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**Datasheet for the decision
of 16 February 2012**

Case Number: T 0763/10 - 3.2.04

Application Number: 03018888.2

Publication Number: 1393622

IPC: A01K 45/00

Language of the proceedings: EN

Title of invention:

An apparatus for emptying poultry from transport crates

Patentee:

Linco Food Systems A/S

Opponent:

STORK PMT B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 100a, 100b

Keyword:

"Sufficiency of disclosure (yes)"

"Novelty (yes)"

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0763/10 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 16 February 2012

Appellant: STORK PMT B.V.
(Opponent) Handelstraat 3
NL-5831 AV BOXMEER (NL)

Representative: Van den Heuvel, Henricus Theodorus
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Respondent: Linco Food Systems A/S
(Patent Proprietor) Vestermøllevej 9
DK-8380 Trige (DK)

Representative: Gregersen, Niels Henrik
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 4 February 2010
rejecting the opposition filed against European
patent No. 1393622 pursuant to Article 101(2)
EPC.

Composition of the Board:

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

Summary of Facts and Submissions

I. By its decision dated 4 February 2010 the Opposition Division rejected the opposition. On 2 April 2010 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 2 June 2010.

II. The patent was opposed on the grounds based on Article 100(a) and (b) EPC.

III. Claim 1 as granted reads as follows:

"1. An apparatus for emptying poultry from transport crates (2) and comprising at least one first conveyor (6) arranged for successively conveying transport crates (2) containing poultry to be slaughtered towards a turning position and at least one subsequent conveyor (24) arranged for successively conveying turned transport crates (2) to an emptying position (32), and from there, further to a washing and/or disinfection system, characterised in that, in said turning position, a turning unit (12) is provided, said unit being in the form of two endless reversible conveyors (14, 16) located at a distance from each other, and being provided with mutually parallel conveyor members (26, 28) being arranged for alternately forming a support surface and a cover surface for a transport crate (2), said turning unit (12) as a whole being arranged for being rotated around a rotational axis (22) being perpendicular to the conveying direction of said conveyors (14, 16)."

IV. Oral proceedings took place on 16 February 2012 before the Board of Appeal.

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

He mainly argued as follows:

Claim 1 relates to an apparatus for emptying poultry from transport crates but the emptying position itself is not part the claimed apparatus. Therefore, an apparatus comprising all technical features of claim 1 is not suitable for emptying poultry from transport crates. The apparatus of claim 1 lacks novelty with respect to D1: US-A-4 798 278 or at least does not involve an inventive step starting from the prior art mentioned in paragraphs [0002] and [0003] of the patent specification and combining this prior art with the teaching of D1.

The Respondent (patentee) contested the arguments of the Appellant. He mainly submitted that the emptying position for emptying poultry from transport crates is part of claim 1. The specific means and arrangements that are necessary to implement the claimed invention are well known in the technical field of handling livestock such as poultry and therefore there is no need to specify them in detail.

The conveyor for turning packages upside down disclosed in D1 does not comprise any emptying position to empty out the contents of the packages.

The preamble (prior art portion) of claim 1 states all those features of the apparatus which are known from the prior art acknowledged in paragraphs [0002] an

[0003] of the patent specification. The conveyor in D1 is not suitable for turning open topped transport crates containing live poultry upside down and thus the skilled person would not have considered the teaching of this prior art citation for solving the problem underlying the claimed invention.

The Respondent requested that the appeal be dismissed, i.e. that the patent be maintained as granted.

Reasons for the Decision

1. The appeal is admissible.
2. *Objections under Article 100 b) EPC*
 - 2.1 Claim 1 relates to an "apparatus [suitable] for emptying poultry from transport crates".
The Appellant mainly argued that no means or steps for actually emptying out poultry from transport crates form part of the claim. The only reference to "emptying poultry from transport crates" is the step of "conveying turned transport crates (2) to an emptying position". The emptying position" is not claimed as a part of the claimed apparatus. Thus the claimed apparatus is not suitable for emptying poultry from transport crates.
 - 2.2 The Board cannot share this point of view. Claim 1 states that "at least one subsequent conveyor (24) arranged for successively conveying turned transport crates (2) to an emptying position (32)". Accordingly, the apparatus according to claim 1 comprises such an

"emptying position". Furthermore the patent specification mentions in column 3, lines 49 to 54 that: "At level with the emptying position 32, the transport crate 2 is only supported by opposite end parts whereby the poultry is automatically emptied into a transverse channel 34 having a conveyor 36 at the bottom that successively conveys the poultry to a suspension position in a manner not shown". Thus on the basis of this information and using his common general knowledge the skilled person is clearly in a position to successfully achieve the desired result, that is the emptying of poultry from the turned transport crates.

2.3 Consequently, the requirements of sufficiency of disclosure of Article 100 b) EPC are fulfilled.

3. *Novelty*

3.1 Novelty has been challenged with respect to D1: US-A-4 798 278.

3.2 D1 discloses an in-line conveyor for turning packages upside down. One possible use of this conveyor is where unloading is necessary "for example such as in the Post Office or any distributing warehouse associated with air freight or express freights and the like"; see column 2, lines 25 to 28. The term "unloading" means in this context that the packages transported by a vehicle in particular by aircraft ("air freight") are removed therefrom.

Accordingly D1 discloses neither an emptying position, where the turned packages are emptied, nor an arrangement, where the turned packages are successively

conveyed to an emptying position by a subsequent conveyor.

3.3 Consequently, the subject-matter of claim 1 is novel over D1.

4. *Inventive step*

4.1 The Respondent (patentee) confirmed in the course of the oral proceedings that the prior art mentioned in paragraphs [0002] and [0003] of the patent specification forms part of the prior art within the meaning of Article 54(2) EPC and that this prior art discloses an apparatus for emptying poultry from transport crates, as defined in the preamble (prior art portion) of claim 1.

According to this prior art, transport of live poultry from the poultry farmers to the poultry abattoirs is by special lorries adapted to contain a very large number of open topped transport crates. During transport, these crates are placed in purpose-built transport modules which in principle are chests of drawers, each having an upper cover surface forming a lid for the upper transport crate in each crate stack in that the other transport crates in the stack form lids for each other. Thus the transport crates are placed directly upon each other (see paragraph [0002]). Upon arrival at a poultry abattoir, the transport modules are unloaded and the individual transport crates are transferred to an emptying system in that the individual transport crates, which are upwardly open, are moved to a first conveyor having an upper stationary cover plate so that the individual birds cannot escape the transport crates before the crates reach an emptying position. There the

transport crates manually or "automatically" are turned around in order to transfer the poultry to a suspension position (see paragraph [0003]).

- 4.2 The difference between the apparatus according to claim 1 and the prior art acknowledged in paragraphs [0002] and [0003] of the patent specification is thus that the turning unit defined in the characterising portion of the claim is in the form of two endless reversible conveyors located at a distance from each other, and being provided with mutually parallel conveyor members being arranged for alternately forming a support surface and a cover surface for a transport crate.

Starting from this closest prior art, the problem underlying the present invention may be seen in the provision of an alternative way for turning the transport crates upside down automatically while "maintaining the necessary animal welfare" when turning the transport crates containing live poultry (see paragraph [0006] of the patent specification).

- 4.3 D1 (abstract, Figures 1 to 3) discloses a conveyor for turning packages upside down, which are typically square or rectangular. This device is therefore also suitable for turning transport crates upside down. In D1 turning unit (17) is also in the form of two endless reversible conveyors (19, 21) located at a distance from each other and being provided with mutually parallel conveyor members (Figure 1) being arranged for alternately forming a support surface and a cover surface for a transport package (14), said turning unit (17) as a whole being arranged for being rotated around

a rotational axis (27) being perpendicular to the conveying direction of said conveyors.

- 4.4 Moreover, D1 relates to a conveyor for turning packages upside down in "a very gentle manner" (abstract). This renders the conveyor of D1 especially suitable for handling transport crates containing live poultry that due to the nature of their load have to be handled very gently.

For the skilled person confronted with the problem of providing an alternative way for turning transport crates upside down automatically in a gentle manner, it would have been obvious to apply the teaching of D1 to the prior art apparatus according to paragraphs [0002] and [0003] of the patent specification and thus to replace the turning unit of this prior art by the alternative turning unit of D1.

The Respondent submitted that according to Figure 4 of D1 the conveyor belts are not as broad as the transported packages, so that the turning unit would not be suitable for open topped transport crates, since the upper conveyor belt of the turning unit would not entirely cover the open top of the transport crates and allow poultry to escape therefrom. The Board does not find this argument convincing: In the present case, the skilled person (which is familiar with poultry transportation problems) would immediately understand that the width of the upper conveyor belt must be adapted to its intended use, i.e. that the width of the upper conveyor belt must be such that it closes off the open tops of the transport crates so that the live poultry cannot jump out of the transport crates.

Thus the skilled person could not have been deterred from using the turning unit of D1.

Consequently, the subject-matter of claim 1 does not involve an inventive step starting from the prior art apparatus as described in paragraphs [0002] and [0003] of the patent specification and combining this prior art with the teaching of D1.

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

M. Ceyte