Datasheet for the decision
of 23 September 2019

Case Number: T 1082/15 - 3.2.04
Application Number: 08002022.5
Publication Number: 2084968
IPC: A22B5/00, A22B7/00, A22C17/00
Language of the proceedings: EN

Title of invention:
Method for processing items such as pieces of meat

Patent Proprietor:
Marel hf.

Opponents:
Frontmatec Kolding A/S
Nordischer Maschinenbau Rud. Baader GmbH + Co. KG

Headword:

Relevant legal provisions:
EPC Art. 54(2), 123(2)
Keyword:
Novelty - (no)
Amendments - extension beyond the content of the application as filed (yes)

Decisions cited:

Catchword:
Case Number: T 1082/15 - 3.2.04

DECISION of Technical Board of Appeal 3.2.04 of 23 September 2019

Appellant: Mareil hf.
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Party as of right: Frontmatec Kolding A/S
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 March 2015 concerning maintenance of the
Composition of the Board:

Chairman          A. de Vries
Members:          S. Oechsner de Coninck
                   T. Bokor
Summary of Facts and Submissions

I. The opponent 2 and the patentee both appeal against the opposition division's decision dated 23 March 2015 to maintain the European patent N° 2 048 968 in amended form. The opponent 2 filed a notice of appeal on the 20 May 2015, paying the appeal fee on the same day, and filed the statement of grounds on 31 July 2015. The patentee filed a notice of appeal on 1 June 2015, paid the appeal fee the same day, and filed the statement of grounds on 3 August 2015.

II. The opposition was based on the grounds of Article 100(a) EPC in combination with lack of novelty and inventive step. In its written decision the Opposition Division held that the patent as amended according to an auxiliary request 1 complied with the requirements of the EPC, having regard in particular to the following document:

E1: US 2007/0293980 A1

III. The appellant proprietor requests that the decision under appeal be set aside and the European patent Nr. 1664517 be maintained as granted, or maintained on the basis of auxiliary request 6 as filed with the statement of the grounds of appeal dated 3 August 2015.

The appellant opponent 2 requested that the decision under appeal be set aside and that the European patent No. 2 048 968 be revoked.

The party as of right (opponent 1) has made neither requests nor substantial submissions during the appeal proceedings.
IV. The wording of the relevant claim 12 of the main request and of claim 1 of the auxiliary request 6 is as follows:

Main request

12." Processing system for processing food items such as pieces of meat, said system comprising a primary conveyor means (4)
- at least two workstations (1), and
- a computer system (8, 20) for allocating an item (10) from a stream of food items (10) provided on said primary conveyor means (4) to one of said workstations (1), characterised in that
said computer system (8, 20) further being for registration of information about a return of said item (10) from said one of said workstations (1) to said primary conveyor means (4)."

Auxiliary request 6 (with amendments underlined)

1. Method for processing food items such as pieces of meat, comprising the steps of
   - providing a stream of food items (10) by means of a primary conveyor means (4), and
   - allocating at least partly by means of a computer system (8, 20) one or more of said items (10) to one of at least two workstations (1) where said items (10) are processed, e.g. cut and/or trimmed, resulting in one or more processed items (11), the method being characterised by further comprising the steps of
   - registering in said computer system (8, 20) information about a return of at least one of said one or more processed items (11) to said primary conveyor means (4), and
   - returning said at least one of said one or more processed items (11) to said primary conveyor means (4) in accordance with said information about a return, whereby said step of returning said at least one of said one or more processed items (11, 12) to said primary conveyor means (4) comprises determining by means of the computer system a space on said primary conveyor means (4) where said returning processed items (11, 12) fit.
V. The appellant proprietor argues as follows:
- E1 does not disclose returning the item to the same principal conveyor. E1 also does not require the tracking of each individual item, and does not disclose the registering of the "information about a return".
- Concerning claim 1 according to the auxiliary request 6, its subject-matter is not extended. The skilled person would understand that the size is to be taken into account and it is also implied in the claim wording "fits".

VI. The appellant opponent 2 argues as follows:
- The patent does not require the conveyor to be a single and essentially continuous system. E1 clearly discloses tracking the items on the conveyor exactly as in the patent. The "information about a return" is to be construed broadly, it is sufficient to identify the item to be returned as a piece of information about a return.
- The subject-matter of claim 1 according to the auxiliary request 6 is extended. The cited parts of the description in fact demonstrates that the size determination was disclosed as necessary but it is no longer claimed. Systems without any size measurement but merely performing fitting into an empty slot are perfectly possible, and are now covered by the claim.

Reasons for the Decision

1. The appeal is admissible.

2. Main request - Novelty of independent claim 12 with respect to E1

2.1 E1 discloses in its figure 2 an embodiment of an apparatus for processing food items, in particular
pieces of meat (paragraph 3), that comprises all the features recited in claim 12.

2.2 More specifically E1 discloses a primary conveyor means (main conveyor 20) that runs through processing stations 13, 14, 15 where the food items are cut into pieces ([0001]) from an item intake 16 towards a batching area 2.

The appellant proprietor contests that there is a direct and unambiguous disclosure that the conveyor is the same one running from the intake to the end in the area of the batching area. They argue that the removal belt is arranged underneath the stations and must thus be at a lower level relative to the intake belt.

The Board is of a different opinion. As explained in the first sentence of paragraph [0027] in relation to the first embodiment in figure 1: "the conveyor comprises a transport belt carrying the items from an item intake towards a batching area...", and further specifies that "The arrows 6 indicate the conveying direction of the belt." The skilled person therefore directly and unambiguously understands that there is a single belt and therefore a single conveyor throughout the food processing system in the embodiment of figure 1. The embodiment of figure 2 differs from figure 1 in that the items are separated manually into sub-items (by operators 13,14,15 rather than computer controlled processing station 8), paragraph [0029]. The skilled person has no reason to assume that anything else, including the conveyor belt, will be changed. It is therefore directly and unambiguously clear for the skilled person that the conveyor of figure 2 comprises the same single belt as explicitly mentioned in relation with figure 1. Even when accepting the
argument of the proprietor that the conveyor 20 of El may in fact be split, the broad wording of claim 12 does not exclude that the "primary conveyor means" could be made up of separate sections at different levels, as long as together they serve the purpose of conveying the items from intake along and past the stations.

2.3 El further explains in paragraph [0029] in relation to the figure 2 embodiment that "the host computer assigns the entering items to individual process workers or processing stations for manual breakdown or separation of the items." This corresponds to the requirement in the preamble of claim 1 that the computer is "for allocating an item (10) from a stream of food items (10) provided on said primary conveyor means (4) to one of said workstations": The allocation to each workstation is thus performed by the host computer 18.

The paragraph continues by explaining that after separation of the items into sub-items by operators "information concerning the origination is assigned to each of the items in the sub-receptacles 19." Subsequently the sub-receptacles are emptied onto the main conveyor 20 under the control of the host computer, and "the position of each item [on the conveyor 20] is traced by a sensor" prior to discharge. This is to ensure full traceability of each item and preserve origination information, the main aim of El, see paragraphs [0002] and [0006]. In the Board's understanding traceability of each individual sub-item up to discharge is only possible if the emptying and subsequent tracing is coordinated by the host computer, meaning that it uses the origination information assigned to each sub-item together with controlled emptying of the sub-receptacles to then trace its
position at sensor 21. To this end the host computer when assigning each sub-item collected in each sub-
receptacle 19 its origination must "know" - by storing or registering the relevant information in coordinated fashion - which sub-item is located in which sub-
receptacle and the corresponding origination information. When controlling the release of a sub-item onto the main conveyor (last but one sentence of paragraph 29) the computer has registered the above mentioned three pieces of information about a return of the sub-items to the main conveyor. Therefore the functional requirements defined in the characterising portion of claim 12 are also realised in E1.

2.4 The appellant proprietor submits that in E1 there is no link between the registration of information and the return operation by the computer, and that it cannot therefore be directly inferred that the computer is configured to register such information which is used to return the item to the first conveyor.

2.5 The Board thinks otherwise for the following reasons: That the host computer would empty its contents without remembering the order with only the sensor 21 performing tracing is inconceivable. This would imply that the whole exercise of assigning origination information to the sub-receptacles would be pointless as that information is then subsequently "lost". Furthermore, the wording of claim 12 does not require any specific relationship between the information about a return to be registered and the physical operation of returning the item itself. At best, see paragraph [0018] of the patent specification, it means knowing what is returned and when. This is not more than the information the host computer is necessarily collecting when it assigns origination information to the sub-
receptacles and empties these in a controlled fashion to ensure traceability of the sub-items. Nor does the claim wording imply any particular use of the registered information for effecting the return itself. Again, see paragraph [0018], it is enough that the computer knows which item is returned when. Finally, the claim wording also does not require any special relationship between the action of "allocating an item (10) from a stream of food items (10) provided on said primary conveyor means (4) to one of said workstations" as defined in the preamble of claim 12 and the information about a return to be registered downstream of the workstation.

2.6 From the above, it follows that the second embodiment of E1 anticipates all the features defined in the system of claim 12. Thus the Board confirms the opposition division's finding that the subject-matter claim 12 of the main request lacks novelty, Articles 52(1) and 54 EPC.

3. Auxiliary request 6

3.1 Claim 1 according to auxiliary request 6 adds to granted claim 1 at the end the expression "whereby said step of returning said at least one of said one or more processed items (11, 12) to said primary conveyor means (4) comprises determining by means of the computer system a space on said primary conveyor means (4) where said returning processed items (11, 12) fit."

3.2 This expression differs from the wording of claim 5 as originally filed because it replaces the last requirement for the processed item which is to be returned, i.e. the "taking their size into account", by the more general concept of "fit".
3.3 The appellant proprietor submits that this wording is to be found in the application as filed, see first sentence of paragraph [0025] of the A publication. This passage explains that the computer systems should be able to determine a space on the conveyor means where the item fits. For the appellant proprietor the requirement that the item needs to fit in a space means that its size should not exceed the available space on the conveyor, and it is therefore inherent in the claim wording that the computer system has to take the size of the item into account.

3.4 For the Board the requirement for an item to fit when returned, is however less specific than the requirement that the size is taken into account. Fitting in the broader sense embraces a "passive" approach in which items are placed at set positions and occupy an appropriately dimensioned space, so that all the computer needs to do is see if there is a space free on the conveyor. Taking size into account implies that the size of a returning item is sensed or otherwise determined and that the computer takes this measured size into account to determine whether the item fits into a free surface available between a preceding and following item on the conveyor line.

3.5 This is exactly what is explained in the immediately following lines in paragraph [0025] which read: "It is important that there is enough space for each item, as the sweeper arms will not be able to separate and the weight determining devices and track keeping sensors may not be able to distinguish two items lying closely together. Therefore the measuring of processed item characteristics, e.g. weight, may include measuring the size of the item; in particular its extent in the
direction parallel to the conveyor means 4. The computer system is then able to evaluate the sequence of items and processed items already on the conveyor means and see where the returning item fits with the size measured. The measurement can e.g. be made by sensors, scanners or a camera located in connection with the scale conveyor 16." From this passage it is quite clear that the size of an item is measured and that the term fit is used in context to mean actively finding a space that fits the measured size of the item.

3.6 It follows from the above that where paragraph [0025] mentions fitting it does so in the specific context of an initial measurement of size for comparison with the dimensions of a free space. By replacing the requirement of taking into account size by fitting in its broader sense and out of its original context, claim 1 according to auxiliary request 6 has been generalized vis-a-vis that original disclosure to also include the "passive" fitting described above in point 3.4. Consequently, this amendment adds subject-matter extending beyond the content of the application as filed (Art 123(2) EPC).

4. Since the appellant proprietor's main request and auxiliary request 6 both fail, because at least one opposition ground prejudices maintenance of the patent, respectively the patent as amended does not meet the requirements of the EPC, the Board must revoke the patent pursuant to Article 101(2) and (3)(b) EPC.
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. Magouliotis                 A. de Vries

Decision electronically authenticated