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Datasheet for the decision of 17 February 2020

Case Number: T 0266/17 - 3.2.04

Application Number: 09787794.8

Publication Number: 2456299

IPC: A01K31/00, A01K45/00

Language of the proceedings: EN

Title of invention:
TRANSPORTING UNIT FOR LIVE POULTRY ON BOARD OF A TRUCK

Patent Proprietor:
Zanotti, Massimo
GIORDANO POULTRY-PLAST S.p.A.

Opponent:
Linco Food Systems A/S

Headword:

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

Keyword:
Grounds for opposition - insufficiency of disclosure (no) - lack of clarity no ground for opposition
Inventive step - main request (yes)

Decisions cited:
G 0003/14

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Chambres de recours

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Case Number: T 0266/17 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 17 February 2020

Appellant: (Patent Proprietor 1)	Zanotti, Massimo Via Santa Maria Vecchia, 11 25064 Gussago (BS) (IT)
Appellant: (Patent Proprietor 2)	GIORDANO POULTRY-PLAST S.p.A. Via Bernezzo 47 I-12023 Caraglio (Cuneo) (IT)
Representative:	Buzzi, Franco Buzzi, Notaro & Antonielli d'Oulx S.p.A. Corso Vittorio Emanuele ll, 6 10123 Torino (IT)
Respondent: (Opponent)	Linco Food Systems A/S Vestermøllevej 9 8380 Trige (DK)
Representative:	Stork Bamberger Patentanwälte PartmbB Meiendorfer Strasse 89 22145 Hamburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 25 November 2016 revoking European patent No. 2456299 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	A. de Vries
Members:	S. Hillebrand
	T. Bokor

Summary of Facts and Submissions

I. The appeal was filed against the decision of the Opposition Division of 25 November 2016 to revoke the patent (Article 101(3)(b) EPC), inter alia because the subject-matter of claim 1 according to the main and first three auxiliary requests did not involve an inventive step (Articles 100(a), 56 EPC).

In the contested decision, reference is made to the following documents.
E1: EP 1 330 952 B2
E2: US 2007/0227460 A1
E3: CA 2 625 636 A1.

II. The Proprietor filed the notice of appeal on 25 January 2017 and paid the appeal fee the same day. They filed the statement of grounds of appeal on 24 March 2017.

III. In preparation for oral proceedings, the Board gave a preliminary opinion in a communication according to Article 15(1) RPBA 2007 of 1 August 2019.

Oral proceedings were held on 17 February 2020 in the presence of all parties.

IV. The Appellant-Proprietor requests that the decision of the Opposition Division be set aside and that the opposition be rejected, i.e. the patent be maintained as granted, or, in the alternative, that the patent be maintained in an amended form on the basis of any one of the 1st to 6th auxiliary requests filed with the statement of grounds of appeal.

The Respondent-Opponent requests dismissal of the appeal.

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

"Transporting unit for live poultry on board of a truck (A), comprising a supporting frame (2) and a plurality of drawer-type cages (3) open at the upper part and arranged in mutually stacked condition in the supporting frame (2) in such a manner that the bottom (4) of a drawer-type cage (3) provides the cover for the underlying drawer-type cage (3), said drawer-type cages (3) having lateral walls (5, 7) with aeration openings and being extractable only towards the dorsal side (2b) of the supporting frame (2) opposite to its front side (2a) at which, during use, the poultry to be transported is introduced into said drawer-type cages (3), **characterised in that** each of said drawer-type cages (3) has a lateral wall (6) substantially without aeration openings and intended to be selectively positioned at one side or the opposite side of the supporting frame (2)."

VI. The Appellant-Proprietor's arguments can be summarised as follows.

The claimed invention is sufficiently disclosed. The subject-matter of claim 1 as granted involves an inventive step with regard to the disclosure of E1. Neither is a selective adaptation to varying climatic conditions addressed by any of the prior art, nor is the claimed solution obvious when applying general knowledge of a person skilled in the art.

The Respondent-Opponent's arguments can be summarized as follows.
The subject-matter of claim 1 as granted is not sufficiently disclosed, since claim 1 does not contain a complete technical teaching for solving the underlying technical problem of adapting the transport unit to varying climatic conditions.
The claimed solution is obvious when starting from the transporting unit of E1 and taking into account general knowledge or the teaching of E2 or E3.

Reasons for the Decision

1. The appeal is admissible.

2. Subject of the patent in suit is a transport unit for poultry comprising a supporting frame in which drawer-type cages are arranged in a vertical stack.
The cages can be drawn out on one side of the frame only (the so-called dorsal side) and each is filled in turn with birds from the bottom cage to the top cage.

Each cage has at least one lateral wall without aeration openings. This allows an operator to turn the cage with the closed lateral wall towards a side of the transport unit, which is exposed to the environment, when the unit is loaded onto a truck deck, or, if conditions allow, towards an opposite side of the transport unit, which faces a center of the truck deck and an adjacent transport unit loaded on the truck deck. The unit can thus be easily adapted to variable climatic conditions, specification paragraphs [0004] and [0006].

3. **Main request- sufficiency of disclosure**

3.1 The respondent argues that the final feature of granted claim 1 would not provide the skilled person with sufficient information for solving the stated problem, because essential features are missing from the claim.

3.2 According to established case law, sufficiency of disclosure is assessed on the basis *of the patent specification as a whole* and not of the claims alone, see CLBA II.C.3.1. The Board has no difficulty in understanding from the totality of description, figures and claims how the relatively simple idea of the invention and its associated effects are realized. Nor has the Respondent-Opponent argued that the necessary information would not be present in the description and drawings of the patent. The Board thus confirms the impugned decision's finding that the claimed invention is sufficiently disclosed, Article 100(b) EPC.

3.3 Otherwise, the fact that the granted claim might lack essential features is a question of clarity, which, according to G3/14 is not open to scrutiny.

4. **Main request - inventive step**

4.1 It is common ground that E1 discloses as closest prior art a transport unit according to the preamble of claim 1, in which the cages have aeration openings in all four lateral walls (paragraphs [0018], [0019], Fig. 1 - 3). In particular, the drawer-type cages 4 of E1 can be introduced in different orientations. This is a prerequisite for realising the alternative embodiment described in paragraph [0027] with its loading side being offset by 90° with respect to the front side.

The subject-matter of claim 1 differs thus from this known transport unit in that each of said drawer-type cages has a lateral wall substantially without aeration openings and intended to be selectively positioned at one side or the opposite side of the supporting frame.

4.2 In use the side without openings can selectively, depending on the climatic conditions, be oriented on the outside of the transport unit to protect or shelter poultry from adverse conditions as described in paragraph [0006] of the specification. Thus, by suitable orientation of the drawer, the transport unit is adaptable to the varying climatic conditions.

The objective technical problem to be solved by the subject-matter of claim 1 can therefore be considered as providing a drawer-type transport unit as in E1 which can be efficiently adapted to different climatic and environmental conditions to which it might be exposed to in the course of transport on board of a truck. This is in line with the technical problem set out in paragraph [0004] of the patent specification and has been agreed to by the Parties during oral proceedings.

4.3 E2 and E3 disclose transport units for live poultry that are of a different type than the transport unit of E1. The cages of the transport units according to E2 and E3 cannot be slid out of a frame like a drawer, but comprise swivelling doors at one lateral side of each cage, through which poultry can be loaded into a cage.

4.3.1 Even if E2 and E3 belong to the knowledge of the skilled person in the field of animal transport, the Board is not able to identify in E2 or E3 any suggestion for adapting a (given) transport unit to

different climatic conditions such as e.g. outside temperature.
E2 and E3 (claim 3) rather teach that cage ventilation is important for the welfare of the birds and should be facilitated by providing as many ventilation openings as possible within the limits of certain constraints. According to E2, paragraphs [0029], [0034] these constraints consist in avoiding injury of birds, whose feet and wings might get caught in ventilation holes, when the birds are pushed through the swivelling door, and avoiding damage to the feathers of delicate birds inside a cage. According to E3, paragraphs [0010], [0011], [0041], these constraints consist in maintaining structural integrity of the swivelling doors when using lightweight materials instead of metal for their production.

4.3.2 In the Respondent-Opponent's view, a person skilled in the art derives from E2 the teaching to close a lateral wall of a cage, if required by climatic conditions (for example low environmental temperature), and to provide more ventilation openings in the lateral wall, if not (for example in case of high environmental temperature). Accordingly, E3 teaches in claim 3 that air flow and thus temperature in a cage depend on the provision and distribution of ventilation openings in the cage walls. Consequently, they can be influenced and adapted to climatic conditions by changing the number and distribution of holes. Applying this teaching to the transport unit of E1 would then directly result in the subject-matter of claim 1.

4.3.3 The Board disagrees.

As mentioned above under point 4.3.1, the Board does not consider E2 to teach closing a lateral wall of a

cage if required by climatic conditions, but rather to do so for safety reasons. If climatic conditions require additional ventilation, E2 proposes in paragraph [0029] the use of an alternative embodiment of the cage, in which the door also includes ventilation holes. E2 is, however, silent on any *adaptation* of an existing transport unit configuration to a different climatic condition, such as for example temporarily covering lateral walls of the cages or replacing lateral walls and/or the door 42 of a modular cage by other walls or doors having fewer or more ventilation openings.

Nor does E2 suggest or teach orientation in dependence on climatic conditions. Paragraphs [0004] and [0035] merely indicate that the cages can be accessed even when stacked, suggesting that the doors are oriented on the same side of the stack, see also figure 4. How the stacks are oriented in transport, whether with the doors of adjacent stacks oriented towards each other (inwardly) or outwardly is not indicated in E2, much less that this might depend on, say, weather or temperature.

Concerning E3, this document does not mention climatic conditions at all. Aeration openings are described only with regard to their basic purpose of increasing air flow (claim 3). Here it can be inferred from figures 9 to 14 that for transport the units are placed side by side with their doors facing each other, i.e. oriented inwardly. There is no suggestion that this is only the case when climatic conditions so allow. Rather, this appears to be the standard arrangement, i.e. is always the case irrespective of outside conditions. Thus, E3 does not contemplate the use of the door to shield the animals from adverse climatic conditions. There is thus

also no disclosure in E2 and E3, explicit or implicit, which might lead a person skilled in the art to the idea to close one of the lateral walls of the drawer like cages of the transport unit according to E1 in order to selectively provide protection against adverse environmental influences like low temperatures, if required.

4.3.4 The Board agrees with the Respondent-Opponent that covering or sheltering transport units of E1 during adverse cold climatic conditions would be an obvious approach based on common general knowledge for solving the objective problem. Most obviously, this could be done by means of a tarpaulin fixed to transport units stacked on a truck deck. The skilled person might even as a matter of obviousness contemplate the use of cover plates removeably attached to the outside of a unit exposed to the environment.

However, these obvious measures employing additional means (tarpaulin or removable cover) do not require any change to the drawers themselves. Permanently modifying the drawer by replacing a lateral wall with aeration openings by a substantially closed lateral wall represents a rather different approach which by selective orientation of the drawer in response to outside conditions removes the need for any additional means. As such it offers a flexibly adaptive, self contained solution to the problem of transport in varying climatic conditions, which - in contrast to the above obvious measures - the Board does not consider to be a straightforward option for a person skilled in the art.

4.4 For the above reasons, the Board concludes that the subject-matter of claim 1 involves an inventive step in the sense of Article 56 EPC over the cited prior art and general knowledge of a person skilled in the art.

5. Since none of the the grounds for opposition according to Articles 100b) and 100a) in combination with 56 EPC prejudice the maintenance of the patent as granted, the opposition must be rejected and the patent thus maintained as granted, Article 101(2) EPC.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**

2. **The patent is maintained as granted.**

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated