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**Datasheet for the decision  
of 7 May 2026**

**Case Number:** T 1458/24 - 3.2.04

**Application Number:** 13186178.3

**Publication Number:** 2679097

**IPC:** A21B1/42, A21B1/48

**Language of the proceedings:** EN

**Title of invention:**

Process to control the airflow and air-leakages between two  
baking chambers

**Patent Proprietor:**

GEA Food Solutions Bakel B.V.

**Opponent:**

Marel Further Processing B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 56

RPBA 2020 Art. 12(4), 12(6)

**Keyword:**

Amendments - added subject-matter (main request yes)  
Amendment to case - admissibly raised and maintained (no)  
Inventive step - (auxiliary request yes)

**Decisions cited:**

T 1195/22

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1458/24 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 7 May 2026**

**Appellant:** GEA Food Solutions Bakel B.V.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted/  
electronically transmitted on 28 October 2024  
concerning maintenance of the European Patent  
No. 2679097 in amended form.**

**Composition of the Board:**

**Chairman** A. Pieracci  
**Members:** J. Wright  
T. Bokor

## **Summary of Facts and Submissions**

I. The appeals were filed by the appellant patent proprietor ('proprietor') and the appellant opponent ('opponent') against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1, the patent in suit met the requirements of the EPC.

Amongst other things, the opposition division decided that the subject-matter of this request involved an inventive step.

II. The opposition division also decided that the subject-matter of the main request extended beyond the content of the application as filed.

III. In preparation for oral proceedings, the Board issued a communication dated 13 February 2026 setting out its preliminary opinion on the relevant matters. Oral proceedings before the Board were held on 7 May 2026.

IV. The proprietor requests that the decision under appeal be set aside and the patent be maintained in amended form according to the main request filed during opposition proceedings, or that the opponent's appeal be dismissed, i.e. the patent be maintained in the form as upheld by the opposition division, as auxiliary request.

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

V. The independent claim of the main request reads as follows (with feature references in square brackets added by the Board):

"Process to operate an oven (1) comprising :

[A] a first chamber (3) and a second chamber (4), which are separated by separation means (2),

[B] each chamber comprising a rotatable drum (5, 6)

[C] a conveyor belt (7) for guiding products from the inlet (10) through these chambers (3, 4) to the outlet (12),

[D] the conveyor belt is guided around each drum in a helical path (8, 9) and wherein the conveyor belt enters the oven (1) via the inlet (10) by a straight belt section (11) and leaves the oven (1) via the outlet (12) by a straight belt section (14) and wherein the two helical paths (8, 9) are connected by a straight belt section (14) , which lies at the top,

[E] wherein the separation means (2) comprise a passage (2.1) for the belt section (14), the passage being larger than the conveyor belt,

[F] temperature control means (15, 19, 22, 16, 27, 28) for controlling the temperature in each chamber individually using a fluid, respectively,

[G] each chamber comprises at least one fan (16, 22) and ducts for a fluid circulation in the chamber and

[H] a passage (2.1) in the separation means (2) through which the conveyor belt is directed from the first chamber (3) to the second chamber (4), characterized in, that

[I] the magnitude and the direction of the leakage between the first chamber (3) and the second chamber (4) or vice versa and to or from the ambient is controlled in order to adjust process parameters in one chamber (3,4), by reducing the pressure in one chamber or increasing the pressure in one chamber

[J] and wherein in case the temperature in a chamber is below or above a desired set point, a controlled leakage via the passage (2.1) or any other fluid connection between the two chambers is initiated and maintained until the temperature in the respective chamber (3, 4) are in the desired range and then stopped".

Claim 1 of auxiliary request 1 reads as for the main request except that features [F], [G] and [H] are amended to read as follows, with additions compared to the main request emphasised by the Board in underline:

[F] temperature control means (15, 19, 22, 16, 27, 28) for controlling the temperature in each chamber individually using a fluid, respectively, the temperature control means being heating means arranged in the top of a housing of the oven (1),

[G] each chamber comprises at least one fan (16, 22) and ducts for a fluid circulation in the chamber to adjust the temperature and/or humidity in the chamber and/or to improve the heat transfer in the chamber respectively; the fan (16, 22) being part of the heating means (15, 19, 27, 28) and having a spiral casing which opens into one of the ducts (18, 23, 24, 25), wherein heating elements (34) are situated in the ducts (18, 23, 24, 25),

[H] a passage (2.1) in the separation means (2) through which the conveyor belt is directed from the first chamber (3) to the second chamber (4), process fluid (31, 32) is sucked up by the fan (16, 22) out of the chamber (3, 4) and forced into one of the ducts (18, 23, 24, 25) via the spiral casing (17) and flows past

the heating elements (34) and is then reintroduced into the respective chamber (3, 4), characterized in, that

VI. In the present decision, reference is made to document D3: EP0558151 A1.

VII. The parties arguments which are relevant to the decision are set out in the reasons for the decision presented below.

### **Reasons for the Decision**

1. The appeals are admissible.

1.1 Main request, claim 1, added subject-matter

1.2 In this section, references to the original application as filed are to the published application (EP2679097 A1). Present claim 1 is the same as granted claim 1. This claim, as original claim 1, is directed to a process to operate an oven. Amongst other amendments, it adds to original claim 1 the feature G - *each chamber comprises at least one fan (16, 22) and ducts for a fluid circulation in the chamber.* Feature G thus contextualises the claimed process as concerning operating an oven where each chamber comprises a fan and ducts for circulating fluid therein.

1.3 It is common ground that "fan and ducts" are only mentioned in the published application in paragraph [0014], 4th sentence, which reads as follows:

"Normally, each chamber comprises at least one fan and ducts for a fluid flow, especially the fluid circulation, in the chamber to adjust the temperature and/or humidity in the chamber and/or to improve the heat transfer in the chamber, respectively."

- 1.4 The opposition division (see the impugned decision, reasons 2.2.3) considered the proprietor's argument that incorporating the wording of feature G (fan and ducts for fluid circulation) into claim 1 from the original application (see paragraph [0014]) without the wording "to adjust the temperature and/or humidity in the chamber and/or to improve the heat transfer in the chamber" merely omitted an inherent effect of fluid circulation, so did not add subject-matter. The opposition division opined that fans can be used for many different purposes and argued that each purpose requires a specific set of constructional constraints which affect its design. Therefore, a fan intended for the purpose of temperature/humidity control or heat-transfer improvement would be structurally different from one intended for another purpose. Accordingly, the omission of the originally disclosed purpose from feature G added subject-matter extending beyond the content of the application as filed.
- 1.5 In appeal (see for example its appeal grounds, starting page 3, section "1. Feature G") the proprietor argued that the opposition division's argument that fans can be used for different purposes without giving any examples amounted to mere speculation. Moreover, it argued that paragraph [0014] of the published application provided the basis for feature G because fluid circulation inevitably fulfilled the purpose of adjusting temperature and humidity, and improving heat transfer, in other words these purposes were rendered implicit by the explicit wording of feature G.
- 1.6 In the published application, paragraph [0014] the fan and ducts are disclosed as being "to adjust the temperature and/or humidity in the chamber and/or to improve the heat transfer in the chamber,

respectively". In the Board's view, the wording to *adjust* teaches that the fan and ducts are so arranged, whether by appropriate design or control, to fulfil the specific purpose of predictably modifying one or both of the temperature and humidity conditions. By the same token, *improving* heat transfer teaches that the fan and ducts are arranged to deliberately achieve such improvement. Thus in the original application, the fan and ducts are disclosed with the purposive, i.e. recognisably intended technical functions of *adjusting* temperature and/or humidity and/or *improving* heat transfer.

1.7 The Board disagrees with the appellant-proprietor that the skilled person implicitly reads any purpose in feature G's fan and ducts arrangement beyond providing the explicitly mentioned fluid circulation in the chamber. It may well be that by applying their general knowledge, the skilled person would understand that the circulating fluid could have an influence on the temperature and/or humidity and/or heat transfer conditions in the chamber. However, such influences would amount to no more than incidental (or possibly even undesired), but not intended effects.

1.8 In the Board's view, such incidental influences on temperature and/or humidity and/or heat transfer are not the same as the purposive functions of *adjusting* temperature and/or humidity and/or *improving* heat transfer, as originally disclosed to be provided by the fan and ducts. This is because, although it may be that a generic fan and ducts *could* be suitably arranged and controlled to achieve such purposive adjusting and improving functions, no such purpose, arrangement or control is defined in feature G.

- 1.9 Put another way, added claim feature G lifts the idea of a fan and ducts from its original purposive context in paragraph [0014] (adjusting heating/humidity and/or improving heat transfer) and expresses it in a broader context to cover arrangements of a fan and ducts providing fluid circulation but not those purposive functions. Therefore, including feature G in the claim without the originally disclosed functional purpose presents the skilled person with new information which was not originally disclosed.
- 1.10 The Board concludes that feature G has no direct and unambiguous disclosure in the application as filed.
- 1.11 The Board notes that this conclusion does not depend on the skilled person being able to identify conceivable purposes for the fan and ducts other than those disclosed in paragraph [0014] of the published application, because the Board is not convinced that feature G implies the latter purposes. Therefore, the opposition division's speculation as to the existence of such conceivable purposes has no bearing on the present discussion (cf. impugned decision, page 5, first complete paragraph).
- 1.12 It follows from the above that the Board agrees with the opposition division's finding (see decision, reasons 2.2.8) that claim 1 of the main request adds subject-matter extending beyond the content of the application as filed. Whether or not claim 1 represents an unallowable extension of subject-matter in any other respect can therefore be left undecided.
- 1.13 In the light of the above, the appeal of the proprietor fails.

2. Auxiliary request 1, added subject-matter and inventive step

2.1 In its appeal grounds (see page 4), the opponent raised added subject-matter objections against auxiliary request 1. The Board considered the matter in its communication (see section 8). The Board expressed its intention (sub-section 8.4) not to admit these objections into the appeal proceedings, Articles 12(4) and 12(6) RPBA.

2.2 The only other objection raised in appeal against auxiliary request 1 by the opponent was lack of inventive step starting from D3 (see its appeal grounds, pages 5 and 6). In its communication (see section 9), the Board opined (sub-section 9.9) that the opponent's arguments had not convinced it that the opposition division had been wrong to conclude that the subject-matter of claim 1 involved an inventive step.

2.3 The relevant sections of the Board's communication read as follows (see points 8 and 9 with sub-points):

"8. Auxiliary request 1 (as maintained), added subject-matter

8.1 In its appeal grounds (section 1 starting on page 2), the appellant-opponent noted that it had raised seven issues of added subject-matter against claims of the patent as granted in its opposition notice, that the opposition division had considered six of these (those concerning claim 1) and recognised the violation of Article 123(2) EPC for two of the six.

8.2 The Board notes that the opposition division considered claim 1 of the main request and concluded that it added subject-matter extending beyond the content of the application as filed (see decision point 2.2.8) . With that, the main request failed. Therefore, it was not necessary for it to consider any objection that might have been raised against a dependent claim. By the same token, howsoever the opponent may dispute the opposition division's finding that certain features

of claim 1 of the main request did not add subject-matter extending beyond the content application as filed, this has no consequences for the opposition division's conclusion on the main request.

8.3 Turning now to auxiliary request 1, this was filed on 26 September 2024 at the oral proceedings before the opposition division. Upon request, the opponent was given time to study it (minutes point 3). Point 4 of the undisputed minutes reads: "The opponent states that the requirements of Article 123(2) EPC are deemed fulfilled but maintains the objection under Article 56 EPC."

It seems to the Board that, after the discussion of the main request, the appellant-opponent raised no added subject-matter objections against auxiliary request 1. In other words, those raised by the opponent against certain features of the main request and which might have applied to auxiliary request I were not raised against corresponding features of the auxiliary request. The impugned decision is consistent with this: "No objections under Articles 54, 84 and 123(2) EPC have been raised by the Opponent." (see reasons, section 3.1, last two lines).

8.4 Now in appeal, the appellant-opponent disputes aspects of the opposition division's findings relating to added subject-matter for the main request, but frames them as objections against auxiliary request 1. For the auxiliary request, the issues are an amendment to the opponent's case, Article 12(4) RPBA. In the Board's view, the appellant-opponent could and indeed should have raised these objections for auxiliary request 1 at the oral proceedings before the opposition division so that a decision could have been taken on them for this request, had it wished the Board to consider them. In the light of this, the Board does not intend to admit them into the appeal proceedings for this request, Articles 12(4) and 12(6) RPBA.

9. Auxiliary request 1, inventive step starting from D3 with common general knowledge

9.1 D3 is referenced in the application as filed (cf. paragraph [0003]). The opposition division found that all the features of the pre-characterising portion of the claim were disclosed in D3, so that the differing features with respect to D3 were features I and J (see decision, 3.4 and 3.5).

9.2 In appeal, the parties have not challenged this finding (see opponent's appeal grounds, section 2

starting on page 5 and proprietor's reply to appeal II. 4 Objection d, starting on page 5).

9.3 The Board notes that the opposition division did not formulate an objective technical problem. In its appeal grounds (bottom of page 5), the appellant-opponent considered the problem to be solved by a person skilled in the art, starting with the oven of figure 1 [of the patent] and document D3, is to provide a process that is stable and leads to reproducible temperature conditions. This appears to be based on the patent, paragraph [0005]. Since feature J specifically mentions temperature, it also appears to the Board appropriate to mention this as a specific process condition as the appellant-opponent has done. However, the Board notes that the impugned decision considered inventive step starting from D3 only. Moreover, given that figure 1 of the patent is, however similar, not the same as the figures of D3, it appears appropriate to consider a modified version of the appellant-opponent's formulation of the problem as follows: *the problem to be solved by a person skilled in the art, starting with the oven of document D3, is to provide a process that is stable and leads to reproducible temperature conditions.*

9.4 Turning now to the question of obviousness, the Board agrees with the appellant-opponent that, in the present case, the skilled person is an engineer specialising in conveyor ovens in which heated fluid circulates and that they would be familiar with fluid mechanics and control systems for such ovens (cf. T1195/22, reasons 3.4).

9.5 In its appeal grounds, page 6, second and third paragraphs, the appellant-opponent explained that it saw its arguments in opposition proceedings to be misrepresented in the impugned decision, reasons point 3.8. In particular, that it is the limited number of [obvious] options the skilled person has available for adjusting process parameters - in particular temperature which is important and not the options for adjusting leakage.

9.6 Before considering how many options the skilled person may know of for solving the objective technical problem (process that is stable/reproducible temperature conditions) and how or whether these might relate to leakage, the Board considers that a more crucial question is whether one such option involves adjusting the magnitude and direction of leakage between chambers, in other words causing a controlled leakage, with the goal of adjusting the temperature

(according to features I and J). As has already been explained, these features are not disclosed in D3.

9.6.1 In the Board's view, the appellant-opponent has not convincingly demonstrated that features I and J belong to the skilled person's common general knowledge.

9.6.2 In this regard it has stated (appeal grounds, page 6, penultimate paragraph) that: "The opposition division concluded that the person skilled in the art would not implement feature I." It went on to dispute the logic of this alleged conclusion, pointing to section 3.5 of T 1195/22 and stated that this could not be followed: "in view of T1195/22 3.5, as in order to adjust the temperature, the skilled person will the [sic] adjust the heating means. As the heating means comprise both heating elements and fans, it is obvious that the fan is also adjusted to adjust the temperature. And by operating the fans 16 and 22 (that are also present in the prior art oven) in order to modify the temperature, the skilled person modifies the pressure and thereby implements feature I."

9.6.3 Firstly the Board notes that the opposition division considered that D3 in conjunction with common general knowledge would not lead to a process according to claim 1 [including feature I] (see impugned decision, reasons 3.6). Thus in this section, it did not consider the question of *implementation* of feature I. Rather, only in the next section (decision, reasons 3.7) it seems to merely acknowledge that the skilled person could implement feature I with hindsight knowledge [of the feature]. However, the Board does not see why this might be relevant to the question of inventive step.

9.6.4 In this regard, section 3.5 of T 1195/22 concluded that the skilled person would encounter no difficulties in carrying out step I of the claim. Here it is important to note an important difference between the knowledge of the skilled person when assessing inventive step and when assessing sufficiency of disclosure, as was considered in T 1195/22. In the former case, the skilled person knows only what is in the prior art and their general knowledge. In the latter case, the skilled person additionally knows the content of the patent. Therefore, the fact that the skilled person can/could implement claim step [I] once they learn about it from the patent, does not demonstrate that it belongs to their common general knowledge.

9.7 Whilst D3 discloses hot air heating devices that comprise blower and heating elements (see for example column 2, lines 37 to 47 with figures 1 and 2) - and it may well be that the fan of a hot air heater would need to be operated when adjusting the oven temperature - nothing in D3 suggests to use the blowers to create a pressure differential between the chambers according to claim feature I, nor to generate a controlled leakage via any fluid connection between the chambers for the purpose of adjusting temperature according to claim feature J. Nor has the appellant-opponent demonstrated that either of these measures belongs to the skilled person's general knowledge.

9.8 In the absence of a disclosure of features I and J in D3 as well as any evidence that they belong to the skilled person's general knowledge, in solving the objective technical problem, the Board considers that it would not be obvious for the skilled person to arrive at these features. The Board arrives at this irrespective of how many or how few other options the skilled person may know about for providing a temperature adjusting process that is stable and leads to reproducible temperature conditions in an oven, because features I and J are simply not amongst them.

9.9 Therefore, the arguments of the appellant-opponent have not convinced the Board that the opposition division was wrong to conclude that the subject-matter of the claim involves an inventive step starting from D3 with the skilled person's common general knowledge."

2.4 After issuance of the communication, neither party made substantive comments on these matters in writing.

Likewise, at the oral proceedings before the Board they merely referred to their written submissions.

2.5 Having reviewed these reasons as set out in the communication, the Board sees no reason to deviate from what was expressed there.

- 2.5.1 Therefore, the Board decides not to admit the opponent's added subject-matter objections into the appeal proceedings, Article 12(4) and 12(6) RPBA.
- 2.5.2 Furthermore, the Board concludes that the subject-matter of claim 1 of the auxiliary request, claims as upheld by the opposition division, involved an inventive step when starting from D3.
- 2.6 It follows from the above that the appeal of the opponent must fail.
3. Since neither of the appeals are successful the Board must dismiss them.

**Order**

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

The appeals are dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated