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**Datasheet for the decision
of 2 February 2007**

Case Number: T 1296/04 - 3.2.04

Application Number: 97904663.8

Publication Number: 0883348

IPC: A21C 11/06

Language of the proceedings: EN

Title of invention:

Method of making bread from dough

Patentee:

Yusufi, Nasier Ahmed

Opponent:

Vaasan & Vaasan Oy

Headword:

-

Relevant legal provisions:

EPC Art. 100(a)

Keyword:

"Request for oral proceedings - considered to be withdrawn"
"Claim 1 - novelty (no)"

Decisions cited:

T 0003/90

Catchword:

-



Case Number: T 1296/04 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 2 February 2007

Appellant: Yusufi, Nasier Ahmed
(Patent Proprietor) Het Dok 41
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Representative: Hooiveld, Arjen Jan Winfried
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Respondent: Vaasan & Vaasan Oy
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Representative: Klusmann, Peter
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 30 July 2004
revoking European patent No. 0883348 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
T. Bokor

Summary of Facts and Submissions

- I. By its decision dated 30 July 2004 the Opposition Division revoked the patent. On 29 September 2004 the Appellant (proprietor) filed an appeal. The appeal fee was paid on 28 September 2004. The statement setting out the grounds of appeal was received on 25 November 2004.
- II. The following documents played a role in the present proceedings:
- D1: Kodin uusi keittokirja, pages 544 and 545 and its translation into English,
D2: Leipojan sunnuntai, page 13 and its translation into English,
D6: Baking Science & Technology (1988), third edition, volume II, page 1065.
- III. The opposition was filed on the grounds based on Article 100a) EPC (lack of novelty and of inventive step) and 100 (b) EPC.
The Opposition Division revoked the patent because the subject matter of claim 1 was found to lack novelty with respect to D1 and the subject matter of claim 8 was found to lack novelty with respect to D2.
- IV. Claim 1 as granted reads as follows:
- "1. Method of making bread from dough, including the steps of:
preparing the bread dough;
rolling out the bread dough into a flat strip;
cutting the strip of dough into flat pieces;

baking the flat pieces of dough in an oven for 2-8 minutes at a temperature of 250-270° C; and cooling the flat pieces of baked bread."

Claim 7 as granted reads as follows:

"7. Bread made by a method according to claim 3, consisting of a rectangular flat piece of baked bread dough including a plurality of weakened lines for defining a plurality, preferably 3 or 6, "slices"."

Claim 8 as granted reads as follows:

"8. Bread made by rolling out dough into a flat strip and cutting the strip of dough into pieces; baking the flat pieces of dough in an oven and cooling it off, the bread being made as a sandwich including a lower layer and an upper layer of dough and an intermediate filling, commonly baked with the bread."

V. The Appellant requested that the decision under appeal be set aside and that the patent be maintained as granted. Oral proceedings are requested should the Board consider dismissing the appeal.

He mainly argued as follows:

D1 does not relate to a method for making bread but to a method for making pastries. Furthermore D1 does not disclose the baking of flat pieces of dough, since they are allowed to rise prior to backing. Again D2 specifically discloses that the rolled out dough is allowed to rise prior to backing. Therefore the subject-matter of claims 1 and 8 is novel.

The Respondent (opponent) mainly argued as follows:
The patent in suit does not disclose any particular meaning of the term "bread". Thus, in absence of a clear definition, the term "bread" cannot be interpreted narrowly and therefore, encompasses pastries. Furthermore the patent is said to teach the baking of flat pieces. However, the term "flat" is imprecise and merely implies that the height is substantially less than the length and width. That the dough has not risen before entering the oven finds no expression in claims 1 and 8. Therefore, D1, D2 and D6 are novelty destroying for at least claim 1.

The Respondent requested that the appeal be dismissed. Oral proceedings were requested should the Board intend to maintain the patent.

Reasons for the Decision

1. The appeal is admissible.
2. *Procedural matters - oral proceedings:*

As set out in paragraph V above, both parties originally requested oral proceedings on an auxiliary basis; according to the established practice of the Boards of Appeal, this is interpreted as a request for oral proceedings unless the Board intends to decide the case in favour of the requesting party. The Board then issued a communication under Article 11(1) of the Rules of Procedure of the Boards of Appeal, in which it indicated as a preliminary view that it was likely to decide in favour of the respondent. Oral proceedings

were therefore appointed because of the appellant's request for such proceedings. The appellant then stated that he would not be represented at the oral proceedings. In such circumstances, such a statement is clearly equivalent to a withdrawal of the appellant's earlier request for oral proceedings on an auxiliary basis.

After the Board had considered the appellant's reply to its communication and had internally confirmed its intention to decide the case in favour of the respondent, the oral proceedings were therefore duly cancelled by the Board (see decision T 003/90; OJ 1992, 737).

3. *Novelty of claim 1:*

3.1 In its communication the Board already indicated that D6 (page 1065, lines 4 to 22) discloses a method of making pizza crusts. Although pizza dough comprises in addition to usual bread dough a small amount of oil, it remains nevertheless bread dough. According the "sheeting method" disclosed in D6, the dough is extruded as a strip and reduced to the desired thickness by sheeting rolls. It then passes under a cutting wheel and the cut dough then enters the oven directly for baking. Because of its thinness, the baking time is of 3 to 5 min at a temperature between 204 and 316°C. Afterwards the product is cooled and can be packaged.

3.2 Thus, the claimed baking temperature range (250 to 270° C) is a sub-range of the broader range known from D6 (204 to 316° C).

According to the case law of the Boards of Appeal a selection of a sub-range of numerical values is considered novel when each of the following three criteria is satisfied:

- i) the selected sub-range should be narrow compared to the range in the prior art,
- ii) the selected sub-range should be sufficiently far removed from the preferred part of the known range (as illustrated for instance in the examples given in the prior art),
- iii) the selected sub-range should not be an arbitrary chosen specimen of the prior art, i.e. not a mere embodiment of prior art, but another invention (purposive selection, new teaching).

However, the selected sub-range (250 to 270° C) does not appear to be narrow with respect to the broader known range (204 to 316° C) and is located right in the middle of the broader range. Moreover, the achieved technical effect is similar in both ranges: there is no indication of any special technical effect achieved in the claimed sub-range of 250 to 270° C. This means that at least the above criterion iii) is not fulfilled. Thus, the claimed sub-range does not fulfil the requirements of novelty.

3.3 In his response to the Board's communication the Appellant did solely state that he will not attend the oral proceedings, but did not present any argument concerning the substantial issues. Thus, the Board sees no reason to depart from its provisional observations.

3.4 Thus, the subject-matter of claim 1 as granted is not new with respect to D6. Consequently the sole request of the Appellant must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte