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**Datasheet for the decision
of 28 April 2009**

Case Number: T 0742/07 - 3.2.04

Application Number: 98203652.7

Publication Number: 0935922

IPC: A22C 21/00

Language of the proceedings: EN

Title of invention:

Rotary shackle with position lock

Patentee:

Numafa Holding B.V.

Opponent:

STORK PMT B.V.

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 100(a) and (c), 111(1)

Keyword:

"Document not submitted in due time admissible (yes)"
"Automatic remittal (no)"
"Main and first auxiliary requests - novelty (no)"
"Auxiliary requests 8, 4 and 6 - inventive step (no)"
"Auxiliary requests 3 and 5 - added subject matter (yes)"

Decisions cited:

T 0714/00, T 1067/97, T 0582/91, T 0133/87, T 0176/84,
T 0169/83



Case Number: T 0742/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 28 April 2009

Appellant: STORK PMT B.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 21 February 2007
rejecting the opposition filed against European
patent No. 0935922 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

- I. By its decision dated 21 February 2007 the Opposition Division rejected the opposition. On 20 April 2007 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 2 July 2007.
- II. The patent was opposed on the grounds based on Article 100(a) and (c) EPC 1973 (lack of novelty and inventive step).
- III. The following documents played a role in the present proceedings:
- D1: EP-A-0 444 782
D12: DE-U-1 733 754
- IV. Oral proceedings took place on 28 April 2009 before the Board of Appeal.

The Appellant requested that the decision under appeal be set aside and that the patent be revoked.

He mainly argued as follows:

Although not submitted in due time, document D12 is highly relevant for the issue of novelty and inventive step and should thus be introduced into the proceedings. The subject-matter of claim 1 of the main and first auxiliary request which is not limited to processing poultry lacks novelty over D12. D1 discloses a suspended conveyor line for a poultry processing plant. The drawback of D1 as mentioned in the contested patent is that it does not provide a stabilized rotary position of

the shackle. This is however the problem D12 proposes to solve by providing locking means exhibiting the claimed features. Therefore, the subject-matter of claim 1 of auxiliary request 8, 4 and 6 does not involve an inventive step. Amended claims 1 of auxiliary requests 3 and 5 contain added subject-matter, contrary to the requirements of Article 123(2) EPC.

The Respondent (patentee) contested the arguments of the Appellant. He mainly submitted that D12 should be disregarded as late filed and if not, the case should be remitted to the department of first instance for further prosecution. D12 does not show a turning gear mounted to the hanger. Furthermore, a skilled person would not combine D1 with D12 because D12 relates to a remote technical field, not concerned with poultry processing. Finally, the feature added into claim 1 of auxiliary request 3 is derivable from Figure 1 of the contested patent; although the features added into claim 1 of auxiliary request 5 are disclosed in combination with other features, it is clear for a skilled person that these other features are not essential for the invention and thus can be omitted, without contravening the requirements of Article 123(2) EPC.

The Respondent requested that that the appeal be dismissed, in the alternative that the decision under appeal be set aside and that the patent be maintained based on one of the sets of claims of auxiliary request 1 filed by letter dated 11 January 2008 or auxiliary request 8 filed by letter dated 27 March 2009, or auxiliary requests 3 to 6 filed during oral proceedings. The Respondent withdrew the former

auxiliary requests 2 to 7 and 9 as well as auxiliary request 10 during the oral proceedings.

