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**Datasheet for the decision
of 20 December 2018**

Case Number: T 2268/14 - 3.2.04

Application Number: 08159612.4

Publication Number: 2011390

IPC: A01K5/02, A01K5/00

Language of the proceedings: EN

Title of invention:

System for controlling the loading of one or more foods into a self-propelled mixing unit by means of a mechanical shovel mounted to a motor vehicle

Patent Proprietor:

DINAMICA GENERALE S.r.l.

Opponent:

Octrooibureau Van der Lely N.V.

Headword:

Food analyser/DINAMICA GENERALE

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2268/14 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 20 December 2018

Appellant: Octrooibureau Van der Lely N.V.
(Opponent) Weverskade 110
3147 PA MAASSLUIS (NL)

Representative: Octrooibureau Van der Lely N.V.
Cornelis van der Lelylaan 1
3147 PB Maassluis (NL)

Respondent: DINAMICA GENERALE S.r.l.
(Patent Proprietor) Via Mondadori, 15
46025 Poggio Rusco (IT)

Representative: Bergadano, Mirko
Studio Torta S.p.A.
Via Viotti, 9
10121 Torino (IT)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 10 November
2014 rejecting the opposition filed against
European patent No. 2011390 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman T. Bokor
Members: S. Oechsner de Coninck
C. Kujat

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal, received on 5 December 2014 against the decision of the Opposition Division dated 10 November 2014 to reject the opposition against the patent EP 2 011 390, and paid the appeal fee the same day. The statement setting out the grounds of appeal was filed on 23 February 2015.
- II. Opposition had been filed to the patent as a whole and based on Article 100(b) in conjunction with Article 83 EPC, and Article 100(a) in conjunction with Articles 52(1), 54(2) and 56 EPC. The Opposition Division had held that the grounds for opposition mentioned in Article 100(b) and (a) EPC did not prejudice the maintenance of the granted patent, having regard to the following documents in particular:
- D1: EP 1 577 663 A1
D2: Handbook "Die Landwirtschaft, Tierische Erzeugung", published by BLV Buchverlag GmbH & Co. KG, 2007
D3: DE 200 05 671 U1
- III. Oral proceedings were held on 20 December 2018.
- IV. The appellant-opponent requests that the decision be set aside and the patent be revoked.
- The proprietor-respondent requests dismissal of the appeal with the maintenance of the patent as granted, or alternatively maintenance of the patent in an amended form on the basis of one of the first to fourth auxiliary requests filed with the reply to the grounds for appeal dated 26 June 2015.

V. The independent claim 1 as granted (main request) reads as follows:

"A system (1) for controlling the loading of at least one food (2) into one or more self-propelled units (3) by means of a loading mechanical shovel (4), which is mounted to a motor vehicle (6) and is adapted to collect and load said food (2) into a self-propelled unit (3); said system (1) being characterized in that it comprises:

- a testing apparatus (7), which is mounted to said mechanical shovel (4) to determine a series of chemical-physical information related to the chemical components contained in the food (2) present in the shovel (4) during each loading;
- weighing apparatus (11), which is installed in a self-propelled unit (3) to measure the weight (PE) of the food (2) contained in said self-propelled unit (3);
- wireless communication means (10)(19) through which said testing apparatus (7) communicates said chemical-physical information related to the components contained in said food (2) to said weighing apparatus (11);

and wherein said weighing apparatus (11) comprises a processing means (20), which determines, at each loading and according to said chemical-physical information detected by said testing apparatus (7), the weight (Dp) of a remaining amount of food (2) to be loaded into said self-propelled unit (3), so that each chemical-physical component of the food (2) in the self-propelled unit (3) at the end of the loading fulfils a predetermined condition."

VI. The appellant argues as follows:

- Concerning sufficiency the skilled person is unable to ensure that each one of the chemical-physical components of the food in the self-propelled unit at the end of the loading fulfils a predetermined condition.
- Starting from D1, the skilled person is prompted to provide a system comprising two separate unit as explained in paragraph 15, using a standard shovel equipped with a analyser as obvious loading device. He would thus arrive at the claimed subject-matter without inventive skill. Alternatively the skilled person would also find in D2 or D3 embodiments of a self-propelled unit separate from the loader unit that would assist him in modifying the integrated unit of D1.

VII. The respondent argues as follows:

- The way the system operates to ensure that the chemical-physical components of the food fulfils a predetermined condition is sufficiently explained in paragraphs 26 to 35 of the description and can thus be carried out without difficulty by the skilled person.
- D1 indeed teaches several types of self propelled units including wagons towed by a tractor. However the skilled person is unable to derive from this teaching to separate the testing apparatus from the weighing device. D2 and D3 are also silent on this measure.

Reasons for the Decision

1. The appeal is admissible.
2. Sufficiency - Article 100(b) EPC
 - 2.1 Claim 1 is directed to a system for controlling the loading of at least one food into one or more self-propelled units by means of a mechanical shovel. The appellant contested in writing the sufficiency of disclosure based on the fact that the skilled person would not be able to obtain the last requirement of claim 1, that is to ensure that each one of the chemical-physical component of the food in the self-propelled unit at the end of the loading fulfils a predetermined condition.
 - 2.2 The way the system operates is explained in details in the paragraphs 26 to 35 of the patent. In particular the predetermined condition is explained in paragraph 26. There the skilled person reads that "at each loading, the processing unit 20 determines the weight of a remaining amount of food 2 which must still be loaded into the self-propelled unit 3 according to the chemical-physical information detected by the testing apparatus 7, so that each chemical-physical component of the food 2 in the self-propelled unit 3 fulfils a predetermined condition, once the loading has been finished." Interpreting this information the skilled person uses the same constructive approach he uses for interpreting claims: with a mind willing to understand and to make technical sense of a teaching, using normal reading skills and reading contents contextually.

2.3 Once the chemical-physical components effectively present in the food are detected, the processing unit determines the weight of a remaining amount of food having the same composition that still needs to be added so that for each of these components at the end of the loading their individual weight amount is known. Therefore for each component a predetermined condition in the sense that the end weight of each component is known in advance is fulfilled.

The skilled person will understand that starting from a food with a certain weight amount for each of its components he cannot reach an end result having a different weight amount or a food with a completely arbitrary composition, and will therefore exclude the interpretation whereby he should be able to perfectly individually adjust each and every component to achieve any type of "predetermined condition".

2.4 The Board has thus no doubts that on the basis of the information provided in the patent the skilled person, will have no great difficulty to realise the "predetermined condition" as defined in claim 1. As the appellant does not provide further arguments, the Board sees no reason to depart from its preliminary opinion as explained in the summons to the oral proceedings, and thus confirms the opposition division's positive finding on the ground of sufficiency of disclosure in relation with Article 100b) EPC.

3. Main request - Novelty and inventive step

3.1 It is common ground that D1 discloses a food analyzer for a self-propelled food loading unit. The components of a food analyzer 1 that communicates via a communication block 23 with a weighing system 26 is explained in detail in paragraphs 38 to 41. Paragraph

15 contains a list of possible self propelled units for carrying the food analyzer, but fails to disclose a mechanical shovel mounted to a motor vehicle, and therefore also a testing apparatus mounted on such a shovel.

3.2 It is also undisputed that the system of claim 1 differs from the device of D1 at least by the following three features: The above mentioned loading mechanical shovel mounted to a motor vehicle, the testing apparatus mounted to said mechanical shovel, and the wireless communication means through which said testing apparatus communicates said chemical-physical information to the weighing apparatus. The system of claim 1 is therefore new with respect to the one disclosed in D1, which the appellant does not further contest.

3.3 In formulating the technical problem to be solved, it is established jurisprudence that an objective definition of the problem to be solved by the invention should normally start from the problem described in the patent (see CLBA Chapter I.D.4.3.2, 8th edition, 2016). According to paragraph 12 of the patent it is sought to propose a system for controlling the loading of foods into a self-propelled unit by means of a mechanical shovel which allows to obtain a mixture of foods within the self-propelled mixing unit, the chemical features and the nutritional values of which actually correspond to the features and to the predetermined nutritional values in the preset diet. The latter part of the problem concerning the appropriate composition of the diet is already solved in the same manner in D1 (e.g. [40]: the actual quantities of the chemical elements in the loaded foodstuff is compared with those prescribed in the set diet).

By providing a testing apparatus on a mechanical shovel mounted on a separate vehicle and wireless communication means, the system is more versatile, in particular it is able to serve and to load several self-propelled units 3 as shown in figure 1 and explained for example in paragraphs 39 to 41. Based on this technical effect the objective technical problem may be regarded as suggested by the respondent of providing a further improved loading system also suitable to load several units.

3.4 Gathering the other informations derivable from D1, it is undisputed that D1 foresees several embodiments of a loader wagon including arrangements with two units. In particular paragraph 15 of D1 gives a non-limiting list of possible self-propelled units, including "any other similar type of wagon, which may be towed, i.e. drawn by another vehicle, such as a tractor...".

3.5 In modifying the system of D1 using the modification possibilities directly offered in its disclosure, the skilled person will start from the embodiment shown in figure 6 as wagon 32 equipped with a front loader, and might indeed as proposed by the appellant take into consideration the specific modification leading to two units composed of a wagon towed by a tractor. In so doing he might further consider one of the other obvious embodiments of a shredder loader to be replaced by an alternative loading tool such as a shovel as also submitted by the appellant. In that context the relocation of the testing arrangement 4 with its protection 10 shown in figure 6 would need to be adapted to the shovel. The resulting arrangement would then be a tractor towing a loader-wagon consisting of a container equipped with a shovel loader including the

food analyser able to test the composition of the food loaded from different sources. No particular hint at mounting the loader on the tractor exists as D1 does not foresee another location of the analyser than on the loader wagon.

The Board is therefore unconvinced that the skilled person would as a matter of obviousness consider the further modification step of fitting the food analyser and the weighing apparatus on separate units as required by claim 1. That further step would not only require remote communication means between the analyser and weighing means, but would substantially depart from the general concept taught by D1.

3.6 Apart from the different embodiments of the self-propelled units, D1 also considers a different location for the analyser 1 (and weighing system 26). In paragraph 17, the preferred location of the reading head 4 of the analyser on the loader of the wagon is given. Paragraphs 19 and 20 further specify that the protective casing or container 10 for the reading head 4 is also integrated in the loader of the wagon ([20], line 25). The case of the absence of loader on the wagon is foreseen in paragraph 21, but it is explained that any other location to be considered should nevertheless be provided inside the wagon (lines 32-33). Therefore the core idea disclosed in D1 relies on providing both the weighing system and analyser on the wagon.

3.7 Turning to both teachings contained in D2 or D3, as also submitted by the appellant, the skilled person does derive the same possibility of providing two separate units also composed of a mixer container and loader unit (see D2: page 199, Figure 134; or D3 page

4, lines 9-13: mixer container "Mischbehälter" on a fast moving transporter "Schnellläufer-Fahrgestell" and separate loader "Radlader"). In relation to the different concepts as separate units, the skilled person is unable to derive from D2 or D3 any further teaching relating to a food analyser and its cooperation with a weighing system. Therefore taking into account these teachings to modify the loader wagon of D1, he is unable to go beyond the mere separation of the loading device from the self-propelled container, that was already suggested in D1, but no further pointer to also separate the food analyser from the weighing system with which it closely cooperates can thus be derived from the cited documents.

3.8 The Board concludes, therefore, that, considering the combination submitted by the appellant of D1 in combination with the skilled person's knowledge or with any one of D2 or D3, the subject-matter of claim 1 as granted involves an inventive step within the meaning of Article 56 EPC.

4. In the light of the above, the Board confirms the Opposition Division's decision to reject the opposition under Article 101(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



G. Magouliotis

T. Bokor

Decision electronically authenticated