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**Datasheet for the decision
of 28 March 2025**

Case Number: T 1742/23 - 3.2.07

Application Number: 15789657.2

Publication Number: 3140091

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Language of the proceedings: EN

Title of invention:
FOOD PRODUCT SLICING APPARATUS

Patent Proprietor:
Formax, Inc.

Opponent:
MULTIVAC Sepp Haggemüller SE & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2), 113(1)
RPBA 2020 Art. 12(8)

Keyword:
Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1742/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 28 March 2025

Appellant: Formax, Inc.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 July 2023 concerning maintenance of the
European Patent No. 3140091 in amended form.**

Composition of the Board:

Chairman G. Patton
Members: V. Bevilacqua
E. Mille

Summary of Facts and Submissions

I. Appeals were filed by the patent proprietor and by the opponent against the decision of the opposition division to maintain European patent No. 3 140 091 in amended form according to auxiliary request 3.

Since both parties to the proceedings are both appellant and respondent, for the sake of simplicity they will continue to be addressed as patent proprietor and opponent.

II. The opponent initially requested

that the decision under appeal be set aside and that the patent be revoked.

The patent proprietor initially requested

- that the decision under appeal be set aside and that the patent be maintained as granted (main request) or alternatively, according to auxiliary request 1 or auxiliary request 2,

alternatively

- that the appeal of the opponent be dismissed and the patent be maintained in amended form on the basis of auxiliary request 3,

as a further alternative

- that, when setting aside the appealed decision, the patent be maintained in amended form on the basis of one of auxiliary requests 4 to 11, 11A, 12

to 24 and 24A,

whereby auxiliary requests 1 to 24 were already submitted during opposition proceedings and auxiliary requests 11A and 24A were first filed with the letter dated 1 August 2024 and received on 2 August 2024.

The patent proprietor also requested, in case that its main request not be allowed, that oral proceedings be held before the board.

III. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, according to which the appeal of the patent proprietor was likely to be dismissed and the patent in suit was likely to be revoked.

IV. The patent proprietor did not react to the above mentioned preliminary opinion of the board in substance, and withdrew, with submissions dated 14 February 2025, its request for oral proceedings.

V. Claim 1 of the **main request** reads as follows (the feature numbering used in the appealed decision has been added by the board):

1a "A food product slicing apparatus comprising:
1b a frame (34);
1c an upper drive assembly (38) mounted on said frame (34)
and including an upper belt (118); and
1d a lower drive assembly (36) mounted on said frame (34)
and including a lower belt (66);
1e wherein the upper belt (118) is configured to engage a
top surface of a food product block to be sliced
1f and the lower belt (66) is configured to engage a

bottom surface of the food product block;
1g a pressure adjustment assembly (84) configured to
adjust the position of the front end of the upper drive
assembly (38), said pressure adjustment assembly (84)
including:
1h wheels (120) around which said upper belt (118) is
mounted characterized by
1i plates (138) pivotally mounted on said frame (34),
1k said wheels (120) mounted between said plates (138),
and
1l a drive member (144) engaged with said plates (138),
1m and wherein when said drive member (144) is engaged,
said plates (138) and wheels (120) pivot about a pivot
shaft (134)."

Claim 1 of **auxiliary request 1** reads as follows
(feature 1m is in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); a tray (46) configured to have a food product block (22) placed thereupon, said tray (46) being configured to pivot upwardly to engage said upper drive assembly; a slicing station (42) configured such that the food product block (22) is movable therein, said slicing station useable to slice the food product block (22) into slices; and a gate (158) configured to retract from a front end of the food product block (22) before the food product block (22) engages with said lower drive assembly (36); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; wherein the upper

drive assembly (38) is engageable with said food product block (22) to move said food product block (22) in a streamwise direction; wherein the food product slicing apparatus further comprises a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), **and wherein when said drive member (144) is engaged, said plates (138) and wheels (120) pivot about a pivot shaft (134).**"

Claim 1 of **auxiliary request 2** reads as follows
(feature 1m is in bold, emphasis added by the board):

A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); a tray (46) configured to have a food product block (22) placed thereupon, said tray (46) being configured to pivot upwardly to engage said upper drive assembly; a slicing station (42) configured such that the food product block (22) is movable therein, said slicing station useable to slice the food product block (22) into slices; and a gate (158) configured to retract from a front end of the food product block (22) before the food product block (22) engages with said lower drive assembly (36); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; wherein the upper

drive assembly (38) is engageable with said food product block (22) to move said food product block (22) in a streamwise direction; wherein the food product slicing apparatus further comprises a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), **and wherein when said drive member (144) is engaged, said plates (138) and wheels (120) pivot about a pivot shaft (134).**"

Claim 1 of **auxiliary request 3** reads as follows
(feature 1m is in bold, emphasis added by the board):

"A method of slicing a food product block (22) using a food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), **and wherein when said drive member (144) is engaged, said plates (138) and**

wheels (120) pivot about a pivot shaft (134)

wherein the method comprises: placing the food product block (22) onto a tray (46); pivoting said tray (46) upwardly to engage said upper drive assembly (38); engaging said upper drive assembly (38) to move said food product block (22) in a streamwise direction; retracting a gate (158) from a front end of the food product (22) block before engaging said food product block (22) with said lower drive assembly (36); moving said food product block (22) into a slicing station (42) and using said slicing station (42) to slice the food product block (22) into slices."

Claim 1 of **auxiliary request 4** reads as follows
(feature 1m is in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), **and wherein when said drive member (144) is engaged, said plates (138) and wheels (120) pivot about a pivot shaft (134)**; and a product gate (158) configurable between a first position in which an upper end of the product gate

(158) is above the lower drive assembly (36), and a second position in which the upper end of the product gate is aligned with the lower drive assembly (36)."

Claim 1 of **auxiliary request 5** reads as follows (feature 1m is in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), **and wherein when said drive member (144) is engaged, said plates (138) and wheels (120) pivot about a pivot shaft (134)**; and wherein the food product slicing apparatus further comprises a tray (46) attached to the frame (34), the tray (46) being configured to support the food product block (22), wherein the tray (46) comprises a base (154), and a product gate (158) attached to the base (154), the product gate (158) having an upper end, wherein the product gate (158) is configurable between a first position in which the upper end of the product gate (158) is above the base (154), and a second position in which the upper end of the product gate is aligned with the base (154)."

Claim 1 of **auxiliary request 6** reads as follows
(feature 1m is in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), **and wherein when said drive member (144) is engaged, said plates (138) and wheels (120) pivot about a pivot shaft (134)**; a product gate (158) formed of an upright housing (166) having a plurality of rods (168) mounted therein, each rod (168) having a rotatable roller (170) mounted at its upper end; wherein the rods (168) are extendable upwardly from the housing (166) and retractable back into the housing (166)."

Claim 1 of **auxiliary request 7** reads as follows
(amendments done with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118), **wherein**

the upper belt (118) wraps around a plurality of wheels (120) with at least one of the wheels (120) being a drive wheel; and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; a pressure adjustment assembly (84) configured to adjust the position of the front end of the upper drive assembly (38), ~~said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, characterised by the upper drive assembly (38) comprises a shaft (122) supporting wheels (120) extending between first plates (124), and a pivot shaft (134) extending between the front ends of the first plates (124) and being used to mount the pressure adjustment assembly (84) thereon; the pressure adjustment assembly (84) includes second plates (138) pivotally mounted on said frame (34) the pivot shaft (134) at a rearward end of each second plate (138), said wheels (120) mounted between said second plates (138), and a drive member (144) engaged with said second plates (138), and wherein when said drive member (144) is engaged, said second plates (138) and wheels (120) pivot about a the pivot shaft (134).~~"

Claim 1 of **auxiliary request 8** corresponds to claim 1 of the main request, with the following features added at the end of the characterizing portion thereof:

"and the upper belt (118) is configured to engage a top surface of a food product block (22) to be sliced along an entire length of the food product block (22)."

Claim 1 of **auxiliary request 9** corresponds to claim 1 of the main request, with the following features added at the end of the characterizing portion thereof:

"and the upper belt (118) has a gripper (132) coupled thereto for gripping an unsliced end of the food product block (22)."

Claim 1 of **auxiliary request 10** corresponds to claim 1 of the main request, with the following features added at the end of the characterizing portion thereof:

"wherein the upper and lower drive assemblies (38, 36) are separated from each other by a distance, and the distance that a front end of said upper drive assembly (118) is relative to said lower drive assembly (36) can be varied, while maintaining the distance that a rear end of the upper drive assembly (118) is relative to the lower drive assembly (36)".

Claim 1 of **auxiliary request 11** corresponds to claim 1 of the main request, with the following features added at the end of the characterizing portion thereof:

"wherein the food product slicing apparatus includes a tray (46) configured to support food product blocks (22), a cavity (157) for receiving unsliced ends of food product blocks (22), and a removal member (44) movable within the cavity (157) to remove the unsliced ends of the food product blocks (22) from the cavity (157); wherein the cavity is defined by an inner surface of a butt receiving wall (156) positioned upstream of the tray (46) between the tray (46) and the lower drive assembly (36); wherein the removal member (44) translates in a direction generally perpendicular to feed path (146) of the food product block (22)."

Claim 1 of **auxiliary request 11a** corresponds to claim 1 of the main request, with the following features added at the end of the characterizing portion thereof:

"wherein the food product slicing apparatus includes a tray (46) configured to support food product blocks (22), a cavity (157) for receiving unsliced ends of food product blocks (22), and a removal member (44) movable within the cavity (157) to remove the unsliced ends of the food product blocks (22) from the cavity (157); wherein the cavity is defined by an inner surface of a butt receiving wall (156) positioned downstream of the tray (46) between the tray (46) and the lower drive assembly (36); wherein the removal member (44) translates in a direction generally perpendicular to feed path (146) of the food product block (22)."

Claim 1 of **auxiliary request 12** reads as follows (amendments done with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block;
wherein a pressure adjustment assembly (84) **configured is used** to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment

assembly (84) including: wheels (120) around which said upper belt (118) is mounted, characterised by plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), and a drive member (144) engaged with said plates (138), and wherein when said drive member (144) is engaged, said plates (138) and wheels (120) pivot about a pivot shaft (134)."

Claim 1 of **auxiliary request 13** is based upon claim 1 of the main request, whereby the characterizing portion has been amended as follows (amendments in bold, emphasis added by the board):

"characterised by plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138)**, and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated, said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) **to** pivot about a pivot shaft (134)."

Claim 1 of **auxiliary request 14** reads as follows (amendments done with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66);

a tray (46) configured to have a food product block (22) placed thereupon, said tray (46) being configured to pivot upwardly to engage said upper drive assembly; a slicing station (42) configured such that the food product block (22) is movable therein, said slicing station useable to slice the food product block (22) into slices; and a gate (158) configured to retract from a front end of the food product block (22) before the food product block (22) engages with said lower drive assembly (36);

wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block;

wherein the upper drive assembly (38) is engageable with said food product block (22) to move said food product block (22) in a streamwise direction; wherein the food product slicing apparatus further comprises a pressure adjustment assembly (84) ~~configured that is used~~ to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted,

~~characterised by~~

plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138), and**

a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84), when said drive member (144) is engaged activated, said drive member (144) bears against said first shaft (142) so as to cause said plates (138) and wheels (120) to pivot about a pivot shaft (134).**"

Claim 1 of **auxiliary request 15** corresponds to claim 1 of auxiliary request 14.

Claim 1 of **auxiliary request 16** reads as follows (amendments done with respect to claim 1 of the main request are in bold, emphasis added by the board):

"1. A **method of slicing a food product block (22) using a** food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118); and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; **wherein** a pressure adjustment assembly (84) **configured is used** to adjust the position of the front end of the upper drive assembly (38), said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, **characterised by** plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138)**, and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated, said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) to pivot about a pivot shaft (134), **wherein the method comprises: placing the food product block (22) onto a tray (46); pivoting said tray (46) upwardly to engage said upper drive assembly (38); engaging said upper drive assembly (38) to move said food product block (22) in a streamwise direction; retracting a gate (158)**

from a front end of the food product (22) block before engaging said food product block (22) with said lower drive assembly (36); moving said food product block (22) into a slicing station (42) and using said slicing station (42) to slice the food product block (22) into slices."

Claim 1 of **auxiliary request 17** is based upon claim 1 of auxiliary request 12, whereby the characterizing portion of claim 1 of auxiliary request 12 has been amended as follows:

" ~~characterised by~~ plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138)**, and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated, said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) to pivot about a pivot shaft (134); **and a product gate (158) configurable between a first position in which an upper end of the product gate (158) is above the lower drive assembly (36), and a second position in which the upper end of the product gate is aligned with the lower drive assembly (36).**"

Claim 1 of **auxiliary request 18** is based upon claim 1 of auxiliary request 12, whereby the characterizing portion of claim 1 of auxiliary request 12 has been amended as follows:

" ~~characterised by~~ plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between**

said plates (138), and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated**, **said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) to pivot about a pivot shaft (134);

and wherein the food product slicing apparatus further comprises a tray (46) attached to the frame (34), the tray (46) being configured to support the food product block (22), wherein the tray (46) comprises a base (154), and a product gate (158) attached to the base (154), the product gate (158) having an upper end, wherein the product gate (158) is configurable between a first position in which the upper end of the product gate (158) is above the base (154), and a second position in which the upper end of the product gate is aligned with the base (154)."

Claim 1 of **auxiliary request 19** is based upon claim 1 of auxiliary request 12, whereby the characterizing portion of claim 1 of auxiliary request 12 has been amended as follows:

~~"characterised by~~ plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138)**, and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated**, **said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) to pivot about a pivot shaft (134);

a product gate (158) formed of an upright housing (166) having a plurality of rods (168) mounted therein, each rod (168) having a rotatable roller (170) mounted at its upper end; wherein the rods (168) are extendable upwardly from the housing (166) and retractable back into the housing (166)."

Claim 1 of **auxiliary request 20** reads as follows (amendments done with respect to claim 1 of the main request are in bold, emphasis added by the board):

"A food product slicing apparatus comprising: a frame (34); an upper drive assembly (38) mounted on said frame (34) and including an upper belt (118), **wherein the upper belt (118) wraps around a plurality of wheels (120) with at least one of the wheels (120) being a drive wheel**; and a lower drive assembly (36) mounted on said frame (34) and including a lower belt (66); wherein the upper belt (118) is configured to engage a top surface of a food product block to be sliced and the lower belt (66) is configured to engage a bottom surface of the food product block; **wherein a pressure adjustment assembly (84) configured is used** to adjust the position of the front end of the upper drive assembly (38), ~~said pressure adjustment assembly (84) including: wheels (120) around which said upper belt (118) is mounted, characterised by the upper drive assembly (38) comprises a first shaft (122) supporting wheels (120) extending between first plates (124), and a pivot shaft (134) extending between the front ends of the first plates (124) and being used to mount the pressure adjustment assembly (84) thereon; the pressure adjustment assembly (84) includes second plates (138) pivotally mounted on ~~said frame (34)~~ the pivot shaft (134) at a rearward end of each second plate (138), **said** wheels (120) mounted between said **second** plates~~

(138), **a second shaft (142) extending between said second plates (138)**, and a drive member (144) engaged with said **second plates (138)**, and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated**, **said drive member (144) bears against said second shaft (142) so as to cause** said **second plates (138)** and wheels (120) **to pivot about a the pivot shaft (134)**."

Claim 1 of **auxiliary request 21** is based upon claim 1 of auxiliary request 12, whereby the characterizing portion thereof has been amended as follows:

"characterised by plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138)**, and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated**, **said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) **to pivot about a pivot shaft (134); and the upper belt (118) is configured to engage a top surface of a food product block (22) to be sliced along an entire length of the food product block (22)**."

Claim 1 of **auxiliary request 22** is also based upon claim 1 of auxiliary request 12, whereby the characterizing portion thereof has been amended as follows:

"characterised by plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138),

a first shaft (142) extending between said plates (138), and a drive member (144) engaged with said plates (138), and wherein during activation of the pressure adjustment assembly (84), when said drive member (144) is engaged activated, said drive member (144) bears against said first shaft (142) so as to cause said plates (138) and wheels (120) to pivot about a pivot shaft (134); and the upper belt (118) has a gripper (132) coupled thereto for gripping an unsliced end of the food product block (22))."

Claim 1 of **auxiliary request 23** is also based upon claim 1 of auxiliary request 12, whereby the characterizing portion thereof has been amended as follows:

"characterised by
plates (138) pivotally mounted on said frame (34),
said wheels (120) mounted between said plates (138),
a first shaft (142) extending between said plates (138), and a drive member (144) engaged with said plates (138), and wherein during activation of the pressure adjustment assembly (84), when said drive member (144) is engaged activated, said drive member (144) bears against said first shaft (142) so as to cause said plates (138) and wheels (120) pivot about a pivot shaft (134);
wherein the upper and lower drive assemblies (38, 36) are separated from each other by a distance, and the distance that a front end of said upper drive assembly (118) is relative to said lower drive assembly (36) can be varied, while maintaining the distance that a rear end of the upper drive assembly (118) is relative to the lower drive assembly (36)."

Claim 1 of **auxiliary request 24** is also based upon claim 1 of auxiliary request 12, whereby the characterizing portion thereof has been amended as follows:

"characterised by plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), **a first shaft (142) extending between said plates (138)**, and a drive member (144) engaged with said plates (138), and wherein **during activation of the pressure adjustment assembly (84)**, when said drive member (144) is **engaged activated, said drive member (144) bears against said first shaft (142) so as to cause** said plates (138) and wheels (120) pivot about a pivot shaft (134); **wherein the food product slicing apparatus includes a tray (46) configured to support food product blocks (22), a cavity (157) for receiving unsliced ends of food product blocks (22), and a removal member (44) movable within the cavity (157) to remove the unsliced ends of the food product blocks (22) from the cavity (157); wherein the cavity is defined by an inner surface of a butt receiving wall (156) positioned upstream of the tray (46) between the tray (46) and the lower drive assembly (36); wherein the removal member (44) translates in a direction generally perpendicular to feed path (146) of the food product block (22).**"

Claim 1 of **auxiliary request 24A** is based upon claim 1 of auxiliary request 24, whereby the characterizing portion thereof has been amended as follows:

"characterised by plates (138) pivotally mounted on said frame (34), said wheels (120) mounted between said plates (138), a first shaft (142) extending between

said plates (138), and a drive member (144) engaged with said plates (138), and wherein during activation of the pressure adjustment assembly (84), when said drive member (144) is activated, said drive member (144) bears against said first shaft (142) so as to cause said plates (138) and wheels (120) pivot about a pivot shaft (134); wherein the food product slicing apparatus includes a tray (46) configured to support food product blocks (22), a cavity (157) for receiving unsliced ends of food product blocks (22), and a removal member (44) movable within the cavity (157) to remove the unsliced ends of the food product blocks (22) from the cavity (157); wherein the cavity is defined by an inner surface of a butt receiving wall (156) positioned ~~up~~downstream of the tray (46) between the tray (46) and the lower drive assembly (36); wherein the removal member (44) translates in a direction generally perpendicular to feed path (146) of the food product block (22)."

VI. The lines of argument of the parties are dealt with in detail in the reasons for the decision.

Reasons for the Decision

1. Decision in writing, Article 12(8) RPBA
 - 1.1 The present case is ready for decision, which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA and with Articles 113 and 116 EPC.
 - 1.2 In reaction to the board's communication pursuant to Article 15(1) RPBA, the patent proprietor wrote (letter of 14 February 2025):

"The Proprietor hereby withdraws its request for oral proceedings and confirms that it will not be in attendance at the scheduled hearing. The remaining requests of the Proprietor are unchanged."
 - 1.3 Clearly, with this statement, the patent proprietor also withdrew its request for oral proceedings in case a final decision on the appeal, revoking the patent in suit, is issued.
 - 1.4 The patent proprietor has been informed of the board's preliminary assessment of the case with a communication under Article 15(1) RPBA taking its written submissions fully into account.

Thus, the grounds and evidence upon which the present decision is based were known to the patent proprietor, and have neither been commented upon nor been contested by this party.

Accordingly, the principle of the right to be heard (Article 113(1) EPC) has been observed since that provision only affords the opportunity to be heard, and the party's submissions have been fully taken into account (see Case Law of the Boards of Appeal, 10th edition 2022, identified as "CLB" in the following, III.B.2.7.3).

- 1.5 In view of the fact that the case is ready for decision on the basis of the appellants' written submissions the board issues the present decision in written proceedings in accordance with Article 12(8) RPBA.

Appeal of the Patent proprietor

2. Main request, feature 1m, added subject-matter
 - 2.1 The opposition division found that feature 1m, which reads "when said drive member is engaged, said plates and wheels pivot about a pivot shaft" has basis in original claim 12. They considered that the use of a pivot shaft was "absolutely the most common form of mechanical pivot" and on this basis found that this feature was directly and unambiguously derivable from original claim 12. The opposition division also cited paragraphs [0086], [0061] and [0062] of the published patent application WO 2015/171858 A1.
 - 2.2 The opponent disagrees with the above findings.

Original claim 12 only discloses that "said plates and rollers pivot" without specifying a pivot shaft.

The pivot shaft is mentioned in paragraph [0086] of the application as filed, in a specific context in which there is a clear functional interdependence between the

claimed pivot shaft and other features which have not been claimed, such as downward pivoting and the bearing of the drive members against the shafts.

Paragraphs [0061] and [0062] also do not provide a basis for feature 1m, because they do not refer to pivoting about a pivot shaft at all.

- 2.3 The patent proprietor defends the opposition division's findings, arguing that the use of the word "pivot" as a verb in original claim 12 inherently implies the existence of a physical "pivot" (noun).

Citing a dictionary definition of "pivot" (noun) as "a shaft or pin on which something turns", the proprietor argues that in the context of mechanical pivoting, a shaft or pin describe substantially the same physical structure.

A skilled reader would therefore immediately understand that the presence of a "pivot shaft" is inherently implied by the use of the word "pivot" in original claim 12.

As the basis for "pivot shaft" relies only on original claim 12, it is not necessary to refer to paragraphs [0061], [0062], and [0086] which anyway merely confirm what the skilled person would have understood from the term "pivot" in original claim 12.

In addition, the opponent's objection that the pivot shaft is only disclosed in the context of downward pivoting is not to be admitted into appeal proceedings under article 12(4) RPBA because it was first raised, without justification, in the statement setting out the

grounds of appeal.

The patent proprietor concludes that the skilled person would understand that the presence of a pivot shaft is inherently disclosed by the use of the term "pivot" in original claim 12, and therefore, no added subject matter exists.

- 2.4 The board notes that an objection of unallowable intermediate generalisation from paragraph [0086] of the original description regarding the pivot shaft was already raised in the opponent's letter of 25 November 2022 (see pages 4 and 5), and concurs with the patent proprietor that in this letter no inextricable link between downward pivoting and the pivot shaft was mentioned.

The board is however not convinced that this specific part of the opponent's appeal case can be clearly identified as an amendment of the party's case.

This is because the appealed decision (page 8, first paragraph) cites *in extenso* and in bold, when summarizing the arguments of the opponent on feature 1m, the passage of paragraph [0086] mentioning downward pivoting.

As a consequence of that the board is not convinced that this particular aspect of the objection of added subject-matter was not raised and discussed during oral proceedings.

Taking the above into account the board sees no reason for exercising the discretion provided for in Article 12(4) RPBA towards not admitting the opponent's

argument that the pivot shaft is only disclosed in the context of downward pivoting into appeal proceedings.

2.5 The board also follows the opponent's view on feature 1m, for the following reasons.

2.5.1 A skilled reader would not understand that the presence of a pivot shaft is inherently disclosed by the use of the verb "pivot" and of the expression "pivotally mounted" in original claim 12.

Original claim 12 defines "plates pivotally mounted on said frame" and states that "said plates and rollers pivot".

This claim does not specify any particular mechanism or structure that enables the pivoting action.

As the claim formulation covers any possible mechanism that allow rotation or turning, not necessarily limited to a shaft, the board sees no reason for considering that the rather restrictive claim interpretation proposed by the patent proprietor, comprising a pivot shaft, would be the one inevitably chosen by the skilled person in view of original claim 12.

According to the established case law (CLB, II.A.6.1), a broad term used in a claim is not to be construed narrowly, even if, as in the case at issue, the narrower interpretation would refer to a structure which is common, but not exclusive, in the technical field concerned.

2.5.2 As a consequence of the above, original claim 12 does not provide a valid basis for claiming that "said plates and wheels pivot about a pivot shaft".

Feature 1m, reading

"when said drive member is engaged, said plates and wheels pivot about a pivot shaft"

is also an unallowable intermediate generalization of what is disclosed in paragraph [0086] of the original description.

The passage where the pivot shaft is mentioned reads:

"During activation of the pressure adjustment assemblies 84 which are best shown in FIG. 8, the drive members 144 are activated which causes the drive members 144 to bear against the shafts 142. This causes the plates 138, 140 and associated wheels 120 to pivot around pivot shaft 134, which moves wheels downwardly toward the lower drive assembly 36."

From this passage it is clear that the pivoting action results in a downward movement towards the lower drive assembly.

This passage also discloses that the pivoting is caused by drive members which instead of being generically "engaged", as claimed, bear against the shafts, which causes the plates and associated wheels to pivot around pivot shaft in a very specific way, namely moving the wheels downwardly toward the lower drive assembly.

A skilled person would not derive from paragraph [0086] any arrangement having a pivot shaft positioned or functioning differently than as described therein.

The Board therefore concurs with the opponent that in this passage there is a functional interdependence between the pivot shaft, downward pivoting and the

bearing of the drive members against the shafts.

Paragraphs [0061] and [0062] also mention a pivot shaft, but do not describe how the pressure adjustment assembly is operated and therefore cannot provide a basis for claiming that "when said drive member is engaged, said plates and wheels pivot about a pivot shaft".

Paragraph [0061] reads:

"A pivot shaft 134 extends between the front ends of the plates (124 and the other plate is not shown) and is used to mount the pressure adjustment assemblies 84 thereon. In addition, a mounting bar 136 extends between the front ends of the plates (124 and the other plate is not shown) at a position which is above and rearwardly of the pivot shaft 134."

Paragraph [0062] mentions:

"The mounting plates 138 are pivotally mounted on the pivot shaft 134 at a rearward end of each mounting plate 138."

and

"Each adjusting plate 140 is attached to the pivot shaft 134 at its lower, rearward end and to the shaft 142 at its upper, rearward end."

Therefore, claiming the pivot shaft without the specific context and functional relationships described in the application as filed, and in particular in paragraph [0086], where the function of the pressure adjustment assembly is described, constitutes an unallowable intermediate generalization.

The above shows that the ground for opposition according to article 100(c) EPC holds against claim 1 of the main request.

For the above reasons the main request cannot be allowed.

3. Auxiliary requests 1 and 2 - added subject-matter

Claim 1 of each of auxiliary requests 1 and 2 also contains the above discussed feature "when said drive member is engaged, said plates and wheels pivot about a pivot shaft" (feature 1m).

As explained above, this feature is not derivable from originally filed claim 12, but is mentioned in paragraph [0086] (see point 2.5 above).

As this feature is also present in claim 1 of each of auxiliary requests 1 and 2, still without mentioning the features disclosed in paragraph [0086] of the application as filed which are inextricably linked therewith, both these auxiliary requests extend beyond the content of the application as originally filed, in contravention of Article 123(2) EPC.

Therefore neither auxiliary request 1, nor auxiliary request 2 can be allowed, and the appeal of the patent proprietor is to be dismissed.

Appeal of the opponent

- 4. Auxiliary requests 3 to 6, 8 to 11, 11A and 12, added subject-matter, feature 1m
- 4.1 The opposition division decided to maintain the patent in amended form according to auxiliary request 3.
- 4.2 The opponent raises the same objection of added subject-matter based upon feature 1m, discussed above in relation to the main request and auxiliary requests 1 and 2, also against auxiliary request 3 as well as against auxiliary requests 4 to 6, 8 to 11, 11A and 12.
- 4.3 The board notes that claim 1 of each of auxiliary requests 3 to 6, 8 to 11, 11A and 12 contains feature 1m, without modifications, and also omits mentioning downward pivoting and the bearing of the drive members against the shafts.

The board also notes that the patent proprietor failed to provide any specific argumentation in defence of these auxiliary requests.

For the above reasons, the board considers that the subject-matter of claim 1 of each of auxiliary requests 3 to 6, 8 to 11, 11A and 12 extends beyond the content of the originally filed application (Article 123(2) EPC), for the same reasons as those discussed in section 3 above.

- 5. Auxiliary request 7
- 5.1 The opponent also argues that amended feature 1m in auxiliary request 7 still contravenes the requirements of Article 123(2) EPC for the same reasons as those

discussed above in relation to the main request.

- 5.2 In reply thereto the patent proprietor specifically refers to the arguments submitted in defence of auxiliary request 3.
- 5.3 The board notes that claim 1 of auxiliary request 7 has been amended to mention the bearing of the drive members against the shafts, but still misses downward pivoting.

Paragraph [0086] discloses that the pivoting is caused by drive members which bear against the shafts, which causes the plates and associated wheels to pivot around pivot shaft in a very specific way, namely moving the wheels downwardly toward the lower drive assembly.

As a consequence of that, and in the absence of any further argument from the patent proprietor explaining how the amendments made to feature 1m in auxiliary request 7 overcome the opponent's objection, also claim 1 of auxiliary request 7 is regarded by the board as extending beyond the content of the application as originally filed, in contravention of the requirements of Article 123(2) EPC.

- 6. Auxiliary request 13
 - 6.1 Claim 1 of auxiliary request 13 contains an amended feature 1m (referred to as feature 1m** by the opponent) which reads as follows (modifications are in bold, emphasis added by the board):

"during activation of the pressure adjustment assembly, when said drive member is engaged activated, said drive member (144) bears against said first shaft so as to

cause said plates (138) and wheels (120) **to** pivot about a pivot shaft".

- 6.2 The patent proprietor did not submit any argument explaining how the amendments made to feature 1m in auxiliary request 13 overcome the opponent's objection,
- 6.3 The opponent argues that the objection under Article 123(2) EPC raised against claim 1 of the main request still applies against claim 1 of auxiliary request 13.
- 6.4 The board notes that the amendments made to claim 1 of auxiliary request 13 can only partially overcome the objection of the opponent, because, as it was already the case for auxiliary request 7, claim 1 of auxiliary request 13 still misses downward pivoting.

Therefore, as the direction of the pivoting movement is left open in claim 1 of auxiliary request 13, this claim also extends beyond the content of the originally filed documents.

As a consequence of the above also auxiliary request 13 cannot be allowed.

7. Auxiliary requests 14 to 24A

Claim 1 of each of auxiliary requests 14 to 24A also contains feature 1m**, as also acknowledged by the patent proprietor.

As already discussed above in relation to auxiliary request 13, while feature 1m** foresees that the pivoting is caused by drive members which bear against the shafts, the feature that the plates and associated

wheels pivot around to pivot shaft downwardly toward the lower drive assembly is still missing.

As this feature is, in paragraph [0086], inextricably linked to the "pivot shaft", these auxiliary requests also contravene the requirements of Article 123(2) EPC for the same reasons as those already discussed above for auxiliary request 13.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated