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**Datasheet for the decision  
of 2 April 2019**

**Case Number:** T 0458/16 - 3.2.04

**Application Number:** 11181007.3

**Publication Number:** 2481291

**IPC:** A22B3/00, A22C21/00, B65G47/64

**Language of the proceedings:** EN

**Title of invention:**  
Method and processing line for stunning and/or killing of  
poultry

**Patent Proprietor:**  
Meyn Food Processing Technology B.V.

**Opponent:**  
Marel Stork Poultry Processing B.V.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54

**Keyword:**  
Novelty - main request (yes)  
Remittal to the department of first instance - (yes)

**Decisions cited:**

**Catchword:**



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Case Number: T 0458/16 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 2 April 2019**

**Appellant:** Meyn Food Processing Technology B.V.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 January 2016  
revoking European patent No. 2481291 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** J. Wright  
W. Van der Eijk

## **Summary of Facts and Submissions**

- I. The appellant-proprietor lodged an appeal, received 11 February 2016, against the decision of the opposition division posted on 22 January 2016 revoking European patent No. 2481291 pursuant to Article 101(3) (b) EPC. The appeal fee was paid at the same time. The appellant-proprietor's statement setting out the grounds of appeal was filed on 17 March 2016.
  
- II. Opposition was filed against the patent as a whole and based on, amongst other grounds, Article 100(a) EPC with Article 54(2) EPC for lack of novelty. In its decision the opposition division held, amongst other things, that the subject matter of the independent claims as granted and of other requests they admitted lacked novelty with respect to a document E1: WO 2008/127667. Therefore, they decided to revoke the patent.
  
- III. Oral proceedings before the Board were duly held on 2 April 2019.
  
- IV. The appellant-proprietor requested that the decision under appeal be set aside and that the patent be maintained as granted, alternatively that the patent be maintained in amended form according to one of auxiliary requests I and II filed with the grounds of appeal or according to auxiliary request III filed with letter of 26 November 2018.
  
- V. The respondent-opponent requested that the appeal be dismissed.

VI. The independent claims of the main request (as granted) read as follows:

Claim 1:

"Processing line (1) for stunning and/or killing of poultry, comprising a plurality of treatment stations (7) to execute the stunning and/or killing of poultry contained in containers or crates (3), a feed-line (4) for supplying the poultry in containers or crates (3) to the plurality of treatment stations (7), and an exit line (8) to transport the stunned and/or killed poultry contained in the containers or crates (3) away from the treatment stations (7), characterized in that at least one shuttle unit (6) is provided that is movable on the one part to and fro the plurality of treatment stations (7) and on the other part to and fro the feed-line (4) and the exit line (8)".

Claim 11:

"Method for stunning and/or killing of poultry, employing a plurality of treatment stations (7) to execute the stunning and/or killing of poultry which is contained in containers or crates (3), wherein the poultry is supplied in said containers or crates (3) via a feed-line (4) to the plurality of treatment stations (7), and is after stunning and/or killing transported away from the treatment stations (7) via an exit line (8), characterized in that at least one shuttle unit (6) is employed that is moved on the one part to and fro the plurality of treatment stations (7) and on the other part to and fro the feed-line (4) and the exit line (8)".

VII. The appellant-proprietor argued as follows:

The subject matter of the independent claims of the main request is new with respect to E1. The examples of E1, figures 5 and 7a and 7b do not disclose a shuttle as claimed, amongst other features.

VIII. The respondent-opponent argued as follows:

The subject matter of the independent claims of the main request lacks novelty with respect to E1. In particular the example of figure 5 shows all features of claim 1.

### **Reasons for the Decision**

1. The appeal is admissible.

2. Background

The patent (see published specification, paragraph [0001]) relates to a processing line and associated method for stunning and/or killing of poultry. The invention aims (see specification, paragraphs [0005]) to convert a stream of living poultry, irregularly supplied to the slaughterhouse, into a relatively uniform stream of stunned and/or killed poultry.

3. Before looking in detail at the issue of novelty, the Board finds it useful to interpret certain terms of claim 1.

3.1 In this regard, the Board notes that the skilled person reads the claim giving terms their usual meanings and with their mind willing to understand, in order to

arrive at a technically sensible interpretation that takes into account the whole disclosure of the patent (see Case Law of the Boards of Appeal, 8th edition, 2016 (CLBA), II.A.6.1, and the decisions cited therein).

3.2 The feature "at least one shuttle unit"

The shuttle unit is movable to and fro. In the Board's view, in the context of a unit movable in this way, the usual meaning of shuttle is a vehicle, one movable to and fro (cf. the common term "shuttle bus").

The usual meaning of "at least one" is one or more. Therefore, in the Board's opinion, the claim defines a minimum of one shuttle vehicle (there could be more than one) that is able to perform *all* the claimed to and fro movements.

3.3 Feed-line and exit-line

3.3.1 The Board notes that claim 1 (see first line) is directed to a "processing line for stunning and/or killing poultry", so it is an industrial processing line. Here, the usual meaning of a "line" (see Oxford English Dictionary on line) is [a] row of machines or work stations where a product is progressively assembled, or [as in the present case] a succession of operations performed on it, as it passes from one end to the other during manufacture or processing. The feed-line and exit-line are integral parts of this processing line, in particular parts dedicated, respectively, to feeding and exiting crates of poultry.

3.3.2 In the preamble of the claim, the feed-line is defined as being "for supplying the poultry in containers or

crates to the plurality of treatment stations". The exit-line is there "to transport the stunned [...] poultry contained in the containers or crates away from the treatment stations".

According to the characterising portion of the claim, at least one shuttle unit is movable on the one part to and fro the plurality of treatment stations and on the other part to and fro the feed-line and the exit line.

In the Board's view, the shuttle's toing and froing between the treatment stations and feed-line/exit line would make no sense if the feed-line ended directly at the treatment stations and the exit-line began there. Therefore, in a technically meaningful reading of the claim the feed-line/exit-line must each be connected to the treatment stations via the at least one shuttle, rather than them say ending/starting at the treatment stations. This view is indeed supported by the various embodiments, see figures where exit line 8 and feed line 4 are separated from station(s) 7, the shuttle ferrying between them. See also claim 2.

4. Main request, novelty of claim 1 with respect to E1
- 4.1 According to established case law (see CLBA, I.C.4.1), it is a prerequisite for the acceptance of lack of novelty that the claimed subject-matter is "directly and unambiguously derivable from the prior art". In other words, it has to be "beyond doubt - not merely probable - that the claimed subject-matter was directly and unambiguously disclosed in a patent document", see for example T 450/89, reasons, point 2.1.1.



- 4.2 E1 (see title and abstract) relates to a processing line for stunning and/or killing of poultry. In the Board's view, E1 does not take away novelty of claim 1.
- 4.3 E1, example of figure 5
- 4.3.1 According to this example (see paragraphs [0030] to [0032] with figure 5), the processing line comprises two stunning chambers 151 and 152 (treatment stations in the claim's wording). Modules or ranks of cages 160, 161 (containers or crates in the claim) are loaded into the treatment stations via front doors 153 and 154 (see paragraph [0030], first 4 lines). Thus, the example includes a plurality of treatment stations to execute the stunning and/or killing of poultry contained in crates.
- 4.3.2 In the Board's view, this example does not disclose a feed-line as claimed. Recalling this to be a line supplying containers or crates to the plurality of treatment stations via the at least one shuttle, no such line can be identified. In this respect, the Board does not agree with the position taken by the opposition division (see impugned decision, reasons, point 11.3.1, first 4 lines) that a delivery truck (cf. E1, page 3, last 4 lines), driving to the processing line site, constitutes a feed-line. This is because such a truck is not a part of a processing line to which claim 1 is directed. Rather it is merely a transport means which can visit a processing line, but the truck does not become a part of the line merely by arriving there (cf. patent specification, paragraph [0020]).
- 4.3.3 The Board also does not consider that this example discloses an exit-line as claimed.

It may well be (see figure 5, rectangular shape above and to the left of crate 7 with arrow pointing left), that the embodiment has an exit-line. However, it is not an exit-line that transports poultry contained in crates as claimed. This is because (see paragraph [0032]) the element 180 is a tipper that tips the poultry out of the crates, which then move empty along the second conveyor 159. So, at most, this embodiment discloses an exit-line for poultry *not* contained in crates. In this respect, the Board also does not view the tipper itself as a transport means. It merely tips or dumps birds out of a crate, without moving the crate with its charge from one place to the next. Therefore, (cf. impugned decision, page 8, first paragraph, last 3 lines) the tipper itself cannot be an exit-line to transport stunned birds as claimed.

4.3.4 Nor is the Board able to identify in the figure 5 embodiment of E1 a shuttle that is configured to operate in the manner prescribed by claim 1.

E1 (see paragraph [0017]) talks generally about loading stunning chambers (treatment stations) with a fork-lift, but without any reference to figure 5. Such a forklift can indeed be considered a shuttle in the broader sense of the word in that it ferries containers to and from the treatment stations from some (truck) unloading point. However, even if it is assumed that the cages are loaded into the treatment stations 153, 154 of figure 5 by a fork-lift as a shuttle, there is still no disclosure of the fork-lift first picking up the cages from a feed-line as claimed, i.e. as an integral part of the processing line and not as a truck supply point. Similarly, there is no disclosure of the forklift shuttling between the treatment station and an

exit line in the sense of the claim. At best a forklift might collect empty cages from the 2nd return conveyor 159 (bottom right), but the latter is not an exit line for transporting stunned or killed poultry in containers away from the treatment station.

Nor can the conveyor 158 described in paragraph [0030]), to transport the cages containing birds leaving the treatment stations 151, 152 to the tipper 180 be considered a shuttle, for the mere fact that a conveyor moves in one direction only, not to and fro (cf. page 5, lines 2 to 5 and figure 5, arrow to the left of crate 5).

4.3.5 In summary, the example shown in figure 5 does not disclose an exit-line or a feed-line as claimed, nor does it disclose a shuttle unit, movable to and fro as claimed.

4.4 Other disclosures in E1

The Board is also not convinced by the respondent-opponent's arguments in their written submissions in reply to the appeal, that other parts of E1 take away novelty of claim 1.

4.4.1 As already touched on, E1 (see paragraph [0017]) discloses that crates are constructed such that they can be loaded into a stunning chamber via a fork lift. This is not a direct and unambiguous disclosure of a particular arrangement of a processing line, let alone one with a plurality of treatment stations to execute stunning.

E1 also discloses (see paragraph [0022]) that crates may be advanced from a stunning chamber via, amongst

other means, a fork-lift. In the absence of any other details of the processing line, or reference to a specific embodiment the Board does not consider this part of E1 to directly and unambiguously disclose a processing line with, amongst other features, a plurality of treatment stations to execute stunning, much less the shuttle (forklift) to and froing between them and feed and exit lines.

- 4.4.2 In a further example explained in E1 (see paragraphs [0048] to [0049] and figures 7a and 7b), a multi-chamber stunning-system is disclosed, each chamber being a pit 201-220 containing carbon dioxide. Contrary to the finding of the opposition division (see impugned decision, point 11.3.2) and the respondent-opponent's argument the Board does not consider the part of the conveyor 250 raising and lowering the cages into consecutive pits to be a shuttle in the proper sense of the term, i.e. a vehicle moving to and fro. This is regardless of whether and, if so, what parts of the conveyor 250 itself can be regarded as a feed line respectively an exit line.

For all these reasons, this example does not disclose a shuttle as claimed.

- 4.5 The Board also has no reason to consider any other part of E1 might take away novelty of claim 1, nor has this been argued.
- 4.6 The Board concludes that E1 does not take away the novelty of claim 1.
5. Main request, novelty of claim 11 with respect to E1

Claim 11 has the same features as claim 1 expressed in terms of a method. Therefore, for the same reasons as apply to claim 1 of the main request, the Board considers that the subject matter of claim 11 is new with respect to E1.

6. In accordance with Article 12(2) RPBA, the respondent-opponent's reply to the grounds of appeal should contain their complete case. Amongst other things, this means it should specify expressly all the evidence relied on.

In this regard, the general reference in the respondent-opponent's reply to the appeal, page 8, last three lines, to their notice of opposition is unspecific. According to well established jurisprudence, such a generic reference to the appellant's submissions in opposition, cannot be retroactively interpreted as expressly specifying particular aspects contained therein (see Case Law of the Boards of Appeal, 8th edition, 2016 (CLBA), IV.E. 2.6.4, and the decisions cited therein).

In the present case, in appeal there has been no specific challenge to the opposition division's finding (see impugned decision, point 11.1.3) that D1 does not take away novelty of the independent claims 1 and 11 of the main request. Therefore, the Board has no reason to deviate from this finding.

7. From the above, the Board concludes that the subject matter of the independent claims 1 and 11 of the main request (as granted) is new. Therefore the Board does not need to consider the appellant-proprietor's auxiliary requests with regard to novelty.

8. The decision under appeal considered only the novelty ground of opposition, but not the opposition ground of inventive step (Article 100a with 56 EPC) on which the opposition was also based. In order to allow the appellant-proprietor consideration of this remaining issue before the first instance, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC by remitting the case to the department of first instance for further prosecution. In this regard, the Board notes that this course of action is in accordance with the wishes of the appellant-proprietor and that the respondent-opponent does not object to it.

## 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 for further prosecution.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated