Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 11 January 2017

Case Number: T 1723/12 - 3.2.04

Application Number: 05777812.8

Publication Number: 1833302

IPC: A22C21/04

Language of the proceedings: EN

Title of invention:
METHOD AND SYSTEM FOR SCALDING SLAUGHTERED POULTRY

Patent Proprietor:
Linco Food Systems A/S

Opponent:
Marel Stork Poultry Processing B.V.

Headword:

Relevant legal provisions:
EPC Art. 54(2), 56, 100(b)

Keyword:
Novelty - (yes)
Inventive step - (yes)
Grounds for opposition - insufficiency of disclosure (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1723/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 11 January 2017

Appellant: (Patent Proprietor)	Linco Food Systems A/S Vestermøllevej 9 8380 Trige (DK)
Representative:	Awapatent A/S Strandgade 56 1401 Copenhagen K (DK)
Appellant: (Opponent)	Marel Stork Poultry Processing B.V. P.O. Box 118 5830 AC Boxmeer (NL)
Representative:	Algemeen Octrooi- en Merkenbureau B.V. P.O. Box 645 5600 AP Eindhoven (NL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 29 May 2012 concerning maintenance of the European Patent No. 1833302 in amended form.**

Composition of the Board:

Chairman	A. de Vries
Members:	S. Oechsner de Coninck
	C. Heath

Summary of Facts and Submissions

I. The appellant-proprietor lodged an appeal, received on 27 July 2012, against the interlocutory decision of the Opposition Division, dispatched on 29 May 2012 on the amended form in which the patent No. 1 833 302 can be maintained. The fee for appeal was paid on 27 July 2012. The statement setting out the grounds of appeal was received on 8 October 2012.

The appellant-opponent likewise lodged an appeal, received on 19 July 2012 against the interlocutory decision of the Opposition Division, after having paid the fee on 18 July 2012. The statement setting out the grounds of appeal was received on 1 October 2012.

Opposition was filed against the patent as a whole and based on Article 100(b) together with 83 EPC, and on Article 100(a) together with 52(1) and 54(1) EPC and together with 52(1) and 56 EPC.

The Opposition Division held that the grounds for opposition mentioned in Article 100 (a) and (b) EPC did not prejudice the maintenance of the patent as amended according to the auxiliary request, having regard in particular to the following documents that also played a role in the present proceedings:

D1: US 3 748 691 A
D2: WO 03/088751 A1
E1: US 3 074 103
E2: US 4 868 950
E5: US 3 716 892
E6: Shane, S. M.:"Total process solutions","New equipment and systems for poultry packing and processing pave the way for increased throughput,

yield, and food safety", The National Provisioner, August 2004

II. Oral proceedings were held on 11 January 2017.

III. The appellant-proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted (Main Request), or maintained in the form of one the auxiliary requests 1 to 7 all filed with the grounds of appeal.

The appellant-opponent requests that the decision under appeal be set aside and that the patent be revoked.

IV. The independent claims of the main request reads as follows:

"1. A method for scalding slaughtered poultry, by way of example chickens, turkeys, ducks or geese, where the poultry is transported through a scalding tunnel after slaughtering suspended at the feet, where the poultry in the scalding tunnel is conveyed successively between rows of nozzles that are adapted to apply scalding agent to the poultry, where a plurality of different scalding agents are applied, wherein in a first scalding zone hot water is used as scalding agent, characterised in that in succeeding scalding zones scalding agents with mutually differing temperatures are applied, that in the said succeeding scalding zones warm humid air is used as scalding agent which is blown onto specific sub areas of the poultry, and that the poultry is then conveyed between additional rows of nozzles in an additional scalding zone where warm humid air is blown on the remaining sub areas of the poultry."

"3. An apparatus for use in the method according to claim 1 and including a largely closed scalding tunnel (10) with a conveyor that runs past a system of nozzles which are arranged to apply scalding agent on the poultry, characterised in that the scalding tunnel includes a first scalding zone (16) with rows of nozzles that are adapted to spray hot water on the poultry, and succeeding scalding zones which are adapted to work with different temperatures of the scalding agent, and which are designed with a system of nozzles that are arranged for blowing warm humid air on specific sub areas of the poultry."

V. The appellant-proprietor argues as follows:
- D1 discloses at different passages of its description to keep an even temperature by using ambient air circulation. In D1 a temperature difference resulting from the tunnel inclination is present in the vertical direction, as opposed to the required temperature difference to be provided along the travelling direction of the poultry. The nozzles that spray steam on the whole back portion do not operate on a small sub area within the meaning of claims 1 and 3.
As for E1 no mention of different temperatures for the steam injection is present, the chimney effect cannot be seen as identical to blowing the steam at different temperatures. In figure 3 the nozzles are distributed around the birds and therefore fail to disclose any particular targeted sub area.
E5 in figure 12 discloses chambers that operate with an even distribution of steam, therefore no sub areas are specially aimed at. The control means are suitable to apply different temperatures but there is no intention to apply these along the processing line as can be inferred from column 11, lines 47-51 and column 3,

line 48, where the enclosure is defined to include the whole processing tunnel.

- In relation to inventive step, E5 teaches to maintain an even temperature by using baffled diffusion of steam to avoid hot air stream reaching the poultry. By contrast E6 goes against this central idea of E5 by requiring direct jet impingement on the poultry. The skilled person would therefore not combine both incompatible teachings. In any case applying of the very broad and theoretical teaching of E6 would imply modifications going beyond routine skills.
D2 neither discloses a first scalding zone spraying hot water nor blowing warm humid air on specific sub-areas of the poultry. The skilled person would not find this solution in E2 which does not disclose a first scalding zone using water, nor spraying hot air at different temperatures on sub-areas of the poultry.
- With respect to sufficiency, an embodiment of pivotable and thus movable nozzles is also disclosed in paragraph 35 in addition to the helical nozzles disclosed in figure 5 and paragraph 29 of the patent. The individual control of the steam temperature is furthermore described in paragraph 32 of the patent, with the "B" group of nozzles being independent from the "Z" group of nozzles, each nozzle having individual steam supply effected by the individual valves B30.00 and Z30.00 shown in figure 8.

VI. The appellant-opponent argues as follows:
- In D1 the nozzles 40 located on the central wall 42 spray steam on the back of the fowl and thus on a sub-area thereof. In that respect, the interpretation of the claims 1 and 3 needs to be made on the basis of the description column 3, lines 3 to 4 which is broader and merely requires to blow humid hot air onto "at least"

the mentioned sub-areas, thereby not restricting the flow of scalding agent on these sub-areas only. Due to the chimney effect resulting from the inclination of the housing in D1, warmer humid air arrives on the poultry in the upper zone than in the lower zone.
In E1 different scalding zones are also shown in figure 4, due to the vertical arrangement of the treatment chamber, a chimney effect also necessarily leads to the presence of zones at different temperatures.
In figure 12 of E5 a modular treatment tunnel is shown that includes independent fan mixer 188 and humidity or spraying cabinets 179,180 that implicitly blow scalding agent at different temperatures because of their separate arrangement.
- Starting from E5 for inventive step, the possible differences with respect to claim 3 are the operation at different temperatures, and the specific sub-areas of the poultry. The skilled person derives from page 2, second paragraph of E6, the teaching to blow hot, moist air jets at different temperatures on the wing and tail of the poultry. This corresponds to the solution of the invention. The skilled person would then obviously apply this teaching by replacing or adapting the humidity cabinet of E5, thereby arriving at the steps and features as claimed.
Furthermore, starting from D2, this document discloses a scalding tunnel from which the subject-matter of claims 1 and 3 only differs by a first scalding zone spraying hot water. To further optimise scalding the skilled person would turn to E2 that describes spraying hot water to remove grease and contaminant, and use this teaching to modify the first scalding zone of D2, thereby arriving at the claimed invention.
- Sufficiency of disclosure is lacking for claims 7 to 9. In particular claim 7 defines a nozzle movable to follow the poultry and which is individually

controllable. These features are not supported in an enabling manner by any embodiment disclosed in the patent, and are even contradictory in that figure 9 discloses fixed and not individually controllable nozzles.
Selective plucking is nowhere disclosed in the patent and the skilled person is not aware of any plucking device for only plucking the sub areas submitted to selective scalding. The limited interpretation of the sub areas therefore also leads to an objection under Art 100(b) EPC.

Reasons for the Decision

1. The appeal is admissible.

2. Background of the invention, interpretation of claims 1 and 3.

2.1 The patent is concerned with the improvement of a method for scalding slaughtered poultry, and of an apparatus for scalding slaughtered poultry. According to paragraph 0010 optimisation of the scalding is sought that avoids unnecessary heat action on the poultry and also attains further reduction of the energy consumption.

2.2 In the method of claim 1 this idea is realised in a scalding tunnel by a first scalding zone using hot water, and succeeding scalding zones, in which scalding agents with mutually differing temperature are applied, the scalding agent being warm humid air blown onto specific sub-areas of the poultry, and by an additional scalding zone in which rows of nozzles blow warm humid air on the remaining sub areas of the poultry.

2.3 The apparatus for use in the method according to claim 1 as recited in claim 3 defines the same first and succeeding scalding zones using nozzles to spray the same scalding agents on specific sub areas of the poultry, the succeeding scalding zone being adapted to work with different temperatures.

2.4 It is established case law that when interpreting a claim, the skilled person should try with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation which is technically sensible and takes into account the whole of the disclosure of a patent, see Case Law of the Boards of Appeal, 8th edition, 2016, (CLBA) II.A.6.1.

The apparatus suitable for use in the method according to claim 1 as defined in claim 3 is broader than claim 1 especially in that it omits features pertaining to the additional scalding zone mentioned in claim 1 in relation to the remaining sub areas of the poultry. From a contextual reading of both claims the skilled person nevertheless is able to derive the main essential concept of the invention common to both claims. Thus, after a first scalding zone where hot water is used as scalding agent, succeeding scalding zones are provided that use warm humid air as scalding agent, the warm humid air having a different temperature in the successive zones and is blown onto specific sub-areas of the poultry. The definition of both claims 1 and 3 therefore includes the same purposive and selective action of blowing warm humid air at different temperatures in the succeeding zones onto specific areas of the poultry through rows of nozzles.

2.5 The otherwise clearly expressed central concepts, i.e. the need to have a purposive or selective blowing of hot humid air at predefined suitable temperatures onto certain sub-areas of the poultry is also entirely consistent with what the skilled person derives from the description, especially by reference to paragraphs 12 and 13 thereof. In these paragraphs, the importance of adjusting, amongst others, the temperature of the scalding agent for scalding the specific sub-areas in an optimised way is underlined. Applying a particular temperature of the warm humid air to some selected sub-areas particularly avoids unnecessary heat action of the relatively easier to pluck areas of the poultry, thereby also reducing the energy consumption.

3. Novelty

Novelty has been challenged with respect to the documents D1, E1 and E5.

3.1 According to established case law for an invention to lack novelty its subject-matter must be clearly and directly derivable from the prior art. It is thus a prerequisite for the acceptance of lack of novelty that the claimed subject-matter is "directly and unambiguously derivable from the prior art". In addition, the implicit disclosure, that is the disclosure which any person skilled in the art would objectively consider as necessarily implied in the explicit content is also taken into account, see Case Law of the Boards of Appeal, 8th edition, 2016,(CLBA) I.C.4.1 and I.C.4.3.

3.2 D1, see figure 1, discloses a system for treating poultry wherein a separate vaporizing station 14 includes an inlet rectangular chamber 30 for an initial

treatment with steam and hot water (column 5, lines 11-15). The vaporizing station includes an inclined housing (see also figure 3) with a central partition 42 in which the poultry travels a U-shaped path. The housing is provided with two types of nozzles: a first type of nozzles 46 for soft scalding with heated water (column 5, lines 54-58 and column 6, lines 23-27) and a second type of nozzles 38,40,52,54 for spraying steam and located on the divider wall and on the interior walls (column 5, lines 33-41 and column 6, lines 15-22).

3.2.1 The appellant-opponent submits that D1 in column 6, lines 4 to 8 also identifies the back portions of the fowls as more difficult portions to be treated, the reason for spraying steam close to that area. The zone for treating the back portion then also represents one of the succeeding zones as defined in claims 1 and 3.

3.2.2 The spraying of the back portion of the birds is applied over the whole length of the U-shaped path of the conveyor within the housing 14. The nozzles 40 identified for the scalding of the back portion are also regularly spaced along both sides of the divider wall within the housing forming a single enclosure for the whole processing line. A differentiation into different scalding zones, let alone zones of different temperature, is neither disclosed nor apparent from this distribution. These nozzles therefore fail to be operated in any succeeding zone in the sense of the claims.

3.2.3 The appellant-opponent nevertheless identifies the upper portion of the vaporizer station 14 as one of the succeeding scalding zones because this portion would

have a higher temperature than the lower portion due to the chimney effect.

3.2.4 In the Board's opinion any chimney effect that might exist is obtained at best as an incidental side effect not expressly sought for. This is especially true as the passage of D1 states in lines 11 to 15 that ambient air admitted through the stack 50 in the upper portion is aimed at maintaining a preselected high temperature. This ambient air circulation not only points at an opposite result to be achieved, namely to maintain a given constant temperature instead of allowing different temperatures, but also cannot be interpreted by the skilled person as a clear and deliberate instruction to blow warm humid air at different temperatures onto specific sub areas of the poultry in succeeding scalding zones, in the sense he understands the claim wording. In fact, even assuming a somewhat higher ambient temperature in the upper part of the housing close to the stack 50 due to the chimney effect, the resulting humid air blown onto the poultry by steam exiting the nozzles 40 will be at substantially the same temperature for all the nozzles as would be immediately understood by the skilled person.

3.2.5 Therefore, neither a specific information on blowing warm humid air at different temperatures, nor a reference to different zones using these different temperatures of the scalding agent is directly and unambiguously derivable from the content of D1.

3.3 E1 in its embodiment of figure 4 discloses an apparatus comprising a first cabinet with water spray means 99, a scalding chamber or tunnel 90 with steam spray means 97, followed by a second scalding chamber 91 with steam

spray means 98 (column 6, lines 55-72). In particular from column 7, lines 1-11 the temperature of the steam issuing from the spray means is defined to be about 300°F(149°C) for hard scalding and 270°F (132°C) for a so-called semi-scald. The same spray means either sprays medium at a first temperature for hard scalding, or,alternatively, a second temperature for semi-scald. This is clearly not the same as having different zones with different temperatures, implying different means for different temperatures. The resulting action of blowing warm humid air at different temperatures in different zones is therefore not directly and unambiguously derivable from E1. Nor does E1 otherwise mention or suggest that different sub-areas of the poultry should be treated with the scalding medium at different temperatures.

3.3.1 The appellant-opponent submits that the interpretation of the claims 1 and 3 needs to be broader than merely blowing air on specific sub-areas of the poultry, on the basis of the description, especially column 3, lines 3 to 4, which states that it is simply required to blow humid hot air onto "at least" the mentioned sub-areas, thereby not restricting the flow of scalding agent on these sub-areas only.

3.3.2 The Board does not agree with this argument. The claims by their wording define the scope of protection. In the present case neither claim 1 nor claim 3 includes the term "at least". As already concluded, they explicitly require an action of blowing air onto specific sub-areas, and do not include the broader limitation to "at least" these areas. Reading the claims in the light of the description and figures does not mean that the inherently clear claim wording should be ignored and

its terms be given another, in this case broader meaning.
Moreover in the Board's view the passage relied upon by the appellant-opponent simply takes into account the fact that even if the direction of warm humid air exiting a nozzle is directed at a particular area, it cannot prevent air being blown on adjacent areas of the poultry. In any case, this passage clearly confirms the central concept expressed in the claims of purposively and selectively blowing warm humid air at different temperatures in different zones onto sub-areas of the poultry.

3.3.3 The appellant-opponent also argues a similar chimney effect in E1 as in D1 due the vertical arrangement of the treating channels 90, in figure 4. However, for the same reasons as given for D1 the Board does not see herein the direct and unambiguous disclosure of the purposive and selective blowing action of claim 1.

3.4 E5 describes, see e.g. figure 12, a modular processing line with in sequence a spraying cabinet 174 using water jets sprayed from movable nozzles 45 (figure 4,5, column 4, lines 51 to 62-), a scalding cabinet in the form of humidity cabinet 177 where baffled hot air is diffused (column 8, lines 31-43) and downstream further two additional humidity cabinets 179,180. As in E1, E5 also discloses hard and soft scalding temperatures.

3.4.1 In relation to E5, the appellant-opponent submits that different temperatures are obtained by distinct steam feeding units 188 and 191 for the different cabinets (see figure 12). Due to their separate arrangement at spaced apart locations of the tunnel and their individual control logic, the skilled person would infer that they feed steam at different temperatures.

E5 moreover describes a hock picker station 178 downstream of the humidity cabinet 177 that therefore needs to specifically scald the corresponding sub area around the hock before plucking.

3.4.2 The Board does not recognise in the description of the operation of the units 188 and 191 a clear and unambiguous disclosure that they operate at two mutually different temperatures. Hard scalding is presented in column 11, lines 53-55 as an alternative to the soft scalding described in the preceding lines, and used "in the event it is desired to "hard scald"". This is done by setting the temperature in the thermostat control 161 in order to keep that desired temperature in various scalding sections of the cabinet as stated in lines 48 to 52 of column 11. Thus, if the spaced apart fan units 188,191 are indeed separate, no indication that they should be set at different temperatures is directly and unambiguously derivable from E5. Likewise, the skilled person will not read in this same passage that teaches to keep the various scalding zones near the desired operating temperature, a clear and unambiguous instruction or intent to treat any particular sub area including the hock area in the upstream humidity cabinet 177. Absent any specific information the hock picker 178 is merely regarded by the skilled person as a station for selective plucking of these sub-areas of the poultry. Therefore, E5 neither contemplates blowing air at a particular sub-area of a poultry, nor blowing warm humid air at different temperatures in succeeding zones.

3.5 The Board thus concludes that none of the available documents brought forward against novelty, directly and unambiguously disclose blowing humid air at different temperatures on specific sub-areas of the poultry.

Thus, none of this cited prior art is prejudicial to novelty of the subject-matter of claims 1 and 3, Article 54 EPC.

4. Inventive step

4.1 As already identified in relation to novelty, figure 12 of E5 describes a modular tunnel that at least differs from the subject-matter of claims 1 and 3 by the warm humid air being blown onto specific sub-areas of the poultry at different temperatures using nozzles.

4.2 Based on the effect of allowing a better matching of the scalding agent temperature and the difficulty of treatment of areas of the poultry, the objective problem as defined in the patent and as proposed by the appellant-opponent of improving the efficiency of scalding may be formulated.

4.3 The Board is not convinced by the submission of the appellant-opponent that the skilled person deriving from page 2, second paragraph of E6, the teaching to blow hot, moist air jets at different temperature on the wing and tail of the poultry, which corresponds to the solution of the invention, would therefore obviously apply this teaching by replacing or adapting the humidity cabinet of E5, thereby arriving at the steps and features as claimed.

4.3.1 As already observed in relation to novelty, E5 contemplates two types of scalding to be applied as alternatives in the processing line, especially the one disclosed in figure 12. As identified by reference to column 10, lines 61-68, soft scalding with a temperature range from 126°F to 135°F is described, and a further hard scalding with a temperature range from

135°F (57°C) to 145°F (63°C) is foreseen in column 11, lines 53 to 57 when desired. According to column 8, lines 44 to 62, this is obtained by a thermostat 160 controlling the steam temperature in an overheat duct 156 running along the different sections of the processing line as shown in figures 9a to 9c. That special design aims at keeping a desired temperature as emphasized throughout the disclosure of E5. In particular the passages in column 11, lines 9 to 21 and in column 8 ,lines 31-43 identify the risks of localized overheating, burning or cooking of the birds if a live steam circulating in the ducts 156 and exiting via conduit outlet 157 to heat the cabinet were allowed to impinge directly on the birds. To prevent such undesirable overheating, a baffle plate 158 is provided where steam exits the conduit 157. Therefore, considering the overall concept of the disclosure and its specific design the skilled person is taught to ensure a desired temperature within the whole cabinet to avoid locally excessive temperature on sub-areas of the poultry. This concept calls for specific design options with diffuser type hot steam feeding devices at a predetermined temperature throughout the processing line.

4.3.2 E6 page 2, second paragraph very broadly discloses the concept of subjecting carcasses to moist air jets and varying the intensity of heat applied directly to different areas of the birds. E6 thus teaches to directly aim jets onto targeted areas of the poultry. For the skilled person this targeted, direct application of steam represents a significant departure from E5's concept of uniform, diffuse and indirect application. For the skilled person the two approaches are so different that he would use one or the other, but not contemplate, as a matter of obviousness, their

combination in a single device or methodology. In particular, these differences would entail considerable modifications in the supply and the temperature control of steam, sizing and overall outlay, which go beyond the skilled person's average skills.

The appellant-opponent contends that there is no incompatibility between the two teachings, because E6 would deliver a new insight applicable to all systems. However, whether or not the two approaches can be combined with each other is beside the point. In this particular case the board believes that the skilled person would choose either one or the other. But even if he would contemplate combining their teachings the degree of modification necessary for adoption of E6's teaching in the E5 arrangement then becomes decisive. In the Board's view, due to the considerable differences of the two approaches, the necessary modifications, see above, are more than simple workshop practice or routine design.

In the light of the above, the Board concludes that starting from E5 and considering the teaching of E6 the skilled person would not arrive at the subject-matter of claim 1 without the exercise of inventive step.

4.4 The appellant-opponent also submitted in writing that the subject-matter of claims 1 and 3 lacked an inventive step starting from D2 in combination with E2.

4.4.1 D2 discloses a scalding tunnel with two chambers for scalding poultry with hot humid air at two different temperatures (page 3, lines 4-10; fig 3). As acknowledged by the appellant-opponent, D2 does not disclose a first zone of spraying hot water. However, the Board concurs with the appellant-proprietor that

the scalding chambers 20 and 22 where hot humid air is sprayed at different temperatures, do not blow such air on any specific sub-area of the poultry. This represents an additional difference with respect to the features identified by the appellant-opponent.

4.4.2 Spraying hot water prepares the poultry for subsequent scalding, whereas blowing on specific sub-areas better matches the amount and temperature of scalding agent to the areas which are more or less difficult to pluck. A similar objective technical problem to that in the patent can be formulated: to further optimise the scalding without subjecting the poultry to unnecessary heat action, especially on the sub areas, which are easy to pluck.

4.4.3 E2 indeed teaches to use a fan for spraying droplets of hot water to remove grease and contaminant (Column 1, lines 12-19 and column 4, lines 35-48). However, E2 does not use nozzles to spray this hot water nor does it disclose any hint to spray a scalding agent at different temperatures on specific sub-areas. As neither document suggests to spray or blow scalding agent onto specific sub-areas of a poultry, their combination would not lead the skilled person to the combination of features or steps of claims 1 and 3.

4.5 The Board thus concludes that the subject-matter of claims 1 and 3 of the main request involves an inventive step within the meaning of Article 56 EPC.

5. Sufficiency of disclosure Art 100(b)

5.1 Sufficiency of the granted claims 7 to 9 was challenged as the patent, in particular the description and figures, would not provide a sufficiently clear and

complete teaching for realizing the movable, individually controllable nozzles of claim 7.

The Board does not recognise a lack of disclosure either of the movable character of the nozzle or of its possibility of being individually controllable. With respect to the nozzles being movable, the Board agrees with the appellant-proprietor that in particular specification paragraph 0029 in combination with figure 5 will provide the skilled person with sufficient information possibly supplemented with common general knowledge as to how to realize such movable, individually controllable nozzles. This passage read in conjunction with the figure teach that a helical nozzle portion 30 facing the injection side translates from one side of the rotatable drum 28 to the other thereby performing the required subsequent motion on the treated poultry. Though this passage may not be ideally formulated, the Board has no problem envisaging how such an arrangement might work: the intersections of a helical slot (see figure) with a slot extending along the length the cylinder will produce plural "nozzles" that move lengthwise as the cylinder rotates. A further example is mentioned in paragraph 35 by reference to pivotable nozzles. If there are any gaps in the disclosure, for example concerning the ability to follow the translating poultry, the Board holds that they are readily filled by the skilled person's technical understanding or common general knowledge, in the present case by adapting the rotation speed of the pivotable or helical nozzle such that it meets the translation speed of the poultry.

5.1.1 As regards individual control of the nozzles, insofar as possible modes of control might not immediately spring to mind, the description provides a sufficiently clear and complete example: paragraphs 0032 and 00033 in combination with figure 8 describe two groups of injection nozzles B and Z that are individually controlled by the respective valves B30.00 and Z30.00.

5.1.2 Therefore, the patent discloses the subject-matter of claims 7 to 9 in a sufficient manner.

5.2 A further late argument submitted by the appellant-opponent that the patent would not provide an enabling disclosure of selective plucking is clearly without merit in view of the ubiquitousness of hock pluckers.

6. Contrary to the finding of the decision under appeal, the Board concludes that none of the opposition grounds raised against the patent as granted prejudice its maintenance.

Order

For these reasons it is decided that:

1. The decision is set aside.

2. The patent is maintained unamended.

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated