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Datasheet for the decision
of 30 May 2022

Case Number: T 2563/19 - 3.2.04

Application Number: 11720384.4

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IPC: A22C17/00, B07C5/00, B07C5/34

Language of the proceedings: EN

Title of invention:
Fat/meat grading method and system

Patent Proprietor:
Marel Iceland EHF

Opponent:
Mettler-Toledo, LLC

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (yes)

Decisions cited:

Catchword:

Case Number: **T 2563/19 - 3.2.04**

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 30 May 2022

Appellant: (Opponent)	Mettler-Toledo, LLC 1900 Polaris Parkway Columbus OH 43240-2020 (US)
Representative:	Werner, Patrick Leinweber & Zimmermann Patentanwalts-PartG mbB Viktualienmarkt 8 80331 München (DE)
Respondent: (Patent Proprietor)	Marel Iceland EHF Austurhraun 9 210 Gardabaer (IS)
Representative:	Inspicos P/S Kogle Allé 2 2970 Hørsholm (DK)
Decision under appeal:	Interlocutory decision of the Opposition Division of the European Patent Office posted on 4 July 2019 concerning maintenance of the European Patent No. 2566340 in amended form.

Composition of the Board:

Chairman	A. de Vries
Members:	J. Wright
	C. Heath

Summary of Facts and Submissions

I.   The appeal was filed by the appellant (opponent)
        against the interlocutory decision of the opposition
        division finding that, on the basis of the auxiliary
        request 1, the patent in suit met the requirements of
        the EPC. Amongst other things, the opposition division
        decided that the subject-matter of this request
        involved an inventive step.

II.   Oral proceedings before the Board were duly held on
        30 May 2022.

III.   The appellant (opponent) requested that the decision
        under appeal be set aside and that the patent be
        revoked in its entirety.

IV.   The respondent (patent proprietor) requested that the
        appeal be dismissed (maintenance of the patent in the
        version upheld by the opposition division) or in the
        alternative that the patent be maintained according to
        one of auxiliary requests 1 to 5, A, 1A to 5A, B, 1B to
        5B, all filed with the respondent-proprietor's reply to
        the appeal. In addition, the respondent requested that
        document E8 be not admitted into the proceedings.

V.   The independent claims of the main request (auxiliary
        request 1 in opposition) read as follows, with feature
        references in square brackets added to claim 1 by the
        Board:

        "1. [M1] Method of processing of meat trim products,
        [M2] where trim products are supplied as a sequence of
        collections of trim (COTs), each collection of trim
        (COT) comprising a plurality of trim products, whereby

- [M3] a fat/meat relationship for a collection of trim
(COT) is measured,
- [M4] a collection of trim (COT) is transferred to a
selected station (24) by a separator (20), controlled
by a controller (50, 51, 52), and whereby
- [M5] a batch is completed at a selected station (24)
on the basis of data for said fat/meat relationship,
said batch comprising collections of trim (COTs) and
fulfilling a predetermined criterion regarding a total
fat/meat relationship,
characterized in that
[M6] measured and/or calculated data including data
relating to the fat/meat relationship required to
complete said batch at said selected station (24) is
provided as a feedback data to a trim source which
supplies collections of trim (COTs),
[M7] where the trim source, in response to said
feedback data, supplies one or more collections of trim
(COTs) with appropriate fat/meat relationship required
to complete said batch."

"3. System for processing of meat trim products,
wherein trim products are supplied to the system in a
sequence of collections of trim (COTs), each collection
of trim (COT) comprising a plurality of trim products,
said system comprising
- a trim parameter measuring apparatus (TPMA) (10)
designed for measuring the fat/meat relationship for a
collection of trim (COT),
- a separator (20) for transferring a collection of
trim (COT) to a selected station (24), and
- a controller (50, 51, 52) for controlling the
separator (20) to complete a batch at a selected
station (24), based on input from said trim parameter
measuring apparatus (TPMA) (10), said batch comprising
collections of trim (COTs) and fulfilling a

predetermined criterion regarding a total fat/meat
relationship,
characterized in that said system is designed for
feeding measured and/or calculated data including data
relating to the fat/meat relationship required to
complete said batch at said selected station (24) as a
feedback data to a trim source which supplies
collections of trim (COTs), where the trim source, in
response to said feedback data, supplies one or more
collections of trim (COTs) with appropriate fat/meat
relationship required to complete said batch."

VI.   In the present decision, reference is made to the
        following documents:

        D1:   WO2009/102457 Al
        E8:   Ian Eustace "In-line chemical lean analysis,
              sorting and blending investigation" Project
              PRTEC.036, report prepared for D. Doral, Meat &
              Livestock Australia, March 2006.

VII.   The appellant-opponent's arguments can be summarised as
        follows:

        The subject matter of claim 1 of the main request lacks
        an inventive step over the combination of D1 with the
        skilled person's general knowledge. This general
        knowledge includes providing feedback in meat
        processing, as illustrated by E8, which should be
        admitted into the proceedings. Claim 3 of the main
        request lacks inventive step for the same reasons as
        apply to claim 1 and even more so because its
        characterising features impose no limitation on the
        claimed system.

VIII.   The respondent-proprietor's arguments can be summarised
        as follows:

        The opposition division correctly found that the
        subject matter of the independent claims of the main
        request is not rendered obvious by the combination of
        D1 and the skilled person's general knowledge. E8 is
        late filed and not relevant so it should not be
        admitted into the proceedings.

Reasons for the Decision

1.   The appeal is admissible.

2.   Introduction

        The invention concerns the processing of meat trim
        products (see published patent specification,
        paragraphs [0001] to [0005]). Trimming meat results in
        a primary cut, fat and trim products (trim). Trim is a
        combination of meat and fat or secondary meat cuts. It
        is normally classified in categories according to its
        fat/meat ratio and is typically used for various
        purposes, such as making mincemeat, where often a
        specific fat/meat ratio is required (see published
        patent specification, paragraphs [0006] to [0008]).

3.   Main request, claim 1, inventive step starting from D1
        with the skilled person's general knowledge

3.1   Before looking in detail at inventive step, the Board
        finds it useful to consider the interpretation of
        certain claim features.

3.1.1   The claim requires that the fat/meat relationship for a collection of trim (COT) is *measured* (feature M3) and a collection of trim is transferred to a selected station (be there one or more) by a separator controlled by a controller (feature M4). M4 is the only feature defining how *each* COT is assigned to a station: it is carried out by a separator under the control of a controller, but the feature does not explain any criterion for the separation. The next feature (M5) requires that a batch is completed at a selected station, on the basis of data for the fat/meat relationship, the batch comprising collections of trim and fulfilling a predetermined criterion regarding a total fat/meat relationship.

3.1.2   The characterising features define that measured and/or calculated data including data related to the fat/meat relationship required to complete the batch is fed back to the trim station (feature M6), the latter responds by sending appropriate trim (feature M7).

3.1.3   The appellant-opponent has argued that the claim wording also encompasses the situation where the feedback to the trim source defined in the first characterising feature (M6) need be nothing other than a reminder to the trim source to continue to supply COTs meeting the criterion of the batch. The Board disagrees with this interpretation.

3.1.4   In accordance with well established jurisprudence the Board reads the claim wording including feature M6 with a mind willing to understand, using normal reading skills, by giving terms their usual meaning (unless there is good reason not to do so) and reading them contextually. Feature M6 defines that measured and/or calculated data relating to the fat/meat relationship

required to complete said batch at said selected
station (24) is provided as a feedback data to a trim
source. The term *feedback* in its normal meaning refers
to the process of "modification, adjustment, or control
of a process or system .... by a result or effect of
the process, esp. by a difference between a desired and
an actual result" (OED). In that context "feedback"
often refers to the system output that is routed back
to the input to change the system response. In feature
M6 the feedback data is formed by measured and/
calculated data including data relating to the fat/meat
content required to complete the batch - this
represents the system *output* - and is provided to the
trim source, which represents the *input* of the system.
For the skilled reader at least, feature M6 thus
already encapsulates a complete feedback loop. Such a
feedback loop is only meaningful if it is meant to
change the response of the system, in this case action
of the trim source (and separator) to form batches.
This presupposes that the system response is not what
it should be because batches are not being formed as
desired in accordance with the predetermined criterion.
This is possible, for example, if the trim source is
not providing COTs with fat/meat relationship at the
requisite accuracy. Indeed, the feedback data is
defined as being *measured* or *calculated,* as would be
expected in a feedback loop as applied to fat/meat
based batching, and which in this context can be
understood (by those with a mind willing to understand)
as an indication of the actual deviation of the fat/
meat relationship from the predetermined criterion of
feature M5. In this regard, the Board is not convinced
that the feedback data could be understood as
corresponding to the desired fat/meat relationship
determined on the basis of values measured or
calculated in a previous test or calibration run, and

thus pre-determined as the appellant has argued. In that case the system would be merely repeating back to the trim source the batching criterion, information the trim source is already working on and which would not change the way it is trimming. Clearly, that does not correspond to a feedback loop as effectively required by feature M6. Therefore, the only meaningful reading of the feedback data to be calculated or measured is that it pertains to the batch that is being built up at the present time, rather than to some previous test batch. With this in mind, the data fed back can only be real time data, provided whilst the process is running, that tells the trim source what is needed to complete the batch at a given moment.

3.2   Turning now to D1, it discloses a method of processing meat trim products (see title and abstract). It is common ground that D1 discloses the preamble features of claim 1. In particular, trim is pre-sorted into containers according to an estimate of meat/fat ratio (lean point in D1's words - see figure 1, step 130). As explained in paragraph [0048] with figures 1 and 2, these containers empty onto a conveyor, thus they are supplied as a sequence of collections of trim (COTs), each comprising a plurality of trim products. Their fat/meat relationship is then measured (see figure 1, step 140). After this (figure 1, step 150), items are transferred to a selected station (combination bin in D1's terms) by a separator (see lower part of figure 2) controlled by a controller (microprocessor - see paragraph [0050] with figure 7) according to fat/meat relationship (lean point). Thus, a batch in the station comprises collections of trim (COTs). Because each COT is directed to the appropriate bin according to its fat/meat relationship, a batch is completed based on fat/meat data to achieve a total fat/meat relationship

for that container as claimed (see for example
paragraph [0040]).

3.3   It is not in dispute that D1 does not disclose the
characterising features of claim 1 (feedback features
M6 and M7). In D1 (see for example figures 1, 2 and 7),
the fat/meat relationship (lean point) of trim from the
trim source is simply determined so that it can be
sorted into an appropriate bin.

3.4   According to well established jurisprudence, the
technical problem addressed by the invention should
normally start from the problem described in the
patent, see Case Law of the Boards of Appeal, 9th
edition, 2019 (CLBA) I.D 4.3.2.

3.4.1   The opposition division considered (see impugned
decision, reasons 8.1) the objective technical problem
to be one of enhancing automation and flexibility of
the batching process (cf. published patent
specification, paragraphs [0014] and [0043]). In the
Board's view, although the patent mentions both these
effects, it does not do so in conjunction with the
differing feature (feedback). Rather, in this respect
the patent discloses (see published patent
specification, paragraphs [0046] and [0047]) that
feedback as claimed allows optimisation of the building
up and completion of batches. This can be considered in
terms of increased accuracy or overall efficiency of
the system, cf. patent specification, paragraph [0053].
There is no indication in the patent that this is to be
understood in relation to *timing* required to build up a
batch or the ability of the system to fill up different
batches at an equal pace as the appellant-opponent has
argued.

3.4.2   Therefore, in accordance with the established
        jurisprudence outlined above, the Board considers that
        the objective technical problem can be formulated
        broadly as *how to modify the method of D1 in order to
        optimise the building up and completion of batches.*

3.5   In the Board's view, faced with the objective technical
        problem (optimisation) the skilled person, here an
        engineer working in meat processing, would not modify
        D1 by adding feedback as claimed, as a matter of
        obviousness.

3.5.1   In this regard the Board agrees with the appellant-
        opponent that in the meat processing industry, the
        concept of *feedback* as such, belongs to the skilled
        person's general knowledge. However, its application is
        always targeted and requires recognition of system
        error and an understanding of its causes. As is
        apparent from figure 2 of D1, its batching scheme
        features a high level of differentiation of fat/meat
        ratios, which must be predicated on a high degree of
        confidence of the trimming process. The Board is
        therefore unconvinced that if the skilled person wanted
        to further optimize batch build-up and completion they
        would consider improving the trimming per se, much less
        doing so using feedback from the batching output.
        Rather, they would consider alternative optimization
        strategies.

        For example D1 uses pre-sorting of trim to increase
        efficiency and accuracy of subsequent sorting (see
        paragraph [0034], [0048], figure 5) by having multiple
        sorting steps with the fat/meat ratio being analysed at
        more than one stage. The skilled person might therefore
        consider a more optimal way of pre-sorting. In another
        arrangement (see paragraph [0048]), D1 suggests

optimising the end product by measuring the total fat/
meat ration for each batch and then mixing different
stored batches to reach a precise desired ratio.
Finally, the degree of differentiation of the batch
fat/meat ratios might be changed to better match build-
up and completion specifications. However, none of
these optimisations point in the direction of providing
any kind of feedback, let alone of the data claimed
(fat/meat relationship required to complete a batch).

From all of the above, the Board is of the opinion that
D1 combined with the skilled person's general knowledge
does not render the subject matter of claim 1 obvious.

4.   Main request, claim 3, inventive step

The appellant-opponent has argued that the subject
matter of the system claim 3 does not identify the
specific adaptations necessary to realize the method of
claim 1 . Rather, so the appellant argues, the
characterising features (feedback and response) merely
specify that means should be suitable to carry out the
relevant method steps but impose no clear limitation on
the claimed system.

The Board disagrees. The features of claim 3 translate
the method features of claim 1 in the usual manner to
corresponding means defined by their function. These
correspond exactly to those of claim 1 expressed in
terms of system features. The normal reading of such a
formulation is that the means must be specifically
adapted to carry out that function. Thus the first
characterising feature states that the system is
designed for feeding [...] feedback to the trim source,
which the skilled person using their normal reading
skills interprets as a system specifically designed

for feeding [back] feedback as being specially adapted
to do so such that in operation it carries out that
function. Similarly, that the trim source *in response
to* [this] *feedback* supplies one or more [suitable]
COTs, can only mean that the system is adapted to
respond to the feedback in the way claimed. Thus the
appellant-opponent's argument that the characterising
feature of claim 3 imposes no limitation on the claimed
subject matter is moot.

Therefore, the Board finds that the subject matter of
claim 3 is not rendered obvious by the combination of
D1 and the skilled person's general knowledge for the
same reasons as apply to claim 1.

5.   Admittance of document E8

Document E8 was filed with the grounds of appeal and
thus outside the opposition period. It is therefore
late filed and subject to the discretion afforded by
Article 114(2) EPC and Article 12(4) RPBA 2007. In
exercising their discretion boards consider, amongst
other factors, whether or not late filing is justified
by developments in the procedure, the need for
procedural economy and relevance (see Case Law of the
Boards of Appeal, 9th edition, 2019 (CLBA) V.A.
4.4.2.b).

At the oral proceedings before the Board, the
appellant-opponent explained that E8's only additional
contribution to its case was to demonstrate that
feedback belonged to the skilled person's general
knowledge. Since, as has already been stated, the Board
accepts this to be true, E8 adds nothing to the
discussion on inventive step. Therefore, the Board
decided not to admit E8 into the proceedings.

6.   From all of the above, the Board concludes that the
        opposition division did not err in finding the subject
        matter of the independent claims of the main request to
        involve an inventive step. As the appellant-opponent
        raised no other issues, their appeal fails and the
        Board must dismiss it.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis   A. de Vries

Decision electronically authenticated