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**Datasheet for the decision  
of 4 March 2022**

**Case Number:** T 1861/19 - 3.2.04

**Application Number:** 13747890.5

**Publication Number:** 2879483

**IPC:** A01F29/00, A01K5/00

**Language of the proceedings:** EN

**Title of invention:**

PROCESSING OF BLOCKS OR BALES OF FEED

**Patent Proprietor:**

Trioliet Holding B.V.

**Opponents:**

Octrooibureau Van der Lely N.V.  
DeLaval International AB

**Headword:**

**Relevant legal provisions:**

EPC Art. 54  
RPBA 2020 Art. 12(3), 13(1)  
RPBA Art. 12(2), 12(4)

**Keyword:**

Novelty - main request (no)  
Auxiliary requests - admitted (no)

**Decisions cited:**

T 1018/02, T 1488/08

**Catchword:**



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Case Number: T 1861/19 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 4 March 2022**

**Appellant:** DeLaval International AB  
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**Party as of right:** Octrooibureau Van der Lely N.V.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
30 April 2019 concerning maintenance of the  
European Patent No. 2879483 in amended form.**

**Composition of the Board:**

**Chairman**           A. de Vries  
**Members:**         J. Wright  
                      T. Bokor

## **Summary of Facts and Submissions**

- I. The appeal was filed by the appellant (opponent 2) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1, the patent in suit met the requirements of the EPC.
- II. The opposition division decided, amongst other things, that the subject-matter of the claims as amended during the opposition proceedings was novel.
- III. The Board issued a communication setting out its preliminary opinion in preparation for the oral proceedings. Oral proceedings were held before the Board on 4 March 2022.
- IV. The appellant (opponent 2) requests that the decision under appeal be set aside and that the patent be revoked in its entirety.
- V. The respondent (patent proprietor) requests that the appeal be dismissed and in the alternative that the patent be upheld in amended form according to one of auxiliary requests 2 or 6 both filed with letter of 11 February 2022.
- VI. The party as of right (opponent 1) has submitted no request.
- VII. Independent claim 1 of auxiliary request 1 (as maintained) reads as follows:  
  
"Apparatus for processing blocks or bales of feed, comprising:

- a movable mixing bin;
  - a feed kitchen with a stationary carrier carrying on it one or more rows of the blocks or bales;
  - separating means for separating feed the full length of a cutting face, with the cutting face extending downwards from the top of the block or the bale;
  - conveying means for moving the separating means in the direction towards the cutting face; and
  - discharge means for moving separated feed to the mixing bin,
- wherein the separating means are part of a mixing carriage on which the mixing bin is disposed".

Claim 1 of auxiliary request 2 reads as claim 1 of auxiliary request 1 but adds the following feature to the end of the claim: "wherein the apparatus on either side of the separating means is provided with side walls which are spaced apart further than the width of the blocks or bales to be cut, with the side walls extending to beyond the cutting face to be described by the separating means".

Claim 1 of auxiliary request 6 reads as claim 1 of auxiliary request 1 but adds the following feature to the end of the claim: "wherein the apparatus comprises a shoveling plate extending beneath the separating means at such a level that the shoveling plate can be slid beneath a block or bale."

VIII. In the present decision, reference is made to the following documents:

P3 : WO 96/14735 A1

P4 : Zevenbergen, G.: "Lely voert automatisch - Voerhoogtesensor maakt verschil", Veehouderij Techniek, May 2012

- P13: Product brochure "Trioliet Livestock Feeding Equipment", printed 11/2010
- P15: Oberschätzl, R. et al: "Automatic Feeding Systems for Cattle" DLG Expert Knowledge Series 398, Frankfurt am Main, July 2014
- P16: "Aus Zwei mach Eins" Profi Veredlungstechnik, July 2012
- P17: Product brochure "Lely Vector", 2018

IX. The appellant-opponent 2's arguments can be summarised as follows:

The term *feed kitchen* does not imply intermediate storage. P3 discloses an area where feed is prepared, which is a feed kitchen. It also discloses a row of slot silos which contain blocks of feed and all the remaining features of claim 1. Therefore, P3 takes away novelty of claim 1. The auxiliary requests of the respondent-proprietor are not substantiated and so should not be admitted into the proceedings.

X. The respondent-proprietor's arguments can be summarised as follows:

The term *feed kitchen* has a particular, rather than literal meaning to the skilled person: it is a place where feed ingredients are intermediately stored and feed is prepared. Although P3 discloses preparing feed this is not done in an intermediate storage area, therefore P3 has no feed kitchen. Nor does it disclose blocks of feed. For these reasons P3 does not take away novelty of claim 1 of the main request. The auxiliary requests 2 and 6 should be admitted into the proceedings.

- XI. The opponent 1 argued that, although its systems have a feed kitchen with intermediate storage, the term feed kitchen should be understood more generally to mean a place where feed is prepared.

### **Reasons for the Decision**

1. The appeal is admissible.

2. Background

The patent relates to an apparatus and a process for processing blocks or bales of feed for livestock (see published patent specification, paragraph [0001]). Cut silage compacted in a silage pit is usually referred to as "blocks" (see specification, paragraph [0002]). To provide this feed to animals it must first be cut by a separating means and mixed, typically in a mixing wagon (see specification, paragraph [0003]).

3. Auxiliary request 1 (proprietor's main request), claim 1, novelty with respect to P3

- 3.1 In its reply to the appeal, the respondent proprietor objected to the appellant-opponent 2 raising the issue of novelty with regard to P3 for the first time in appeal. The Board informed the parties that it intended to admit this objection into the proceedings (see communication in preparation for the oral proceedings, points 4.1 and 4.2). At the oral proceedings before the Board, the respondent proprietor no longer raised objections against admittance.

- 3.2 P3 (see figure 1) relates to a feed wagon 1 and its operation. The feed wagon 1 is part of an apparatus for processing feed.



The feed wagon 1 (see page 3, lines 17 to 20 with figure 2) is provided with mixing augers in a closed box 8 so it is a movable mixing bin. Bulk feed is stored in slot silos 5 and 6 (see page 5, lines 34 to last line with figure 1). The feed wagon has a separating means, in the form of a rotating cutting member 31 (see page 6, lines 9 to 13 with figure 2 - exsilage member 31), which cuts the bulk feed away.

As best seen in figure 1 (silo 5), see also page 9, 1st complete paragraph, the separating means cuts along the length of a cutting face running downwards from the top of the bulk feed in the silo. The separating means 31 are mounted on an articulated arm of the wheeled wagon 1, which enables the separating means to move in the direction towards the cutting face. The wagon, with its articulate arm, thus comprises a conveying means as claimed.

Once the feed is separated, it is moved to the mixing bin 8 by a discharge means in the form of a guide plate 37, wall 36 cooperating with the rotating member 31 (see page 6, lines 13 to 20). Moreover, the separating means 31 is mounted on the wagon 1 with its mixing bin 8. Therefore, as in the claim, P3's separating means are part of the mixing carriage on which the mixing bin is disposed.

3.3 It is not disputed that P3 discloses the above features. Therefore, the question of novelty hinges on whether P3 discloses a feed kitchen with a stationary carrier carrying one or more rows of blocks or bales. In this regard, the respondent-proprietor has argued that the skilled person would understand a *feed kitchen* to mean a place where feed was not only prepared but

also stored *intermediately* (in the case of silage, an intermediate storage between a silage pit where silage is compacted and the stalls, where the animals are fed). Moreover, the respondent has argued that the skilled person would understand a *block* of feed to be a block of silage after it had been cut out of a silage pit. With this understanding, so the argument goes, P3 does not disclose the above feature. The Board disagrees.

3.4 In accordance with established jurisprudence, 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, 9th edition, 2019 (CLBA), II.A.6.1, and the decisions cited therein). Moreover (see CLBA II.A.6.3), a discrepancy between the claims and the description is not a valid reason to ignore the clear linguistic structure of a claim and to interpret it differently or to give a different meaning to a claim feature which, in itself, imparts a clear credible technical teaching to the skilled reader, see for example T 1018/02, reasons 3.8.

3.4.1 The usual definition of a kitchen (see Oxford English Dictionary (OED), meaning 1.a) is [a] *room or area equipped with facilities for the cooking and preparation of food*. In the light of this, the Board holds that the expression *feed kitchen* is understandable in its own right as nothing more than an area equipped for preparing [animal] feed. In the Board's view, this is a clear and credible technical teaching which requires no consultation of the description.

3.4.2 Even when the skilled person consults the description, it does not lead the skilled person to a more limited interpretation of the term *feed kitchen* (implying intermediate storage), contrary to how the respondent-proprietor has argued. In particular, the respondent-proprietor has referred to paragraphs [0004] and [0005]. However, these paragraphs do not describe the invention but the prior art (in particular P4's Lely Vector ® system). Therefore, the skilled person would not use them to interpret the claim. In any case, the idea of the feed kitchen being an *intermediate* storage is not mentioned there. At most it is only said that the feed kitchen will need to be cleaned and filled on a regular basis (paragraph [0005], last sentence). The respondent-proprietor has also referred to the embodiment shown in figure 1 (see published patent specification, column 5, lines 52 to 55). There it is said that figure 1 shows a feed kitchen with parallel rows of blocks of silage, though it does not explicitly mention that it is an intermediate store, let alone attach any significance to the idea that the feed kitchen should store feed previously stored elsewhere.

3.4.3 Furthermore, the Board does not consider that the idea of the feed kitchen being an *intermediate* store is implied by its having a stationary carrier carrying *blocks* of feed. The normal meaning (see OED, meaning II) of a *block* is: *A bulky piece of any substance*. Thus a block of feed is no more than a bulky piece of feed. This is also consistent with the description (see published patent specification paragraph [0002]): cut silage compacted in a silage pit is usually referred to as blocks (in contrast to feed compacted into bales). It is not said that such blocks are only so called once

removed from a silage pit as the respondent-proprietor would have it.

3.5 The respondent-proprietor has also argued that the skilled person would not understand the expression *feed kitchen* literally as merely an area equipped for preparing [animal] feed because it has a specific meaning in the technical field of preparing animal feed, namely an *intermediate* storage area where feed is prepared in the context of a particular feeding concept. The Board disagrees that the cited prior art proves this to be the case.

3.5.1 It is undisputable that at least two proprietary systems show intermediate storage of block or bales of feed sometimes in connection with the term *feed kitchen* or similar term. Thus, the Vector® system from Lely is described in several documents, some post published, which all appear to show blocks of feed stored on the floor and replenished every few days, thus stored *intermediately*, in an area sometimes referred to as a *feed kitchen*: see P4, page 1, middle paragraph: "voerkeuken"; P15 [post published], page 9, figure 6 : reference sign 2: "feed stock area", and section 2.3: "feed kitchen"; P16, page 54, third column : "Futterküche"; and P17 [post published], pages 14 and 15. Similarly, the respondent proprietor's own Trioliet system disclosed in P13 (see page 2, second paragraph) refers to a feed kitchen which can store rations *for several days*.

3.5.2 However, in the Board's view, the fact that two proprietary systems use a dairy farm concept with intermediate storage does not demonstrate that the term (at the priority date) was accepted terminology and inevitably implied *intermediate* storage. That

publications describing two systems use similar terminology may be because they use a broadly similar feeding concept. That does not of itself, unless it is clear from the context, prove that a particular term must be given a specific meaning that applies only to that feeding concept. In this case the Board is unable to see from the context that the term "feed kitchen" is tied to these feeding concepts and must denote an area of intermediate storage where feed is also prepared. The term may equally well have been used there more generally to indicate an area where feed is prepared, which in both systems happens to be located in an area of *intermediate* storage. In this regard the Board notes that the feed kitchen of at least the Lely system also has tower silos for long term storage of concentrate feed ingredients (see for example P17, pages 14 and 15 "*How the Lely Vector feeding system works*" and P15, page 9, figure 6, tower silos 5). Finally, the majority of documents mentioned as evidence are post-published or published shortly before priority; only P13 was published some two years before. Assuming the term was first coined in P13 in the description of the Trioliet system with some special meaning, the fact the term is used in various publications dated very close to or after priority to describe a single other but similar system does not prove convincingly that the term had become prevalent in the field by the priority date and would thus be understood by the skilled person on that date as having the special meaning.

- 3.6 Turning again to P3 and armed with the skilled person's understanding of a block of feed (bulky piece of feed) and feed kitchen (an area equipped for preparing [animal] feed), the Board holds that P3's apparatus is for processing blocks of feed and that P3 furthermore

discloses a feed kitchen with a stationary carrier carrying a row of the blocks of feed as claimed.

In particular, P3's slot silos 5 and 6, which are arranged in parallel, store silage (see page 2, lines 28 to 29 and left hand side of figure 1). Because this silage is compacted it is in the form of two bulky pieces, in other words it is a row of blocks. It goes without saying that the floor of these slot silos is stationary, so it is a stationary carrier.

It is not disputed that P3's feed wagon 1 prepares feed in this area (see page 6, lines 9 to 20). It does so by taking feed from the slot silos 5 and 6, as well as concentrate from the standing concentrate silo 7 (see page 5, lines 29 to last line). Therefore, the skilled person understands this area to be a feed kitchen (area equipped for preparing feed).

From the above, the Board concludes that P3 discloses all features of claim 1 and thus it takes away novelty of claim 1. Therefore, the main request must fail.

4. Admittance of auxiliary requests 2 and 6

4.1 In accordance with Article 12(3) RPBA 2020, a respondent's reply to the grounds of appeal should contain its complete case. It is noted that essentially the same requirements were stipulated by Article 12(2) RPBA 2007. Amongst other things, the reply should specify expressly all the facts, arguments and evidence relied on. In accordance with Article 13(1) RPBA 2020, any subsequent amendment to a party's case may be admitted and considered at the Board's discretion. Amongst other things the article sets out that, in the case of an amendment to a patent, the Board exercises

its discretion taking into consideration whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by another party in the appeal proceedings or by the Board and does not give rise to new objections.

4.2 In its communication in preparation for the oral proceedings the Board commented on the admissibility of the auxiliary requests then on file (see the communication, section 6). It considered that the respondent proprietor's general statement on novelty and inventive step failed to substantiate why the auxiliary requests should succeed on novelty/inventive step, were the respondent-proprietor's first auxiliary request to fail. Therefore, the Board concluded, the respondent's reply to the appeal did not meet the requirements of Article 12(2) RPBA 2007, and thus ran the risk of not being taken into account (Article 12(4) RPBA 2007 in conjunction with Article 25(2) RPBA 2020).

4.3 With a letter dated 11 February 2022, the respondent-proprietor filed further auxiliary requests, including amended auxiliary requests 2 and 6, which, with auxiliary request 1 (as maintained) and after withdrawal of all other requests, made up the respondent-proprietors only requests at the end of the oral proceedings before the Board. In section 3 b) they explained that the further amendment made to these requests, restoration of a deleted feature, addressed the objection of a violation of the principle of prohibition of *reformatio in peius* made by the appellant. In section 3 c) they indicated the basis for the amendments, while in section a) they referred to a passage in the grounds discussing the advantage of side walls in auxiliary request 2.

- 4.4 However, the reply fails to address the Board's objection raised in section 6 of its communication that the auxiliary requests had not been sufficiently substantiated as regards novelty and inventive step. In particular, the response *again* fails to state the respondent's complete case and fails to explain why the amendments establish novelty and inventive step over the cited prior art for any of the requests, including the two requests ultimately maintained. In so doing it thus also fails to demonstrate that the amendments to its case in respect of auxiliary requests 2 and 6, *prima facie*, overcomes the issue of novelty with respect to P3 as raised by the appellant-opponent 2 and commented on in detail by the Board in its communication. In this regard merely citing an advantage of an added feature for one request does not explain why that or any other request might achieve novelty over P3, because P3 might have the same advantageous feature.
- 4.5 The Board is also not convinced by the respondent-proprietor's argument that, because a *huge number of* [novelty and inventive step] *attacks* were made against the auxiliary request 1 in the appellant-opponent 2's grounds of appeal, it would be contrary to procedural economy to have discussed these with respect to the auxiliary requests (see letter of 11 February 2022, page 7, first paragraph).
- 4.5.1 The intended overall effect of Articles 12(2) and (4) RPBA 2007 is to require the parties to present a complete case at the outset of the proceedings in order to provide the board with an appeal file containing comprehensive submissions from each party and to prevent procedural tactical abuses, see CLBA V.A.4.4.1 and the cited jurisprudence, for example T 1488/08,



reasons 2.2. In the Board's view, the presence of a larger number of issues to be discussed does not relieve a party of its obligations to present a complete case as early as possible. On the contrary, such cases may well be more complex so it is all the more important to present a complete case to the Board and the other parties as early as possible, rather than leaving it to the last minute (for example the oral proceedings).

4.5.2 Moreover, in the present case, in its communication (see points 4.4 and 4.6) the Board focused heavily on the issue of novelty with respect to P3 when it discussed auxiliary request 1 and concluded that the subject matter of claim 1 lacked novelty. Therefore, at the very least this issue should have been addressed by the respondent-proprietor on filing auxiliary requests 2 and 6 in order to demonstrate why, *prima facie*, it considered them to overcome this critical issue as is required by Article 13(1) RPBA 2020, whether or not exceptional circumstances existed which would justify filing these requests after the Board's communication (Article 13(2) RPBA).

With respect to this requirement (demonstrating novelty over P3), it appears not to be so that the amendments are of such a nature that the reader will realise without explanation that they overcome the novelty objection. For auxiliary request 2 (side walls feature) in particular, it was argued from the outset of the opposition proceedings (see opponent 1's opposition notice, page 16) that the feature (cf. granted claim 10) was known from P3 (referred to there as D3). Therefore, it does not go without saying that this amendment would achieve novelty over P3.

- 4.6 For all these reasons the Board decided to exercise its discretion under Article 13(1) RPBA 2020 and Article 114(2) EPC by not admitting auxiliary requests 2 and 6 into the proceedings.
5. Since the respondent-proprietor's principal request, auxiliary request 1 (as upheld by the opposition division) fails and its remaining requests, auxiliary requests 2 and 6 filed on 11 February 2022, were not admitted into the proceedings, the Board must revoke the patent.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



B. Brückner

A. de Vries

Decision electronically authenticated