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**Datasheet for the decision
of 23 September 2019**

Case Number: T 1082/15 - 3.2.04

Application Number: 08002022.5

Publication Number: 2084968

IPC: A22B5/00, A22B7/00, A22C17/00

Language of the proceedings: EN

Title of invention:
Method for processing items such as pieces of meat

Patent Proprietor:
Marel hf.

Opponents:
Frontmatec Kolding A/S
Nordischer Maschinenbau Rud. Baader GmbH + Co. KG

Headword:

Relevant legal provisions:
EPC Art. 54(2), 123(2)

Keyword:

Novelty - (no)
Amendments - extension beyond the content of the application
as filed (yes)

Decisions cited:

Catchword:

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: **T 1082/15 - 3.2.04**

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 23 September 2019

Appellant: (Patent Proprietor)	Marel hf. Austurhraun 9 210 Gardabaer (IS)
Representative:	Inspicos P/S Kogle Allé 2 2970 Hørsholm (DK)
Appellant: (Opponent 2)	Nordischer Maschinenbau Rud. Baader GmbH + Co. KG Geniner Strasse 249 23560 Lübeck (DE)
Representative:	Stork Bamberger Patentanwälte PartmbB Meiendorfer Strasse 89 22145 Hamburg (DE)
Party as of right: (Opponent 1)	Frontmatec Kolding A/S Platinvej 8 6000 Kolding (DK)
Representative:	Zacco Denmark A/S Arne Jacobsens Allé 15 2300 Copenhagen S (DK)
Decision under appeal:	Interlocutory decision of the Opposition Division of the European Patent Office posted on 23 March 2015 concerning maintenance of the European Patent No. 2084968 in amended form.

Composition of the Board:

Chairman   A. de Vries

Members: S. Oechsner de Coninck

                         T. Bokor

Summary of Facts and Submissions

I.   The opponent 2 and the patentee both appeal against the
        opposition division's decision dated 23 March 2015 to
        maintain the European patent N° 2 048 968 in amended
        form. The opponent 2 filed a notice of appeal on the
        20 May 2015, paying the appeal fee on the same day, and
        filed the statement of grounds on 31 July 2015. The
        patentee filed a notice of appeal on 1 June 2015, paid
        the appeal fee the same day, and filed the statement of
        grounds on 3 August 2015.

II.   The opposition was based on the grounds of
        Article 100(a) EPC in combination with lack of novelty
        and inventive step. In its written decision the
        Opposition Division held that the patent as amended
        according to an auxiliary request 1 complied with the
        requirements of the EPC, having regard in particular to
        the following document:

        E1: US 2007/0293980 A1

III.   The appellant proprietor requests that the decision
        under appeal be set aside and the European patent Nr.
        1664517 be maintained as granted, or maintained on the
        basis of auxiliary request 6 as filed with the
        statement of the grounds of appeal dated 3 August 2015.

        The appellant opponent 2 requested that the decision
        under appeal be set aside and that the European patent
        No. 2 048 968 be revoked.

        The party as of right (opponent 1) has made neither
        requests nor substantial submissions during the appeal
        proceedings.

IV.   The wording of the relevant claim 12 of the main
        request and of claim 1 of the auxiliary request 6 is as
        follows:

Main request

12." Processing system for processing food items such
as pieces of meat, said system comprising a primary
conveyor means (4)
- at least two workstations (1), and
- a computer system (8, 20) for allocating an item (10)
from a stream of food items (10) provided on said
primary conveyor means (4) to one of said workstations
(1), characterised in that
said computer system (8, 20) further being for
registration of information about a return of said item
(10) from said one of said workstations (1) to said
primary conveyor means (4)."

Auxiliary request 6 (with amendments underlined)

1. Method for processing food items such as pieces of meat, comprising the steps of
   – providing a stream of food items (10) by means of a primary conveyor means (4),
     and
   – allocating at least partly by means of a computer system (8, 20) one or more of said
     items (10) to one of at least two workstations (1) where said items (10) are
     processed, e.g. cut and/or trimmed, resulting in one or more processed items (11),
     the method being **characterised by** further comprising the steps of
   – registering in said computer system (8, 20) information about a return of at least one
     of said one or more processed items (11) to said primary conveyor means (4), and
   – returning said at least one of said one or more processed items (11) to said primary
     conveyor means (4) in accordance with said information about a return, whereby said
     step of returning said at least one of said one or more processed items (11, 12) to
     said primary conveyor means (4) comprises determining by means of the computer
     system a space on said primary conveyor means (4) where said returning processed
     items (11, 12) fit.

V.   The appellant proprietor argues as follows:
        - E1 does not disclose returning the item to the same
        principal conveyor. E1 also does not require the
        tracking of each individual item, and does not disclose
        the registering of the "information about a return".
        - Concerning claim 1 according to the auxiliary request
        6, its subject-matter is not extended. The skilled
        person would understand that the size is to be taken
        into account and it is also implied in the claim
        wording "fits".

VI.   The appellant opponent 2 argues as follows:
        - The patent does not require the conveyor to be a
        single and essentially continuous system. E1 clearly
        discloses tracking the items on the conveyor exactly as
        in the patent. The "information about a return" is to
        be construed broadly, it is sufficient to identify the
        item to be returned as a piece of information about a
        return.
        - The subject-matter of claim 1 according to the
        auxiliary request 6 is extended. The cited parts of the
        description in fact demonstrates that the size
        determination was disclosed as necessary but it is no
        longer claimed. Systems without any size measurement
        but merely performing fitting into an empty slot are
        perfectly possible, and are now covered by the claim.

Reasons for the Decision

1.   The appeal is admissible.

2.   Main request - Novelty of independent claim 12 with
        respect to E1

2.1   E1 discloses in its figure 2 an embodiment of an
        apparatus for processing food items, in particular

pieces of meat (paragraph 3), that comprises all the
features recited in claim 12.

2.2   More specifically E1 discloses a primary conveyor means
         (main conveyor 20) that runs through processing
         stations 13, 14, 15 where the food items are cut into
         pieces ([0001]) from an item intake 16 towards a
         batching area 2.

         The appellant proprietor contests that there is a
         direct and unambiguous disclosure that the conveyor is
         the same one running from the intake to the end in the
         area of the batching area. They argue that the removal
         belt is arranged underneath the stations and must thus
         be at a lower level relative to the intake belt.

         The Board is of a different opinion. As explained in
         the first sentence of paragraph [0027] in relation to
         the first embodiment in figure 1: "the conveyor
         comprises a transport belt carrying the items from an
         item intake towards a batching area...", and further
         specifies that "The arrows 6 indicate the conveying
         direction of the belt." The skilled person therefore
         directly and unambiguously understands that there is a
         single belt and therefore a single conveyor throughout
         the food processing system in the embodiment of figure
         1. The embodiment of figure 2 differs from figure 1 in
         that the items are separated manually into sub-items
         (by operators 13,14,15 rather than computer controlled
         processing station 8), paragraph [0029]. The skilled
         person has no reason to assume that anything else,
         including the conveyor belt, will be changed. It is
         therefore directly and unambiguously clear for the
         skilled person that the conveyor of figure 2 comprises
         the same single belt as explicitly mentioned in
         relation with figure 1. Even when accepting the

argument of the proprietor that the conveyor 20 of E1
may in fact be split, the broad wording of claim 12
does not exclude that the "primary conveyor means"
could be made up of separate sections at different
levels, as long as together they serve the purpose of
conveying the items from intake along and past the
stations.

2.3   E1 further explains in paragraph [0029] in relation to
        the figure 2 embodiment that "*the host computer assigns
        the entering items to individual process workers or
        processing stations for manual breakdown or separation
        of the items.*" This corresponds to the requirement in
        the preamble of claim 1 that the computer is "for
        allocating an item (10) from a stream of food items
        (10) provided on said primary conveyor means (4) to one
        of said workstations": The allocation to each
        workstation is thus performed by the host computer 18.

        The paragraph continues by explaining that after
        separation of the items into sub-items by operators
        "*information concerning the origination is assigned to
        each of the items in the sub-receptacles 19.*"
        Subsequently the sub-receptacles are emptied onto the
        main conveyor 20 under the control of the host
        computer, and "*the position of each item [on the
        conveyor 20] is traced by a sensor*" prior to discharge.
        This is to ensure full traceability of each item and
        preserve origination information, the main aim of E1,
        see paragraphs [0002] and [0006]. In the Board's
        understanding traceability of each individual sub-item
        up to discharge is only possible if the emptying and
        subsequent tracing is coordinated by the host computer,
        meaning that it uses the origination information
        assigned to each sub-item together with controlled
        emptying of the sub-receptacles to then trace its

position at sensor 21. To this end the host computer
when assigning each sub-item collected in each sub-
receptacle 19 its origination must "know" - by storing
or registering the relevant information in coordinated
fashion - which sub-item is located in which sub-
receptacle and the corresponding origination
information. When controlling the release of a sub-item
onto the main conveyor (last but one sentence of
paragraph 29) the computer has registered the above
mentioned three pieces of information about a return of
the sub-items to the main conveyor. Therefore the
functional requirements defined in the characterising
portion of claim 12 are also realised in E1.

2.4   The appellant proprietor submits that in E1 there is no
        link between the registration of information and the
        return operation by the computer, and that it cannot
        therefore be directly inferred that the computer is
        configured to register such information which is used
        to return the item to the first conveyor.

2.5   The Board thinks otherwise for the following reasons:
        That the host computer would empty its contents without
        remembering the order with only the sensor 21
        performing tracing is inconceivable. This would imply
        that the whole exercise of assigning origination
        information to the sub-receptacles would be pointless
        as that information is then subsequently "lost".
        Furthermore, the wording of claim 12 does not require
        any specific relationship between the information about
        a return to be registered and the physical operation of
        returning the item itself. At best, see paragraph
        [0018] of the patent specification, it means knowing
        what is returned and *when*. This is not more than the
        information the host computer is necessarily collecting
        when it assigns origination information to the sub-

receptacles and empties these in a controlled fashion
to ensure traceability of the sub-items. Nor does the
claim wording imply any particular use of the
registered information for effecting the return itself.
Again, see paragraph [0018], it is enough that the
computer knows which item is returned when.
Finally, the claim wording also does not require any
special relationship between the action of "allocating
an item (10) from a stream of food items (10) provided
on said primary conveyor means (4) to one of said
workstations" as defined in the preamble of claim 12
and the information about a return to be registered
downstream of the workstation.

2.6   From the above, it follows that the second embodiment
        of E1 anticipates all the features defined in the
        system of claim 12. Thus the Board confirms the
        opposition division's finding that the subject-matter
        claim 12 of the main request lacks novelty, Articles
        52(1) and 54 EPC.

3.   Auxiliary request 6

3.1   Claim 1 according to auxiliary request 6 adds to
        granted claim 1 at the end the expression "whereby
        said step of returning said at least one of said one or
        more processed items (11, 12) to said primary conveyor
        means (4) comprises determining by means of the
        computer system a space on said primary conveyor means
        (4) where said returning processed items (11, 12) fit."

3.2   This expression differs from the wording of claim 5 as
        originally filed because it replaces the last
        requirement for the processed item which is to be
        returned, i.e. the "taking their size into account", by
        the more general concept of "fit".

3.3   The appellant proprietor submits that this wording is
         to be found in the application as filed, see first
         sentence of paragraph [0025] of the A publication. This
         passage explains that the computer systems should be
         able to determine a space on the conveyor means where
         the item fits. For the appellant proprietor the
         requirement that the item needs to fit in a space means
         that its size should not exceed the available space on
         the conveyor, and it is therefore inherent in the claim
         wording that the computer system has to take the size
         of the item into account.

3.4   For the Board the requirement for an item to fit when
         returned, is however less specific than the requirement
         that the size is taken into account. Fitting in the
         broader sense embraces a "passive" approach in which
         items are placed at set positions and occupy an
         appropriately dimensioned space, so that all the
         computer needs to do is see if there is a space free on
         the conveyor. Taking size into account implies that the
         size of a returning item is sensed or otherwise
         determined and that the computer takes this measured
         size into account to determine whether the item fits
         into a free surface available between a preceding and
         following item on the conveyor line.

3.5   This is exactly what is explained in the immediately
         following lines in paragraph [0025] which read: "*It is
         important that there is enough space for each item, as
         the sweeper arms will not be able to separate and the
         weight determining devices and track keeping sensors
         may not be able to distinguish two items lying closely
         together. Therefore the measuring of processed item
         characteristics, e.g. weight, may include measuring the
         size of the item; in particular its extent in the*

direction parallel to the conveyor means 4. The
computer system is then able to evaluate the sequence
of items and processed items already on the conveyor
means and see where the returning item fits with the
size measured. The measurement can e.g. be made by
sensors, scanners or a camera located in connection
with the scale conveyor 16." From this passage it is
quite clear that the size of an item is measured and
that the term fit is used in context to mean actively
finding a space that fits the measured size of the
item.

3.6   It follows from the above that where paragraph [0025]
        mentions fitting it does so in the specific context of
        an initial measurement of size for comparison with the
        dimensions of a free space. By replacing the
        requirement of taking into account size by fitting in
        its broader sense and out of its original context,
        claim 1 according to auxiliary request 6 has been
        generalized vis-a-vis that original disclosure to also
        include the "passive" fitting described above in
        point 3.4. Consequently, this amendment adds subject-
        matter extending beyond the content of the application
        as filed (Art 123(2) EPC).

4.   Since the appellant proprietor's main request and
        auxiliary request 6 both fail, because at least one
        opposition ground prejudices maintenance of the patent,
        respectively the patent as amended does not meet the
        requirements of the EPC, the Board must revoke the
        patent pursuant to Article 101(2) and (3)(b) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Magouliotis   A. de Vries

Decision electronically authenticated