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

"1. A carrier assembly for a suspended conveyor line comprising:
a plurality of trolley assemblies for movement along a conveyor rail;
a conveyor chain (20) connected between said trolley assemblies for pulling said trolley assemblies in series along said rail;
a plurality of hanger assemblies (28) suspended in spaced series along said conveyor chain (20), each hanger assembly (28) including rotary shackle comprising a hanger support (32) and a hanger (30) rotatably suspended from the hanger support (32);
a turning gear (38) mounted to said hanger (30); said turning gear (38) including a lock collar, with lock notches (50) formed at intervals about said lock collar;
means for locking the position of said hanger (30) relative to said hanger support (32),
characterized in that
said locking means comprise a cam lock (62) movably supported by said hanger support (32), said cam lock (62) having a lock pin (82) engagable with said lock notches (50), and having a cam engagement surface (76); and
said carrier assembly comprises a first cam (78) positioned along the conveyor line for engaging said cam engaging surface (76) of said cam lock (62) for moving said cam lock (62) and its lock pin (82) and thereby releasing said lock pin (82) from a first lock notch (50) and permitting said hanger (30) and said turning gear

(38) to rotate from a first position with respect to said hanger support (32) so that said lock pin (82) can engage a second lock notch (50) and securely retain said hanger (30) in a second position with respect to said hanger support (32)."

Claim 1 of auxiliary request 1 is a combination of claims 1 and 2 as granted.

Claim 1 of auxiliary request 8 reads as follows:

"1. A carrier assembly for a suspended conveyor line of a poultry processing plant comprising:
a plurality of trolley assemblies for movement along a conveyor rail;
a conveyor chain (20) connected between said trolley assemblies for pulling said trolley assemblies in series along said rail;
a plurality of hanger assemblies (28) suspended in spaced series along said conveyor chain (20), each hanger assembly (28) including rotary shackle comprising a hanger support (32) and a bird hanger (30) rotatably suspended from the hanger support (32);
a turning gear (38) mounted to said hanger (30); said turning gear (38) including a lock collar, with lock notches (50) formed at intervals about said lock collar;
means for locking the position of said bird hanger (30) relative to said hanger support (32),
characterized in that
said locking means comprise a cam lock (62) movably supported by said hanger support (32), said cam lock (62) having a lock pin (82) engagable with said lock notches (50), and having a cam engagement surface (76); and

said carrier assembly comprises a first cam (78) positioned along the conveyor line for engaging said cam engaging surface (76) of said cam lock (62) for moving said cam lock (62) and its lock pin (82) and thereby releasing said lock pin (82) from a first lock notch (50) and permitting said bird hanger (30) and said turning gear (38) to rotate from a first position with respect to said hanger support (32) so that said lock pin (82) can engage a second lock notch (50) and securely retain said bird hanger (30) in a second position with respect to said hanger support (32)."

Claim 1 of auxiliary request 3 filed at the oral proceedings comprises with respect to claim 1 of auxiliary request 8 the following additional features: "and wherein said hanger (30) is arranged between subsequent trolley assemblies (14)".

Claim 1 of auxiliary request 4 filed at the oral proceedings is a combination of claim 1 of auxiliary request 8 and claim 6 as granted.

Claim 1 of auxiliary request 5 filed at the oral proceedings comprises with respect to claim 1 of auxiliary request 8 the following additional features: "and said lock notches (50) are formed in an inwardly facing circular surface of the lock collar".

Claim 1 of auxiliary request 6 filed at the oral proceedings differs from claim 1 of auxiliary request 8 in that its characterising part reads as follows: "said lock collar (42) is formed on the upper surface of turning gear (38) and has an inwardly facing circular surface (46) that concentrically surrounds a central

stem opening (48) which accommodates a stem 34 of the hanger 30, wherein a plurality of lock notches (50) are formed in the inwardly facing circular surface (46) of the lock collar (42), with the lock notches (50) being formed at 90° intervals about the lock collar (42), thereby forming four lockable rotational positions of the hanger (30) relative to the hanger support (32); said locking means comprise a cam lock (62) movably supported by said hanger support (32) above said lock collar, said cam lock (62) having a lock pin (82) projecting downwardly from the cam lock and engagable with said lock notches (50), and having a cam engagement surface (76); and said carrier assembly comprises a first cam (78) positioned along the conveyor line for engaging said cam engaging surface (76) of said cam lock (62) for moving said cam lock (62) and its lock pin (82) and thereby releasing said lock pin (82) from a first lock notch (50) and permitting said bird hanger (30) and said turning gear (38) to rotate from a first position with respect to said hanger support (32) so that said lock pin (82) can engage a second lock notch (50) and securely retain said bird hanger (30) in a second position with respect to said hanger support (32)."

Reasons for the Decision

1. The appeal is admissible.
2. *Admissibility of document D12:*

2.1 D12 has been filed seven weeks before the date of the oral proceedings in response to the Board's communication and within the time limit set in this communication, that is one month before the date of the oral proceedings.

It is to be observed that the Respondent as well as the Board had ample time to take the disclosure of D12 into consideration. The Respondent has indeed dealt with D12 in some detail in his letter dated 27 March 2009 and has filed three further auxiliary requests 8 to 10 in response to the filing of D12.

2.2 The Appellant submitted that he filed D12 as soon as he had knowledge of it. There is no evidence that this has not been the case. Therefore, no abuse of procedure can be inferred from the Appellant's late objection.

The Respondent contended that D12 was not highly relevant since it relates to a remote technical field and would therefore be disregarded by the skilled person dealing with poultry processing.

This cannot be accepted. Firstly, although the contested patent relates to a suspended conveyor for a poultry processing plant, claim 1 of the main request is not limited to a carrier assembly for transporting poultry. Secondly, according to the case law a skilled person would, as well as considering the state of the art in

the specific technical field of the patent (suspended conveyor lines for poultry processing plants), look for suggestions in a broader general technical field (suspended conveyor lines for processing plants) if the same or similar problems arose, and if he could be expected to be aware of such general fields, see i.a. T176/84 (OJ EPO 1986, 50).

In the present case, the skilled person is a mechanical engineer specialised in the field of suspended conveyors suitable for carrying poultry and thus, suspended conveyors for processing plants in general have to be viewed as part of his general technical knowledge.

2.3 Accordingly, the Board decided to admit D12 into the proceedings.

3. *Remittal:*

3.1 The Appellant requested that the case be remitted to the department of first instance, in case the Board decides to admit D12 into the proceedings.

3.2 However, Article 111(1) EPC 1973 establishes no absolute right for parties to have all matters raised in appeal proceedings examined by two successive instances; on the contrary, it leaves the Board of Appeal to decide in the light of the circumstances of the case, whether or not to remit it to the department of first instance, see inter alia T133/87, point 2 of the reasons.

3.3 In this respect, it is observed that the patent under appeal was granted in 2003, almost six years ago, and that remittal would prolong the already rather lengthy opposition proceedings.

Furthermore, in accordance with the Article 13(2) of the Rules of Procedure of the Boards of Appeal (RPBA) the patent proprietor in response to the submission of D12 was allowed to file three new auxiliary requests 8 to 10 by letter dated 3 March 2009 as well as four further auxiliary requests 3 to 6 during the oral proceedings before the Board, i.e. a not inconsiderable number of requests.

3.4 Accordingly, in view of the above circumstances and taking into account the imperative of procedural efficiency, the public interest in a speedy and streamlined procedure, the Board considered it not appropriate to remit the case to the department of first instance for further prosecution but rather to decide on the merits of the case itself in accordance with Article 111(1) EPC 1973.

4. *Claim 1 of the main and first auxiliary requests:*

4.1 D12 discloses a carrier assembly for a suspended conveyor line comprising:
a plurality of trolley assemblies (1) for movement along a conveyor rail;
a conveyor chain (6) connected between said trolley assemblies for pulling said trolley assemblies in series along said rail;
a plurality of hanger assemblies (8, 9) suspended in spaced series along said conveyor chain (6), each hanger assembly including rotary shackle comprising a hanger

support (8) and a hanger (9) rotatably suspended from the hanger support (8);

a turning gear (21) mounted to said hanger (9); said turning gear (21) including a lock collar (11), with lock notches (15) formed at intervals about said lock collar;

means for locking the position of said hanger (9) relative to said hanger support (8),

wherein said locking means comprise a cam lock (17, 20) pivotally supported by said hanger support (8), said cam lock having a lock pin (16) engagable with said lock notches (15), and having a cam engagement surface (20);

and

said carrier assembly comprises a first cam (19) positioned along the conveyor line for engaging said cam engaging surface (20) of said cam lock (17, 20) for moving said cam lock and its lock pin (16) and thereby releasing said lock pin (16) from a first lock notch (15) and permitting said hanger (9) and said turning gear (21) to rotate from a first position with respect to said hanger support (8) so that said lock pin (16) can engage a second lock notch (15) and securely retain said hanger (9) in a second position with respect to said hanger support (8).

4.2 The Respondent argued that D12 does not show a plurality of trolleys and that the turning gear is not mounted to the hanger.

4.3 However, the title of document D12 "Vorrichtung zum ... von ... drehbar aufgehängten Wagen von Hängebahnen" unmistakably uses the plural for the carriers (Wagen). Moreover, the first sentence of the description "... Wagen ... um sie so in ..." likewise uses the plural "sie"

with respect to the carriers. Thus, D12 discloses the presence of more than one carrier assembly.

In D12, the hanger 9 is bolted to the underside of turning gear 11 (page 3, lines 20 to 23, Figure 2). Accordingly, turning gear and hanger are mounted to each other. The wording of claim 1 does not imply that the turning gear is mounted "on" in the sense of supported by the hanger. Therefore, in D12 too the turning gear is mounted to the hanger.

4.4 Consequently the subject-matter of claim 1 of the main and the first auxiliary requests is not novel over D12 and thus the main and first auxiliary requests must fail.

5. *Claim 1 of auxiliary request 8:*

5.1 Amendments:

Claim 1 of this request has been amended with respect to claim 1 of the main request to specify that the conveyor line is that of a "poultry processing line" and that the hangers are "bird hangers".

These amendments do not contravene the requirements of Article 123(2) and (3) EPC.

5.2 Novelty:

The expression "bird hanger" implies that the hanger must be suitable for supporting a bird in a hanging position. This cannot be inferred from the description and the drawings of D12.

Accordingly, novelty of the subject-matter of claim 1 is given.

5.3 Inventive step:

5.3.1 D1 is the closest prior art because it relates to the same technical field of suspended conveyor lines of poultry processing plant, where birds are suspended by their legs on shackles or poultry hanger assemblies. The carrier assembly disclosed in this citation comprises a plurality of trolley assemblies (14) for movement along a conveyor rail, a conveyor chain (16) connected between said trolley assemblies, a plurality of hanger assemblies (30) suspended in spaced series along said conveyor chain, each hanger assembly including rotary shackle comprising a hanger support (18) and a hanger (60) rotatably suspended from the hanger support; a turning gear (40) mounted to said hanger, means for holding the position of said hanger (60) relative to said hanger support.

5.3.2 Starting from D1 as closest prior art the problem to be solved can be seen in providing "an improved poultry processing line along which suspended poultry support shackles move in series with the bird hangers of the shackles being rotatable with their supporting trolley and with the rotary positions of the bird hangers being stabilized both while the suspended bird of the shackle is being moved through a cut-up or other processing machine, and while the shackle is changing directions between processing stations" (see patent specification, paragraph [0013]).

5.3.3 The problem of firmly holding a hanger in a predetermined relative rotary position along a processing line so as to avoid any unwanted rotary movement has already been solved by D12.

5.3.4 The Respondent contended that a skilled person would not take D12 into consideration, because it relates to a remote technical field.

This cannot be accepted. D12 relates to suspended conveyor lines for a processing plant, i.e. to the non-specific (general) technical field which encompasses the specific technical field of suspended conveyor lines for a poultry processing plant.

Therefore, as has been explained in section 2.2 above the skilled person would have taken D12 into consideration.

The Respondent also considered that the cam member 41 of D1 prevents rotation of the shackle as long as the first cam member surface of the turning gear remains in sliding contact with the cam member and that therefore, the easiest way of solving the above stated problem would have been to extend the length of the cam member, and not to look for another solution in a more general technical field.

This line of argument cannot be followed either. D1 does neither mention nor even suggest that rotation is prevented as long as the cam member surface of the turning gear remains in contact with the cam member and the figures only show that the cam member can prevent rotation of the turning gear in a first direction but not whether rotation is also prevented in the opposite

direction. Thus D1 does not solve the problem of avoiding unwanted rotation of the shackle.

5.3.5 D12 however, solves the problem of maintaining a rotatable hanger in a predetermined relative rotary position by providing the carrier assemblies for a suspended conveyor line with locking means as mentioned in section 4.1 above.

Accordingly, it would have been obvious for a skilled person to provide a suspended conveyor line of a poultry processing plant comprising rotatable bird hangers as known from D1 with carriers provided with locking means engaged between the turning gear of the hanger and the hanger to maintain the hanger in a predetermined rotary position as taught by D12. The skilled person would thus have arrived at the carrier assembly of claim 1 without exercising any inventive skill.

5.3.6 Consequently, the subject-matter of claim 1 of auxiliary request 8 does not involve an inventive step and therefore, this request must fail.

6. *Claim 1 of auxiliary request 3:*

6.1 With respect to claim 1 as granted, claim 1 of auxiliary request 3 comprises inter alia the following feature:
"and wherein said hanger (30) is arranged between subsequent trolley assemblies (14)".

6.2 The sole possible basis for this amendment is Figure 1. However, Figure 1 solely depicts one trolley followed by one hanger. This leaves open whether the hanger

represented in Figure 1 is followed by a trolley or by another hanger. It is therefore not excluded that the depicted hanger is arranged between a trolley and another hanger.

The Respondent contended that it would be obvious for a skilled person that the conveyor line depicted in Figure 1 comprises in series a trolley, a hanger, a trolley, a hanger and so on.

However, only what is directly and unambiguously derivable from the originally filed application, taking into account matter which is implicit (not merely obvious) to a skilled person can serve as a basis for an amendment. In the case of the arrangement of hangers and carriers, it is not implicitly disclosed that each hanger is arranged between subsequent trolley assemblies, since other arrangements are possible as well.

- 6.3 Furthermore, according to the well established case law subject-matter may be taken from the drawings if the structure and function of these features are clearly, unmistakably and fully derivable for the skilled person from the drawings (see in particular the decision T169/80; OJ EPO 1984, 357). In the present case, neither the structure (the arrangement of the hanger between subsequent trolley assemblies) nor the function of the arrangement is clearly derivable for the skilled person from Figure 1.

The Respondent argued that the function of this feature is to counteract lateral forces occurring during processing of the poultry and thus to stabilize the hanger. He referred in this respect to paragraph [0013]

of the patent specification. However, this paragraph states: "... improved poultry processing line ... with the rotary positions of the bird hanger being stabilized". Thus, it is the rotary position and not the lateral position of the hanger which is stabilized, so that there is no basis in the description for this alleged function.

6.4 Accordingly, amended claim 1 of auxiliary request 3 does not meet the requirements of Article 123(2) EPC and thus, this request is not allowable.

7. *Claim 1 of auxiliary request 4:*

7.1 With respect to claim 1 of auxiliary request 8, claim 1 of auxiliary request 4 comprises the additional following feature:

"wherein said cam lock (62) is spring biased to engage with its lock pin (82) in a lock notch".

7.2 The use of a spring to engage the lock pin of the cam lock in a lock notch is already disclosed in D12, page 1, penultimate line and page 3, ultimate line.

7.3 Accordingly, for the reasons given above with respect to subject-matter of claim 1 of auxiliary request 8, the subject-matter of claim 1 of auxiliary request 4 does not involve an inventive step in view of D1 and D12. Consequently, auxiliary request 4 is not allowable.

8. *Claim 1 of auxiliary request 5:*

8.1 With respect to claim 1 of auxiliary request 8 claim 1 of auxiliary request 5 comprises the following additional feature:

"and said lock notches (50) are formed in an inwardly facing circular surface of the lock collar".

8.2 This feature is disclosed in the passage of the description page 9, lines 12 to 19 which reads: "As illustrated best in Fig. 2, turning gear 38 is approximately square with turning recesses 40 formed at each corner of the square shape, with a lock collar 42 extending from the upper surface 44 of the turning gear 38. Lock collar 42 is formed on the upper surface of turning gear 38 and has an inwardly facing circular surface 46 that concentrically surrounds the central stem opening 48 which accommodates the stem 34 of the hanger 30. A plurality of lock notches 50 are formed in the inwardly facing circular surface 46 of lock collar 42, with the lock notches 50 being formed at 90° intervals about the lock collar 42, thereby forming four lockable rotational positions of the hanger 30 relative to the hanger support 32."

8.3 The above quoted feature added to claim 1 has been disclosed in the original application only together with other features, such as the arrangement of the inwardly facing circular surface which concentrically surrounds the central stem opening which accommodates the stem of the hanger. The inwardly facing circular surface and the central stem opening are both provided on the lock collar, so that there is a structural relationship between these two features.

However, it is not admissible to isolate a features from a set of features originally disclosed in an embodiment, if, from the original application, it can be clearly recognised that the isolated feature has a functional or structural relationship with the other features, see also the Case Law Book, 5th Edition, Chapter III.A.1.1 (T714/00, T1067/97, T582/91).

8.4 Accordingly, the amendment of claim 1 of auxiliary request 5 adds subject-matter, contrary to the requirements of Article 123(2) EPC. Thus, auxiliary request 5 must fail.

9. *Claim 1 of auxiliary request 6:*

9.1 With respect to claim 1 of auxiliary request 8, claim 1 of auxiliary request 6 comprises the additional following features:

- a - said cam lock (32) [is] movably supported by said hanger support (32) above said lock collar;
- b - having a lock pin (82) projecting downwardly from the cam lock;
- c - lock collar (42) is formed on the upper surface of turning gear (38) and has an inwardly facing circular surface (46) that concentrically surrounds a central stem opening (48) which accommodates a stem 34 of the hanger 30, wherein a plurality of lock notches (50) are formed in the inwardly facing circular surface (46) of the lock collar (42), with the lock notches (50) being formed at 90° intervals about the lock collar (42), thereby forming four lockable rotational positions of the hanger (30) relative to the hanger support (32).

- 9.2 However, Figure 2 of D12 discloses already features a) and b). Moreover, the same Figure shows that the lock collar (11) is formed on the upper surface of turning gear (21) and has an inwardly facing circular surface (Figure 3) wherein four lock notches (15) are formed at 90° intervals.
- 9.3 Thus, with respect to D1 taken in combination with D12, claim1 of auxiliary request 6 adds that the inwardly facing circular surface of the lock collar concentrically surrounds a central stem opening which accommodates the stem of the hanger.
- 9.4 It is however unclear which technical problem should be solved by this distinguishing feature.

The Respondent contended that by accommodating the stem of the hanger in the lock collar, the carrier becomes more rigid and resists lateral forces better in comparison with D12, where the hanger is linked to the lock collar by a swivelling connection.

This point of view cannot be shared. According to page 3, lines 22 to 26 of D12, the hanger is fixed to the lock collar by a bolt and has a series of holes to adjust its position relative to the lock collar so as to adapt the carrier to the load to be transported.

A skilled reader would therefore interpret this passage to mean that the hanger is firmly fixedly to the lock collar. Moreover in the closest prior art D1, the hanger is also fastened to its support member.

Thus, the distinguishing feature does not solve any particular technical problem with respect to the cited

prior art. Consequently, this feature is merely a matter of normal design procedure which does not involve any inventive skill.

Accordingly, for the reasons given in section 5.3 above, the subject-matter of claim 1 of auxiliary request 6 does not involve an inventive step, starting from D1 as closest prior art and combining this closest prior art with D12.

Consequently, auxiliary request 6 is not allowable either.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte