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Case Number: T 0139/04 - 3.5.01

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Title of invention:
Identification and tracking of articles

Applicant:
NEWMAN, Paul Bernard David

Opponent:
-

Headword:
Tracking carcass primals/NEWMAN

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - all requests (no)"

Decisions cited:
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Case Number: T 0139/04 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 26 January 2007

Appellant: NEWMAN, Paul Bernard David
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 13 June 2003 refusing European application No. 97305368.9 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: S. Steinbrener
Members: W. Chandler
P. Schmitz

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division to refuse the application on the ground that claims 1 to 10 did not involve an inventive step (Article 56 EPC) over Document US-A-5 478 990 (D1). In addition, the examining division noted that independent claims 1 and 2 lacked unity (Article 82 EPC) since the method of identifying and tracking carcass primals and of calculating the value of a carcass were not linked by a single general inventive concept.

II. In the grounds of appeal, the appellant requested that the decision be set aside and that a patent be granted on the basis of the refused claims and submitted or specified first to fifth auxiliary requests.

III. In the communication accompanying the summons to oral proceedings, the Board summarised the issues to be discussed and expressed some doubts about the clarity and inventive step of the requests. In response, the appellant filed an amended main and first auxiliary request to replace all preceding requests.

IV. At the oral proceedings, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 10 of the main request or claims 1 to 9 of the first auxiliary request, both filed on 11 January 2007 with the reply to the Board's communication. At the end of the oral proceedings, the Chairman announced the decision.

V. Claim 1 of the main request reads as follows:

"1. A method of identifying and tracking carcass primals comprising successive steps of
(a) providing a database holding respective records relating to a multiplicity of carcasses;
(b) applying a respective different identifying machine—readable mark to each primal of a carcass whose records are included in said database, thus producing a carcass whose primals are marked, wherein each mark is applied by a non-contact method directly onto a respective site on a carcass or onto a band of material that has been sprayed onto the carcass at the site to act as a base surface to receive the mark;
(c) removing at least one marked primal from the carcass;
(d) moving said marked primal to a reading and assessment station;
(e) reading the mark on the primal at the station and recording the mark;
(f) identifying the appropriate carcass record in said database from the mark read at step e; and
(g) passing information about the location of the primal to a central unit."

Claim 1 of the auxiliary request relates to a "method of identifying and tracking carcass primals or determining the value of a carcass". It additionally specifies at the end of feature (b) "each primal being marked prior to its removal from the carcass", and replaces feature (g) by the following:

"(g) passing information to a central computer, said information being either information about the location

of the primal or, in the case that the method is for value determination, information obtained by a step of obtaining data relatable to the yield, and optionally the quality of the primal at the station;
step (g) being in the latter case followed by the steps of:
(h) providing price data relevant to the components of the primal to said computer;
(i) computing the value of the primal from (1) data obtained in step g; (2) said price data; and optionally (3) a weighting or weightings dependant upon the quality of the primal;
(j) adding the value of the primal to the appropriate carcass record;
(k) repeating steps b to j for every other primal of the carcass which is to be assessed according to the method; and
(k [*sic*]) adding together the value of all the primals from the carcass assessed according to the preceding steps, and optionally a value assigned to the remainder of the carcass."

VI. The appellant argued essentially as follows:

The invention solved the problem of improving the certainty as to which carcass a particular primal came from.
The first aspect of the solution was to mark the primals on the intact carcass so that there was no risk that the primals from different carcasses were mixed up.

The second aspect was to apply the marks directly to a site on the carcass or to a band of material that had

been sprayed onto the carcass. This was more reliable than using labels, which may become detached.

Dl taught a process in which the central feature was the continued generation of more and more labels as the food product was successively split and/or processed into smaller and smaller pieces. The passage at column 5, lines 62 to 65 stated that this was a unique feature of the process rather than having a specific number of tags generated at the beginning. This passage was not a meaningful disclosure of the latter, but rather taught away from it.
It could not be obvious, on the basis of Dl, to go directly against the main thrust of its teaching.
In D1, the label generation occurred at one location (a printer) and the labels were physically transferred to another (the fabrication line) and then affixed to the carcass through manual intervention.
The labels required adhesive or other physical means to allow for affixing to the carcass. The tattoos mentioned at column 4, line 38 could be regarded as directly-applied marks, but the passage only referred to the initial labelling and not marking the primals.
Moreover, the invention used a non-contact method for labelling.
Finally, the process in D1 relied on the initial source of carcass identification, namely the ID tag, to remain in contact with the carcass and that the halves stayed together until a tracing label could be generated and affixed. This was not guaranteed in the rough environment of the slaughterhouse.

The inventor had identified this weakness in the process and proposed labelling before the original

carcass identification was removed from its site on the carcass. This "difference" was the difference between a totally reliable system of labelling and one whose reliability was compromised from the outset. Dl and the present invention both sought to provide reliable labelling of meat, and the inventors of Dl proclaimed that they had provided solutions to this problem. The present invention provided a critique of Dl, showing its defects and providing remedies for them. As with many good inventions, once this had been explained, it seemed obvious. But that was only the case with the benefit of hindsight.

In particular, the difference was not just a simple question of starting point because there were many steps performed at the slaughterhouse before labelling. D1 did not suggest nor was it obvious to extrapolate labelling to the rough slaughterhouse situation.

Finally, the machine-readable marks were applied by a non-contact method directly to a site on a carcass, or to a band of material that had been sprayed onto the carcass at the site to act as a base surface to receive the mark. This further enhanced the security and reliability of the system, and increased the contrast with Dl, which was essentially concerned with the generation of labels and thus required the use of an adhesive as a further component, to adhere a label to a substrate. The manner of labelling was connected with the fundamental feature of the invention, the marking of all primals when they were still part of the carcass, in that it was then relatively easy to find suitable sites for marking. Once the carcass had been cut up, it was much more difficult to find suitable, dry sites for the application of marks.

Thus, at no stage did it give rise to any loss of continuity in traceability as at no point was the chain of identification lost.

Reasons for the Decision

1. The appeal complies with the requirements referred to in Rule 65(1) EPC and is therefore admissible.

Background

2. The application relates to a method of identifying and tracking primals of slaughtered animals e.g. hams, shoulders, loins, and bellies. In a preferred embodiment (the one claimed), the primals are labelled on the carcass of the slaughtered animal before the carcass is cut up (see e.g. Figure 5 and column 10, line 56 to column 11, line 12 and original claim 5).

3. D1 discloses a process in which the slaughtered animal, tagged with a tracking number (A-TN), is halved (Figure 5 and column 12, lines 52 to 59) and then quartered, each quarter being given a tag before the halves are cut up to maintain the identity of the animal (Q-TN: Figures 5 and 6 and column 13, lines 1 to 11 and 26 to 48). Similarly, the primal and sub-primal pieces are labelled on the quarters with tags (P-TN: Figure 8 and column 14, lines 20 to 28) before the quarters are cut up (Figure 9 and column 14, lines 43 to 49). Thus in D1 the primals are marked *after* the carcass has been cut into quarters.

4. The appellant argued that D1 did not disclose that the marks were applied by a non-contact method directly onto the carcass or onto a band of material sprayed onto the carcass (second part of feature (b)). However, the Board considers that the passage in D1 at column 4, lines 38 and 39, stating that the labels can take the form of tattoos, does disclose that the labels can be applied "directly" onto the carcass. The appellant argued that the passage only referred to the initial labelling of the carcass. However, the paragraph containing this passage makes no such distinction between initial and subsequent labelling, but merely refers to "labels". The Board thus considers that the reference is to any of the previously mentioned labels that can be affixed to a food product during the processing, i.e. including labels on the primals.

5. The Board thus considers that claim 1 of the main request differs from D1 in that each primal is marked on the intact carcass (first part of feature (b)) and that the marks are applied by a non-contact method onto the carcass (taking only the first alternative of the second part of feature (b)).

6. It is common ground that the feature of marking the intact carcass solves the problem of improving the reliability of identifying the primals. The Board considers that the feature of marking with a non-contact method solves the separate, unrelated problem of avoiding contamination of the print head. However, the application describes, at column 7, lines 31 to 32, non-contact marking as well known and mentions the advantage of avoiding contamination of the print head. The Board considers that the skilled person would

realise these advantages of such a well known method and would use the method if contamination of the print head was a problem. The Board accordingly judges that this feature does not contribute to inventive step.

7. The examining division considered that labelling the carcass before splitting it up in any way was a matter of starting point; in D1 the quarters were labelled, in the invention the carcass was labelled. The Board agrees with this and, as a result, considers that if for any reason the chain of identification of the primals from the larger pieces were to be lost, the skilled person would consider as one obvious possibility labelling the primals earlier by simply extrapolating the labelling to the beginning of the process. D1 already points in this direction by allowing both carcass halves to be tagged and not necessarily limiting the number of "quarter" tags to four (see column 12, lines 57 to 59 and column 13, lines 5 to 9).

8. Moreover, the Board considers that the passage in D1 at column 5, lines 62 to 65, stating that it is a unique feature of the invention that the labels are produced throughout a production process *rather than at the beginning of an identification process*, explicitly discloses the claimed feature as an alternative. The appellant considers that D1 teaches away from the latter. However, in the Board's view, it does not teach away, but rather discloses that both alternatives are possible, but that one was preferred for the invention of D1. There is no actual disclosure that teaches away, e.g. by saying that producing labels at the beginning would not work, or would suffer from drawbacks.

9. In particular, the Board does not see that the slaughterhouse environment or the number of steps performed there would dissuade the skilled person from attempting this alternative either. Firstly, the number of steps is not relevant because, as explained above, the skilled person would consider as one obvious possibility labelling before any step that was causing a problem. Secondly, if the labels are tattoos, as explained above in point 4, the skilled person would see no problem in the number of steps or the rough slaughterhouse environment causing them to come off. On the contrary, in the Board's view, it would seem all the more sensible, especially if the slaughterhouse and the fabrication plant are on the same site, as contemplated in D1 at column 13, lines 27 to 29, to provide a consistent marking scheme throughout the process.

10. Accordingly, the subject-matter of claim 1 of the main request lacks an inventive step (Article 56 EPC).

Auxiliary request

11. Claim 1 of the first auxiliary request is a combination of independent claims 1 and 2 of the main request into a single claim to overcome the unity objection in the decision under appeal. The amendment to feature (b) merely makes explicit that each primal is marked prior to removal from the carcass, which is already implied by claim 1 of the main request. Otherwise, the claim only adds alternate features to claim 1 of the main request in the case that the method is for value

determination and is therefore no more limited than this claim.

12. Accordingly, the subject-matter of claim 1 of the auxiliary request lacks an inventive step for the same reasons as claim 1 of the main request (Article 56 EPC).

13. There being no further requests, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Steinbrener