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Datasheet for the decision of 4 December 2025

Case Number: T 1096/23 - 3.4.03

Application Number: 16704388.4

Publication Number: 3250894

IPC: G01G19/387

Language of the proceedings: EN

Title of invention:
CONTROLLED BATCH DISTRIBUTION

Patent Proprietor:
Marel A/S

Opponents:
Nordischer Maschinenbau Rud. Baader GmbH + Co. KG
MULTIVAC Sepp Haggenmüller SE & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 52(1), 54(1), 54(2), 56, 84, 123(2)
RPBA 2020 Art. 13(2)

Keyword:
Novelty - main request and auxiliary request 1 (no) - auxiliary request 2 (yes)
Inventive step - auxiliary request 2 (yes)
Claims - clarity - auxiliary request 2 (yes)
Amendments - auxiliary request 2 - allowable (yes) - change of category
Sufficiency of disclosure - auxiliary request 2 (yes)

Decisions cited:
G 0003/14

Catchword:
When a complete granted dependent claim is incorporated into an independent claim of another category (here: method step -> method step carried out by an apparatus), then only the amendments related to the change of category can be examined for clarity under G3/14. (Grounds, 3.2.5)

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Case Number: T 1096/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 4 December 2025

Appellant: (Patent Proprietor)	Marel A/S P.O. Pedersens Vej 18 8200 Arhus N (DK)
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Party as of right: (Opponent 2)	MULTIVAC Sepp Haggenmüller SE & Co. KG Bahnhofstrasse 4 87787 Wolfertschwenden (DE)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 26 April 2023 concerning maintenance of the European Patent No. 3250894 in amended form.**

Composition of the Board:

Chairman	T. Häusser
Members:	A. Böhm-Pélissier
	E. Mille

Summary of Facts and Submissions

I. The appeals of the patent proprietor and opponent 1 are against the interlocutory decision of the opposition division maintaining the impugned patent in amended form based on auxiliary request 2.

II. The patent was opposed in its entirety under Articles 100 (a) to (c) EPC. The opposition division decided that the subject-matter of claim 1 as granted and of claim 1 of auxiliary request 1 was not new over document D2 and that the claimed subject-matter of auxiliary request 2 was clear, new over D2 and involved an inventive step.

III. Reference is made to the following **documents**:

D2 = US 2004/0176874 A1
D2A = US 5 998 740

Requests

IV. The **appellant patent proprietor** (here: patent proprietor) requests that the decision under appeal be set aside and the patent be maintained as granted (main request), or alternatively on the basis of any of auxiliary requests 1 to 11 refiled with the statement setting out the grounds of appeal. It further requests that the new objections under Article 123(2) EPC against auxiliary requests 1 and 2 as well as new document D2A not be admitted into the appeal proceedings.

V. The **appellant opponent** (here: opponent 1) requests that the decision under appeal be set aside and the patent

be revoked in its entirety or alternatively, if auxiliary requests 3 to 11 were to be discussed, that the case be remitted to the opposition division for further prosecution. Admission of new document D2A and the corresponding new line of argument is requested.

VI. The **respondent opponent** (here: opponent 2) requests that the proprietor's appeal be dismissed.

VII. **Claim 1** of the **main request** reads as follows (feature labelling "(M1.1)", "(M1.2)", ... inserted by the board and as used by the opposition division):

(M1.1) A method of generating batches of food items, comprising:
(M1.2) • transferring food items to a weight determination means
(M1.3) where the weight of the food items are obtained for single food items and/or food items in groups,
(M1.4) • generating a plurality of batches based on the obtained weight of the single food items and/or food items in groups,
(M1.5) wherein the step of generating batches is controlled such that the weight of batches is within a pre-defined weight range,
(M1.6) characterised in that the distribution of the batches within the weight range is pre-defined.

VIII. **Claim 1** of **auxiliary request 1** further provides at the end of the claim the following feature:

(M1.7) , wherein the pre-defined weight range is divided into two or more sub-weight ranges, and wherein the pre-defined sub-weight ranges are

defined by the percentage number of batches to be generated within the sub-weight ranges.

IX. **Claim 1** of **auxiliary request 2** adds to claim 1 of auxiliary request 1 at the end of the claim the following feature:

(M1.8) , and wherein each of the two or more sub-weight ranges have an associated prioritization variable indicating shortage of batches within the two or more sub-weight ranges and where the prioritization variable is utilized as an operation parameter in indicating the prioritization of the which of the two or more sub-weight ranges a batch is to be selected.

X. The independent apparatus **claim 11** of auxiliary request 2 reads as follows:

A batching apparatus for generating batches of food items, comprising
• means for transferring food items to a weight determination means where the weight of the food items are obtained for single food items and/or food items in groups,
• means for generating a plurality of batches based on the obtained weight of the single food items and/or food items in groups,
• a control unit for controlling means for generating the plurality of batches such that the weight of batches is within a pre-defined weight range,
[features (M1.6) to (M1.8) of the aforementioned requests].

XI. In view of the conclusions of the board (see below) **auxiliary requests 3 to 11** do not need to be listed.

XII. The invention

When food - such as chicken wings or fruits - is packaged into batches for the supermarket, a target weight is specified, e.g. 50 g or 70 g. The aim of the invention is to optimise the composition of the individual food portions ("batches") - so that as few batches as possible are above the target weight - and to optimise the composition of the individual food portions so that specific customer needs are met.

This is achieved by distributing the batches in a predefined way ("target weight distribution").

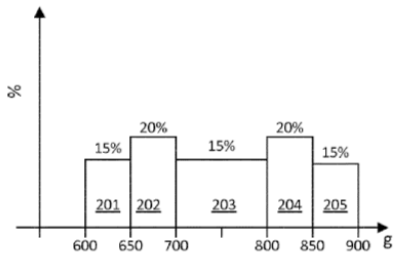

FIG. 2

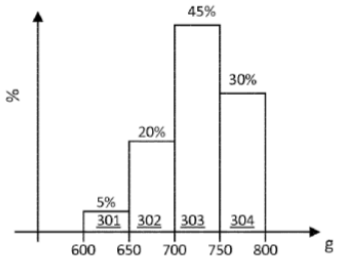

FIG. 3

impugned patent

This is further achieved (auxiliary request 1) by defining sub-weight ranges (e.g. [600 g, 650 g]) that are usually at or near the target weight (e.g. 750 g). A possible distribution or target probability of these ranges can be specified. This is further achieved (auxiliary request 2) by setting up a prioritisation variable indicating shortage of batches for sub-weight ranges.

XIII. The arguments of opponent 1, insofar as they are relevant to this decision, can be summarised as follows:

(a) The subject matter of claim 1 of the main request and auxiliary request 1 is not new over the disclosure of D2.
(b) The subject matter of claims 1 and 11 of auxiliary request 2 is not inventive with regard to the disclosure of D2 in combination with the common general knowledge of the skilled person.
(c) This also applies to D2A as the closest prior art. D2A was filed in response to new arguments of the board in its communication under Article 15(1) RPBA.
(d) The subject matter of claims 1 and 11 of auxiliary request 2 goes beyond the original disclosure and is unclear.

XIV. The arguments of the patent proprietor, insofar as they are relevant to this decision, can be summarised as follows:

(a) The claimed subject-matter of the main request and auxiliary requests 1 and 2 is new and inventive.
(b) The new line of arguments based on D2A was submitted too late and is not admissible under Article 13(1) and (2) RPBA.
(c) The objections raised late under Article 123(2) EPC are also inadmissible under Article 13(2) RPBA.
(d) All claims of auxiliary request 2 meet the requirements of Articles 123(2) and 84 EPC.

XV. The arguments of opponent 2, insofar as they are relevant to this decision, can be summarised as follows:

Claim 4 of auxiliary request 2 does not meet the requirements of Article 83 EPC.

Reasons for the Decision

1. Main request - novelty

1.1 Disclosure of D2

1.1.1 D2 discloses a food weighing, sorting, batching and packaging device (cf. paragraphs [0003], [0026], [0027]):

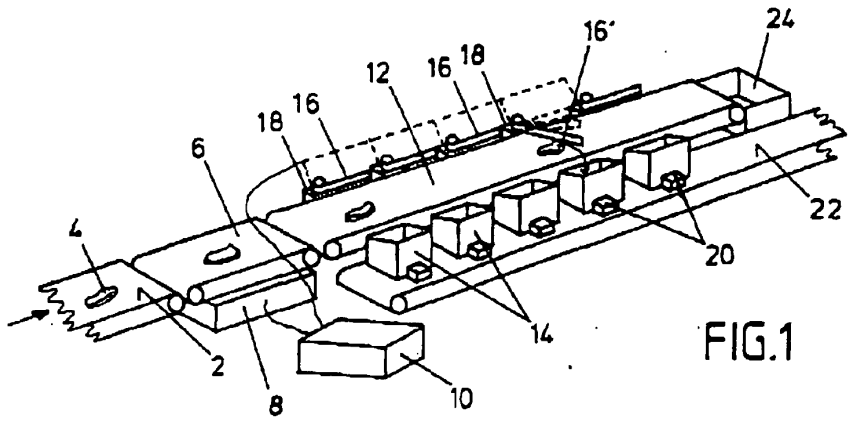

FIG.1

D2

1.1.2 Paragraphs [0051] to [0054], [0065] and [0067] of D2 in combination with Figure 7 disclose a desired "target weight distribution". The weight distribution after a high number (for example 1000, see [0054]) of batch portions must correspond to a percentage weight distribution that looks e.g. as follows:

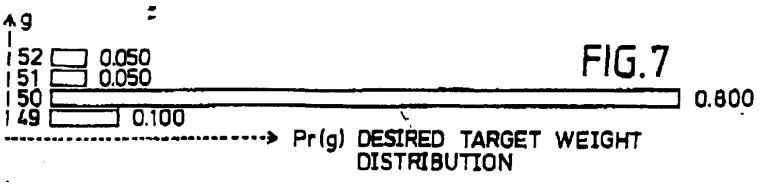

FIG.7

D2

For example, no more than 10% of the target portions may be underweight, i.e. have a weight of less than 50 g.

1.1.3 Features M1.1 to M1.5 were undisputed.

1.1.4 The patent proprietor argues that D2 did not disclose a target weight distribution but rather a narrow "tolerance weight distribution" that was used during batching for calculations and to fill incomplete batches (see paragraphs [0060], [0050] to [0054], [0065]). In the impugned patent, on the other hand, a target weight distribution represented the weight distribution of all finished batches. In D2, the weight distribution therefore had a completely different meaning than in the impugned patent.

1.1.5 Opponent 1 argues that although the weight distribution in D2 had a different purpose, the "tolerance weight distribution" represented a "predefined distribution of batches within the weight range", as defined in feature M1.6.

1.1.6 The board does not agree with the patent proprietor's reasoning. In light of the disclosure of paragraphs [0051] to [0054] and Figure 7 the "target distribution" shown in Figure 7 discloses that the goal of the distribution process is - similar to the impugned patent - to have 80% of the batch portions at 50 g, 10% at 49 g, 5% at each 51 g and 52 g. In particular, the board considers the values 49 g, 50 g, 51 g and 52 g in Figure 7 as "sub-weight ranges". In reality, these ranges could be, for example, [48.50 g, 49.49 g], [49.50 g, 50.49 g], etc., since the weight is rounded up to an integer value. Therefore, the weight range "50 g" is predefined from 49 g to 52 g with a pre-

defined "target weight distribution" as shown in Figure 7.

1.1.7 D2 further discloses to perform "mixed jobs", i.e. batching of pieces of different types with different target distributions with predetermined selection criterion for each batch, e.g. with different compositions and a different target weight ([0026], [0027], [0065]). Therefore, there are at least two "target weight distributions", as shown in Figure 7 and two pre-defined jobs, e.g. for the weight ranges "50 g" and "70 g". The weight range "70 g" can therefore correspond, for example, to the range [69 g, 72 g] with probabilities of 10%, 80% and 5% for respective sub-weight ranges 69 g, 70 g and 71 g/72 g.

1.2 Lack of novelty over D2

1.2.1 Therefore, D2 discloses (wording of claim 1 of the impugned patent, references with respect to D2):

(M1.1) A method of generating batches of food items ([0003]), comprising:
(M1.2) transferring food items to a weight determination means (cf. Figure 1 and corresponding description),
(M1.3) where the weight of the food items are obtained for single food items and/or food items in groups ([0003], [0026], [0065]),
(M1.4) generating a plurality of batches based on the obtained weight of the single food items and/or food items in groups ([0003], [0026], [0065], Figures 1 and 7),
(M1.5) wherein the step of generating batches is controlled such that the weight of batches is within a

pre-defined weight range (Figure 7: [49 g, 52 g]= weight range "50 g", [0003]),
(M1.6) characterised in that the distribution (cf. Figure 7) of the batches within the weight range ("50 g") is pre-defined (DESIRED TARGET WEIGHT DISTRIBUTION in Figure 7).

1.2.2 Consequently, the subject-matter of claim 1 as granted is not novel over D2 (Articles 52(1) and 54(1) and (2) EPC).

2. Auxiliary request 1

2.1 Lack of novelty over D2

2.1.1 The board agrees with the opponents and is of the opinion that D2 additionally discloses that the pre-defined weight range (49 g to 52 g) is divided into two or more sub-weight ranges (cf. Figure 7: sub-weight ranges 49 g, 50 g, 51 g, 52 g) and that the pre-defined sub-weight ranges are defined by the percentage number of batches to be generated within the sub-weight ranges (80%, 10% and two times 5%, see paragraph [0054]).

2.1.2 Since D2 also discloses the additional feature M1.7 over claim 1 of the main request, the subject-matter of claim 1 of auxiliary request 1 also lacks novelty (Articles 52(1) and 54(1) and (2) EPC) with respect to D2.

3. Auxiliary request 2

3.1 Amendments - Article 123(2) EPC

3.1.1 In claim 1 of auxiliary request 2 feature M1.7 is added to granted claim 1 (see points VIII. and IX. above). This feature has a basis in original claims 3 and 6,

which have the following wording (features contained in feature (M1.7) are underlined, highlighting and feature labelling added by the board):

(a) Original claim 3:
*The **method** according to any of the preceding claims, wherein the pre-defined weight range is divided into two or more **sub-weight ranges**.*

(b) Original claim 6:
*The **method** according to any of the claims 3 to 5,* (M6.1) *wherein **the pre-defined sub-weight ranges** are defined by a first sub-weight value and a second sub-weight value,* (M6.2) *where the second sub-weight value is larger than the first sub-weight value, and* (M6.3) *where the pre-defined sub-weight ranges are adjustable by means of adjusting at least one of the first sub-weight value and the second sub-weight value, and/or* (M6.4) ***the pre-defined sub-weight ranges** are defined by the percentage number of batches to be generated within **the sub-weight ranges**.*

3.1.2 Opponent 1 argues that features M6.1 to M6.4 of original claim 6 were all interrelated. Therefore, an omission of the first part of claim 6 (features M6.1 to M6.3) violated the requirements of Article 123(2) EPC (intermediate generalisation). Furthermore, these features had originally been disclosed only as method claims. There was no disclosure of an apparatus which was configured to carry out these method steps. Therefore, the subject-matter of independent apparatus claim 11 did not meet the requirements of Article 123(2) EPC.

3.1.3 The patent proprietor requests not to admit the new objections under Article 123(2) EPC, because they were late filed in the appeal proceedings. Furthermore, the skilled person reading original/granted claim 6 would derive that features M6.1 to M6.3 were directed at a first alternative of defining sub-weight ranges in terms of sub-weight values (range limits) and that feature M6.4 was directed at a second alternative of defining the sub-weight ranges in terms of the percentage number of batches to be generated within the sub-weight ranges. Therefore, these alternatives were not inextricably linked to each other. For the same reasons feature M6.4 could be considered independent from features M6.1 to M6.3 and isolated without committing an unallowable intermediate generalisation. Furthermore, it was implicit that a range had an upper and a lower range limit value.

3.1.4 The board agrees with the reasoning of the patent proprietor. The conjunction "and/or" in original claim 6 links the first part of the claim related to the sub-weight range limit values with the second part of original claim 6, which relates to defining the target value of the sub-weight ranges by a percentage value. Therefore, feature M6.4 can be isolated from features M6.1 to M6.3. Furthermore, original claim 13 defines a batching apparatus with means for generating a plurality of batches and a control unit for controlling means for generating the plurality of batches such that the weight of the batches is within a pre-defined weight range. It is implicit that this pre-defined weight range may be further defined by the additional features of original claims 3 and 6.

3.1.5 Consequently, claims 1 and 11 of auxiliary request 2 meet the requirements of Article 123(2) EPC. The

question whether this new objection is to be admitted into the proceedings can therefore be left open.

3.2 Article 84 EPC

3.2.1 The opposition division held that the inclusion in the independent apparatus claim of the features of granted dependent process claims 3 and 6 did not formally constitute the inclusion of dependent claims, but that it was clear from the application as a whole that all the process steps disclosed were carried out by the disclosed apparatus. For a person skilled in the art there was no doubt that the process steps of all dependent process claims were carried out by a batching system with a correspondingly programmed control unit (see point 18.3 of the Reasons of the contested decision).

3.2.2 Opponent 1 argues that "the pre-defined sub-weight ranges" had no antecedent and were therefore unclear. In addition, features M6.1 to M6.4 of original claim 6 had originally been disclosed only as dependent method claims. There was no disclosure of an apparatus which was configured to carry out these method steps. G3/14 did not apply when the category of the (dependent) claim was changed. Therefore, according to G3/14 clarity of these features had to be assessed. It was unclear how the method steps were implemented in the apparatus. Therefore, the subject-matter of independent apparatus claim 11 did not meet the requirements of Article 84 EPC.

3.2.3 The patent proprietor argues that the sub-weight ranges were introduced - and thereby properly defined - in original/granted claim 3 and that therefore the antecedent of feature M1.7, second part, in features

M1.6 and feature M1.7, first part, was clear. As decided by the opposition division, features M1.6 to M1.8 were implemented by software and therefore could be formulated as method steps carried out by computational means.

3.2.4 The board notes that the question whether the term "subway-ranges" had an antecedent did not arise due to an amendment but could already be asked in relation to the granted claims and must therefore not be answered according to G3/14. Moreover, the board agrees with the patent proprietor that according to G3/14 adding "complete dependent claims" to the corresponding independent claim of the patent must not be examined for compliance with the requirements of Article 84 EPC (cf. Reasons 80 to 84). But the board agrees with the reasoning of opponent 1 that this does not apply in the present case to the implementation of the method of the dependent method claim in the apparatus defined in claim 11.

3.2.5 However, when a complete granted dependent claim is incorporated into an independent claim of another category (here: method step -> method step carried out by an apparatus), then only the amendments related to the change of category can be examined for clarity under G3/14. In the case of a sub-step of a method, which is (implicitly) executed in a computer program, it makes no difference for the purposes of clarity whether this method step is part of a (computer-implemented) method or is implemented in computational means in an apparatus claim, so that no ambiguity can arise. It is obvious to the skilled person that the method defined in claim 1 has a corresponding software implementation in the controller of the batching machine. Claim 11 for the apparatus is formulated

accordingly. Therefore, no unambiguity arises by adding said method step to apparatus claim 11.

3.2.6 Consequently, adding the features of the original dependent method claim 6 to the wording of apparatus claim 11 does not result in any ambiguity for the skilled person. Therefore, claim 11 of auxiliary request 2 meets the requirements of Article 84 EPC.

3.3 Inventive step - closest state of the art, disclosure of D2

3.3.1 It was undisputed that D2 is considered the closest state of the art.

3.3.2 The opponents argue that the different "target weight distributions" with graduated priorities mentioned in paragraph [0065] of D2 corresponded to the "sub-weight ranges".

3.3.3 However, the board agrees with the reasoning of the patent proprietor that the prioritization ("priorities") mentioned in [0065] corresponds to the "weight ranges" and not to the "sub-weight ranges".

> **[0065]** The method is perfectly usable for carrying out two or more jobs at the same time, with different target weight distributions and even with graduated priorities. The computer, of course, should have the required increased capacity.

3.3.4 The board considers the values 49 g, 50 g, 51 g and 52 g in Figure 7 to correspond to the "sub-weight ranges" (see above). The board agrees with the proprietor that another "target weight distribution" would have a distribution with "sub-weight ranges" of e.g. 69 g, 70 g, 71 g, 72 g etc. The "graduated priorities" mentioned in paragraph [0065] therefore

concerns the "priorities" for weight ranges "50 g" and "70 g". With "target weight distributions" in paragraph [0065] the "target distribution" shown in Fig. 7 is meant. If "target weight distributions" referred to the weight distribution of the different "jobs" (e.g. "50 g" and "70 g"), the singular form ("target weight distribution") would have been used in [0065]. In fact, D2 is silent about a "target weight distribution" relating to the different jobs.

3.3.5 In view of the above, D2 fails to explicitly disclose "*each of the two or more sub-weight ranges have an associated prioritization variable*".

3.4 Inventive step - difference

Consequently, the differing features are

(a) each of the two or more sub-weight ranges have an associated prioritization variable (feature M1.8, first part);
(b) the prioritization variables indicate shortage of batches within the two or more sub-weight ranges (feature M1.8, middle part);
(c) the prioritization variables are utilized as an operation parameter in indicating the prioritization of the which of the two or more sub-weight ranges a batch is to be selected (feature M1.8, last part).

3.5 Inventive step - technicality, technical effect and objective technical problem

3.5.1 The opponents challenge the technicality of distinguishing features (a) to (c). Opponent 1 argues that the problem had to be considered broadly, namely

that specific customer needs had also to be taken into account. The problem to be solved was to find an alternative way to achieve the desired weight distribution.

3.5.2 The patent proprietor argues that the objective technical problem was to achieve the desired weight distribution more effectively and accurately.

3.5.3 The board is of the opinion that features (a) to (c) have a technical effect. They constitute a specific algorithm that contribute to the efficiency of the distribution of the food portions. According to established case law, algorithms that influence the technical effect are technical. The board agrees with the patent proprietor that the technical effect of features (a) to (c) is to achieve the desired weight distribution more effectively and accurately. This includes meeting specific customer needs.

The objective technical problem to be solved is to achieve this effect.

3.6 Inventive step - non-obviousness

3.6.1 The opponents consider that the claimed prioritization was within the knowledge of a skilled person. It was obvious to the skilled person to choose the complementary indication, i.e. shortage instead of completion, as a basis for prioritization. It was obvious that the prioritization taught in section [0065] for the weight ranges should also be introduced for the sub-weight ranges.

In particular, opponent 1 argued that D2 disclosed a predefined distribution for the different jobs. It was

obvious to control shortage of one job with respect to the other job(s) by means of the controller software of the batching apparatus. It was common general knowledge to monitor the batching by means of a variable indicating the shortage of one job with respect to another job. Therefore, the skilled person would implement controlling and monitoring the batching of the different jobs in the same way as it was proposed by the impugned patent.

In a first line of argument, opponent 1 argues that the pre-defined distribution was disclosed by the tolerance distribution in Figure 7. In this case, the skilled person would, if necessary, define a parameter that determined to which sub-weight range missing parts were assigned. In the second line of argument, opponent 1 argues that each of the at least two jobs represented a sub-weight range. Paragraph [0063] was cited.

3.6.2 The patent proprietor argues that the prioritization mentioned in paragraph [0065] might concern prioritization in terms of time or prioritization of a job depending on which food components were currently available. However, D2 did not disclose prioritization depending on a shortage.

3.6.3 The board is of the opinion that D2 teaches prioritization of one of the at least two different jobs. However, it is left open how this is done. There is no mention of a prioritization variable. In particular, D2 does not teach prioritization variables indicating a shortage of batches for each sub-weight range. For the first line of argument, prioritization of the sub-weight ranges is already regulated by the fact that a percentage "tolerance distribution" is specified for the sub-weight ranges. For this purpose

histograms of the weight distribution of parts to be added to the batches and probability distributions of the weight of two or three of these parts are used (see Figures 4 to 6 and paragraphs [0045] to [0051]). This leads away from introducing an additional dynamical variable for this purpose.

3.6.4 For the second line of argument, the board is of the opinion that D2 does not explicitly disclose a pre-defined distribution of how these two jobs are to be divided. The board agrees with the patent proprietor that the "graduated priorities" mentioned in [0065] can be any kind of priority other than shortage, such as a temporal priority or priority linked to the kind of food pieces available or batched previously. Furthermore, it is not evident for the skilled person how this could be applied to the "target distribution" of Figure 7.

