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**Datasheet for the decision
of 10 November 2023**

Case Number: T 0671/22 - 3.2.04

Application Number: 10177784.5

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B08B3/02, B08B3/10, B08B9/46,
A23P30/10

Language of the proceedings: EN

Title of invention:
Moulding

Patent Proprietor:
Marel Townsend Further Processing B.V.

Opponent:
GEA Food Solutions Bakel B.V.

Headword:

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 12(1)

Keyword:

Basis of proceedings - decision under appeal - written reply
of other party
Amendments - added subject-matter (yes) - intermediate
generalisation

Decisions cited:

G 0010/91

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0671/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 10 November 2023

Appellant: Marel Townsend Further Processing B.V.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 January 2022 concerning maintenance of the
European Patent No. 2253219 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 (proprietor) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 11, the patent in suit met the requirements of the EPC.
- II. The opposition division decided, *inter alia*, that the subject-matter of auxiliary request 1B extended beyond the content of the application as filed.
- III. Oral proceedings before the Board were duly held.
- IV. The appellant requests that the decision under appeal be set aside and that the patent be maintained based on the auxiliary request 1B filed on 15 October 2021 in the proceedings before the opposition division, presently main request, or on the basis of the auxiliary request AP1 submitted with the grounds of appeal dated 18 May 2022, as an auxiliary request.
- The respondent (opponent) requests that the appeal be dismissed.
- V. The independent claim 1 of auxiliary request 1B reads as follows, with feature references as used by the parties added by the Board in square brackets:

"**[1]** System for moulding three-dimensional products from a mass of one or more food starting materials which are suitable for consumption, in particular human consumption,

[2] which system comprises:

- a production device (1) having:

[2.1] - a frame,

[2.2] - a mould drum (20) which is removable from and rotatable with respect to the frame (10) about an associated axis of rotation, which mould drum is provided with one or more mould cavities (21) each having an opening in at least one drum surface and each having a mould cavity wall, which is formed at least in part by a wall part with a porous structure, and wherein one or more passages are provided which are in communication with each mould cavity of the mould drum, so that a medium can be forced through the porous mould cavity wall to release the moulded product from a mould cavity, the frame supporting the mould drum,

- drive means for the mould drum;

[3] - mass feed means (15) for feeding the mass to the one or more mould cavities (21) of the rotating mould drum (20),

[4] wherein the one or more passages extend from one head-end face (20a) of the mould drum,

[5] whereby the system furthermore comprises a mould member cleaning device (50) is adapted to be coupled to said one or more passages in such a manner that cleaning liquid can flow through the said passages to said mould cavities and is designed to force at least one cleaning liquid through the wall parts with the porous structure into the mould cavities (21),

[6] which mould member cleaning device (50) is arranged at a distance from the production device (1),

[7] the mould member cleaning device comprising:

[7a] i) a collection trough (53) for cleaning liquid and a cover (54), so that cleaning of the mould drum (20) can take place in a closed chamber; 30

[7b] ii) spraying means (59) for an initial coarse cleaning;

[8] the system further comprising conveyor means (40) for conveying the mould drum (20) between the

production device (1) and the mould member cleaning device (50)."

Claim 1 of auxiliary request AP1 reads as for auxiliary request 1B except that, at the end of the claim, the following wording is added: ", the conveyor having a movable frame, a mould drum gripper and lifting means for moving the gripper up and down."

VI. The appellant's arguments can be summarised as follows:

Claim 1 of both auxiliary requests 1B and AP1 does not add subject-matter. The argument that subject-matter is added by claiming particular passages in the mould drum without claiming the cleaning device to have a distributor is beyond the scope of the opposition proceedings and so should not be considered in appeal. In any case, a distributor which comes to bear on the head end face is implicit in the claim. Moreover, the spraying means can be claimed without defining the disclosed supporting means for rotatably supporting the drum that is to be cleaned because the latter are originally disclosed as being optional.

VII. The respondent's arguments can be summarised as follows:

Claim 1 of auxiliary requests 1B and AP1 represents an unallowable intermediate generalisation. This is firstly because the claim feature of particular passages in the mould drum is only originally disclosed inextricably linked to a particular distributor arrangement of the cleaning device, which has not been claimed. Secondly, this is because the claim feature of spraying means is only originally disclosed inextricably linked to the cleaning device comprising

supporting means for rotatably supporting the drum that is to be cleaned, which has not been claimed. On both accounts, claim 1 adds subject-matter extending beyond the application as filed.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The patent relates to a system for moulding three-dimensional products from a mass of food material. The system has a production device with a removable mould drum having one or more mould cavities with openings on the drum's surface. The drum has one or more passages that communicate with the mould cavities (see patent specification, paragraphs [0001], [0018] and claim 1).

The system also comprises a [mould drum] cleaning device. This device has a spraying means for an initial coarse cleaning and is also designed to force a cleaning liquid into the mould cavities via the passages (patent specification, paragraphs [0041], [0047] and claim 1).

3. Auxiliary request 1B, added subject-matter

Unless stated otherwise, references in this section are to the A2 publication of the application as filed.

3.1 In deciding the question of allowability of amendments under Article 123(2) EPC, the Board, following well established practice, must consider whether the amendments in question are directly and unambiguously derivable by the skilled person from the application

filed, using normal reading skills and, where necessary, taking account of their general knowledge.

In this context (see Case Law of the Boards of Appeal, 10th edition, 2022 (CLBA), II.E.1.9 and the decisions cited therein), it will normally not be allowable to base an amended claim on the extraction of isolated features from a set of features originally disclosed only in combination, e.g. a specific embodiment in the description. Such an amendment results in an "intermediate generalisation". An intermediate generalisation is justified only in the absence of any clearly recognisable *functional* or *structural* relationship among the features of the specific combination or if the extracted feature is not inextricably linked with those features.

- 3.2 Amongst other things, the opposition division considered (see impugned decision, reasons, paragraph bridging pages 6 and 7) that the claimed subject-matter constituted an unallowable intermediate generalisation because the claim features 7a (trough and cover) and 7b (spraying means) were only originally disclosed inextricably linked with the cleaning device features of a particular distributor and supporting means for rotatably supporting the drum, which had not been claimed. In reviewing the impugned decision on its merits (cf. G 10/91, Reasons 18) as occasioned by the proprietor's appeal, the Board must consider whether, by not including this particular distributor and supporting means, the present claim adds subject-matter. Within the scope of this review, amongst other things, the Board must consider the opponent's argument (see reply to appeal, page 3, last paragraph) that not including the distributor adds subject-matter because it was originally disclosed inextricably linked with

the particular arrangement of passages defined in claim feature [4]. Whether or not this argument was raised in opposition proceedings, in appeal it is neither a new fact nor new evidence, but amounts to a reason based on facts that were considered in opposition proceedings. Therefore, these arguments and issues are part of the matter that serves as the basis of the appeal proceeding within the meaning of Article 12(1) RPBA and as such may be treated by the Board.

3.3 Present claim 1 is directed to a system for moulding three-dimensional food products. The system has a production device with a mould drum having one or more mould cavities, each having an opening in a drum surface and a porous mould cavity wall. One or more passages are in communication with each mould cavity so that a medium can be forced through the porous wall to release the product (features 1 and 2). These features appear to have a basis in original claims 1, 2 and 3.

The claimed system also comprises a cleaning device for cleaning the mould member that comprises a collection trough for cleaning liquid and a cover so that cleaning can take place in a closed chamber (feature 7a). The cleaning device is arranged at a distance from the production device (feature 6) and the system comprises a conveyor for conveying the drum between the two (feature 8). These features have a basis in original claims 2 and 6.

However, the present claim adds other features of the cleaning device which do not have a direct basis in the claims as filed. One of these is that the passages in the drum leading to the mould cavities to which the cleaning device is *adapted to be coupled* (feature 5), *extend from one head-end face of the mould drum*

(feature 4). Whilst this feature does, as such, appear in original claim 11, there it is not in combination with a cleaning device located at a distance from the production device nor one with a trough and cover, so claim 11 cannot form the basis for the feature in present claim 1. Another such added feature is that the cleaning device comprises *spraying means for initial coarse cleaning* (feature 7a): Neither the original claim set nor the claim-like clauses of paragraph [0076] mention a spraying means.

It is common ground that these added features (passages extending *from head-end face* of the mould drum - feature 4 and spraying means - feature 7b) appear in the example of the invention shown in figures 3 to 5 and discussed in paragraphs [0029] to [0049].

- 3.4 Turning firstly to the *passages* feature (feature 4), the opponent has argued that this feature is only originally disclosed functionally and structurally related to a particular distributor which has not been claimed. The Board agrees.
- 3.4.1 The mould drum is first described in paragraphs [0031] to [0041] with figures 4a and 4b. There (see paragraph [0033]) it is explained that [certain parts of the mould drum] form *a number of passages 24 which extend from one head end of the mould drum. Although paragraph [0041] mentions the cleaning device (the cleaning device is designed to force cleaning liquid into the mould cavities) the paragraph is describing figure 4a. It reiterates that the passages leading to each mould cavity each have a feed opening in an end face of the mould drum. The fact that it does not explain a distributor here does not prove that the passages are not functionally or structurally related to the*

distributor in the cleaning device as the appellant-proprietor has argued. This is because figure 4a shows the mould drum when it is not fitted to the cleaning device. The latter is disclosed in detail starting in paragraph [0042]. There it is explained that the cleaning device (cf. figures 3 and 5, reference 51), *has a distributor which comes to bear against the head-end face [of the drum], for the purpose of feeding cleaning liquid to one or more of the passages. Both the openings in the distributor and those of the head end face of the drum (the same in number) can be seen in figures 3 and 4a. Thus here, the distributor, bearing as it does against the mould drum's head end face (see figure 5), is disclosed in a tight structural relationship with the passages which end at the head end face of the drum. Moreover, because the purpose of this arrangement is to feed cleaning liquid from the distributor to the passageways which start at the openings, they are in a tight functional relationship.*

3.4.2 Therefore, the Board holds that to claim that the passages in the mould drum extend from its head end face without the distributor that bears against it constitutes an unallowable intermediate generalisation.

