

**Internal distribution code:**

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

**Datasheet for the decision  
of 27 June 2019**

**Case Number:** T 0204/16 - 3.2.04

**Application Number:** 09012521.2

**Publication Number:** 2305042

**IPC:** A22C11/12, A22C15/00, B65G47/26

**Language of the proceedings:** EN

**Title of invention:**  
System for storing products

**Patent Proprietor:**  
Poly-clip System GmbH & Co. KG

**Opponent:**  
Tipper Tie technopack GmbH

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56, 123(2), 83

**Keyword:**  
Admissibility of appeal - (yes)  
Novelty - main and first auxiliary request (no)  
Inventive step - second auxiliary request (yes)

**Decisions cited:**

T 0800/91, T 0870/96

**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 0204/16 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 27 June 2019**

**Appellant:** Poly-clip System GmbH & Co. KG  
(Patent Proprietor) Niedeckerstraße 1  
65795 Hattersheim (DE)

**Representative:** Eisenführ Speiser  
Patentanwälte Rechtsanwälte PartGmbH  
Postfach 31 02 60  
80102 München (DE)

**Appellant:** Tipper Tie technopack GmbH  
(Opponent) Wilhelm-Bergner-Straße 9a  
21509 Glinde (DE)

**Representative:** Glawe, Delfs, Moll  
Partnerschaft mbB von  
Patent- und Rechtsanwälten  
Postfach 13 03 91  
20103 Hamburg (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**25 November 2015 concerning maintenance of the**  
**European Patent No. 2305042 in amended form.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** J. Wright  
C. Heath

## **Summary of Facts and Submissions**

I. The appellant-opponent lodged an appeal, received 22 January 2016, against the interlocutory decision of the Opposition Division posted on 25 November 2015 concerning maintenance of the European Patent No. 2305042 in amended form. The appellant-opponent paid the appeal fee at the same time. Their statement setting out the grounds of appeal was filed on 24 March 2016.

The appellant-proprietor also lodged an appeal, received 5 February 2016, against the interlocutory decision and paid the appeal fee simultaneously. Their statement of grounds of appeal was filed on 5 April 2016.

II. The opposition was filed against the patent as a whole and based on all opposition grounds, Article 100 EPC. The opposition division decided that granted claim 1 did not add subject matter, that the invention according to granted claim 1 was sufficiently disclosed but that the subject matter of granted claim 1 lacked novelty. The division considered that claim 1 according to a first auxiliary request met all the requirements of the EPC.

In their decision, the opposition division considered the following documents, amongst others:

E1: DE 28 18 024 A  
E3: DE 38 06 467 C  
E4: EP 0 424 675 A  
E7: EP 0 413 166 A  
E8: DE 86 25 826 U  
E9: DE 100 12 611 A

E10: DE 10 2005 054 210 A

III. Oral proceedings before the Board were duly held on 27 June 2019.

IV. The appellant proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted (Main Request), or on the basis of one of Auxiliary Requests 1 or 2 filed with letters dated 5 April and 22 August 2016, respectively.

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

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

"System for storing products, in particular sausages, each having a sausage-shaped body and a loop (22) being fixed to the sausage-shaped body and being used for a pendulously storage of the products (20) on rod-shaped storage devices (50), comprising: at least one rod-shaped storage device (50) for storing several products (20) by their loops (22) one after another, and at least one conveyor device (30) with at least one conveyor element (40) for conveying the products (20) by means of their loops (22) to storage places on the rod-shaped storage device (50), wherein at least one damping unit (80, 90) for reducing a swinging motion of the products (20) is positioned at least partially along the rod-shaped storage device (50) such that it abuts on the products (20), characterized in that the damping unit (80, 90) is adapted to extend into the path of motion of the

products (20) such that the products (20) slide along the damping unit during their motion."

Claim 1 of the first auxiliary request reads as for claim 1 of the main request except that it adds the following wording at the end of the claim:

"wherein, the at least one damping unit (80, 90) is positioned such that it abuts on the sausage-shaped body (24) of the products (20)."

Claim 1 of the second auxiliary request reads as the main request but adds the following wording at the end of the claim:

", that the damping unit (80, 90) is positioned approximately along the entire length of the storage device (50), that the damping unit (80, 90) comprises at least one holding element (90) and at least one damping element (80) which abuts on the sausage-shaped body of the product (20), and that the damping element (80) comprises bristles."

VI. The appellant-opponent argued as follows:

Claim 1 of the main and first auxiliary requests lack novelty with respect to E3. In this regard, the guide rods 42 of E3 extend into the path of motion of products, as they swing in different directions, so E3 discloses a damping unit as claimed.

Claim 1 according to the second auxiliary request adds subject matter extending beyond the application as filed. Furthermore the invention according to claim 1 is insufficiently disclosed.

The subject matter of claim 1 of the second auxiliary request lacks inventive step starting from E4 or E1 combined with various documents and the general knowledge of the skilled person. Starting from E4, the objective technical problem is to stop products from swinging. Damping swinging with bristles is generally known.

VII. The appellant-proprietor argued as follows:

The appeal of the opponent is inadmissible.

Claim 1 of the main and first auxiliary requests are new with respect to E3. In this regard, the claim feature of a damping unit adapted to extend into the path of motion of products implies that it is flexible, and such a damping unit is not disclosed in E3.

Claim 1 of the second auxiliary request does not add subject matter and is sufficiently disclosed.

Claim 1 of the second auxiliary request involves an inventive step. Starting from E4, the objective technical problem is to prevent damage to products. None of the cited prior art discloses a damping unit with bristles for damping hanging products to prevent their being damaged. E1 is not a suitable starting point for analysing inventive step since it is not a system for storing.

## **Reasons for the Decision**

1. Admissibility of the appeals

- 1.1 The admissibility of the appellant-proprietor's appeal has not been called into question, nor does the Board have any reason to consider it would not be admissible. The Board concludes that the appellant-proprietor's appeal is admissible.
- 1.2 In the Board's opinion, the appeal of the appellant-opponent is also admissible.
  - 1.2.1 The impugned decision is appealable, Article 106 EPC, and the appellant-opponent filed a notice of appeal and reasoned grounds of appeal within the prescribed time limits, meeting the formal requirements of Article 108 and Rule 99 EPC.

Moreover, the appellant-opponent's case in appeal can but fall within the same legal and factual framework as the opposition proceedings because all grounds of opposition were raised in the opposition notice. Nor, therefore, is the appeal case a fresh case.
  - 1.2.2 In appeal, the appellant-proprietor has observed that at oral proceedings before the opposition division (see minutes point 12) the opponent made no objections under Articles 123(2), Article 83 or Article 54 EPC against the version of claim 1 as it was maintained in the impugned decision. The appellant-proprietor's observation could only be relevant for the issue of admissibility of the appeal if this might imply that the opponent gave their express approval to the patent being maintained in that form and was therefore not adversely affected by the impugned decision, Article 107 EPC. In the Board's view this is not the case.
  - 1.2.3 A party is adversely affected within the meaning of Art. 107 EPC if the decision fails to meet that party's wishes (see CLBA, IV.E.2.4.2).



In the present case, in the opposition proceedings the opponent requested revocation of the appeal in its entirety (see impugned decision, facts and submissions, point 1.2). By maintaining the patent in an amended form, the opposition division did not meet this wish, so the opponent was adversely affected.

Nor do the minutes of the oral proceedings in opposition suggest anything different. In particular (see minutes, point 13) the opponent indisputably argued that claim 1 could not be maintained because it lacked inventive step, so it did not give its approval to the patent being maintained in that form, whatever its position with respect to other issues arising from this request may have been.

1.2.4 Therefore, the appellant-opponent was adversely affected by the impugned decision within the meaning of Article 107 EPC.

1.2.5 Since, furthermore, the opponent's appeal appears to meet all other necessary requirements, the Board concludes that it is admissible.

## 2. Background of the invention

The invention (see published patent specification, paragraph [0001] and all versions of claim 1) relates to a system for storing products, in particular sausages, each having a a loop fixed to a sausage-shaped body that is used for pendulously storing the products on rod-shaped devices.

When transferring sausages from a transport conveyor to the rod-shaped device for storage, the sausages may

start to swing, resulting in their being damaged. The invention aims to solve this problem (see published patent specification, paragraphs [0006] to [0008]).

3. Main request, claim 1, novelty with respect to E3

3.1 In the Board's opinion, the subject matter of claim 1 lacks novelty with respect to E3.

3.2 It is not disputed that E3 (see abstract and figures 1, 9, 10 and 11) discloses a system for storing products, in particular sausages 16, each having a sausage shaped body and a loop 11 fixed to the body used for pendulous storage of the products on rod-shaped storage devices, one after another by their loops (see column 3, line 66 to column 4, line 6 with figure 11), the rod shaped storage device being the smoke stick (Rauchstock) 21, which is likewise part of the system. The system also has a conveyor device with a conveyor element (see column 4, lines 23 to 39 with figures 1 and 4), the conveyor element being the endless chain (Endloskette) 15.

In appeal, the appellant-proprietor has argued that E3 does not disclose:

- that the conveyor device is for conveying the products by means of their loops to storage places on the rod-shaped storage device,
- that the system has a damping unit for reducing a swinging motion of the products that is positioned at least partially along the rod-shaped storage device such that it abuts on the products,
- and is adapted to extend into the path of motion of the products such that the products slide along the damping unit during their motion.

The Board disagrees.

3.3 Regarding the first of these disputed features (conveying), it is useful to review how E3 explains that sausage products arrive on the rod-shaped storage device 21. As shown in figure 4 (see column 4, lines 23 to 39), sausages 16 arriving at the sword tip 12 of the conveyor device 15 are fed, suspended on their loops, onto the upper run of a circulating endless chain 15. Whilst this is happening, the rod shaped storage device (smoke stick 21) is slung underneath the chain 15 (cf. figure 9).

Once (see column 4, lines 40 to 59) the upper run of the chain 15 has sausages along its entire length, the chain together with rod 21 is rotated through  $180^\circ$  about its longitudinal axis, so that the sausages hang by their loops on the rod 21 (see figure 11).

The sausage products therefore only arrive at their longitudinal storage positions along the rod 21 because they have been moved there by the translational and subsequent rotational movements of the conveyor chain 15 (conveyor element). Thus, the conveyor element 15 conveys products to their storage places on the rod-shaped storage device as claimed. In this respect, it is irrelevant that during some of this conveyance procedure, the loops may not touch the rod 21 (cf. figure 9), because the claim does not require this. It only requires that the conveyor element (here the chain 15) conveys products to their end destinations on the rod-shaped storage device, without specifying how.

3.4 In the Board's view, E3 also discloses a damping means (guide rods 42) positioned along the rod shaped storage

device (smoke stick 21) such that it abuts on the products. As best seen in figures 9 and 10, the body of the sausages 16 abut the guide rods 42. As they are dragged by their loops on the chain 15 (see column 4, lines 23 to 39 with figures 5, 9 and 10), there can but be friction between the rods and sausage bodies, which will damp (at least to some extent) any swinging of the sausage products during their conveyance. Thus the guide rods 42 form a damping unit, positioned such that it abuts on the products, whether or not the primary function of the rods 42 (cf. column 5, lines 43 to 48 with figures 11 and 12) might be to stop the sausages from swinging out after having been conveyed, when an aligning element 17 is swung into position.

- 3.5 Thus, the question of novelty hinges on whether this damping unit (guide rods 42) is adapted to extend into the path of motion of the products such that the products slide along the damping unit during their motion. In the Board's view it is.

To decide on this issue, the skilled person's understanding of the claim term "path of motion of the product" is critical. Contrary to how the appellant-proprietor has argued, the Board considers that the skilled person does not read the "path of motion of the products" as being a linear unchanging path following the path of the conveyor element. Rather (see all versions of claim 1), the claim itself acknowledges that products are not only in motion because they are conveyed but also because they swing. Indeed, it is this swinging motion that the damping unit should reduce. The Board is also not convinced by the appellant-proprietor's contention that the skilled person reads the swinging of claim 1 to be exclusively aligned with the conveyor element. The claim itself

does not define a particular direction for the swinging. Nor would the skilled person conclude this from the description. Paragraph [0007] tells the skilled person what would happen without a damping unit: when suddenly stopped as they are deposited, sausages swing heavily, clashing either into each other or nearby machine parts, and they may be ripped off their loops. Thus, the picture painted here is one of a chaotic swinging in all directions and (see paragraph [0010]) it is this swinging which the damping unit of the invention should reduce.

With this understanding, the skilled person reads that the damping unit is "adapted to extend into the path of motion of the products" to simply mean that it must be placed somewhere where it can interrupt the path of movement of a swinging product, whether the product is swinging in the plane of conveyance or another plane, for example one having a sideways component, that is a component at right angles to the conveyance direction.

The claim also qualifies that the damping unit is such that the products slide along it during their motion. It is true that this could happen if the damping unit was flexible and deformed as the product met the damping unit in its path before sliding along it. However, the same sliding occurs if the damping unit is rigid and simply deflects the product from its original trajectory, causing it to slide along the damping unit. Therefore, the Board considers that it is not implicit that the damping unit of claim 1 is made of flexible material, such as bristles, as the appellant-proprietor has argued, and it could equally well be rigid.

3.6 Turning back to E3, as can best be seen in figures 9 and 10, the rod-shaped guide elements 42 are shown

lying directly alongside and contiguous with the sausages 16 as they are conveyed. Furthermore (see E3, column 5, lines 10 to 13), as with the patent, the sausage's path of movement is a complex one. The sausages swing so much that they may slip on the upper run of the chain 15 (cf. figure 7). Thus, it is implicit that their swinging motion includes sideways components. Therefore, the guide rods 42, running parallel to the chain 15, extend into the path of motion of the sausage products. Since, furthermore, the sausages are being conveyed by the chain 15 and abut the guide rods 42 (damping unit), they can but slide along the damping unit during their motion.

3.7 From all of the above, the Board concludes that E3 discloses all features of claim 1, so renders it not new. Therefore, the main request must fail.

4. First auxiliary request, claim 1, novelty

The first auxiliary request adds to the main request that the damping unit is positioned such that it abuts on the sausage shaped body of the products. As has already been explained and as best seen in E3, figures 9 and 10, the rods 42, which form the damping unit, are contiguous with the sausages and thus abut on the body of the sausages 16.

Therefore, E3 also takes away novelty of claim 1 of the first auxiliary request, so this request likewise fails.

5. Second auxiliary request, claim 1, added subject matter and sufficiency of disclosure

In its communication in preparation for the oral proceedings, the Board gave their detailed and reasoned preliminary opinion (sections 2 and 3) that claim 1 of the main request did not add subject matter and that the invention was sufficiently disclosed. The Board also noted that the appellant-opponent's arguments appeared to be the same for the second auxiliary request, amongst others. Thus it was implicit from these statements that the Board's opinions for the main request likewise applied to the second auxiliary request. These parts of the communication read as follows:

*"2. Main request, added subject matter*

*In the following, references to the originally filed application are to its A publication. Where claims are referred to they are those as originally filed, not those amended in accordance with Rule 137(2) EPC.*

*In the Board's opinion, claim 1 as granted does not add subject matter extending beyond the application as filed. The preamble of granted claim 1 corresponds to claim 1 as filed. The characterising portion of granted claim 1 adds two features:*

- the damping unit is adapted to extend into the path of motion of the products,*
- such that the products slide along the damping unit during their motion.*

*The first of these features corresponds to claim 2 as originally filed. Therefore it has a basis in the application as filed.*

*According to the appellant-opponent the last feature is disclosed as an alternative to the first so their combination in present claim 1 adds subject matter. The Board disagrees.*

*The original description paragraph [0009] presents a damping unit along which products slide. Paragraph [0010] states that it is "also possible" that the damping unit extends into the path of motion of the product. Nothing in these two paragraphs suggests that these are alternatives. Rather, the use of the definite article the in the second paragraph appears to imply that the damping means described there is the same as the one in paragraph [0009] (that is one along which products slide) but with an additional feature, namely that the damping means extends into the path of motion of the products.*

*It is true that the subsequent paragraph, [0011], commences with "[b]y either means a damping effect is created...", which, on the face of it, could either be interpreted to disclose two alternative damping alternative units, each having a damping effect or one damping unit which has two means of imparting a damping effect. In the light of the fact that the preceding paragraphs appear to refer to the same damping unit, the Board considers that the skilled person will understand the latter of these two interpretations, rather than the former.*

*Since the characterising feature of claim 1 corresponds to the latter interpretation (one unit two means of damping), the Board sees no added subject matter in this respect.*



*Nor would the rest of the application change this understanding. The description of the detailed embodiments explains various damping units with damping elements 80 (referenced 70 in the text) that extend into the path of motion of the products and along which the products appear to slide.*

*For example (see published application, paragraphs [0031] and [0032] with figures 3a and 3b), as the product moves in the direction R (figure 3b), it slides along the elements 80. As best seen in figure 3a, the elements 80 extend into the path of motion of the products.*

*Figures 1 and 2 show a different arrangement (see published application, paragraph [0029]) where the damping unit 80 is formed by bristles (page 4, lines 22 to 23). As shown in the figures, the bristles extend into the path of the product, partly obscuring the view of loop 22 in figure 1. It may well be that, as shown in figure 2, the loop 22 has to push the bristles away as the sausage progresses along its path. However, since the unit 80 is stationary, the sausage with its loop 22 can only progress along its path if it also slides from one bristle to the next. Thus the product also slides along the damping unit as claimed.*

*In summary, the the idea of having the damping means extend into the path of motion of products and that the products slide along the damping means are directly and unambiguously originally disclosed together.*

*For all these reasons, the Board considers that claim 1 as granted does not contain subject matter that extends beyond the application as filed.*

### *3. Sufficiency of disclosure*

*The appellant-opponent argues that having the products slide along the damping means is not compatible with the damping means extending into the product's path of motion. In the Board's opinion, as explained above in the discussion of added subject matter these two features are not incompatible. For example, as explained a product that moves along a path into which a stationary damping unit with flexible bristles extends, can but slide along the damping unit. Otherwise it would be held stationary. Therefore the Board has no doubt that the invention as claimed can be carried out by the skilled person".*

*[...]*

### *6. Auxiliary requests*

*The auxiliary requests may need to be discussed. The appellant-opponent's arguments in respect of Article 100(b) and 100(c) appear to be as for the main request.*

- 5.1 Following the Board's communication, the appellant-opponent did not comment on these issues in writing. At the oral proceedings before the Board, the appellant-opponent merely referred to their written submissions. In the light of this, the Board sees no reason to deviate from the above preliminary opinion.

Therefore, the Board concludes that claim 1 of the second auxiliary request does not add subject matter extending beyond the application as filed, so it meets the requirements of Article 123(2) EPC. Furthermore, the invention according to claim 1 is sufficiently disclosed, so meets the requirements of Article 83 EPC.

6. Second auxiliary request, claim 1, inventive step

6.1 It is not disputed that the subject matter of claim 1 is novel.

6.2 The appellant-opponent has argued that the subject matter of claim 1 lacks inventive step starting from E4 combined with E1 and the skilled person's general knowledge or various documents, or starting from E4 with the skilled person's general knowledge or E7 to E10 or starting from E1 in combination with various documents.

6.3 Starting from E4

E4 discloses (see abstract, title, column 8, line 44 to column 9, line 26 and claim 1 with figure 1) a system for storing products, namely sausages (Wurst) 58. Each sausage has a sausage-shaped body and a loop 30 (Aufhängeschlaufe) which is fixed to the sausage-shaped body and used for pendulously storing the products on rod-shaped storage devices (Kochstab) 38.

As best seen in figure 1 with column 5, lines 6 to 18, the system comprises a rod-shaped storage device 38 for storing several products 58 by their loops 30 one after another. The system also has a conveyor device (see column 5, lines 41 to 47 with figure 1) comprising an endless conveyor (Endlosförderer) 50 with a conveyor element (Förderketten 60 and trolleys 52), for conveying the products by means of their loops to storage places on the rod-shaped storage device 38.

6.3.1 It is not in dispute that E4 does not disclose a damping unit. As best seen in figure 1, the sausages 58

appear to hang freely, both when being transported slung from the conveying trolleys 52 and when already hung on the rod-shaped storage device 38.

- 6.3.2 According to established jurisprudence (see CLBA, I.D. 4.3.2, the objective definition of the problem to be solved by the invention should normally start from the problem described in the contested patent. Furthermore, the formulated problem should be one which the skilled person knowing only the prior art would wish to solve. Moreover (see **T800/91**, reasons, point 6), it should not be tendentiously formulated in a way that unfairly directs development towards the claimed solution.
- 6.3.3 In the present case (see published patent specification, paragraphs [0007] and [0008]), as already mentioned, the patent explains that the sudden stopping of sausage products may make them swing, causing them to crash into each other or machine parts. This damages the sausage products and the object of the invention is to solve this problem.
- 6.3.4 In the Board's view, the skilled person will understand the underlying problem described here to be damage to the sausage products, not the swinging as the appellant-opponent suggests. Swinging, as such, may cause no difficulty. E4 does not say whether or not sausage products swing when they are stored on the cooking rod. A light swinging which caused no collisions and thus lead to no damage would hardly be problematic. Starting from E4, if this were the case, it is unrealistic that the skilled person would wish to solve this problem.

Moreover, in the Board's view, expressing the problem in terms of how to reduce swinging would direct

development towards the claimed solution. Although it may be that the skilled person could avoid causing products to swing in the first place (for example by running the system slowly), the only way they can reduce swinging movements which have already occurred is to damp them, which can but (unfairly, in the Board's view) direct the skilled person to provide a damping unit.

Therefore, rather than to reduce swinging, the Board considers that the objective technical problem can be expressed as: how to prevent damage to products in a system, such as that of E4, for storing products having loops and sausage shaped bodies, by suspending them on their loops on rod shaped storage devices.

#### 6.3.5 Combination of E4 and E1 and the skilled person's general knowledge

In deciding whether the claimed invention, starting from the closest prior art and the objective technical problem, would have been obvious to the skilled person, the crucial question is not whether the skilled person could have arrived at the invention by modifying the prior art but whether they would have done so in the hope of solving the underlying technical problem, see CLBA, I.D.5.

In the Board's view, when starting from E4 and faced with the objective technical problem (preventing damage), the skilled person would not, as a matter of obviousness, consider combining its teaching with that of E1, because E1 relates to a rather different field to that of E4 and does not offer a solution to this problem.

In particular, E1 (see page numbers bottom right - page 4, paragraph bridging pages 6 and 7, page 8 middle paragraph and claim 1 with figures 1 and 2) relates to stabilising hanging loads on a weighing device, with a damping unit (Gleitschiene 15). In the examples the loads that are weighed are animal (pig) carcasses or parts thereof. Thus the field of application - weighing carcasses - is rather dissimilar to that of conveying sausages. Moreover, the purpose of the damping unit 15 is not to prevent damage to products but the stabilisation of a single product so that it can be quickly and accurately weighed. Therefore, E1 offers no solution to the problem posed, for which reason the skilled person would not combine E4 with the teaching of E1.

Consequently, the question as to whether, having combined the teachings of E4 and E1, the skilled person would add the further modification to that combination of providing the damping unit with bristles from their general knowledge or other cited documents, is moot.

6.3.6 Inventive step starting from E4 with the skilled person's general knowledge or E7 to E10

In the Board's opinion, the skilled person when starting from E4 and faced with the objective technical problem (preventing damage to products suspended on loops) would likewise not find the solution to the problem as claimed in their general knowledge or any of E7 to E10.

The appellant-opponent has not demonstrated that preventing damage to suspended products using bristles as a damping unit belongs to the skilled person's

general knowledge. Nor does the Board have any reason to consider this is so.

A solution to the problem of preventing damage to products, let alone to suspended products, is also not disclosed in any of E7 to E10.

E7 (see abstract and column 2, lines 46 to last line with figure 1) discloses the alignment of sausage loops 3 stored on a rod by means of rotating brushes (implicitly with bristles), but not that this prevents damage to the sausages.

E8 (see claim 1) discloses braking brushes for the automatic storage of corrugated paper sheets. It does not mention preventing damage, let alone to suspended sausage shaped products.

E9 (see column 2, lines 20 to 31 with the figure) discloses brushes to provide a braking action to bring single loads ("Stückgüter") 3 transported on a conveyor to a smooth stop immediately before a change of conveying direction. There is no disclosure of preventing damage to the product, which is not sausage shaped, nor is the product suspended. Rather, it is conveyed on belts 13, 14.

Similarly, E10 (see abstract, figure 1 and paragraph [0013]) discloses a braking brush for flat products conveyed on a conveyor belt. Also here there is no disclosure of preventing damage to products, rather they are merely slowed down. In any case, the products are not suspended but carried on conveyor belts.

Since none of the documents or the general knowledge proposed for combination with E4 discloses a solution

to the problem of preventing damage to suspended products, the Board holds that the skilled person would not make such combinations in the hope of solving the problem posed (preventing product damage). Therefore, the subject matter of claim 1 involves an inventive step starting from E4 and considering the skilled person's general knowledge, or any of E7 to E10.

6.4 Inventive step starting from E1

6.4.1 In accordance with established jurisprudence (see CLBA I.D.3.4.3), a generically different document cannot normally be considered as a realistic starting point for the assessment of inventive step (see for example **T0870/96**, reasons 4.1). If they do start from such prior art, they are bound by that choice: any further obvious development will be constrained to the field of application of their choice.

6.4.2 In the present case, the Board notes that claim 1 is addressed to a system for storing products on rod-shaped storage devices. The Board notes that the usual meaning of "storing" (see Oxford dictionary on line, definition 4) is to keep in store for future use; to collect and keep in reserve; to form a store, stock or supply of; to accumulate, hoard.

E1, on the other hand, relates to a weighing system. In particular (see pages 6 to 8, with figures 1 and 2) E1 discloses a balance 1 of an overhead track with a weighing scales 2. As explained at the middle of page 7, the articles 8 to be weighed are pig carcasses or parts thereof which are suspended by hooks. There is no suggestion that this device is for storing, much less for storing sausage shaped products which are suspended from loops.



Any obvious further development is thus confined to the framework of weighing heavy objects such as pig carcasses, as determined by the starting point. Whatever obvious measures the skilled person might adopt from common general knowledge or other documents, the end result will always be a device for weighing objects such as pig carcasses. Consequently, they will not arrive at the claimed device for storing products which must be sausage shaped on rod shaped storage devices.

- 6.5 For the above reasons, the Board finds that the subject-matter of claim 1 involves an inventive step over the cited prior art. Auxiliary request 2 thus meets the requirements of Article 52(1) with 56 EPC.
  
7. Taking into account the amendments made to the patent according to the second auxiliary request of the appellant-proprietor, including amendments made to the description during the oral proceedings before the Board, the Board finds that the patent and the invention to which it relates meet the requirements of the EPC. Therefore, the patent can be maintained according to the second auxiliary request, Article 101(3) a EPC.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent in the following version:
  - Claims:  
1 - 9 of Auxiliary Request 2 filed with letter dated 22 August 2016;
  - Description:  
pages 2 - 5 as filed during oral proceedings before the Board.
  - Figures: 1- 6 of the patent as granted.

The Registrar:

The Chairman:



M. H. A. Patin

A. de Vries

Decision electronically authenticated