3.6.5 At most the skilled person would specify a single static variable to determine which of the two jobs should be prioritised. However, the skilled person would have no reason to specify a dynamic variable for each individual job. D2 also provides no indication that this variable would indicate a shortage.

3.6.6 D2 discloses in paragraph [0054] to take the batch history (e.g. the last 1000 batches) into account for deciding whether an underweight batch is to be further filled or not. This statistical analysis teaches away from using a specific dynamical variable. There is no pointer to monitor any of the other sub-weight ranges and there is no pointer to associate a prioritization variable with each of the sub-weight ranges.

3.6.7 Paragraph [0063] teaches to set an "additional probability" if a bin has stopped. A bin however does not relate to a sub-weight range but to a specific container to collect the food items.

3.6.8 The other passages cited by the opponents or other documents do not provide further information than that prioritization in a general meaning may be carried out.

3.6.9 Therefore, there is nothing in D2 which would encourage a skilled person to associate a prioritization variable to each sub-weight range, the variable indicating shortage of a batch and indicating the prioritization of the which of the two or more sub-weight ranges a batch is to be selected.

3.6.10 Consequently, the subject-matter of claim 1 is not obvious with respect to the teaching of D2 and the skilled person's common general knowledge. The same reasoning applies *mutatis mutandis* to independent apparatus claim 11. Therefore, subject-matter of claims 1 and 11 involves an inventive step (Articles 52(1) and 56 EPC).

3.7 Admission of document D2A and the corresponding inventive step attack

3.7.1 Opponent 1 argues that the board introduced in its communication under Article 15(1) RPBA the new argument that the disclosure of paragraph [0054] of D2 taught away from feature M1.8. Therefore, this new argument represented exceptional circumstances under Article 13(2) RPBA.

3.7.2 The patent proprietor argued that the impugned decision already mentioned paragraph [0054] of D2 in its

reasoning in favour of inventive step with regard to the teaching of D2. The arguments of the board were a mere development of a previous argument, just using different wording. Therefore, introducing a new document and a new line of arguments was not justified under Article 13(2) RPBA. Furthermore, D2A had the same disclosure as document D2 except that some passages of D2 were missing.

3.7.3 The board agrees with the reasoning of the patent proprietor that the argument that the teaching of paragraph [0054] leads the skilled person away from introducing variables indicating shortages of the corresponding sub-weight ranges in the communication under Article 15(1) RPBA is a mere development of the same argument with different wording. Therefore, the document D2A and the corresponding new line of arguments is not admitted under Articles 13(1) and (2) RPBA.

3.8 Sufficiency of the disclosure

3.8.1 Opponent 2 argues that random selection of the sub-weight range in dependent granted claim 5 (dependent claim 4 of auxiliary request 2) was not compatible with a pre-defined weight range (distribution) in claim 1 and therefore could not be carried out by the skilled person.

3.8.2 However, the board is of the opinion that the patent (paragraphs [0014] and [0045] of the specification) provides enough details for the skilled person to carry out this feature. It specifies in these passages that *"the random selection simply means that it is sufficient that the selected batch weight lies somewhere within this interval of 600-700g"*, i.e. the

batch weight can be any arbitrary value between 600 g and 700 g. Therefore, the board is of the opinion that the patent as maintained meets the requirements of Article 83 EPC.

4. Conclusions

4.1 The claimed subject-matter of the main request (patent as granted) and of auxiliary request 1 is not new over D2. The subject-matter of claims 1 and 11 of auxiliary request 2 (patent as maintained by the opposition division) is new and inventive with respect to D2 and the common general knowledge. D2A and the associated new line of attack is late filed and is not admitted into the proceedings. The claims of auxiliary request 2 also meet the requirements of Articles 83, 84 and 123(2) EPC.

4.2 Consequently, the decision of the opposition division is to be confirmed and the patent is to be maintained in amended form as decided in the impugned decision. Consequently, the appeals of the patent proprietor and opponent 1 must fail.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar: The Chairman:

S. Sánchez Chiquero T. Häusser

Decision electronically authenticated