

**Smörgåsbord**



Harold Johnson  
Publisher and  
Editorial  
Director

**Deere Loses Final  
Max-Emerge Appeal**

After more than seven years, it appears that the long Deere-Kinze legal battle centering around the popular Max-Emerge planter has finally been put to rest, with Jon Kinzebaw and his fast-growing Iowa manufacturing firm, near Williamsburg, the big winner.

A year ago last April, as reported in FARM SHOW (Vol. 7, No. 3), a Federal judge ruled — based on a nine-member jury's recommendation — that four of the five patents which Deere holds on the Max-Emerge are invalid and that a fifth patent is unenforceable.

As expected, Deere promptly appealed to the Federal Court of Appeals in Washington, D.C., charging, among other things, that the small town jury was biased against Deere.

Deere has lost the appeal — by a landslide! The five judges who heard the appeal voted unanimously last month to uphold the jury's verdict which rendered all five of Deere's Max-Emerge patents invalid or unenforceable.

This latest and presumably final decision means that the Max-Emerge and all its patented features is up for grabs. It's generic. Any companies, including Kinze Mfg., or any individuals, including you, are free to make and sell exact carbon copies of the Max-Emerge and all of its patented features.

There is, of course, the remote possibility that Deere will request still another appeal. "We're studying our options," Bill Shoup, Deere's media relations manager, told FARM SHOW shortly before this issue went to press.

Deere's options for appeal include (1) to ask the five-member panel of judges to reconsider their decision; and (2) to ask the Supreme Court to hear the case. We're told that several years ago, because of the heavy workload on the federal courts, including the Supreme Court, The Congress set up a special panel of judges to hear cases involving patents. Deere's asking for reconsideration would be tantamount to telling the five judges, "hey, you made a mistake," and expecting them to agree. And, since judges are appointed to this court by the Supreme Court, specifically to hear patent cases, it's just as unlikely to expect that the Supreme Court would agree to hear an appeal involving patents.

As it now stands, the Deere-Kinze legal dispute promises to go down in history as one of the landmark patent cases involving farm machinery and equipment. Here are just a few of its many ramifications:

- Kinze Mfg., the David in the case, literally slew Deere, the Goliath, giving encouragement to "small guys" to fight back if they feel they've been stepped on or otherwise abused in the marketplace.
- Deere's top management took a costly gamble,

and lost. In 1982, they agreed to an out-of-court settlement whereby Kinze Mfg. would have paid Deere more than \$1 million annually in royalties under a licensing agreement. Deere's top management elected to abandon that agreement and asked for the 1983 trial on patent infringement — which they lost initially, and again last month on appeal. Kinze Mfg. countersued, charging that Deere had misused its Max-Emerge patents by "manipulating the supply to produce contrived shortages." Deere settled the anti-trust suit out of court, agreeing to pay Kinzebaw an undisclosed amount, estimated by some observers to be several million dollars.

"It'll go down as one of the most colossal blunders in the history of agricultural industry," predicts Kinzebaw's attorney James Hill, of Deere's decision to abandon the 1982 agreement and thus put all of its Max-Emerge patents and Kinze's anti-trust claims on the line. "It was a greedy and costly gamble on the part of Deere's top management. They ended up getting their corporate knuckles and pocketbook rapped on the anti-trust issue, and they've jeopardized one of Deere's most valuable assets — the Max-Emerge planter," according to Hill, a member of the law firm of Emerich, Lee, Brown and Hill of Chicago, who has represented Kinze Mfg. on patent issues since the Deere-Kinze dispute began more than seven years ago.

• Deere and other farm equipment manufacturers that do a lot of customer, on-farm testing before offering new machines for sale may have to re-examine the validity of all their patents. Patents have to be applied for within 12 months of their first public exposure. Deere had placed early prototypes of the Max-Emerge with farmers for testing, maintaining that this customer testing was secret and private, and thus not public. The courts held, however, that such use is indeed public and thus counts against the 12 month deadline for patent applications. Dozens of farm machinery patents held by Deere and other companies could possibly be in trouble if challenged on this point, says Hill.

Meanwhile, back at Kinze Mfg., Kinzebaw is moving full speed ahead, no longer burdened by the legal battle he's had to fight. He's putting the finishing touches on a revolutionary toolbar-planter he hopes to have ready for public unveiling at the upcoming 1984 Farm Progress show, to be held Sept. 25-27 near Fisher, Ill. "We've developed a reputation for having something really hot, new and different to introduce at this show every year. This new rig we're coming with, in my estimation, tops them all," Kinzebaw told FARM SHOW.

**Help the gambler?** — The farmer's tone was bitter as he said, "I have a neighbor who really plunged during the go-go years when inflation and land prices were soaring. He borrowed all the money he could find to buy real estate, figuring he'd end up a millionaire before he was fifty. He calculated he'd pay off those humungous debts with twenty-five-cent dollars.

"I was more cautious because I know what goes up must come down. I tinkered up old equipment while Joe bought too-big new tractors . . . and I went without snowmobiles and all-terrain vehicles. So the day of reckoning arrived . . . and now the politicians are all rallying around to save Joe from his wheeler-dealer ways. The worst of it is, they are calling for tax dollars . . . my dollars . . . to help save him with loan-forgiveness and other assorted give-aways.

"Joe grabbed the chance to make a killing . . . and he lost. Why should those of us who choose a slower and safer path to make a living have to bail out the glamour boys? The politicians tell us how great the free-enterprise system is, and how important competition is to efficiency. That's a farce unless the opportunity to fail is always there with the opportunity to succeed.

"I don't enjoy seeing any neighbor have financial troubles . . . I've had 'em myself. But I damn sure don't appreciate having my hard-earned income taken away by Uncle Sam to be given to

someone who took a big risk with big bucks in mind.

"If the big spenders have their way, he'll end up living high off the hog, and I'll be working for a living until the day I die. Even the bleeding hearts can't call that justice!" (American Agriculturist).

**Square Tractor Wheels** — As you tour farm shows this fall, don't be surprised if you see tractors equipped with square wheels. Built by GKN Sankey, one of the largest tractor wheel manufacturers in the world, the unusual-looking wheels are likely to take over the market, as we found out on a recent



trip to Britain where nearly every tractor manufacturer — including Deere, IH, Massey Ferguson, Case and Ford — had square-wheeled tractors on display.

As tractors get heavier and more powerful, torque loads have increased and demand has risen for higher performance wheels. The new design uses square discs fixed to the rims by close-coupled lugs. "Wheels won't creak and groan the way they have in the past when under load. Since we introduced these wheels in the U.K. 18 months ago we've virtually eliminated warranty problems due to cracked and broken hubs," says John Lodge, GKN sales manager.

The new wheel, has been approved by all UK tractor manufacturers and will begin showing up at U.S. and Canadian dealerships this fall. Ford is the first tractor manufacturer to begin fitting the square disc wheels to their U.S. tractors, but Case, Massey Ferguson, and others will be importing them from their European manufacturing plants. Deere and IH are looking at the wheel for domestic markets. According to Lodge, U.S. tractor manufacturers are moving ahead cautiously because of the way farmers react to the new design.

"The wheels are stronger than the conventional design, which has been around for 30 years or more. But, because the square disc design uses less material and looks different, farmers are somewhat leery of the design at first," says Lodge, noting that British farmers, use their tractors for more chores than American farmers, who rely more on trucks and pickups, and had been looking for a stronger wheel.

The new wheel contacts the hub at just four places, as opposed to the eight mounts on an old-style wheel, but there are two bolts at each mount instead of one. The fact that the wheel is held by two close-coupled bolts at each mounting location is the reason the tire is stronger, according to Ted Williams, chief testing and design engineer at GKN Sankey.

In addition to the fact that they're stronger, square disc wheels cost less to manufacture which should help to keep the cost of tractors in line, according to Lodge.