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**Datasheet for the decision
of 8 April 2022**

Case Number: T 3133/19 - 3.2.04

Application Number: 14781309.1

Publication Number: 3041361

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:

SKINNING INSTALLATION AND METHOD FOR REMOVING SKIN FROM
SLAUGHTERED POULTRY PARTS

Patent Proprietor:

Marel Stork Poultry Processing B.V.

Opponent:

Meyn Food Processing Technology B.V.

Headword:

Relevant legal provisions:

EPC Art. 100(b), 100(a)

Keyword:

Sufficiency of disclosure - (yes)

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 3133/19 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 8 April 2022

Appellant: Meyn Food Processing Technology B.V.
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 29 October 2019 rejecting the opposition filed against European patent No. 3041361 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition filed against the patent in suit.
- II. The opposition division decided that the patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art and that the subject matter of the claims as granted was novel and involved an inventive step.
- III. In preparation for oral proceedings, which were duly held on 8 April 2022, the Board issued a communication setting out its preliminary opinion on the relevant issues.
- IV. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of one of auxiliary requests 1 to 5 filed with letter dated 19 May 2020.

- V. Claims 1, 6, 11 and 12 of the main request, which are relevant for this decision, read as follows:

"1. Skinning installation (1) adapted to remove skin from slaughtered poultry parts, e.g. from a part including the breast, comprising a skinning device, which comprises:

- a support frame (2);
- a toothed skinning roller (3) being rotatably supported by the support frame (2), having teeth gripping the skin;
- a skinning roller drive that is adapted to drive the skinning roller in a rotation direction;
- an elongated shoe (4) having opposed ends (4a, 4b), at least one of which is fastened to the support frame (2), said shoe extending adjacent and essentially parallel to the toothed skinning roller, characterized in that the shoe comprises:
 - a central nose portion (4d) which is directed counter to the rotation direction of the skinning roller, having two side edges (4y, 4z) and a leading skin gripping edge (4x), wherein the side of the nose portion facing the skinning roller comprises an arcuate surface having a curvature corresponding essentially to the curvature of the skinning roller, wherein a skin gripping gap (G) is defined between the arcuate surface of the central nose portion (4d) and the skinning roller (3);
 - at least one bridging portion (4e, 4f) between the central nose portion (4d) and the end of the shoe (4a, 4b) that is fastened to the support frame, arranged downstream of the leading skin gripping edge (4x) when seen in the rotation direction (R) of the skinning roller (3), wherein a bridge clearance (B1, B2) is defined between the bridging portion (4e, 4f) and the skinning roller (3)".

"6. Skinning installation according to one or more of the preceding claims, wherein the toothed skinning roller is provided with one or more circumferential grooves (3x, 3y) extending in the rotation direction (R) of the roller, the grooves having a depth preferably exceeding that of the teeth, and wherein

further one or more final release cams (7a, 7b) are provided in the vicinity of the skinning roller (3), downstream of the shoe (4), seen in the rotation direction (R), which final release cams (7a, 7b) each extend into a circumferential groove (3x, 3y)".

"11. Skinning installation according to claim 10, wherein the outer surface of the central nose portion of the shoe (4d), opposite the arcuate surface comprises a recess (4h) with respect to the bridging portions (4e,4f), allowing for a reduced spacing between poultry parts conveyed by the conveyor".

"12. Skinning installation according to one or more of claims 9-11, wherein the conveyor comprises a track and multiple carriers that are driven along said track, each carrier being adapted to support a slaughtered poultry part, and wherein further a carrier sensor is provided for detecting an empty carrier, and wherein a support frame positioning mechanism (50) is provided in connection with the carrier sensor, which support frame positioning mechanism is adapted to move the support frame between an operational position, wherein the skinning roller and shoe are positioned adjacent the conveyor so as to allow the skin of the poultry part being conveyed to be gripped by the skin gripping gap, and a non-operational retracted position, wherein the skinning roller and shoe are positioned at a distance from the conveyor preventing the skinning roller and shoe to contact the empty carrier".

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

D0: US 2912027

D1: US 2013/0157553 A1

D2: NL 2007492

D3: US 6086470

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

The invention according to claim 1 is insufficiently disclosed. To carry out the invention several interdependent parameters must be known. Because the patent fails to explain these dependencies, the skilled person would be unable to carry out the invention. Nor could this information be supplied by common general knowledge because the shoe is of a new kind. At most the patent only discloses how to skin a chicken breast but not other parts or other poultry types, therefore it cannot be carried out over the whole scope of the claim. The particular teachings defined in granted claims 6, 11 and 12 can also not be carried out by the skilled person.

The subject matter of claim 1 lacks novelty with respect to any of D1, D0 and D3. Claim 1 lacks inventive step starting from D1 or D3 in combination with the skilled person's general knowledge.

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

The invention as claimed is sufficiently disclosed. The patent defines examples of suitable ranges of parameters for carrying out the invention. Where the skilled person needed to adapt the arrangement for skinning different poultry or different poultry parts, they would do so by applying their common general knowledge and limited trial and error and so carry out the invention across the whole scope of the claims

without undue burden. The invention according to claims 6, 11 and 12 can also be carried out.

The subject matter of claim 1 is new because none of D1, D0 nor D3 discloses a skinning roller shoe with a central nose portion and bridging portion as claimed. The subject matter of claim 1 also involves an inventive step starting from D1 or D3 because the prior art does not suggest a central nose portion or bridging portion.

Reasons for the Decision

1. The appeal is admissible.
2. Background

The invention concerns a skinning installation for removing skin from poultry parts (see published patent specification, paragraph [0002] and claim 1). It is known from the prior art for such installations to have a skinning roller and a cooperating shoe (see specification, paragraph [0003]). The invention concerns a particular design of the shoe, see for example claim 1 and figure 1b. The shoe has a front nose portion that has a leading edge and at least one bridging portion, set back from the nose portion (downstream in the sense of rotational direction of the roller). According to the patent (see specification, paragraph [0008]), this shoe design improves the quality of skinning.

3. Opposition ground of insufficiency of disclosure

3.1 The appellant-opponent disputed the opposition division's finding that this ground did not prejudice maintenance of the patent as granted. According to established jurisprudence (see the Case Law of the Boards of Appeal of the EPO, 9th edition, 2019 (CLBA) II.C. 1 introduction), an invention is sufficiently disclosed if it can be performed by a person skilled in the art in the whole area claimed, based on the whole contents of the patent (description, claims and drawings) and taking into account their common general knowledge. Moreover, parameters must be sufficiently defined and the disclosure must also be reproducible without undue burden.

3.2 Claim 1

The appellant-opponent has argued that no information is given on the shape, width or diameter of the toothed skinning roller, the curvature of the shoe nor how it is driven. More importantly, the speed of the roller and the shape of its teeth as adapted for skinning different parts of different kinds of poultry is not disclosed. This means that the invention is impossible to carry out across the whole breadth of the claim without undue burden.

3.2.1 The Board first notes that a skinning roller with a shoe extending adjacent and parallel to it as claimed can but be of cylindrical shape (cf. published patent specification, paragraph [0050]), whatever is meant by paragraph [0013] where a cylindrical form is merely presented as a possibility.

3.2.2 The Board disagrees with the appellant-opponent that the patent gives no guidance on the dimensions of the roller and shoe. As the respondent-proprietor has

pointed out, paragraph [0015] of the specification discloses suitable diameters for the rollers for skinning a poultry breast, paragraphs [0019] and [0022] give dimensions of the nose portion of the shoe for skinning poultry breast and other portions. Paragraphs [0021] and [0024] give clearance dimensions for the gaps between the skinning roller and nose and bridging portions of the shoe, however easy it might be for chunks of fat to pass through these gaps and whether or not they might be forced to move against gravity. Moreover, these clearances, together with the diameter of the roller, define the shoe's curvature. The patent also suggests suitable tooth patterns and information about their dimensions (see paragraphs [0016], [0022] and [0052] with figure 1).

3.2.3 The Board agrees with the appellant-opponent that parameters may be interdependent. Notably the speed of the rollers may be related to the skilled person's choice of various other parameters, such as the diameter of the skinning roller and the patent does not define such relationships. However, contrary to how the appellant-opponent has argued, the Board does not see this as being unduly burdensome for the skilled person when carrying out the invention.

3.2.4 This is because sufficiency of disclosure is not to be considered from the perspective of a skilled person who knows no starting parameters as the appellant-opponent has suggested, but rather from that of one who knows the most relevant starting parameters from the patent itself. Nor is the skilled person seeing a shoed skinning roller for the first time. Rather, they have been known for a long time and the skilled person will be very familiar with their dimensions, tooth profiles and how they are driven. By the same token the skilled

person will know how the skinning rollers must generally be adapted, for example scaled up or down, for skinning poultry portions other than breast portions and for poultry other than chickens.

- 3.2.5 From this perspective, the Board holds that the skilled person would have no difficulty in carrying out the invention across the whole breadth of the claim by choosing suitable values for any parameters not defined in the patent, such as roller speed and the precise shape of the skin gripping teeth. In this regard, the Board sees no reason as to why the choice of these parameters would be any different for the skinning installation of the invention compared to what they know from prior art gripping shoe arrangements. The shoe's having a nose and bridging portions does not fundamentally change the skin grabbing action of the skinning roller or the overall dimensions or operating speed of the installation.

Moreover, whilst it may well be that most of the example parameters given in the patent relate to skinning chicken breast, the skilled person will be able to make suitable adjustments for skinning other portions and for other poultry simply by applying their general knowledge, as indeed they must routinely do when implementing skinning installations.

The Board also agrees with the respondent proprietor that, should any final adjustment of parameters still be necessary to make the invention work, the skilled person would be able to make these with only very limited trial and error experimentation, which would not be burdensome.

3.2.6 The Board also considers that the skilled person would be able to provide suitable carriers for presenting poultry portions to the skinning installation, whether or not those of D2 would be suitable (cf. published patent specification, paragraph [0072]). This is because carriers are already well known in prior art shoed skinning installations, and the skilled person would draw on this knowledge to carry out this aspect of the invention.

3.2.7 The Board agrees with the appellant-opponent's assessment that the essence of the invention is to have the bridging portions set back from the central nose portion in the direction of travel of the roller. The respondent-proprietor has explained that this improves skinning quality because the skin is consistently first gripped between the roller and the shoe in the middle of the skinning roller, rather than at some arbitrary position along the roller which could be at one side where tearing of the skin would be more likely. The Board finds this plausible.

In the light of this, the Board sees no reason as to why the invention would not work if the sides of the nose portion extended perpendicularly to the leading edge of the nose portion (cf. published patent specification paragraph [0019]), whether or not such an arrangement might less successfully guide any fatty chunks too large to pass under the central nose portion to the bridging portions, as the appellant-opponent has speculated.

3.2.8 The appellant-opponent has also argued that it is within the scope of the claim that the bridging portions may be set back from the central nose portion by a negligible distance and that this would only

negligibly, or perhaps not at all, improve skinning quality (cf. patent specification paragraph [0008]). Therefore, so the appellant reasons, the skilled person would not be able to carry out the invention across the whole scope of the claim.

The Board disagrees. It may well be that if a shoe's bridging portions were only set back a little way, skinning quality would only be marginally improved. This, however, would not prevent the skilled person from carrying out the invention. If, however, this set back were reduced to such an extent that, to all intents and purposes, it no longer existed, then the shoe would no longer have identifiable nose and bridging portions. This arrangement would not fall under the terms of the claim. Therefore, it is irrelevant to the question of sufficiency of disclosure of the invention of claim 1.

3.2.9 For all these reasons, the Board is of the opinion that claim 1 is sufficiently disclosed.

3.3 Main request, claim 6, sufficiency of disclosure

3.3.1 In its written submissions, the appellant-opponent contested the opposition division's finding (see impugned decision, point cf. 14.1.3) that the invention according to granted claim 6 was sufficiently disclosed. In its communication in preparation for oral proceedings (see point 2.8), the Board gave a preliminary opinion that claim 6 was sufficiently disclosed. The Board wrote the following:

"In the Board's view, the invention according to claim 6 is sufficiently disclosed. The skilled person would know from their general knowledge how to provide

circumferential grooves in a roller. Figure 1 of the patent specification shows what is meant by the grooves being deeper than the teeth - where there is a groove there is no tooth profile because the groove cuts deeper into the roller. Also the cams 7 and how they are to be positioned are shown in the figure".

3.3.2 Neither in writing nor at the oral proceedings did the appellant-opponent explain why this opinion might have been wrong. Nor does the Board see any reason to deviate from it. Therefore, the Board confirms its opinion that claim 6 is sufficiently disclosed.

3.4 Main request, claim 11, sufficiency of disclosure

3.4.1 In its written submissions (see for example the appeal grounds, part A7 on pages 12 to 14) The appellant-opponent contested the opposition division's positive finding regarding sufficiency of disclosure of claim 11 (cf. impugned decision point cf. 14.1.4). In its preliminary opinion in preparation for oral proceedings (see point 2.9), the Board considered that claim 11 was sufficiently disclosed. In particular the Board wrote the following:

"In the Board's view, the invention according to claim 11 is sufficiently disclosed. The first objection raised by the appellant-opponent is that the recess feature is incomprehensible. The objection is one of lack of clarity, which is not a ground for opposition. What recess 4h is and on what side of the shoe relative to the arcuate surface it is located is shown in figures 2a and 2b and described in paragraph [0067]. Therefore, the skilled person would be able to make a recess as claimed.

The remaining question is: would the skilled person, having made such a recess, achieve the effect of allowing for a reduced spacing between poultry parts compared to when the recess was not present? The Board thinks the answer is yes. Figures 4a to 4c show how poultry parts move past the skinning assembly. The device is resiliently mounted (published patent specification, paragraph [0072], first sentence). Figure 4a shows the situation when the skinning device comes into contact with the leading poultry piece on holder 38 for the first time. The skinning roller is in its lowest position on the page - almost at the height of the chain line that runs horizontally through all three figures. As the poultry piece is skinned the skinning device must ride over it (see figure 4b - the skinning roller is well above the chain line). In order for the skinning roller to return to the height of the chain line to start skinning the following poultry piece on carrier 38b, the parting skinned poultry piece must not prevent the skinning assembly's descent (down the page). As shown in figure 4c and described in paragraph [0076] this is possible because the recess 4h (see figure 2b) accommodates the skinned poultry piece on carrier 38. In this way, the poultry pieces can be closer spaced than would have been possible without the recess. Therefore, the subject matter of claim 11 appears to achieve the claimed effect".

Neither in writing nor at the oral proceedings before the Board, did the appellant-opponent explain why the Board's position on the above points might have been wrong.

- 3.4.2 However, at the oral proceedings before the Board, the appellant-opponent introduced a new argument. It reasoned that the recess was merely the result of

having a smaller clearance between the skinning roller in the nose portion compared to the bridging portions, which would not be the case when these clearances were the same, as is covered by the claim. Therefore, so it argued, there could be embodiments with no recess and the claim had no technical effect.

Firstly, the Board notes that the argument's conclusion boils down to the idea that if there were no recess there would be no effect, which, although true, concerns an arrangement not falling under the terms of claim 11 which defines a recess. Moreover, the argument itself (interdependency between roller/shoe clearances and the presence of a recess) appears to be based on a false premise. This is because, the recess is on the surface opposite the shoe's arcuate surface (the one facing the roller), so the forms of these surfaces are independent. Therefore, the argument is moot.

- 3.4.3 From the above, the Board sees no reason to deviate from the opinion expressed in its communication, that claim 11 is sufficiently disclosed.
- 3.5 Claim 12
 - 3.5.1 Claim 12 defines a carrier sensor for detecting an empty carrier and a support frame positioning mechanism in connection with the sensor and which is adapted to move the support frame between an operational (skinning) position and a non-operation retracted position if the carrier is empty.
 - 3.5.2 The description (see published patent specification, paragraph [0077] and [0078] with figures 5a and 5b) explains an embodiment in which an empty carrier is said to be detected and the skinning device retracted

on its support frame 42 in response. The mechanical retraction of the skinning roller on its support frame into a non-operational position (figure 5b) is described in detail. The Board holds that from this information, the skilled person would be able to carry out this aspect of claim 12. This has not been disputed.

- 3.5.3 However, the appellant-opponent has argued that the so called safety arm 50 would not be able to detect an empty carrier and so the embodiment as a whole cannot be carried out by the skilled person. The Board disagrees.

The argument boils down to the idea that the skilled person would not know how to detect an empty carrier. The Board does not find this convincing. The Board agrees with the respondent-proprietor that empty carriers must routinely be detected in poultry carcass processing. This means that, whether or not figure 5's detector (safety arm 50) would work, the skilled person knows suitable detectors from their general knowledge. Therefore, they would be able to make an installation that retracted the skinning roller if a carrier was empty, as claim 12 requires.

- 3.5.4 The appellant-opponent has also argued that the skilled person would not understand how a gap could grip skin and therefore not be able to provide a skin gripping gap according to claim 12. However the skilled person not only does not read the term in isolation they know how shoed skinning roller mechanisms grip skin. At best, therefore, the argument boils down to an objection that the term *skin gripping gap* itself is unclear. As a matter of clarity, this has no bearing on the question of sufficiency of disclosure. Similarly,

the appellant-opponent's argument that the description does not support the claim is an objection under Article 84 EPC, rather than sufficiency of disclosure. Therefore the argument is moot.

3.5.5 For these reasons, the Board considers the invention of claim 12 to be sufficiently disclosed.

3.6 For the above reasons, the Board agrees with the opposition division that the opposition ground of insufficiency of disclosure (Article 100b EPC) does not prejudice maintenance of the patent as granted.

4. Main request, claim 1, novelty

4.1 Novelty with respect to D1

4.1.1 D1 (see abstract, paragraphs [0031] and [0032] with figures 5 to 7) discloses a skinning installation with a supporting frame 108 with side walls 109, a toothed skinning roller 128 and a shoe 144. As best seen in figure 6, and explained in paragraph [0032], second sentence, the front edge of the pressure shoe 144 extends uniformly over the entire length of the roller between the sides of the frame. As shown in figure 7 and explained in paragraph [0032] (towards the bottom of the left hand column on page 24) the end of the shoe 144 has a curved flange 150. A bracket 210 mates with this flange and attaches the shoe to the walls 109 of the frame 108.

4.1.2 The appellant-opponent has argued that the portion of the shoe 144 that ends at the curved flange 150 is a nose portion and that, interpreting the claim words in a literal sense, the curved flange 150 reads onto the bridging portion of the claim. The Board disagrees.

4.1.3 The claim requires that the nose portion has a leading skin gripping edge and that the bridging portion is arranged downstream of this edge seen in the rotational direction of the skinning roller. In the Board's view, with their mind willing to understand, the skilled person would interpret this to mean that the entire bridging portion was downstream of the nose portion. In other words it is set back from the nose portion in the direction of rotation of the roller. This interpretation is corroborated in the claim by the use of the term *nose* (see Oxford English Dictionary on line, meaning II.7: a prominent or projecting part; the point or extremity of something), which implies that the *nose portion*, with its *leading skin gripping edge*, projects in the upstream direction further out than the rest of the shoe.

4.1.4 With this understanding of how the claimed bridging portion is arranged (set back) relative to the nose portion, the feature is absent in D1: its skin gripping edge 148 extends uniformly over the entire length of the shoe, including the flange 150 (see figure 7). There is simply no portion that projects forward or that is set back along the gripping edge of the shoe, nothing that is reasonably identifiable as a nose portion. At most it can be said that the curved rear edge of the flange is behind its front cutting edge 148, but this does not mean that the entire flange is set back from any nose portion. Therefore, the flange portion 150 is not a bridging portion as claimed. By the same token D1 does not disclose a nose portion as claimed.

4.1.5 In written proceedings, the appellant-opponent has also argued that the bracket 210 (which fits into the flange portion 150 - see figure 7) is a bridging portion as claimed. In its communication in preparation for the oral proceedings, the Board gave a preliminary opinion that disagreed with this. The Board wrote the following (see point 3.2.3): *"In the Board's view, the bracket 210 cannot be the bridging portion because the curved flange is between it and the roller. Therefore, it does not have a clearance to the roller as claimed"*.

Neither in written proceedings nor at the oral proceedings has the appellant-opponent explained why the Board's opinion on this matter might be wrong. In the light of this, the Board confirms its preliminary opinion that the bracket 210 is not a bridging portion as claimed.

4.1.6 For these reasons the Board finds that D1's shoe neither has a central nose portion nor a bridging portion as claimed. Therefore, D1 does not take away novelty of claim 1.

4.2 Novelty with respect to D0 and D3

4.2.1 The appellant-opponent argued in its written submissions that the subject matter of claim 1 lacks novelty with respect to D0 and D3. At the oral proceedings before the Board, it merely referred to its written submissions on these issues.

4.2.2 Without prejudice to the question of admittance of these objections, which has been challenged by the respondent-proprietor, the Board is of the opinion that both objections fail.

4.2.3 In its communication in preparation for the oral proceedings, the Board gave the following preliminary opinion on these issues:

"3.3 Main request, claim 1, lack of novelty with respect to D0

[...]

3.3.2 D0 discloses a skinning installation with a frame 12, a toothed roller 16 and a shoe 20 (see for example column 1, lines 21 to 24, column 2, lines 12 to 18 with figures 1 and 7). The opposition division found that D0 did not take away novelty of claim 1 because its shoe did not have a central nose portion and bridging portion as claimed (see impugned decision page 19, second paragraph).

3.3.3 The appellant has argued why it thinks that the opposition division erred in finding D0 did not disclose a central nose portion (see grounds point 56 and 57). However, the appellant has not explained why the opposition division's other finding - that D0 did not disclose a bridging portion - might have been wrong. Therefore, the appellant-opponent's arguments are incomplete and thus not convincing.

3.3.4 For the sake of thoroughness, the Board adds that if the shoe part 20 were a central nose portion as the appellant has argued, and since it extends between both ends of the shoe (cf. figure 1), the Board does not see how there could be a bridge portion between it and the end of the shoe.

3.4 Main request, claim 1, lack of novelty with respect to D3

[...]

3.4.2 D3 discloses (see abstract and column 8, lines 7 to 16 with figures 1 and 2) a skinning installation 30 with a support frame, a skinning roller 40 and a shoe 36. Novelty hinges on whether the shoe has a central nose portion and at least one bridging portion as claimed. In the Board's view, it does not.

3.4.3 The appellant-opponent has argued, with reference to figure 3, that the central nose portion of the shoe comprises the elements 54, 56 and 58, this portion having side edges 132 and that the bridging portions are the elements 130.

As explained in the paragraph bridging columns 10 and 11 with figures 3, 13 and 14, the side 132 is not the side of a portion of the shoe but the end surface of the shoe. In other words, the shoe does not extend beyond the surface 132. Moreover, the element 130 is not part of the shoe but a mounting plate that allows the shoe to move between an opening clearance position and an operational clearance position relative to the gripping roller: As best seen in figures 13 and 14 - slots 134 and cooperating bolts 136 allow the shoe to move independently of the plate 130 and thus also of the frame and gripping roller. Therefore, element 130 is not a bridging portion of the shoe. By the same token, the elements 54, 56 and 58 extend only up to the two ends 132 of the shoe. Therefore, whether or not elements 56 and 58 should be considered to be parts of the shoe, none of the elements 54, 56 and 58 form a central nose portion (with a bridging portion between them and the ends of the shoe). For these reasons, the Board is not convinced by the appellant-opponent's argument that D3 takes away novelty of claim 1".

- 4.2.4 In the absence of any arguments from the appellant-opponent on these issues in response to the Board's communication, the Board confirms its preliminary opinion that neither D0 nor D3 takes away novelty of claim 1.
5. Main request, claim 1, inventive step starting from D1 or D3 combined with the skilled person's general knowledge
- 5.1 As explained above in connection with novelty, neither D1 nor D3 discloses a skinning installation with a shoe having central nose portion and a bridging portion downstream thereof (set back). It is common ground that the technical effect of this feature is the improvement of skinning quality (see published patent specification, paragraph [0008]). Therefore the objective technical problem starting from D1 or D3 can be formulated as how to improve skinning quality. In the Board's view, a skinning shoe having such a nose portion and bridging portion is not known from the skilled person's general knowledge, nor has this been argued. Therefore, starting from D1 or D3, the Board holds that it would not be obvious for the skilled person to arrive at this feature.
- 5.2 The appellant-opponent has argued that, because a bridging portion that is only marginally set back from a central nose portion falls under the terms of the claim, the technical effect (improving skinning quality) may be marginally small and indeed absent if the bridging portion is only set back by the depth of a scratch, for example. Therefore, the technical effect is not achieved over the whole range of the claim and the claimed feature is merely an arbitrary variation of

the skinning installations of D1 or D3 and thus devoid of inventive step.

- 5.3 The Board disagrees. However little the quality of skinning might be improved by having a bridging portion only marginally set back, it is still a technical effect and so such nose and bridge portions (which fall within the scope of the claim) would not be mere arbitrary variations on the arrangements of D1 or D3.

As has already been pointed out in the discussion of sufficiency of disclosure (see above, section 3.2.8), if the set back of the bridging portions was so reduced that, to all intents and purposes it was no longer there, the arrangement would have neither an identifiable nose portion nor bridging portion. It would therefore not fall under the terms of the claim. Consequently, the argument is moot.

- 5.4 From the above, the Board is of the opinion that the subject matter of claim 1 involves an inventive step.

6. From all of the above, the Board concludes that the arguments of the appellant-opponent have not convinced the Board that the opposition division's decision to reject the opposition was wrong. Therefore, the Board must dismiss the appeal and the respondent-proprietor's auxiliary requests need not be considered.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated