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**Datasheet for the decision  
of 26 January 2022**

**Case Number:** T 2589/17 - 3.4.02

**Application Number:** 10751098.4

**Publication Number:** 2406597

**IPC:** G01G15/00

**Language of the proceedings:** EN

**Title of invention:**

METHOD FOR WEIGHING PRODUCTS AND A CHECKWEIGHER

**Patent Proprietor:**

NORDEN MACHINERY AB

**Opponent:**

IWK Verpackungstechnik GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a), 101(2)

**Keyword:**

Grounds for opposition - lack of patentability (no)

**Decisions cited:**

**Catchword:**



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Case Number: T 2589/17 - 3.4.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.02**  
**of 26 January 2022**

**Appellant:** IWK Verpackungstechnik GmbH  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 2 October 2017  
rejecting the opposition filed against European  
patent No. 2406597 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** R. Bekkering  
**Members:** A. Hornung  
B. Müller

## **Summary of Facts and Submissions**

I. The opponent appealed against the decision of the opposition division rejecting the opposition against the European patent No. 2406597.

Opposition had been filed against the patent as a whole and based on the grounds for opposition of Article 100(a) EPC, together with Articles 54 and 56 EPC.

The opposition division had found that the grounds for opposition set out in Article 100(a) EPC did not prevent the patent from being maintained in unamended form.

II. The opponent (appellant) requested that the decision under appeal be set aside and that the patent be revoked.

III. The patentee (respondent) requested as a main request that the appeal be dismissed. Alternatively, it requested that the decision under appeal be set aside and that a patent be maintained in amended form on the basis of the claims of auxiliary requests 1 to 10 filed during the first-instance opposition proceedings and referred to in the letter dated 23 May 2018.

IV. In a communication annexed to a summons to oral proceedings, the board informed the parties about its provisional and non-binding opinion according to which, *inter alia*, it was not convinced by the opponent's arguments in favour of lack of inventive step of the subject-matter of claims 1 or 9 of the patent as granted.

The communication referred to the following documents:

D1: EP 0 496 083 A1

D2: EP 0 077 992 A1

D3: EP 1 980 829 A2

D4: EP 1 972 907 A1.

Reference was made to the numbering of the features V1 to V13 of method claim 1 and to the features W1 to W12 of device claim 9 of the patent as granted, as used in the appealed decision. This numbering is maintained in the present decision.

- V. The board's provisional opinion as to the existence of novelty and inventive step was formulated as follows in the board's communication, point 8:

**"8. Main request**

**8.1 Novelty**

There seems to be agreement between the parties that the subject-matter of claim 1 differs from the method known from D1 or D2 in that it contains features V5, V6, V9 and V10 and that the subject-matter of claim 9 differs from the device known from D1 or D2 in that it contains features W9 to W12.

**8.2 Inventive step**

The board, in its preliminary view, is not convinced by the opponent's arguments in favour of lack of inventive step of the subject-matter of claims 1 or 9.

**8.2.1** In its preliminary view the board agrees with the opponent's assumptions that:

- (a) Claim 1 relates to a general method of weighing a product along a production line (see point I of the statement of grounds of appeal).
- (b) Claim 9 relates to a general scale (see point I of the statement of grounds of appeal).
- (c) Claim 1 does not imply that the product to be weighed is elongated and arranged horizontally (see point II, first paragraph, of the statement of grounds of appeal).
- (d) Claims 1 and 9 leave open how the plurality of spaced V-shaped support surfaces are arranged relative to each other (see point II, second paragraph, of the statement of grounds of appeal).
- (e) The product to be weighed does not belong to the claimed subject-matter and, hence, cannot limit the scope of the claim (see point II, third paragraph, and point VI, second paragraph, of the statement of grounds of appeal).

**8.2.2** However, the board cannot follow the opponent's reasoning in points III and VI of the statement of grounds of appeal, based on the above assumptions (c) to (e), that the opposition division was wrong in finding that the skilled person would not combine D1 with D3, or with D4. This is because the product to be weighed would have to be rotated by 90°, which technically would make no sense, since the product in D1 is an open bottle with liquid inside. Indeed, it is not because the product does not form part of the claims and the relative arrangement of the V-shaped supports is undefined in the claims that it is necessarily obvious to combine D1 with D3 or D4 and to arrive at the claimed subject-matter. The actual technical disclosure of the documents, such as their supporting surfaces having distinct shapes, has to be taken into account.

In this respect, the board currently agrees with the patentee's statements that "[t]he Opponent does not present any problem-solution based argumentation ..., i.e. why the claims of the present invention would be obvious over D1 or D2 combined with D3 or D4. For instance, the Opponent does not give any reasons why the skilled person would go from D1/D2 to D3/D4 to find a solution to the objective problem ..., or how (if contemplating a combination) it would be possible in practice to modify the device/system/method of D1/D2 so as to include the teachings of D3/D4" (see patentee's letter of reply dated 23 May 2018).

**8.2.3** The opponent further argued that method features V5, V6, V9 and V10 were pure device features and, hence, not allowable ("nicht zulässig") because the specific V-shape of the supports was not required for executing the method of claim 1 (see point IV, second paragraph, of the statement of grounds of appeal). The purely structural features V5, V6, V9 and V10 had to remain out of consideration when assessing patentability of the method claim 1 (see point IV, third paragraph, of the statement of grounds of appeal). Moreover, the distinguishing features were known from D3 and D4. It would, therefore, have been obvious for the skilled person to combine D1/D2 with D3/D4, thereby arriving at the claimed method (see point IV, fourth paragraph, of the statement of grounds of appeal).

This argument of the opponent cannot be followed by the board. All features of a claim must in principle be considered when assessing novelty and inventive step of the claimed subject-matter. In the present case, the claimed method requires two pairs of V-shaped surfaces supporting the product. There is no reason to neglect these limiting features of the claimed method.

**8.2.4** Still further, the opponent argued in general terms in point VI, third and fourth paragraphs, of the statement of grounds, that the skilled person, starting from D1 as closest prior art and wishing to weigh a specific product, would find it trivial to look for a conventional scale suitable to weigh the product. The scales of D3 and D4 were specifically designed to weigh elongated, horizontally disposed products.

This general reasoning is not found convincing by the board. As stated in point 8.2.2 above, the opponent does not present a thorough problem-solution based argumentation, including, for instance, the formulation of a concrete problem to be solved when starting from either D1 or D2, the incentive to look for a solution, the concrete steps for modifying the method and device of the closest prior art so as to arrive at the claimed subject-matter".

- VI. With letter dated 1 December 2021 the opponent presented counter-arguments with respect to the board's opinion expressed in its communication, point 8.2.2.
- VII. With letter dated 28 December 2021 the patentee responded to the opponent's counter-arguments filed on 1 December 2021. Moreover, it filed claims according to an auxiliary request 11.
- VIII. With letter dated 13 January 2022 the opponent announced that the subject-matter under dispute had no economic relevance anymore to the opponent and that, therefore, the opponent decided not to attend the oral proceedings scheduled on 2 February 2022.

IX. The oral proceedings, scheduled on 2 February 2022, were cancelled then.

X. Independent claim 1 according to the patentee's main request reads as follows (the features of claim 1 are preceded by the numbering V1 to V13):

**V1** Method for weighing individual products being moved along a production line,

**V2** which products are moved along the production line by at least one manipulator, **characterized by** the steps of

- **V3** transferring at least one product from the production line to a checkweigher (101) comprising at least one weighing cell (115, 116);

- **V4** placing at least one product in a first position on a first support (111, 112) above a corresponding weighing cell (115, 116),

**V5** the first support (111, 112) comprising two spaced V-shaped support surfaces (111 a, 111 b; 112a, 112b),

**V6** wherein the V-shaped support surfaces (111 a, 111 b) supports [sic] each end of the product;

- **V7** displacing the at least one product by means of said first support (111, 112) and

**V8** placing said at least one product in a second position on a second support (113, 114) on the weighing cell (115, 116),

**V9** the second supports (113, 114) comprising two spaced V-shaped support surfaces (113a, 113b; 114a, 114b),

**V10** wherein the V-shaped support surfaces (113a, 113b) supports [sic] each end of the product;

- **V11** weighing the at least one product;

- **V12** displacing the at least one product back to the first position by means of said first support (111, 112); and

- **V13** transferring the at least one product from the checkweigher (101) back to the production line".

Independent claim 9 according to the patentee's main request reads as follows (the features of claim 9 are preceded by the numbering W1 to W12):

"**W1** Checkweigher for weighing individual products being moved along a production line,  
**W2** wherein the checkweigher (101) comprises at least one first support (111, 112)  
**W3** arranged to support a product to be weighed;  
**W4** at least one second support (113, 114) mounted on a weighing cell (115, 116);  
**W5** and a drive means connected to the at least one first support (111, 112)  
**W6** and arranged to displace the at least one first support (111, 112) relative to the second support,  
**W7** where the drive means is arranged to displace each first support (111, 112) from the first position, located above the second support, into the second position, located beneath the second support (113, 114), so that the at least one product is supported by the second support (113, 114),  
**W8** whereby the at least one product is weighed by the weighing cell (115, 116), **characterized in that**  
**W9** the first support (111, 112) comprises two spaced V-shaped support surfaces (111a, 111b; 112a, 112b),  
**W10** wherein the V-shaped support surfaces (111a 111b) are arranged to support each end of the product,  
**W11** and the second support (113, 114) comprises two spaced V-shaped support surfaces (113a, 113b; 114a, 114b),  
**W12** wherein the V-shaped support surfaces (113a, 113b) are arranged to support each end of the product".

## Reasons for the Decision

### 1. Main request - inventive step

- 1.1 In the communication annexed to the summons (see point V. above), the board expressed its preliminary view, along with the underlying reasons, that the opponent's arguments of lack of inventive step, filed with the statement of grounds of appeal, were not convincing.

In particular, in point 8.2.2, second paragraph, of the communication, the board stated that it agreed with the patentee's statement that "[t]he Opponent does not present any problem-solution based argumentation ..., i.e. why the claims of the present invention would be obvious over D1 or D2 combined with D3 or D4".

- 1.2 In response thereto, the opponent submitted with letter dated 1 December 2021, that no such "problem-solution based argumentation" was possible in the present case because no meaningful technical problem existed. Since claim 1 did not specify how the various V-shaped support surfaces were arranged with respect to one another, there was no meaningful technical problem the distinguishing features V5, V6, V9 and V10 of claim 1 and features W9 to W12 of claim 9 solved for **all** possible arrangements of the V-shaped surfaces.

According to the opponent (see letter dated 1 December 2021), the patentee did also not formulate a technical problem to be solved for **all** possible arrangements of the V-shaped surfaces. Neither did the problem mentioned in the patent, [0004], "... which allow products to be placed in the correct position on a checkweigher every time, and which allow products to be weighed with an improved accuracy" fulfil the requirement

that the problem was solved for **all** possible arrangements of the V-shaped surfaces, since the first and the second support had to be arranged in a specific manner depending on the product to be weighed. Such a specific arrangement was missing in claims 1 and 9.

No further arguments were submitted by the opponent with respect to the board's preliminary opinion.

1.3 The board is not convinced by these additional arguments filed by the opponent on 1 December 2021.

As submitted by the patentee with letter dated 28 December 2021, an objective technical problem was indeed formulated by both the opposition division in the appealed decision, point 4.3, and the patentee in its reply to the statement of grounds of appeal, dated 23 May 2018. Moreover, the board agrees with the patentee that the objective technical problem could be formulated as proposed in its reply dated 23 May 2018, page 2, second bullet point, namely "to provide a stable support and avoid movement of the product during displacement and weighing in a production line".

Furthermore, the board concurs with the patentee "that claims 1 and 9 sufficiently well specify how the spaced V-shaped support surfaces are arranged in relation to each other" (patentee's letter of 28 December 2021). In particular, "placing a product on two spaced V-shaped support surfaces that support each end of the product and weighing the product in that position clearly implies that the spaced V-shaped support surfaces are horizontally spaced and arranged at least roughly at a similar horizontal level so as to make it possible to place the product on the V-shaped support surfaces" (highlighted in the original).

The board does not agree with the opponent that the problem must be solved by **all** possible arrangements of the V-shaped surfaces since the skilled person is able to select appropriate arrangements and discard the arrangements not solving the objective technical problem.

- 1.4 The arguments submitted by the opponent with letter dated 1 December 2021 in response to the board's communication annexed to the summons to oral proceedings are not found convincing by the board (see point 1.3 above). Therefore, the board sees no reason to deviate from its preliminary opinion regarding inventive step, which therefore becomes final.
- 1.5 The subject-matter of claims 1 and 9 thus involves an inventive step.
2. The opposition was filed exclusively on the ground of Article 100 (a) EPC. It follows that none of the grounds of opposition put forward by the opponent preclude the maintenance of the patent as granted. The opposition division's finding that the opposition must be rejected (Article 101(2) EPC) must therefore be affirmed.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated