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**Datasheet for the decision
of 17 January 2017**

Case Number: T 0672/14 - 3.2.04

Application Number: 11734129.7

Publication Number: 2477511

IPC: A23N15/02

Language of the proceedings: EN

Title of invention:

APPARATUS FOR SINGULARIZING AND SEPARATING VEGETABLE PRODUCTS

Applicant:

Unitec S.p.A.

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter - (main, first auxiliary request: yes)(2nd auxiliary request : no)
Remittal to the department of first instance

Decisions cited:

Catchword:



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Case Number: T 0672/14 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 17 January 2017

Appellant: Unitec S.p.A.
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 12 December 2013 refusing European patent application No. 11734129.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal, received on 4 February 2014, against the decision of the examining division, dispatched on 12 December 2013, refusing the application No. 11734129.7. The appeal fee was also paid on 4 February 2014. The statement setting out the grounds of appeal was received on 17 March 2014.

In its decision the examining division came to the conclusion that the application did not meet the requirements of Article 123(2) EPC.

II. The appellant requests that the decision under appeal be set aside and that the application be granted on the basis of a main request or alternatively on the basis of the first or second auxiliary requests filed with the grounds for appeal dated 17 March 2014. He also requests oral proceedings should none of the main or auxiliary requests be allowed.

III. Claim 1 of the relevant requests are as follows:

Main request

"Apparatus for the singularization and the separation of vegetable products, especially cherries, and comprising:

- a conveying and singularization line for said products, defined in a "V" slot (1) having rectilinear configuration, implemented in a body (2) solid with the frame of said apparatus, and delimited by two opposed walls (3, 4) inclined to each other, said slot (1) being provided:

- with two first motorized belts (3A, 4A) arranged on said opposed walls (3, 4) and placed on the bottom of

said slot and acted with synchronous motion on a direction parallel to said slot (1),

- separation means able of separating two or more said vegetable products connected each other with respective stalks and which include one or more cutting means placed on a side and preferable symmetrical position with respect to said "V" slot, characterized in that said cutting means comprise at least a circular blade (5, 6):
- rotating around a respective axis (a1, a2) which lays on a plane essentially orthogonal to the direction of said "V" slot,
- said axis being also able to be arranged on a vertical plane, or on an inclined plane, or preferably on an horizontal plane,
- and further characterized in that said two opposed and inclined walls (3, 4)
- are flat,
- and are basically joined by their lower edge,
- in that said two motorized belts (3A, 4A) are similarly flat, and are substantially adhering to the respective said flat walls (3, 4),
- and in that the lower portions (5a, 6a) of said at least one rotating blades (5, 6) do rotate at a level which is lower than the upper edges (7, 8) of said two opposed walls (3, 4)."

First auxiliary request:

"Apparatus for the singularization and the separation of vegetable products, especially cherries, and comprising a conveying and singularization line for said products, defined in a "V" slot (1) having rectilinear configuration, implemented in a body (2) solid with the frame of said apparatus, and delimited by two opposed flat walls (3, 4) inclined to each other

and basically joined by their lower edge, said slot (1) being provided with two first motorized belts (3A, 4A) similarly flat and substantially on said opposed walls (3, 4) and placed on the bottom of said slot and acted with synchronous motion on a direction parallel to said slot (1),

characterized in that it further comprises separation means able of separating two or more said vegetable products connected each other with respective stalks and which include one or more cutting means placed on a side and preferable symmetrical position with respect to said "V" slot,

said cutting means comprising at least a circular blade (5, 6), rotating around a respective axis (a1, a2) which lays on a plane essentially orthogonal to the direction of said "V" slot, said axis being also able to be arranged on a vertical plane, or on an inclined plane, or preferably on an horizontal plane, the lower portions (5a, 6a) of said at least one rotating blades (5, 6) do rotate at a level which is lower than the upper edges (7, 8) of said two opposed walls (3,4)."

Second auxiliary request

"Apparatus for the singularization and the separation of vegetable products, especially cherries, and comprising a conveying and singularization line for said products, defined in a "V" slot (1) having rectilinear configuration, implemented in a body (2) solid with the frame of said apparatus, and delimited by two opposed walls (3, 4) inclined to each other, said slot (1) being provided with two first motorized belts (3A, 4A) arranged on said opposed walls (3, 4) and placed on the bottom of said slot and acted with synchronous motion on a direction parallel to said slot (1),

characterized in that it further comprises separation means able of separating two or more said vegetable products connected each other with respective stalks and which include one or more cutting means placed on a side and preferable symmetrical position with respect to said "V" slot, said cutting means comprise at least a circular blade (5, 6) rotating around a respective axis (a1, a2) which lays on a plane essentially orthogonal to the direction of said "V" slot, said axis being also able to be arranged on a vertical plane, or on an inclined plane, or preferably on an horizontal plane, the lower portions (5a, 6a) of said at least one rotating blades (5, 6) do rotate at a level which is lower than the upper edges (7, 8) of said two opposed walls (3,4)."

- IV. Wit respect to added-matter, the Appellant argues as follows:
- With regard to the added features in claim 1 of the main request, figures 2, 2A, 3, 3A, 4, 4A and 6A provide a clear and unambiguous basis for the two opposed walls being flat joined by their lower edge. With reference to the same figures it is also evident that the belts are also flat and adhere to the inclined walls. The latter feature is also supported by page 6, lines 19 to 22 that discloses the belts to be installed on the respective walls. Likewise paragraph 8 of EP1880959 that is referred to in the application as filed also provides support for all the above added-features.
 - The first auxiliary request contains the same allowable, added features that have been moved to the preamble.
 - The second auxiliary request contains an amended claim 1 based on originally filed claims 1,2 and 3,

where the features added in the main and first auxiliary request have been deleted.

Reasons for the Decision

1. The appeal is admissible.
2. Subject-matter of the invention

The application concerns an apparatus for the singularization and separation of agricultural or vegetable products. As stated on page 4, paragraph 5, it is in particular sought to improve singularization even if the vegetables are still joined together by a stalk or stem, as for example in cherries and beans. The solution is broadly provided by separation means for separating the vegetables including one or more cutting means placed aside a "V" shaped slot in which the vegetables are conveyed.

3. Main request and first auxiliary request- added-matter

- 3.1 Claim 1 as amended according to the main request combines claims 1, 2 and 3 as originally filed (see page 14 of the international publication WO2012/028382 with the following addition:

- the two opposed and inclined walls
- are flat
- and are basically joined by their lower edge,
- the two motorized belts (3A, 4A) are similarly flat and are substantially adhering to the respective said flat walls.

- 3.2 The examining division came to the conclusion that the added features of the two opposed and inclined walls and of the motorized belt were not derivable from the

original filed figures alone, and that the reference to the the document cited as reference in the last paragraph of page 5 did not represent an acceptable source for the proposed amendments.

3.3 With his grounds of appeal the appellant submits that these features are supported by the original disclosure of the figures, whereby the features of the belt would also be derivable from page 6.

3.4 The board concurs with the appellant that the drawings form part of the whole original disclosure. However according to established jurisprudence, Case Law of the boards of Appeal, 8th edition 2016 (CLBA) II.E.1.12.1, 8th edition, 2016, for features to be included in a claim from figures their structure and function must be clearly, unmistakably and fully derivable from the figures, as well as the fact that they can be isolated from the other features shown but not claimed.

Considering the figures depicting the walls and belts as quoted by the appellant figures 2, 2A concern a first embodiment, figures 3, 3A the second embodiment, and figures 4, 4A the third embodiment, and figure 6A a further improved embodiment. From these very schematic drawings the same broad characteristics of the walls 3, 4, belts 3A, 4A and first body 30A, 31A are derivable. However, the schematic nature of the drawings is such that little detail is discernible regarding the walls and belts apart from the fact that the belt sections are thin and elongated, as will be apparent to the skilled person. In particular the skilled person cannot clearly recognise the way the belts cooperate with the walls from the drawings alone.

The appellant also mentions the passage on page 6, lines 2 to 5, where the belts are disclosed as being installed on the wall. However, the amendment to claim 1 now requires the belts and walls to be in an adhering relationship, which defines a more specific relationship than the originally disclosed belts that are installed on the walls. Such a specific relationship is not directly and unmistakably derivable for the figures referred to, as no particular surface structure for the belt and walls is recognisable from the schematic drawings. Hence by the addition of the feature that "the two motorized belts (3A, 4A) are substantially adhering to the respective said flat walls", the claim now contains subject-matter not directly and unambiguously disclosed in the application as filed.

In addition and irrespective of the above, the lack of a clear and unambiguous disclosure of the belts adhering the walls, the board is also unconvinced that, on the basis of figures and description as originally filed, the recessed walls can be unmistakably qualified as "flat". As can be seen in all the figures, the upper edges 7, 8 appear to be raised in relation to the wall surface 3, 4 which at their bottom edge connect in an upside down "W" configuration, from which the skilled person infers the presence of outwardly projecting recesses receiving the belts. It would therefore appear that qualification of the walls as "flat" is incomplete, if not incorrect. At least all the above recognisable characteristics should then have been included in an amended claim based on the disclosure of the drawings. This is so as in particular the recessed portions of the walls are also functionally related to the belts as they provide a guiding function. Consequently, omitting these recesses, and including in

the claims the walls as flat in isolation results in unallowable intermediate generalisation, cf. CLBA, II.E.1.7.

- 3.5 The appellant also quotes the disclosure in EP 1 880 959 (D3) cited as cross reference. However, according to established jurisprudence, it is only possible to add features from a cross reference under particular conditions, cf. CLBA II.E.1.1.6, see in particular T689/90 (OJ 1993, 616) cited therein. The conditions elaborated therein require that the description of the invention as filed left the skilled reader in no doubt that protection was sought for those features; that they helped achieve the invention's technical aim and thus formed part of the solution to the technical problem underlying the invention claimed; that they implicitly clearly belonged to the description of the invention contained in the application as filed and thus to the content of the application as filed; and that they were precisely defined and identifiable within the total technical information contained in the reference document. The corresponding conditions have also been included in the Guidelines for examination (see Chapter H-IV 2.3.1), on which the examining division relied in its decision.

It is questionable whether any of these conditions are met. The relevant passage in the present application referring to D3, the paragraph bridging pages 5 and 6 of the published application, states merely that the apparatus is "ideally of the type described in D3" and refers only to a conveyor line 5 and window 18 of figure 5 of D3. There is no mention of the wall or belt or their relationship to each other. Nor, when consulting figure 5 of D3 and the relevant passages in D3, is it apparent that these features are of any

significance, let alone can be considered in isolation from the rest of the features shown in figure 5 of D3.

3.6 From the above the board concludes that the amendments concerned do not have a direct and unambiguous basis in the original disclosure, and therefore claim 1 according to the main request contains subject-matter extending beyond the content of the application as filed (Art 123(2) EPC).

3.7 The same conclusions hold for claim 1 of the auxiliary request 1 that includes the same added-features but which are merely moved into the preamble of the claim. Therefore claim 1 according to this first auxiliary request also contains subject-matter extending beyond the original disclosure, contrary to Article 123(2) EPC.

4. Auxiliary request 2

4.1 Claim 1 of this request removes the above added features which were the sole amendments identified by the examining division as contravening the requirements of Article 123(2) EPC and which led to the refusal of the application. Claim 1 now only contains in straightforward combination the features of claims 1, 2 and 3 as originally filed which were dependent on each other. Therefore claim 1 of the auxiliary request 2 does not comprise the above added-matter identified in relation with claim 1 of the main request and first auxiliary request.

The board therefore concludes that these amendments to claim 1 according to the second auxiliary request comply with the provisions of Article 123(2) EPC.

5. Remittal

As also observed by the appellant on page 2 of the grounds of appeal, the appealed decision only considered the issue of added subject-matter. The patentability, in particular novelty and inventive step, of claim 1 was not discussed. Therefore, the board considers it appropriate to remit the case to the first instance for further prosecution pursuant to Article 111(1) EPC. Furthermore, as the Board holds auxiliary request 2 to be allowable with respect to the sole ground of refusal, there is no need for oral proceedings in accordance with the final, conditional request of the appellant.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution on the basis of the claims 1 to 11 of the second auxiliary request as filed on 17 March 2014.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated