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**Datasheet for the decision  
of 13 January 2026**

**Case Number:** T 0508/24 - 3.2.07

**Application Number:** 11778126.0

**Publication Number:** 2566670

**IPC:** B26D7/06

**Language of the proceedings:** EN

**Title of invention:**  
HIGH SPEED SLICING MACHINE

**Patent Proprietor:**  
Formax, Inc.

**Opponents:**  
GEA Food Solutions Germany GmbH  
Weber Food Technology SE & Co. KG

**Headword:**

**Relevant legal provisions:**  
EPC Art. 56  
RPBA 2020 Art. 12(6) sentence 1

**Keyword:**

Inventive step - (yes)

Late-filed evidence - admitted in first-instance proceedings  
(no) - error in use of discretion at first instance (no) -  
admitted (no)

**Decisions cited:**

T 0838/17, T 0173/19, G 0001/24

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0508/24 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 13 January 2026**

**Appellant:** Weber Food Technology SE & Co. KG  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 7 February 2024  
rejecting the opposition filed against European  
patent No. 2566670 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairwoman**           A. Beckman  
**Members:**            V. Bevilacqua  
                          Y. Podbielski

## **Summary of Facts and Submissions**

I. An appeal was filed by the opponent 02 (appellant) against the decision of the opposition division to reject the two oppositions directed against European patent No. 2 566 670.

II. The appellant requested that the decision under appeal be set aside and that the patent be revoked. The appellant also requested that evidence be taken in relation to the allegation of public prior use "Tulip-Oldenburg" by hearing Mr C. Kuhmichel, Mr J. Gerlach, Mr I. Rother and Mr S. Zecher as witnesses.

The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted (main request), or alternatively if the decision was set aside, that the patent be maintained in amended form according to one of auxiliary requests A to Q (originally numbered as auxiliary requests 1 to 16) on file.

Opponent 01, who is a party as of right (Article 107 EPC), has filed neither submissions nor requests.

III. The following documents, mentioned in the decision under appeal, are referred to in the present decision:

D1: US 5,628,237 A  
D2: DE 39 12 446 A1  
D3: US 2009/0120256 A1  
D3': WO 2010/011237 A1  
D4: DE 195 18 583 A1  
D5: EP 0 547 389 A1

D6: DE 195 18 595 A1  
D7: DE 103 53 114 A1  
D7': WO 2005/037501 A2  
D8: JP 2000-288983 A with translation  
D9: DE 42 35 985 A1  
D10: EP 0 398 602 A1  
D14: DE 101 35 846 A1  
D30-D37: Evidence relating to alleged public prior use  
"Tulip-Oldenburg".

IV. In preparation for the oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA according to which the appeal was likely to be dismissed.

V. Oral proceedings before the board took place on 13 January 2026.  
Further details of the oral proceedings can be found in the minutes thereof.

VI. Claim 1 of the **main request** reads as follows:

"A food article slicing machine (100) comprising:  
a) a slicing station (124) comprising a knife blade (125) and a knife blade drive driving the blade (125) along a cutting path in a cutting plane;  
b) a food article loading apparatus (108);  
c) a food article feed apparatus (120) disposed over said food article loading apparatus (108),  
d) said food article feed apparatus (120) having a conveyor assembly (530) with independently driven endless conveyor belts (802, 804, 806),  
e) wherein each of the conveyor belts (802, 804, 806) is connected to a food article gripper (894) for moving a food article along a food article feed path, characterized in that

f) the conveyor assembly (530) is an upper conveyor assembly (530)."

VII. The arguments of the parties are dealt with in detail in the reasons for the decision.

### **Reasons for the Decision**

1. Admittance of document D14

1.1 The opposition division exercised its discretionary power under Article 114(2) EPC and decided not to admit document D14 into the proceedings.

The reasoning provided in the decision under appeal reads as follows:

*"The apparatus of D14 includes a single gripper driven by a coaxial linear drive. D14 therefore does not disclose features d-f) and does not come closer to the invention than documents D1, D3/D3', D4, D6, D7 and D9. It was therefore not admitted into the procedure, as late-filed and prima-facie not relevant (Article 114(2) EPC)."*

1.2 The appellant raised inventive step objections against the main request based on combinations involving D14, and therefore at least implicitly requested that this document be part of the appeal proceedings.

However, the appellant did not explain, neither in writing, nor during oral proceedings, why the opposition division's discretionary decision not to admit this document was incorrect.

According to established jurisprudence (see Case Law of the Boards of Appeal, 11th Edition 2025, CLB in the following, V.A.3.4.1b), a board of appeal should only overrule a discretionary decision of an opposition division if it is established that the opposition division decided in accordance with the wrong principles, without taking the right principles into account or in an arbitrary or unreasonable way.

The decision under appeal was clearly based on a substantive *prima facie* relevance assessment of the document's technical content, as is evident from point 1.1 above.

Therefore, since no arguments have been provided to show that the opposition division exceeded the bounds of its discretion, there is no reason to review their decision not to admit D14. Furthermore, the appellant did not bring forward any arguments that the circumstances of the appeal case would justify admittance of D14. The board cannot identify any of such circumstances either.

The board therefore decides not to admit D14 under the provision of Article 12(6), first sentence, RPBA which stipulates that the board shall not admit evidence which was not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit it suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

Consequently, the inventive step objections based on D14 are also not admitted into the proceedings.

2. Admittance of the public prior use "Tulip-Oldenburg"

2.1 The opposition division decided not to admit the facts and evidence related to the alleged public prior use "Tulip-Oldenburg" explaining that the objection of lack of novelty based on the alleged public prior use

*"could only be admitted in the proceedings if it were relevant beyond any doubt",*

and that the alleged public prior use

*"clearly does not anticipate the feature e) of claim 1",*

and that for this reason

*"it is not more relevant for the assessment of inventive step than the documents D1 /D3/D3', D4, D6, D7 and D9".*

2.2 The appellant challenges this discretionary decision arguing that the established case law requires only *"prima facie relevance"*, not relevance *"beyond any doubt"*.

According to the appellant the public prior use is *prima facie* relevant for inventive step because there is *prima facie* only one distinguishing feature (feature e)) while all other documents used as a starting point to discuss inventive step (D1, D3/D3', D4, D6, D7 and D9) were found to differ from the claimed subject-matter in two features.

The public prior use was therefore clearly closer to the claimed subject-matter than the available written evidence.

During the oral proceedings, the appellant further referred to T 838/17, in which a discretionary decision to admit a late filed document (P1) was set aside, and in particular to point 12 of the Reasons thereof stating that:

*"... , the identification of a distinguishing feature is not sufficient to demonstrate that the invention would not have been obvious."*

According to the appellant the contested decision not to admit the public prior use in the present case suffered from the same error in the use of discretion as in T 838/17 because a proper assessment of *prima facie* relevance for an inventive step attack requires more than just identifying a difference, and at least some consideration of whether that difference would have been obvious to the skilled person.

- 2.3 The respondent argues that the opposition division properly exercised its discretion and that discretionary decisions should not be reviewed unless an improper exercise of discretion is demonstrated, and that the alleged prior use was properly not admitted as it does not disclose feature e).

During oral proceedings, the respondent contested the appellant's reliance on T 838/17, arguing that the opposition division's approach was appropriate and within the bounds of proper discretionary decision-making and that the established jurisprudence does not establish any general rule regarding the required depth

or intensity of a *prima facie* assessment of inventive step.

2.4 The board follows the respondent and sees no reason to set aside the opposition division's discretionary decision not to admit the alleged prior public use "Tulip-Oldenburg" into the proceedings, for the following reasons.

2.4.1 The established jurisprudence consistently applies the criterion of "*prima facie* relevance" for the admittance of late-filed evidence (CLB, IV.C.4.5.3). Other criteria, such as how late the documents were and why they were late-filed, may also be taken into account (CLB, IV.C.4.5.3, 6th paragraph, IV.C.4.5.3d).

The criterion of *prima facie* relevance requires that the late-filed submission must, on its face, be relevant, i.e. decisive to the outcome of the proceedings.

Upon review of section II.6 of the contested decision, the board observes that even if the opposition division employed the terminology "relevant beyond any doubt", a comprehensive reading of its reasoning demonstrates that it conducted a substantive *prima facie* relevance examination of the technical content of the evidence submitted in support thereof with respect to novelty and inventive step.

This is because to assess whether feature e) of claim 1 was disclosed, the opposition division specifically analysed the videos D36 and D37. Their conclusion, that feature e) is not disclosed because the machine shown in the videos includes grippers which operate independently from the conveyor belts and are not

connected thereto, clearly represents a technical assessment based on *prima facie* relevance examination which does not appear to violate the opposition division's discretionary powers.

Based on the *prima facie* finding of the distinguishing feature e), which feature e) was also not disclosed in any of the cited documents, the opposition division assessed the *prima facie* relevance of the alleged public prior use with respect to inventive step for the outcome of the case.

- 2.4.2 The appellant's reliance on decision T 838/17, particularly point 12 thereof, is not decisive for the purpose of admitting the public prior use "Tulip-Oldenburg".

The case law of the Boards of Appeal does not establish a fixed or uniform standard for how deeply an opposition division must examine late-filed evidence when assessing *prima facie* relevance.

This means that an opposition division must exercise its discretion under Article 114(2) EPC according to the particular facts before it, and that boards of appeal should only intervene if that discretion was exercised on the basis of wrong principles, without taking account of the right principles, or in an arbitrary or unreasonable manner (CLB, V.A.3.4.1b).

T 838/17 deals with a specific situation where particular circumstances, overseen by the opposition division, *prima facie* suggested potential relevance of a late filed piece of prior art (document P1).

These particular circumstances present in T 838/17 (see

in particular point 17 of the reasons) that led the board to overturn the opposition division's *prima facie* assessment are not present in this case.

In T 838/17, document P1 was a family member of a document explicitly cited in the patent specification itself (paragraphs [0008]-[0011]), had been used throughout examination as the starting point for inventive step assessment, and had been filed with the notice of opposition. The technical similarity between P1 (figure 6) and the patent (figure 4A) was striking, leading the board to identify "several reasons to suspect that P1 might be prejudicial to the inventive step of claim 1 of the patent" (T 838/17, point 16).

By contrast, in the present case, the alleged prior use "Tulip-Oldenburg" was introduced for the first time after remittal of the case to the opposition division and was not directly related to the prior art already on file.

Given these different factual circumstances, the specific principles that led the board in T 838/17 to overturn the opposition division's decision are not applicable to the present case.

Since the opposition division's assessment was based on the particular facts before it and, as further shown below, does not appear to have been exercised on the basis of wrong principles or in an unreasonable manner, the board sees no reason to intervene in the opposition division's discretionary decision.

- 2.4.3 The appellant's argument regarding relative relevance (fewer distinguishing features of the alleged public prior use compared to other documents) does also not

demonstrate that the opposition division's technical assessment was incorrect or that its discretion was exercised improperly for the following reasons.

The board concurs with the line of case law which recognizes that *prima facie* relevance is not a question of comparative or relative relevance, but rather a question of absolute relevance to the outcome of the proceedings (CLB, IV.C.4.5.3b).

The fact that a late-filed document might appear at first glance to be "more relevant" than documents already on file does not automatically mean that it must be admitted if it still lacks relevance on a *prima facie* basis for the outcome of the case.

In the present case, the fact that the alleged public prior use had fewer distinguishing features than the cited prior art was not decisive for the opposition division's *prima facie* relevance assessment for inventive step.

When considering the admittance of the public prior use the opposition division found that since the alleged public prior use did not disclose feature e), it lacked *prima facie* relevance for the assessment of inventive step.

The opposition division found, on a *prima facie* basis that already because the prior use did not disclose the feature e), it was also not more relevant for the assessment of inventive step than documents D1 /D3/D3', D4, D6, D7 and D9 since features d), e) and f) were not disclosed in combination in any of the cited documents.

The board cannot consider such reasoning of the opposition division as applying the criterion of *prima facie* relevance in an arbitrary or unreasonable manner.

- 2.4.4 Based on the above, the board finds that the opposition division effectively applied the correct legal standard (*prima facie* relevance) in the correct way to conclude, based on a *prima facie* assessment, that the alleged prior use would not affect the patentability assessment and is therefore not relevant to the outcome of the proceedings.

The prior use "Tulip-Oldenburg" is therefore not admitted into the appeal proceedings (Article 12(6), first sentence RPBA).

- 2.4.5 For the above reasons, it is also not necessary, for the purpose of settling the present case, to hear the witnesses offered by the appellant in relation to this allegation of public prior use.

3. Main request, inventive step starting from D1

- 3.1 The opposition division found that D1 differs from the subject-matter of claim 1 of the main request in features c) and f).

- 3.2 The appellant contests the opposition division's finding regarding feature f), arguing that it is at odds with the corresponding finding in decision T 173/19 which is *res iudicata*.

In addition, the appellant also argues that figures 3 and 5 of D1 disclose that the food article feed apparatus comprises an upper conveyor assembly, within the meaning of feature f), arranged above and upstream

of a lower conveyor assembly.

The appellant then also argues that feature c), being the only distinguishing feature, has no particular technical effect compared to the lateral arrangement, disclosed in D1, and that the objective problem is merely to provide an alternative arrangement of the food article loading apparatus.

The appellant finally argues that D1 combined with each of the teachings of D2, D4, D6, D8, D9, and D10 renders the claimed subject-matter obvious, for the following reasons.

When discussing the combination with D2, the appellant points to the swiveling support track described in column 2, starting from line 48, and column 3, starting from line 8, which can be lowered for loading and raised to operating position, as disclosing feature c).

When discussing the combination with D4 the appellant refers to the upper supply conveyor 154 lying above the lower supply conveyors 32 and 34 and the loading conveyor 126, as shown in figure 7.

In relation to the combination with D6 the appellant argues that this document is identical to D4 in relevant respects and similarly discloses feature c).

The appellant then also refers to figure 2 and paragraphs [0019], [0024] and [0031] of D8 as disclosing a loading arrangement corresponding to feature c).

Similarly, the appellant points to the loading device 5 and/or support track 36 in loading position 2 of D9 as

constituting a food article loading apparatus below the feed apparatus corresponding to feature c).

When discussing the combination with D10, the appellant refers to column 5, lines 17-21 and 40-44, as disclosing a food loading apparatus according to feature c).

Finally, the appellant also argues that feature c) was part of the common technical knowledge of the skilled person, as evidenced by the multiple documents disclosing this arrangement.

- 3.3 The appellant convincingly demonstrated that
- D1 discloses feature f),
- but failed to convincingly demonstrate that
- the subject-matter of claim 1 of the main request lacks inventive step when starting from D1 as closest prior art.

3.3.1 Feature f)

While the board does not find convincing the appellant's position that the disclosure of feature f) in D1 is *res iudicata*, the board follows the appellant's argument that figures 3 and 5 of D1 show an upper conveyor assembly.

As convincingly argued by the appellant, feature f) does not specify that the upper conveyor assembly must be above the grippers.

The term "upper" is a relative term that must be interpreted in the context of the overall structure of the slicing machine disclosed in D1.

Based upon this interpretation of D1, and looking at figures 3 and 5, belt assembly 334 can be characterized as an "upper conveyor assembly" because it is positioned above other conveyor assemblies in the machine, particularly conveyor 135 which forms part of the discharge conveyor system 64 (D1, column 7, lines 4-13; figures 3, 5, 7A).

The respondent acknowledges that conveyor assembly 334 belongs to the food article feed apparatus of D1, however puts forward that feature f) is not disclosed because said conveyor assembly 334 is positioned below the grippers 151.

This more restrictive interpretation of "upper conveyor assembly" is however not followed by the board.

The case law establishes that a broad term used in a claim is not to be construed narrowly (CLB, II.A.6.1) and that when reading a broadly formulated claim, only technically illogical interpretations should be excluded.

Claim 1 uses the term "upper conveyor assembly" without specifying what this conveyor assembly must be "upper" relative to. In the absence of such specification, the skilled person would understand "upper conveyor assembly" as referring to a conveyor assembly that is positioned in an upper region of the apparatus relative to other conveyor elements or components.

This interpretation is neither technically illogical nor inconsistent with the claim wording.

During oral proceedings, the respondent argued, referring to G 1/24, that the appellant's

interpretation of "upper conveyor assembly" in the context of D1 should not be followed because it contradicts paragraph [0010] of the patent specification, which characterizes D1 as comprising a "lower conveyor assembly" for driving food products along the feed paths.

The board does not follow this argument for the following reasons.

G 1/24 confirmed that the description and drawings must always be used as interpretative tools for the claims, however this principle does not force the board to accept characterizations of prior art documents contained in the patent description.

While the characterization of prior art documents in the description of a patent reflects the patent proprietor's view of those documents, the assessment of what a prior art document actually discloses is a matter to be determined by the board independently, based on the content of that document itself and the understanding of the skilled person.

To find otherwise would mean that a patent proprietor could "immunize" their invention from certain patentability objections by strategically describing prior art in a particular way in the patent specification. This would be incompatible with the objective examination of patentability under the EPC.

### 3.3.2 Effect of feature c) - Problem to be solved

The board is not convinced by the appellant's position that the only distinguishing feature of claim 1, feature c), is deprived of a technical effect.

According to the appellant the mere statement that a food article feed apparatus is disposed over the food article loading apparatus only implies that, when viewed from above, the feed device partially overlaps or covers the loading device, without any further limitations regarding the relative orientation of these apparatuses.

To the appellant it is not apparent, also because the patent in suit does not contain any indication in that respect, why a food article loading apparatus should become less complicated already because it is positioned below the feed apparatus.

On the contrary, according to the appellant, from a hygienic point of view, positioning the feeding apparatus above the loading apparatus increases complexity, because of hygienic reasons, as any surface which comes into contact with the food product poses a risk of contamination when arranged above other apparatuses contacting food products.

The above arguments of the appellant are not followed by the board.

This is because, as convincingly explained by the respondent, also referring to paragraph [0016] of the patent in suit, it is clear that in the particular case of D1 the lateral arrangement of the loading apparatus requires the additional presence in this apparatus of a separate loaf transfer mechanism, of a lift tray 85 and of lower supports 116, 117, 118, increasing the complexity thereof.

Taking the above into account, the board concurs with the respondent that starting from the slicing machine known from D1, feature c) has the technical effect that there is no need for lateral shifting of food articles into the feed path.

Therefore the formulation of the problem to be solved put forward by the appellant, as the mere "provision of an alternative" is not followed by the board.

The problem to be solved starting from D1 can therefore be reformulated, following the respondent, as how to provide a less complicated food article slicing machine.

### 3.3.3 Discussion of inventive step

The board fully concurs with the respondent that even if the secondary documents cited by the appellant (D2, D4, D6, D8, D9, D10, or the knowledge of the skilled person allegedly proven by these documents) all disclose loading arrangements corresponding to feature c), the implementation of such arrangements in the apparatus of D1 is not obvious.

This is because the feeding apparatus disclosed in D1 is fundamentally incompatible with loading from below, as required by feature c), due to multiple structural elements that collectively block access to the food article feed path from the underside.

The following specific structural elements of D1 were identified by the respondent as preventing an implementation of feature c):

- Lower belt 334: This belt drives the gripper carriages 125 and is positioned below the food article feed path. Its presence physically obstructs any loading mechanism that would approach from below;
- Members 116, 117, and 118: As described in D1 at column 6, lines 35-38, these members afford a continuous loaf support surface below the feed path. The continuous nature of this support structure leaves no opening through which food articles could be loaded from below;
- Linear actuator and rod assembly (325 and 321): As disclosed in column 17, lines 35-65 of D1, this actuator assembly is positioned below the feed path and controls the lifting mechanism. This assembly constitutes a further physical barrier preventing access from below.

The board therefore concurs with the respondent that to implement a loading apparatus positioned below the feed apparatus, as taught by the secondary documents, would require not merely repositioning the loading mechanism, but fundamentally redesigning the entire loading and feeding structures and drive systems of D1.

Such extensive modifications would amount to replacing the core structural concept of the loading and feed apparatuses of D1 with a fundamentally different mechanical architecture, and there is no guidance, in the secondary documents (and in the knowledge of the skilled person) on how to concretely carry out all the modifications which would be necessary to implement feature c) in the machine known from D1.

The subject-matter of claim 1 of the main request

therefore involves an inventive step starting from D1 as closest prior art.

- 4. Main request, inventive Step starting from D3/D3'
- 4.1 The opposition division found in the decision under appeal that, similarly to D1, also documents D3/D3' fail to disclose features c) and f).
- 4.2 The appellant argues that starting from D3/D3' the only distinguishing feature is feature c).  
The appellant also argues that the findings of the earlier board decision T 173/19 support this position, but does not explain which passage of D3 or D3' discloses feature f).

The appellant finally argues that D3/D3' combined with each of the teachings of D2, D4, D6, D8, D9, and D10 or the common general knowledge renders the claimed invention obvious, for the same reasons already submitted in the statement of grounds of appeal when discussing the combination of these documents with the machine known from D1.

- 4.3 The board disagrees with the appellant, and notes that in T 173/19 (Reasons, section 3.1), the then competent board concluded that the subject-matter of claim 1 of the main request is novel over D3 since D3 does not disclose feature c), without discussing whether feature f) is also disclosed or not.

Therefore, T 173/19 established that there is at least one distinguishing feature but does not constitute *res iudicata* that there are no further distinguishing features.

To substantiate the disclosure of feature f) in D3/D3' the appellant only wrote:

*"Die andere Auffassung der Einspruchsabteilung ist nicht gerechtfertigt. Insbesondere wird durch die Anspruchsmerkmale keine Einschränkung dahingehend zwingend impliziert, dass ein Seitenbeladungssystem („side loading system“), wie die Einspruchsabteilung das System der D3/D3' bezeichnet, vom Anspruch ausgeschlossen wird."*

The above statement is however a mere allegation, does not identify any passage of these documents where the feature f) is disclosed and is therefore not enough to convincingly demonstrate that feature f) is known from D3/D3'.

In the absence of any concrete indication from the appellant, both in writing and during oral proceedings, why feature f) is disclosed in either D3 or D3', the board can only concur with the opposition division, and with the respondent, that as figure 19 of D3 clearly shows the grippers being driven by lower conveyor belts rather than an upper conveyor assembly, feature f) is not disclosed in these documents.

Therefore, contrary to what has been argued by the appellant, feature f) constitutes a further distinguishing feature over D3/D3'.

Therefore, the appellant's written arguments for combining D3/D3' with secondary documents D2, D4, D6, D8, D9, and D10 (or with the knowledge of the skilled person allegedly proven by these documents) are not convincing already because they only address one of the two distinguishing features, namely feature c).

The subject-matter of claim 1 of the main request therefore involves an inventive step starting from D3/D3'.

5. Main request, inventive step starting from D7

5.1 The opposition division found that D7 does not disclose feature c) and feature e) and that already because of that D7 is not suitable as a starting point to discuss inventive step.

5.2 The appellant contends that the above findings are based on an inappropriately narrow construction of feature e).

According to the appellant paragraphs [0062] to [0064] of D7 disclose a frictional engagement between gripper 18 and transport belts 4 which constitutes a connection between these elements, corresponding to feature e) of claim 1 of the main request.

The appellant concludes that the only distinguishing feature starting from D7 is feature c).

Referring to paragraph [0064] of this document, where the presence of a loading apparatus is only mentioned, without providing any further detail thereof, the appellant formulates the problem to be solved as the provision of a suitable food article loading apparatus.

The appellant then argues that figure 2a of D7 should be read rotated by 180° compared to how it is presented in the document.

According to the appellant, when the positions of the knife blade 11 and the food slices 12 shown in figures

1 and 6 are compared with their positions in figure 2a, it becomes apparent that the configuration shown in figure 2a is actually inverted.

The appellant contends that when figure 2a would be properly oriented (*i.e.*, rotated 180° from its printed orientation), the actual arrangement becomes clear: the transport band 4 positioned over the food article bar 2 constitutes the upper conveyor assembly, and any mechanical loading system would necessarily need to approach from below this upper conveyor assembly.

The appellant argued in writing that the embodiment of figure 2a of D7 combined with each of the teachings of D2, D4, D6, D8, D9, and D10, or with the common general knowledge, all disclosing feature c), renders the claimed invention obvious.

During oral proceedings, when specifically discussing the combination with D2, the appellant argued that the skilled person, seeking to implement a suitable food article loading apparatus, would be led towards implementing a swiveling support track ("Auflagebahn") as described in D2 (column 2, lines 48 to 56 and from column 3, line 8), which can be first lowered for loading and then raised to the operating position.

According to the appellant, this would provide the loading apparatus positioned below the feed apparatus as required by feature c).

5.3 The respondent replies that feature e) of claim 1 requires a permanent connection between the conveyor belts and the food article grippers.

According to the respondent, the term "connected"

implies a lasting, structural relationship between these elements, not merely a transient physical contact, this interpretation being supported by the embodiments shown in the patent specification, where grippers are fixedly mounted to the conveyor belts and move together as an integrated system.

The respondent refers to paragraph [0062] of D7 and emphasizes that the frictional contact ("Reibschluss") between the gripper 18 and the conveyor belts 4 described therein is temporary only, unlike the claimed invention.

According to the respondent this interpretation of the content of the disclosure of document D7 is confirmed by the fact that the grippers in D7 have only the function of supporting short food article ends, do not move the food articles, and this, according to the respondent, represents a fundamentally different structural and functional arrangement from the claimed invention.

The respondent then argues that figure 2a of D7 should be read as presented in the published document D7, as there is no indication in D7 that figure 2a contains an error or should be viewed in an inverted orientation.

- 5.4 The appellant convincingly demonstrated that
- D7 discloses feature e)
- but failed to convincingly demonstrate that
- the subject-matter of claim 1 of the main request lacks inventive starting from D7 as closest prior art,
- for the following reasons.

- 5.4.1 Feature e)

There is no support in the claim wording for the respondent's restrictive interpretation requiring a permanent or structural connection between gripper and conveyor belts, because feature e) does not specify the nature, permanence, or type of connection required.

The term "connected" should therefore be given a broad interpretation encompassing any operative coupling that allows the conveyor belts to influence or control the movement of the grippers.

Paragraph [0062] of D7 explicitly describes that a frictional engagement ("Reibschluss") exists between the gripper 18 and the transport belts 4, and that once the gripper engages with the transport belts, it is transported by them toward the knife together with the food article.

Clearly, the essential purpose of the connection claimed in feature e) is to enable the conveyor belts to move the food article grippers along the food article feed path.

D7 therefore discloses that each of the conveyor belts is connected to a food article gripper for moving a food article along a food article feed path.

The respondent's argument that the grippers in D7 serve primarily a support function rather than a driving function does not negate the disclosure of feature e). Feature e) only requires that the conveyor belts are connected to the grippers; it does not specify what function the grippers must perform or whether they must be the primary means of moving the food articles.

Consequently and contrary to the findings of the opposition division, the board concludes that D7 differs from the claimed invention only in feature c).

#### 5.4.2 Discussion of inventive step

The board does not follow the appellant's argument that figure 2a of D7 should be read in an inverted orientation, because there is no indication in this document that figure 2a contains a printing error or should be viewed differently from how it is presented.

The disclosure of a document must be determined based on its actual content as presented to the public. While obvious errors may be corrected by the skilled person reading the document, the alleged "error" in figure 2a identified by the appellant is not apparent on the face of the document.

The comparison with the knife and slice positions in other figures (figures 1 and 6) relied upon by the appellant does not compellingly demonstrate an error in figure 2a.

The board concludes that the "inverted" version of figure 2a to which the appellant refers in its argumentation does not belong to the content of the disclosure of document D7.

Therefore, the board does not accept the appellant's argument that mechanical loading from below is "immediately apparent" from D7 based on a reoriented reading of figure 2a.

Even if the secondary documents cited by the appellant (D2, D4, D6, D8, D9, D10, or the common general

knowledge) disclose loading arrangements corresponding to feature c), the board notes that the implementation of such an arrangement in the apparatus of D7 would require major structural changes that go beyond what the skilled person could accomplish without the exercise of inventive ingenuity.

The board is also not convinced that it would be obvious, following common general knowledge or the teachings of the secondary documents cited by the appellant in the statement of grounds of appeal, and in particular of document D2, upon which the appellant focussed during oral proceedings, to implement, in the machine of figure 2a of D7, mechanical loading from below.

This is because in this apparatus, in its actual, published orientation, the knife blade and its drive 11 are positioned such that it would be impossible to swivel the lower conveyor assembly 4 downward (as taught by D2) because they would be in the lower conveyor assembly's way.

To implement the teaching of D2 in the context of D7 would therefore clearly go beyond merely adding a swivel mechanism, requiring further modifications for which there is no concrete guidance, neither in D2 nor in the other secondary documents cited or from the common general knowledge.

The subject-matter of claim 1 of the main request therefore involves an inventive step starting from D7.

6. Main request, inventive step starting from D9

- 6.1 The opposition division found that D9 did not disclose features d) and e).
- 6.2 The respondent additionally argues that feature f) is also not disclosed in this document.
- 6.3 The appellant argues that feature e) is anticipated by D9, because the driving device 18 of the conveying means 15 engages in the transport means 17 in the working position and receives a forced movement.

In relation to feature f) the appellant considers it disclosed because the transport belt 17 is arranged upstream and above the conveyor belt 6 (see figure 1) and thus represents an upper conveyor assembly within the meaning of feature f).

The only distinguishing feature is therefore feature d) because D9 discloses a single belt 17.

The subject-matter of claim 1 therefore lacks inventive step over D9 combined with each of the teachings of D1, D3', D7, D8, or the knowledge of the skilled person.

The appellant formulates the objective technical problem as how to provide a slicing machine in which multiple food articles can be sliced simultaneously in a variable manner, for example to obtain slices of different thicknesses.

The appellant finally argued (see statement of grounds, page 18) that each of D1, D3', D7 and D8 discloses feature d), and also that for this reason feature d) belongs to the knowledge of the skilled person, and that for this reason their combination with D9 would be detrimental to inventive step.

- 6.4 The board disagrees with the appellant, and rather concurs with the position of the respondent that
- features d) and f) are both not disclosed in D9 and that
  - the subject-matter of claim 1 of the main request is inventive starting from D9 as closest prior art.

6.4.1 Features d) and f)

While the appellant correctly acknowledges that D9 does not disclose a plurality of endless conveyor belts as required by feature d), this document also fails to disclose that the single belt present ("transport means 17") is independently driven.

As explained by the respondent during oral proceedings, this is clear from column 3, lines 27-32, of D9 which explains that the endless conveyor belt is a passive element without a drive of its own, which only moves when and because the driving device 18 (which is part of the gripper system) engages with it and pulls it along.

D9 thus discloses a fundamentally different drive architecture from the claimed one.

Feature f) is also not disclosed. This feature requires that "the conveyor assembly" is an upper conveyor assembly.

The definite article "the" refers back to the conveyor assembly of feature d), which must have independently driven conveyor belts.

Since D9 lacks this element, feature f) is necessarily also not disclosed.

#### 6.4.2 Inventive step

The board finds that the appellant's inventive step objection formulated starting from D9 is not convincing, already because it does not take proper account of the fact that, as discussed above, D9 also fails to disclose feature f).

For these reasons, the claimed subject-matter involves an inventive step when starting from D9, whether considered in combination with the cited secondary documents or with the common technical knowledge.

### 7. Main request, inventive step starting from D4

#### 7.1 The opposition division found in the decision under appeal that the subject-matter of claim 1 differs from the slicing machine disclosed in D4 in features d) and e).

The problem to be solved by these features was formulated as how to provide improved feeding of the food articles through the slicing apparatus.

The opposition division acknowledged an inventive step explaining that none of documents D1, D2, D3/D3', D4, D5, D6, D7 and D9 taught the combination of features d) and e).

#### 7.2 The appellant contests the above findings and argues that the only distinguishing feature is feature d) (independently driven conveyor belts), and that feature e) is disclosed in D4.

According to the appellant, there is a functional connection between the conveyor belts and the grippers because the upper feed conveyor 154 with its three conveyor belts 160 and the linear drive 158 of the clamping unit 156 work synchronously with the lower feed conveyors 32, 34 and due to the synchronous operation of the feed conveyor and the linear drive 158 of the clamping unit, there is a connection between them.

The appellant formulates the objective technical problem as how to provide a slicing machine in which multiple food articles can be sliced simultaneously in a variable manner, for example to obtain slices of different thicknesses.

The appellant finally argues that D4 combined with each of D1, D3', D7, D8 or the knowledge of the skilled person is detrimental to inventive step, for the following reasons.

According to the appellant, D1 discloses the missing feature d) through its belt arrangement 334, which allegedly provides independent driving capability for parallel processing lanes.

The appellant also contends that D3' teaches the technical concept of independent belt driving in multi-lane food processing applications, thereby rendering feature d) obvious.

According to the appellant, D7 also discloses independent gripper operation and conveyor belt systems that would motivate the skilled person to implement independent driving mechanisms in the context of D4.

The appellant then also contends that D8 provides technical teaching regarding independent belt drive systems that would render feature d) obvious to the skilled person starting from D4.

The appellant finally asserts that the provision of independently driven conveyor belts, particularly for the stated purpose, was known to the person skilled in the art from a variety of documents, so that it can be assumed that this was general technical knowledge. According to the appellant, this general knowledge, when combined with the teaching of D4, would render the claimed subject-matter obvious through routine modification of known belt drive systems.

- 7.3 The counter-argument of the respondent is that "the grippers of D4 are not driven by an upper conveyor assembly as required by features e) and f) of claim 1" and that "the linear drive ('Linearantrieb 158') of D4 jointly moves all grippers ('Spannzangeneinheit 156')" through a spindle drive, rather than through connection to the conveyor belts.

No mechanical or functional connection exists between the upper conveyor belts 160a-c and the gripper assembly 156, and the linear drive system "jointly moves all grippers" through direct mechanical coupling, independent of any conveyor belt operation.

- 7.4 The board concurs with the respondent. The argument of the appellant that synchronous operation between the upper conveyor 154 and linear drive 158 establishes the required "connection" of feature e) is not convincing.

This is because synchronous operation through coordinated control does not require any mechanical or functional connection.

D4 discloses that the linear drive 158 operates independently through a dedicated spindle mechanism ("Gewindespindel 226"), while the upper conveyor belts function through separate drive systems.

No technical means establishing a concrete connection between these components has been identified.

Based on the above, the board concurs with the opposition division that claim 1 presents two distinguishing features relative to D4, namely the absence of independently driven endless conveyor belts (feature d)) and the absence of connection between conveyor belts and grippers (feature e)).

Therefore, the appellant's written objections of lack of inventive step starting from D4 as closest prior art taken in combination with the teaching of secondary documents D1, D3', D7, D8 or with the knowledge of the skilled person are not convincing already because when formulating these objections the appellant only addressed feature d), and failed to explain why feature e) is obvious.

8. Main request, inventive step starting from D6

The appellant's inventive step objection starting from document D6 as closest prior art is based upon the same distinguishing features and corresponding arguments to those of the previously discussed objection, formulated starting from D4.

The board also notes that the appellant explicitly acknowledges the technical similarity between documents D4 and D6.

Notably, the appellant has not explained in detail which specific passages of D6 disclose feature e), but has merely reiterated the argument that synchronous operation implicitly discloses a form of connection.

Therefore, given the acknowledged similarities between the two documents and the appellant's reliance on the same underlying reasoning without providing additional substantive analysis specific to D6, the board reaches the same conclusions and is of the preliminary opinion that the appellant's inventive step objections starting from D6 are not convincing for the same reasons discussed above, when the objections starting from D4 were discussed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairwoman:



G. Nachtigall

A. Beckman

Decision electronically authenticated