)

The claim can be upheld. A default judgment can be issued.

The decision by default, also known as a decision *in absentia*, is stipulated by the RoPs based on the principles of proportionality and celerity outlined in the RoP's preamble.

Rule 355.1 letters a) and b) provide that if a party fails to defend themselves (Rule 355.1 letter a) or to appear in court at the oral hearing (Rule 355.1 letter b), defendants are deemed to have acquiesced to the opposing party's claim.

Under Rule 355.3 '*A decision by default against the defendant of the claim or counterclaim may only be given where the time limits for the defence to the claim or counterclaim have expired and thus, it is established that the service of the claim or counterclaim was effected in sufficient time to enable the defendant to enter a defence*'.

The default decision is based on the principle of non-contestation and is, nevertheless, subject to prior verification of proper service and the absence of preliminary grounds for inadmissibility of

⁶ Paragraph 18's first sentence states that the fixing means indeed include the pin and bolt, but claim 1 does not require these to be part of the claimed tool. In the system of the first embodiment, indeed two pins or bolts may be used, while in the system of the second embodiment, only one pin or bolt is used.

the claim and the assessment that the facts put forward by the claimant justify the remedy sought (Rule 355.2).

In fact, before issuing a default judgment, the court must verify that service was made within the time limits set out in the Rules of Procedure (Rule 277 RoP) and that the defendant's default is not due to a lack of understanding of their right to a defense (Under Article 6 of the European Convention on Human Rights).

In the present case, where SPIRIDONAKIS did not file an infringement defense and the claimant requested a default judgment, it is apparent from the service notification of the statement of claim that the paper was validly served to the defendant on January 2, 2025.

This is supported by the postal courier's receipt, which indicates the date on which the Public Prosecutor's Office of Thessaloniki on request of the UPC Registrar handed over the statement of claim to Spiridonakis, under both the European Regulation 1784/2020 of 25.11.2020 (copy delivered on January 17, 2025) and the 1965 Hague Convention art. 5 letter a) (copy delivered on 2 January 2025).

ΕΙΣΑΓΓΕΛΙΑ ΠΡΩΤΟΔΙΚΩΝ ΘΕΣΣΑΛΟΝΙΚΗΣ

κο Ιζ'.ΠΙΛΟΣΙ•ΙΩΣ

Στην Θεσσαλονίκη την ...2... του μήνα Ιανουαρίου 2024 ημέρα ...Πέμπτη...
και ώρα ...1.00... εγώ ...ΙΣΑΓΓΕΛΙΑΣ... πήγα να επιδώσω στην
«ΣΠΥΡΙΔΩΝΑΚΗ ΑΦΟΙ Ο.Ε.» - ΕΠ ΧΑΜ Ε.Ο. ΘΕΣΣΑΛΟΝΙΚΗΣ -
ΚΑΤΕΡΙΝΗΣ ΤΚ: 54700 ΣΙΝΔΟΣ ΘΕΣΣΑΛΟΝΙΚΗΣ. Μεταφρασμένα στην
Ελληνική Γλώσσα Δικόγραφα των Δικαστικών Αρχών της ΙΤΑΛΙΑΣ. Με ΑΠ: 75343-
4/12/2024. ΑΠ:6066/19-12-2024 ΕΙΣΑΓΓΕΛΙΑΣ ΠΡΩΤΟΔΙΚΩΝ ΘΕΣΣΑΛΟΝΙΚΗΣ
και ώρα

«ΣΠΥΡΙΔΩΝΑΚΗ ΑΦΟΙ Ο.Ις.

ΚΑΤΕΡΙΝΗΣ ΤΚ: 54700

Ις}-ληνικ-ή

Furthermore, regarding the level of evidence required for an *in absentia* decision, it should be noted that Rule 355.2 reflects the UPC's commitment to delivering efficient, high-quality judgments, a principle that cannot be compromised for the sake of speed or based on lack of defence.

Before deciding by default, factors other than the lack of opposition must be considered.

Rule 355.2 has, therefore, a broader scope than Rule 171.2.

Rule 171.2 relates to the non-contestation of a specific fact, determining the court's knowledge of that fact based solely on the absence of dispute.

The required 'specific' contestation of adversarial allegations is part of the right to defence and entails that a fact primarily alleged by the counterparty be first contested and then proven by anyone with a legal interest in opposing it.

Therefore, the 'specific' contestation set out in Rule 172.1 requires the effective exercise of the right of defence and is not applicable when the defendant fails to appear in the proceedings and makes no contestation. This is because, without a written defence, there can be no 'specific' contestation under Rule 172.1.

Rule 355.2 deals rather with a general 'default' and thus with a general non-contestation of all facts phrased in the statement of claim.

To prevent the claimant from gaining an unfair advantage through non-contestation or to avoid a decision being made based solely on one party's assertions, against the already mentioned commitment to decision of highest quality, Rule 355.2 requires that non-contestation be accompanied by facts justifying the remedy. The goal of expeditious proceedings must be balanced with proportionality and fairness. Whether it is a declaration of infringement or a patent revocation, a decision cannot be issued 'by default' merely by acknowledging the absence of a defence.

Consequently, Rule 355.2 must be interpreted in light of the burden of proof principle set out in Rules 171.1 and 172.1, reflecting the front-loaded nature of UPC proceedings.

This means that, in any case, the claimant must put forward all elements in its possession to justify the legal requests. These elements constitute the *de minimis* requirements for a statement of claim to be considered complete and admissible.

Rules 171.1 and 172.1 require claimants to prove not only contested statements of fact that have already been contested, but also those facts that are 'likely to be contested'. This means that claimants must anticipate the possible developments of the trial and the opponent's possible line of defence (based on the knowledge he has acquired up to that point, not on speculation, though).

Rule 355.2, therefore, imposes *de minimis* factual allegations for a decision to be issued in absentia, namely those set out in Rules 12 and 13 RoP. Claimant must reasonably provide the court with patent documents (see Rule 13, letter g), which highlights the technical problem and the figure of the person skilled in the art, as well as all documents and evidence related to infringement and damages, if requested (see Rule 13, letters m), n), p) and q) RoP).

However, it is not necessary to take a stand on patent invalidity, as the court does not raise the issue of patent validity *ex officio*, even in a decision by default. According to the case law of the European Court of Justice (Case C-44/21), granted European patents enjoy a presumption of validity from the date of publication of their grant (cf. LD Munich, UPC_CFI_508/2023, 9 January 2025, *air up v Guangzhou Aiyun*).

The requirements of the decision by default concerning infringement are met.

The Claimant maintains that the Defendant is offering and placing on the market products having all the features of at least claims 1, 2, 3, 5, 6, 9, and 10 of patent EP '604, at least in the contracting member state of Bulgaria.

The statement of claim is sufficiently detailed and supported by consistent evidence and reflects the requirements of Rule 355.2.

The claimant has provided visual evidence that the defendant uses the websites <https://www.spiridonakis.com/en-gb/parts/subsoiler/> and <https://www.spiridonakis.com/en-gb/point-riper-maschio-bellota.html> to sell the so-called 'Bellota Tool' in Bulgaria, trespassing the UPC territory.

Spare parts can also be purchased in Greece and picked up at the venue of the defendant in Greece, even though there is no evidence of the feasibility of this purchase in other CMS. The plaintiff stated at the OH that he did not simulate sales in other CMSs and that direct shipping was not offered outside Bulgaria (or Greece).

spiridonakis All Search here...

MACHINERY PARTS ACCESSORIES TRANSMISSION GARDEN TOOLS INDUSTRIAL SUPPLIES 828 JOBS CONTACT BLOG

Shopping Cart Checkout

Checkout

Sign in with Google+ Login with Facebook

Login or Register
☐ Login ☒ Register

Your Personal Details

First Name *
Last Name *
E-Mail *
Telephone *
Password *
Password Confirm *

Billing Address

Company
Address 1 *
Address 2
City *
Post Code *
Country *
Region / State *
Invoice Type *
VAT No.

☒ My delivery and billing addresses are the same.

Shipping Method

☐ Store Pickup Thessaloniki - 0.00€
☐ Store Pickup Sindos - 0.00€
☒ ACS Courier - 84.00€

Payment Method

☐ Bank Transfer
☒ PayPal

Coupon / Voucher / Reward

Enter your coupon here
Enter your gift certificate code here

Shopping Cart

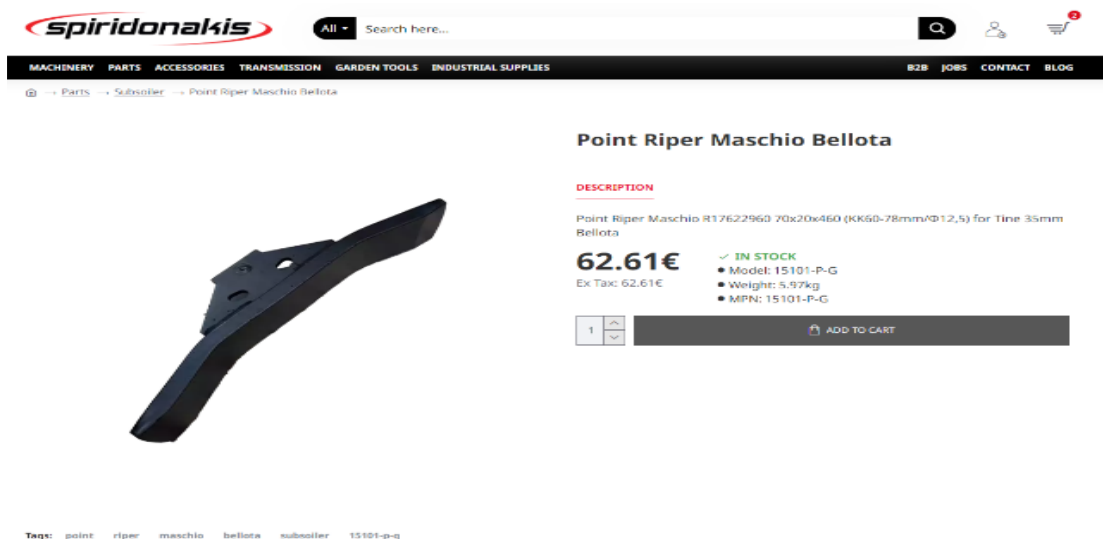
IMAGE	PRODUCT NAME	MODEL	QUANTITY	UNIT PRICE	TOTAL
	Point Riper Maschio Bellota	15101-P-G	<input type="text" value="1"/>	62.61€	125.23€
Sub-Total:					125.23€
ACS Courier:					84.00€
Total:					209.23€

Payment Details

Confirmation

☒ I wish to subscribe to the Spiridonakis newsletter.
☐ I have read and agree to the [Terms & Conditions](#)

CONFIRM ORDER



The plaintiff simulated an online purchase, obtaining delivery of the product at the address of the simulated purchaser in Bulgaria.

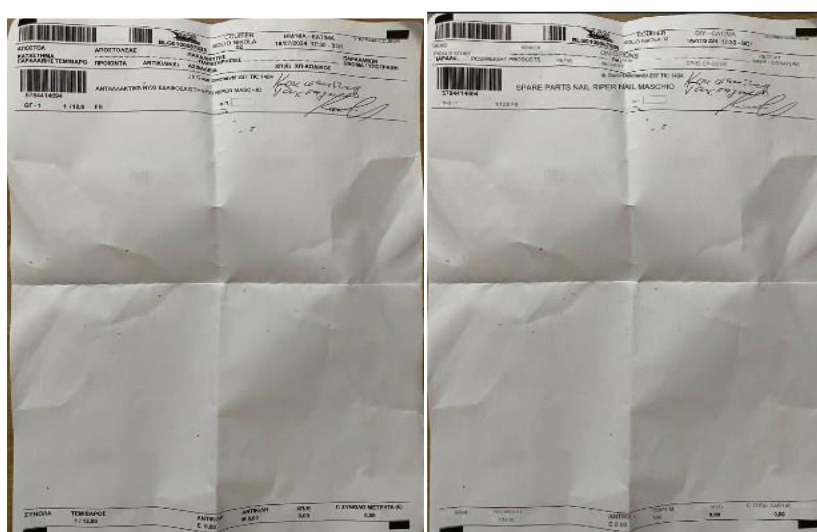
A first order of Bellota tool products was placed on the SPIRIDONAKIS online webstore by Mr. Konstantin Tahtadjiev (resident in Sofia, Bulgaria) on 16 July 2024. The purchased products were dispatched from the Defendant and delivered in Bulgaria to Mr. Tahtadjiev on 19 July 2024.

A second order of Bellota tool products was placed by Mr. Tahtadjiev on 2 August 2024.

The ordered products were dispatched from the Defendant and delivered in Bulgaria to Mr. Velizar Mladenov on 6 August 2024. (see Exhibit 7 declaration of Konstantin Tahtadjiev).

These products were labelled in the shipment receipts as (automatic translation in English) “Spare parts nail riper nail Maschio” and “Spare parts for agricultural machinery”.

The claimant also exhibited the invoice of the purchase (exhibit 11 in Greek and English pictures 8a and 8b).



In his capacity as Chief Technical Officer at Maschio Gaspardo, Andrea Ruffin had the opportunity to inspect the spare parts purchased from Spiridonakis's website. In Exhibit 13, he attests that the Bellota tool is almost identical in shape, dimensions, and features to the patented embodiment.

On the morning of 4 June 2024, the Milan CD panel of judges travelled to Cremona to visually assess the product sold by Spiridonakis. The two products — the original and the allegedly counterfeit one — were mounted on the same agricultural machinery and proved to operate in the same way.

See the comparative pictures below (10a, 10b, 10c in the files):



The tool “Point Riper Maschio Bellota” distributed by SPIRIDONAKIS incorporates, all the features of claim 1 of EP ‘604, as well as the features of at least dependent claims 2, 3, 5, 6, 9, and 10 of the patent at issue being made up with a reversible agricultural tool comprising an elongated flat body from which two chisels extend and which has, on the side to be placed longitudinally on the anchor member, a pair of parallel coaxial openings that accommodate pins and bolts to be fixed on the anchor member.

These characteristics fall within the scope of claim 1 of the patent in suit:

(a)	A reversible tool (6) for agricultural subsoilers and the like, including an elongate plate-like body (7) at the opposite ends of which respective chisels (8a, 8b) are defined, and
(b)	fixing means for the tool (6) for fixing said body (7) to the free end (3a) of an anchor member (3) of a subsoiler (1) reversibly so as to present in the working position one or the other of said chisels (8a, 8b),
(c)	said fixing means comprising quick-release connectors,
(d)	wherein said fixing means comprise a pair of parallel and spaced plates (9a, 9b) between which a seat for coupling with said anchor member (3) is defined,
(e)	said plates (9a, 9b) being fixed on the same side of said body (7), intermediate between said chisels (8a, 8b), and
(f)	characterized in that said plates (9a, 9b) are provided with at least two pairs of coaxial apertures (10a, 10b, 11a, 11b), at least one of said pairs being intended to receive a respective pin (14) or bolt (16a) of the quick-release type.

Feature (a) ("A reversible tool (6) for agricultural subsoilers and the like, including an elongate plate-like body (7) at the opposite ends of which respective chisels (8a, 8b) are defined") is realised in the attacked embodiment. This is evident from the following photo (cf. Statement of Claim, page 29, Figure 14):



Feature (b) ("fixing means for the tool (6) for fixing said body (7) to the free end (3a) of an anchor member (3) of a subsoiler (1) reversibly so as to present in the working position one or the other of said chisels (8a, 8b)") is also realised, see photos p. 30 of the Statement of Claim:



Figure 15. View of a MG subsoiler with anchor members onto which the Bellota tool can be mounted.

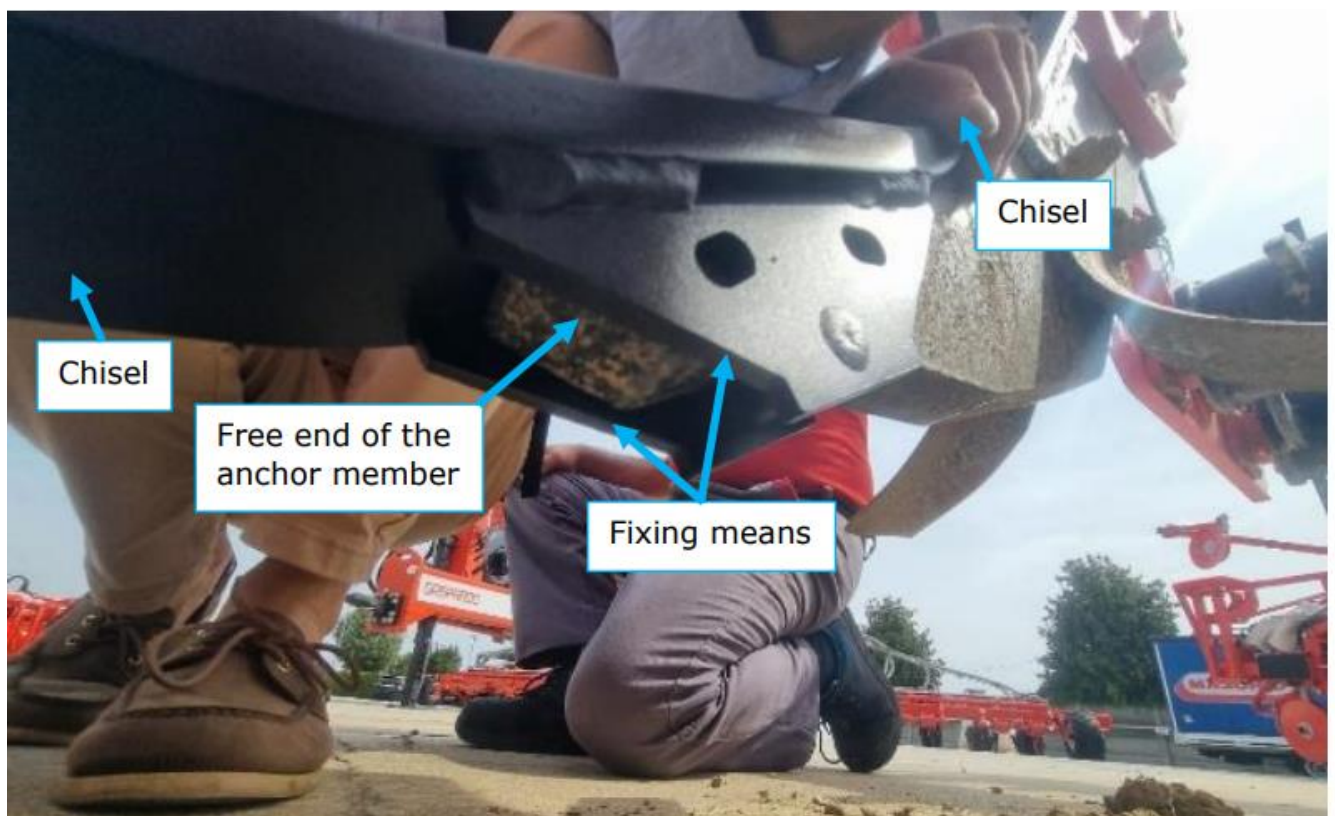


Figure 16. Detail from a bottom view of the embodiment of figure 15 with a Bellota tool mounted on an anchor member.

The reversibility is shown by the following sequence of photos (Statement of Claim p. 31) and was also observed by the panel at the inspection described above:

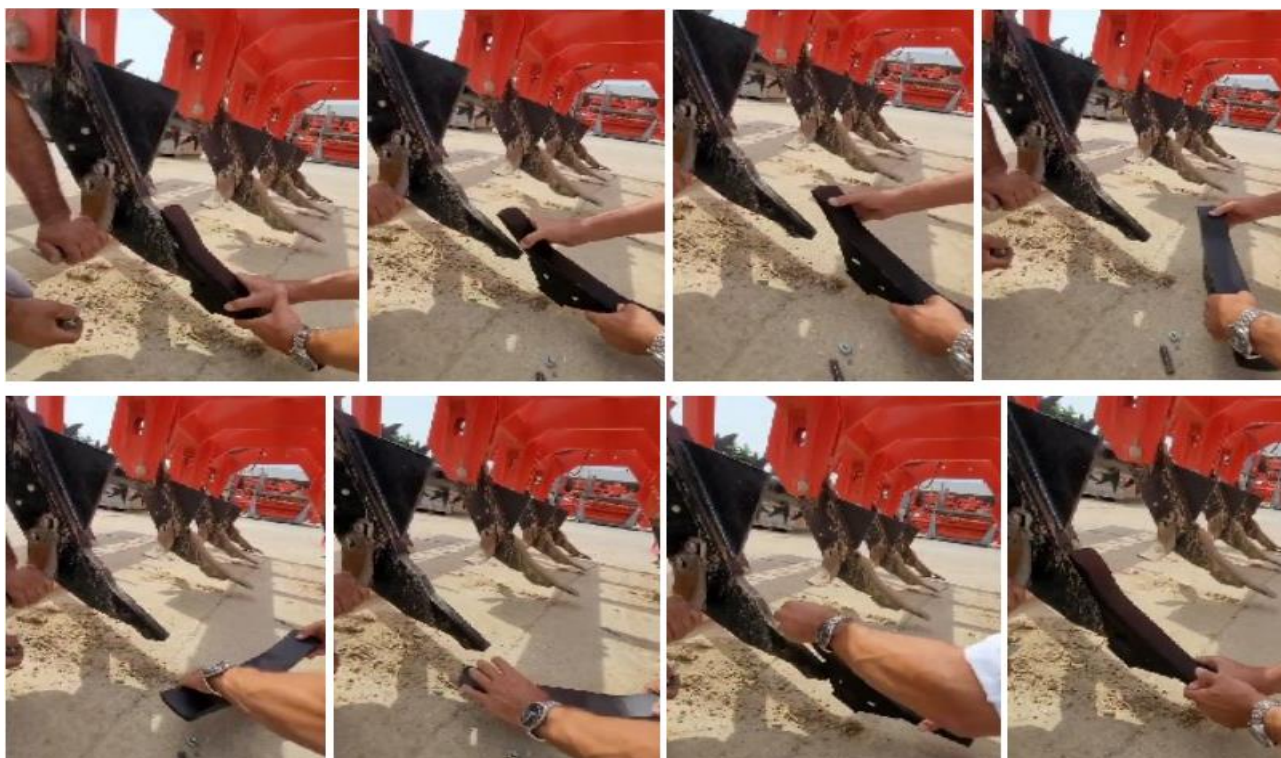


Figure 17. Sequence of video frames of the reversible mounting of the Bellota tool.

The realisation of feature (c) ("said fixing means comprising quick-release connectors") is shown in the following photos (Statement of Claim, p. 32):



Figure 18. Lateral view of the Bellota tool

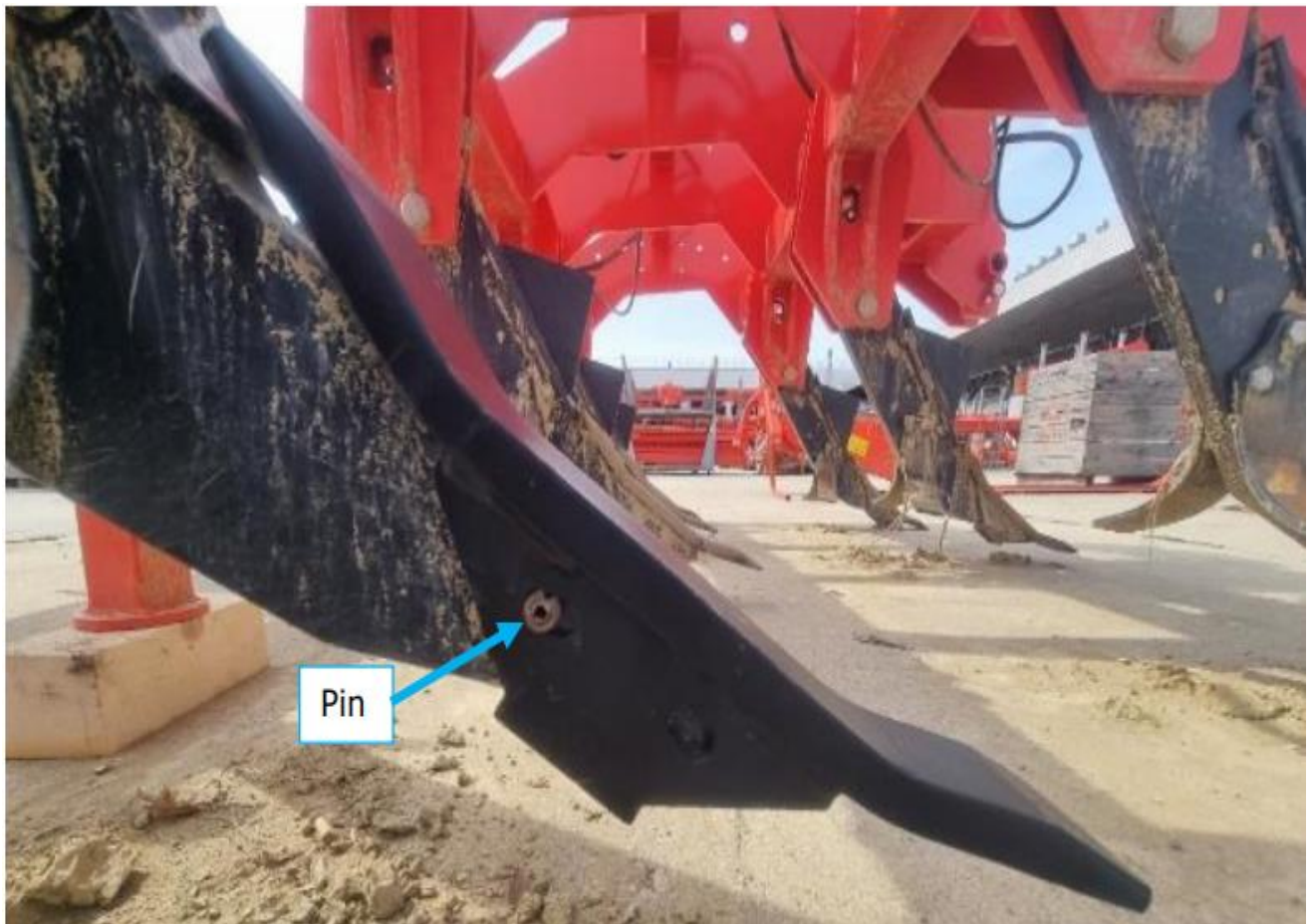


Figure 19. Detailed view of the MG subsoiler wherein the Bellota tool is fixed by a pin.



Figure 20a, 20b. Different lateral views of an alternative embodiment wherein the Bellota tool is fixed by a bolt.

Feature (d) ("wherein said fixing means comprise a pair of parallel and spaced plates (9a, 9b) between which a seat for coupling with said anchor member (3) is defined") is realised as well. This is clear from the following photos (Statement of Claim p. 37):



Figure 21. Top view of the Bellota tool

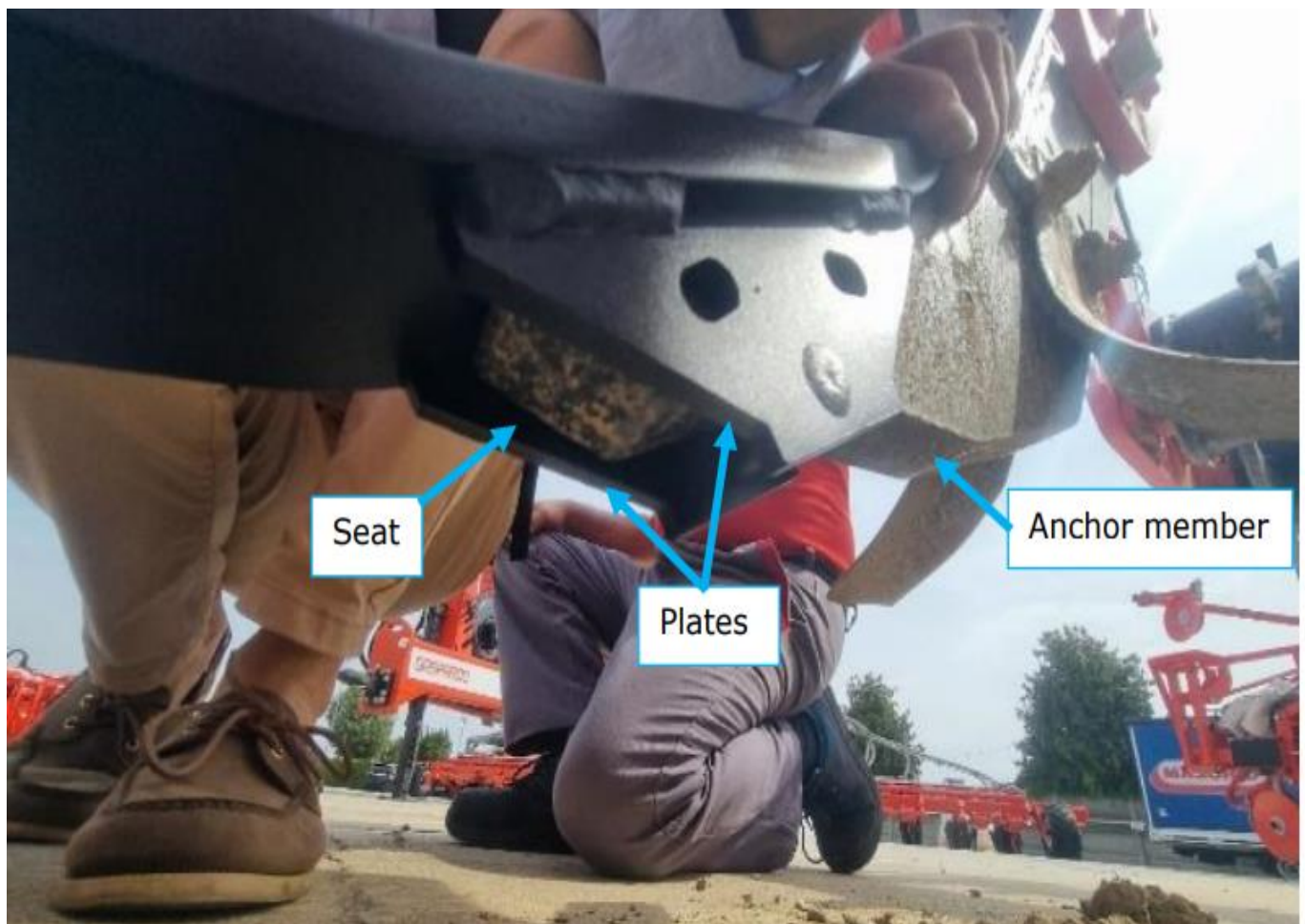


Figure 22. Detailed bottom view.

Concerning feature (e) (“said plates (9a, 9b) being fixed on the same side of said body (7), intermediate between said chisels (8a, 8b), and”), the Court refers to the photos on p. 38 of the Statement of Claim. The Court also inspected the fixing of the plates during the inspection.



Figure 23. Top view of the Bellota tool

Feature (f) (“characterized in that said plates (9a, 9b) are provided with at least two pairs of coaxial apertures (10a, 10b, 11a, 11b), at least one of said pairs being intended to receive a respective pin (14) or bolt (16a) of the quick-release type”) is also realised, as is obvious from the following photos (Statement of Claim, p. 38 et sequi):

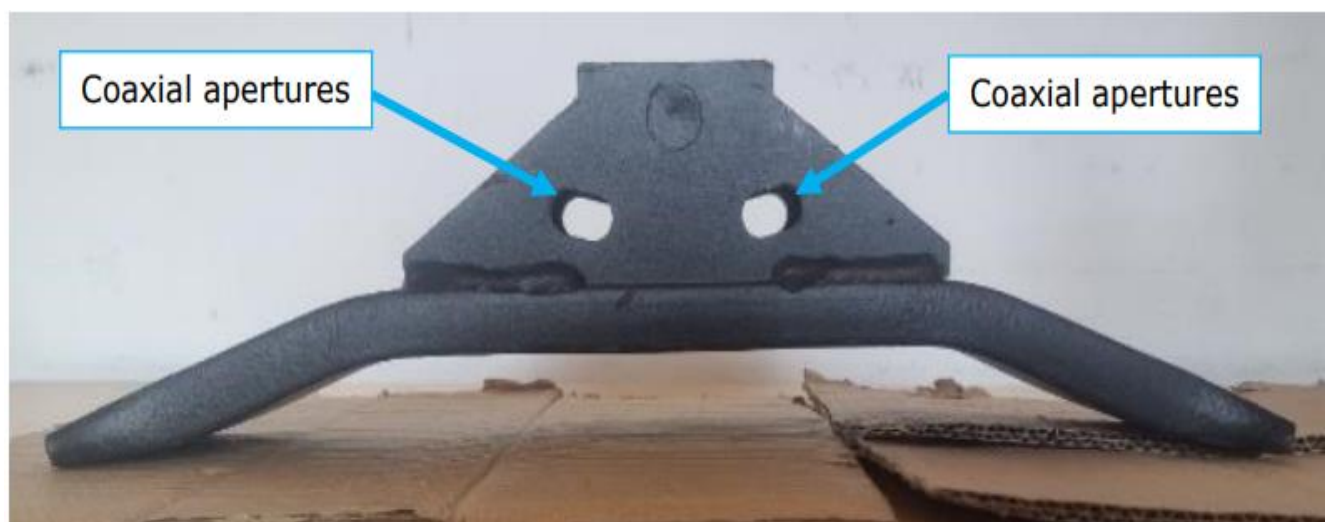


Figure 24. Lateral view of the Bellota tool



Figure 25. Lateral view of the Bellota tool mounted on the MG anchor member.

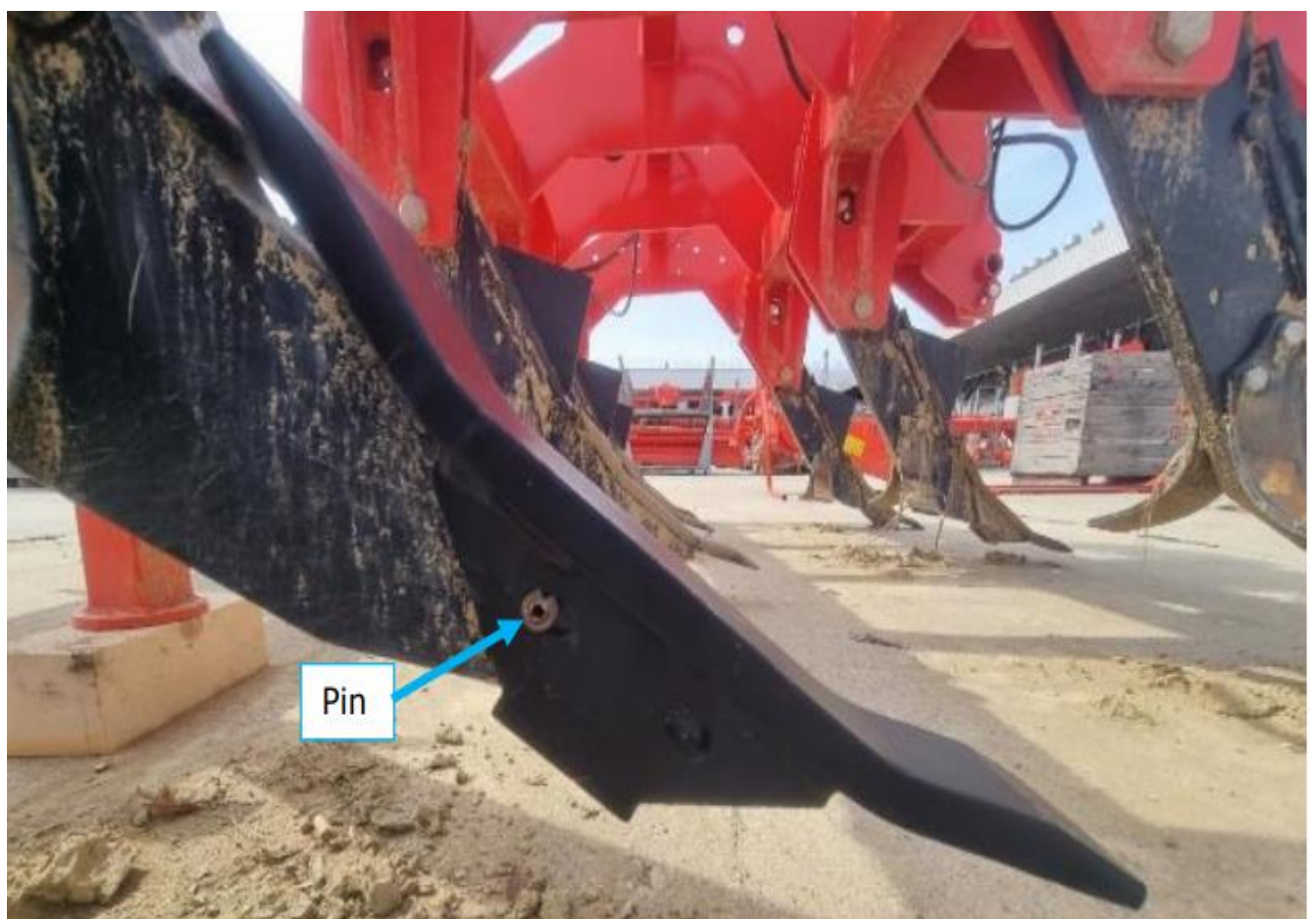


Figure 26. Detailed view of the MG subsoiler wherein the Bellota tool is fixed by a pin.



Figure 27a, 27b. Different lateral views of an alternative embodiment wherein the Bellota tool is fixed by a bolt.

With regard to the dependent claims, the Court refers to the photos on page 40 et sequi in the Statement of Claim.

The court, therefore, considers that the infringing offer, sale and distribution of the Bellota-tool in Bulgaria has been proven.

Under art. 25 UPCA, a patent confers on its proprietor the right to prevent any third party not having the proprietor's consent from making, offering, placing on the market or using a product which is the subject-matter of the patent, or importing or storing the product for those purposes. As explained above, the defendant offers and places a product on the market that is the subject-matter of the claimant's EP '604, so direct infringement is established. Even though the claimant only showed that the defendant offers the attacked embodiment and places it on the market, there is a rebuttable presumption that the other acts addressed in Art. 25 (a) UPCA have also been committed, thus the injunction covers the alternative acts addressed in Art. 25(a) UPCA as well (cf. LD Duesseldorf, UPC_CFI_363/2023, 10 October 2024).

Even if one were not to follow the Court's claim construction, under which the pins and bolts are not part of the claimed tool, there would be a direct infringement. Where the infringer uses the user's actions so as to appropriate them as part of the production process ("verlängerte Werkbank"), and it would be deemed inappropriate to only find for an indirect infringement, the Court may find for a direct infringement, where the completion of the infringing product by the user is clearly to be if a concretely outlined completion of the patented device is to be expected with certainty. This can be the case where the user is provided with a toolkit (including a construction manual) and the product does not work if it is not completed (cf. LD Munich, UPC_CFI_74/2024, 27 August 2024, Hand Held Products vs Scandit). Against this background, there is a direct infringement in this case: the pins and bolts can also be bought on the defendant's website. Without these means of attachment, the tool would not work.

Even if one were to see this aspect differently, there would still be an indirect infringement in the sense of Art. 26 UPCA.

Art. 26 UPCA provides the right for the patent owner ‘to prevent any third party, without the proprietor’s consent, from supplying or offering to supply within the territory of the Contracting Member States where the patent is in effect, any person other than a party entitled to exploit the patented invention with means related to an essential element of that invention, for putting it into effect there, when the third party knows or should have known that those means are suitable and intended for implementing the invention’.

The attacked embodiment is a means related to an essential element of the patented invention, as shown above. The attacked embodiment is supplied within the territory of the Contracting Member States in which that patent has effect, namely in Bulgaria, for putting into effect therein.

It is furthermore offered at least in the Contracting Member States of Germany, Italy, France and Bulgaria. “Offer” in this sense is to be understood broadly (cf. LD Munich, UPC_CFI_2/2023 ACT_459746/2023 App_577241/2023, 5 December 2023: every act committed in the territory where the patent is valid, which according to its objective explanatory value makes the subject matter of the demand available in an externally perceptible manner for the acquisition of the power of disposal/ jede im Geltungsbereich des in Rede stehenden Patents begangene Handlung, die nach ihrem objektiven Erklärungswert den Gegenstand der Nachfrage in äußerlich wahrnehmbarer Weise zum Erwerb der Verfügungsgewalt bereitstellt). Since the attacked embodiment can be ordered online from these countries (with shipment to Bulgaria or pick up in Greece), it is offered there. The offer serves for the attacked embodiment to be used in the abovementioned states.

Even if one would see this differently, because shipment is only provided to Bulgaria, there would be a prohibited offer in all the CMS mentioned above. The attacked embodiment can be put in effect at least in Bulgaria, where it is shipped. The requirements of Art. 26 with regard to the so called “double territoriality link” are met where the offer and the putting into effect are established with regard to the territory of the contracting member states where the EP is valid. It is not necessary that both the offer and the putting into effect refer to the same contracting member state, even with regard to “bundle patents”. This is clear from the wording of Art. 26 UPCA (“therein”/ “auf diesem Gebiet”/ “sur cette territoire”) and from the goal of the UPCA, laid down in the preamble to integrate, unify patent protection and provide legal certainty (cf. Tilmann/ Plassmann/ Grabinski/ W.Tilmann, Unified Patent Protection in Europe, Art. 26 para. 16; Voss, in: Luginbuehl/ Huettermann, Einheitspatentsystem, 1st edition 2024, EPG Art 24 par. 48, 49; different view in Tilmann/ Plassmann/ Tilmann, Unified Patent Protection in Europe, Art. 33 para. 37).

As the attacked embodiments are offered in the CMS France, Italy, Germany and Bulgaria, and are shipped to Bulgaria, for use at least there, the requirements of double territoriality are met.

The subjective requirements of Art. 26 UPCA are met since the defendant offers products in the above-mentioned Contracting Member States and supplies them at least to Bulgaria. The defendant refers to the claimant’s products (see below), so that the defendant knows that the attacked embodiment can and will be used as a means within the sense of Art. 26 UPCA.

Injunction

SPIRIDONAKIS must consequently be ordered to immediately cease any infringing activity, such as making, offering, placing on the market, using, or importing or storing the product for those purposes, such as spare parts for agricultural machines called Bellota-tool in the CMS where the patent is valid (Italy, Germany, France, Romania⁷ and Bulgaria). Even though the claimant has only explained that the attacked embodiment is offered in Bulgaria, France, Germany and Italy (so no explanation was given with respect to Romania), this is sufficient to obtain an injunction for the territory of all the contracting member states where the EP is valid (cf. LD Munich, UPC_CFI_15/2023, 15 November 2024). As to the wording of the injunction order, the Court follows the CoA (UPC, CoA, UPC_CoA_382/2024, APL_39664/2024, 14.02.2025, Abbott / Sibio) in allowing a broad injunction.

SPIRIDONAKIS is subject to a penalty of €500 for each set of tools sold in violation of this order.

MG withdrew the request under Art. 64.2 (b), (d), and (e) and the request for an interim award of damages under Rule 119 RoP. MG also abandoned the request for publication of the decision.

About these requests, there is no further need to adjudicate.

Declaration of infringement

The infringement declaration requested by the claimant is well-founded and brings to acknowledgement of permanent injunction, however within the sole territorial limitation of the UPCA signatory countries for which the patent has been registered: France, Italy, Germany, Romania and Bulgaria (not Greece, Czech Republic though).

Order to communicate information

Moreover, under Art. 67 UPCA MG requested the Court also to order SPIRIDONAKIS to inform the applicant of (a) the origin and distribution channels of the infringing products or processes, (b) the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the infringing products; and (c) the identity of any third person involved in the production or distribution of the infringing products or the use of the infringing process.

This request is to be granted as a consequence of the above-mentioned infringement. The Court does not see grounds for objections concerning the type and manner of information requested.

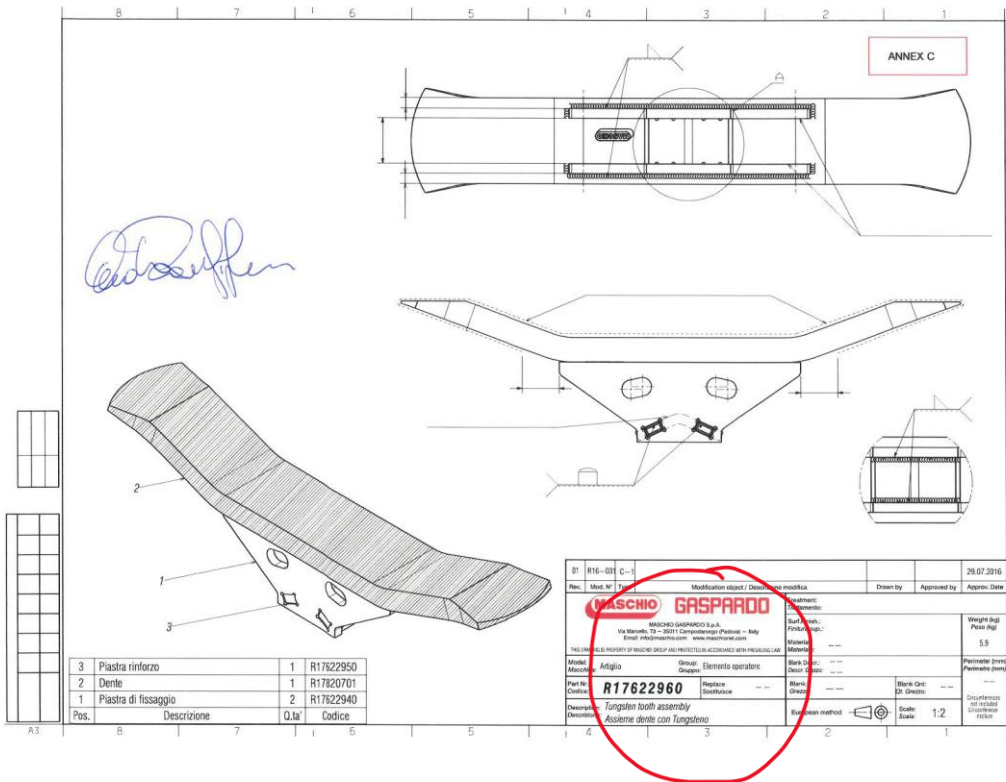
This applies in particular in this case, where the defendant offers to sell the Bellota tool on the website of Spiridonakis.com (shown as Exhibit 05) describing it as a “*Point Riper Maschio Bellota*” tool. The use of the term ‘Maschio’ clearly evokes the patent owner Maschio Gaspardo, indicates the purpose of confusing the customer about the origin of the product. Exhibit 06b shows that the tool is described in the packaging as “Spare parts nail Maschio”. The Bellota tool shows also the product code R17622960, which is the distinguishing code of claimant’s original embodiment.

⁷ Romania joined the UPC after this action has been filed. Claimant requested protection, however, in all UPC states, where the patent was validated, so that the request can also be granted for Romania.

See the pictures of the two items below (see also pictures 12a and 12b, the code number is circled in red):

MASCHIO GASPARDO

BELLOTA TOOL delivered in Bulgaria



Art. 67 UPCA requires that the request be sustained in response to a justified and proportionate request of the applicant. Rule 191 RoP further requires that that piece of information be 'reasonably necessary for the purpose of advancing that party's case' and protected from disclosure.

The request of MG appears to be legitimate, proportionate and reasonably necessary for the case.

It is evident that the product sold by SPIRIDONAKIS is crafted by the company Bellota, showing the trademark "Bellota".

MG has a legitimate interest in understanding where the production takes place and who might be the infringing company. The request is also proportionate to the seriousness of the infringement. The infringer uses the name Maschio (as 'spare parts of Maschio Gaspardo') and, since the products are non-original, by doing so, could tarnish MG's reputation in the market of agricultural tools.

For these reasons, the Claimant's request to understand the origin of the Bellota tool can be fulfilled. SPIRIDONAKIS is subject to a penalty of €100 for each day after the 15th day following notification of this order in which it fails to provide the information.

Legal costs

Maschio Gaspardo requested costs totaling €25,000 plus VAT and the charging of court fees to SPIRIDONAKIS.

It is not necessary that an invoice be attached for legal costs, as long as it is clear and evident what sums are claimed by the winning party and about what activities. RoP 151.1 d) requires only “*an indication of the costs for which compensation is requested, which may include recovery of court fees and costs of representation, of witnesses, of experts, and other expenses*” whereas RoP 152 allows the Court to grant “*reasonable and proportionate costs for representation*”.

RoP 152.2 stipulates that the cost for legal representation be linked to the value of the case and capped to ceiling, below which the judge’s appreciation may apply and be based on circumstantial or presumptive elements.

This request is well-founded under RoP 152, considering that the costs requested (15.000 euro for the preparation of the case, 10.000 euro for the oral hearing) are well below the minimum level of recoverable costs set out by the Presidium for an infringement action and appear to be in line with the activity done by the legal representatives.

FOR THESE REASONS

The Court

- leaves grant to claimant to withdraw requests: 8.4.b, 8.5, 8.6, 8.8, and 8.10
- declares that the reversible tool for agricultural subsoilers sold under the name ‘Bellota tool’ constitutes an infringement of claims 1, 2, 3, 5, 6, 9 and 10 EP 1998604;
- orders the defendant to cease to carry out any infringement of claims 1, 2, 3, 5, 6, 9 and 10 of EP 1998604 (such as by way of example only offering, marketing, selling, shipping, manufacturing products such as spare parts for agricultural machines called Bellota-tool) within the territories of Italy, Germany, France, Romania and Bulgaria from the date of service of this order. The defendant is subject to a penalty of €500 for each set of tools sold in violation of this order in the territories of the above-mentioned states starting from the date of service of this order;
- orders the defendant to communicate to the claimant any information concerning the origin and the distribution channels of the infringing products, the quantities produced, delivered, ordered, the price related to the sales and the identity of any person involved in the production of the so-called Bellota tool. SPIRIDONAKIS is subject to a penalty of €100 for each day after the 15th day following service of this order in which it fails to provide the above-mentioned information. For the protection of confidential information, the Court orders that this information is to be considered strictly confidential and must not be disclosed outside the party itself and its legal representatives (191, 190.1 RoP).
- orders the defendant to pay to the claimant euro 25.000 (plus VAT) for legal costs and to refund the claimant of the court fees paid to file these proceedings (in the exact paid amount).

Milan, 8 July 2025

Judge rapporteur and presiding judge
Andrea Postiglione

Legally qualified judge
Anna-Lena Klein

Technically qualified judge
Bernard Ledeboer

For the Registrar
Marco Ginestro (Milan)

INFORMATION ABOUT APPEAL

The decision about the infringement claim is final and can be appealed under Rule 220 RoP. Orders referred to in Article 67 of the Agreement can also be appealed under Rule 220 RoP. The decision by default can be set aside under Rule 356 RoP within one month of service of the decision. The Application to set aside a decision by default shall contain the party's explanation for the default. It shall mention the date and number of the decision by default. Under Rule 190 RoP, an order to produce evidence can be appealed by Article 73 of the Agreement and Rule 220.1.

INFORMATION ABOUT COSTS AND DAMAGES

SPIRIDONAKIS Brothers Co. shall pay to the claimant MASCHIO GASPARDO s.p.a 25,000 euros (plus VAT) for legal costs and reimburse Maschio Gaspardo s.p.a. for the amount of court fees paid to file these proceedings. Under Rule 157 the decision as to costs only may be appealed to the Court of Appeal in accordance with Rule 221. Leave to appeal is granted

INFORMATION ABOUT PERIODIC PENALTY PAYMENTS (IN CASE OF NON-COMPLIANCE)

SPIRIDONAKIS Brothers Co. shall be subject to a penalty of €500 for each set of infringing tools sold in violation of this order in Italy, France, Germany, Romania and Bulgaria starting from the date of service of this order;

SPIRIDONAKIS shall be subject to a penalty of €100 for each day of delay after the 15th day following service of this order, in the event of failure to provide the information mentioned in the decision.

INFORMATION ABOUT ENFORCEMENT (RULE 68(1) RGR)

Under Rules 354.1, decisions and orders of the Court shall be directly enforceable from their date of service in each Contracting Member State. Enforcement shall take place following the enforcement procedures and conditions governed by the law of the particular Contracting Member State where the enforcement takes place.

ORDER DETAILS

Order no. ORD_17812/2025 in ACTION NUMBER: ACT_50468/2024

UPC number: UPC_CFI_513/2024

Action type: Infringement Action – Decision by default