3.4.3 In this regard, the proprietor has argued that the distributor feature is implicit in the claim so need not be explicitly mentioned. The Board does not find this convincing.

As with explicit features, an implicit feature must be directly and unambiguously disclosed, that is the skilled person must objectively consider the feature as necessarily implied by the explicit content.

What the claim says about the interfacing of the cleaning device to the mould drum for supplying cleaning fluid to the passages is that the cleaning device is *adapted to be coupled to [the] passages in such a manner that cleaning liquid can flow through the [...] passages to [the] mould cavities* (feature 5). It says nothing about the nature of this adaptation that should implement this coupling. Evidently, such an adaptation could involve a distributor, that is a device which distributes a single source of cleaning fluid to several outlets, that bore against the head end face of the drum as originally described in relation to figure 5. However, the Board agrees with the opponent that this is not the only possible coupling arrangement covered by the claim. One such coupling arrangement would be to have cleaning fluid supplied to the passages in the mould drum by individual tubes coming from a remotely located distributor, thus one that did not bear against the head end face of the drum.

Therefore, the disputed feature (distributor that bears against the head end face of the drum) is not directly and unambiguously derivable from the claim's explicit features, in other words it is not an implicit feature of the claim.

- 3.4.4 Without this (distributor) feature being either implicitly or explicitly claimed, the Board can but conclude that the claim represents an inadmissible intermediate generalisation. As such it adds subject-matter extending beyond the application as filed.
- 3.5 The Board will now consider the claim feature defining that the cleaning device comprises *spraying means for an initial coarse cleaning* (feature 7b). The opposition

division found that claiming this without the cleaning device comprising supporting means for rotatably supporting the drum that is to be cleaned (see impugned decision, top of page 7) constituted an unallowable intermediate generalisation. The Board agrees.

3.5.1 The skilled person reads the claim giving terms their usual meanings. The word *coarse* (cf. Oxford English Dictionary online (OED)) thus qualifies that the cleaning is *wanting in fineness* or *rough*, both of which pertain to the quality of the cleaning rather than its scope. Therefore, the proprietor's argument that it could mean incomplete cleaning, that is that only a part of the drum might be cleaned, is moot.

3.5.2 Already in paragraph [0043], the skilled person learns that the cleaning device is provided with a support that *rotatably supports the drum which is to be cleaned in rotation*. It is with this in mind that the skilled person reads further on (paragraph [0047]) that: "*Spraying means are provided here for an initial coarse cleaning*".

Since this coarse cleaning is an integral part of the cleaning process, the Board holds that the skilled person will immediately understand that the drum is rotating whilst being sprayed. Therefore, a straightforward reading of the text already without consulting the drawings discloses a functional relationship between the spraying means and the rotational support for the drum to be cleaned.

3.5.3 The proprietor has argued that this is not so because presenting the description in separate paragraphs means that the skilled person reads each one as an independent statement, lacking any connection to the

foregoing or subsequent paragraphs and therefore as presenting a series of independent optional features. The Board disagrees. Although the spraying means has its own dedicated paragraph, it is a part of the whole description of a particular example of the invention shown in figures 3 to 5 and the skilled person reads it in this way. In other words, paragraph [0047] cannot be read in isolation from the other paragraphs mentioned or divorced from the figures 3 to 5 which this part of the description describes. This is all the more true in the present case since, in paragraph [0047], the word *here* can but reference the *spraying means'* context in the cleaning device that is described in the preceding paragraphs. Thus paragraph [0047] even contains a linguistic link to the foregoing paragraphs.

3.5.4 Therefore, the skilled person understands that what they learnt from paragraph [0043] (cleaning is carried out in rotation) applies to the initial cleaning carried out with a spraying means explained in paragraph [0047]. Nor would this understanding change on reading to the end of the description where certain claim-like clauses are given (see paragraph [0076]). Whatever these might say about supporting means for rotatably supporting the drum during cleaning, none of these clauses discloses a spraying means, so they can shed no light on how paragraph [0047] is to be read.

3.5.5 This understanding (spraying is carried out with the drum rotating) is also confirmed to the skilled person when they look at figure 5: As well as the spraying means 59, the drum's rotational support means which also drive the drum, in the form of external rollers 52, are prominently shown. According to paragraph [0043], whilst the form of these support/drive means is optional (a driven shaft is an alternative) there is no

disclosure of the rotational support means *as such* being optional.

- 3.5.6 Moreover, rather than figure 5 showing spraying means arranged in the manner of a shower head spraying the entire drum by raining down from above as the proprietor has suggested, they are in the form of a single spraying arm 59 that extends parallel to the length of the drum, close to its surface and located on only one side. Thus arranged, the arm is only capable of carrying out a coarse cleaning of the drum whilst it rotates. If it were stationary, the spray would only reach a narrow longitudinal strip on the left hand side of the drum, but never reach the top, bottom and opposing right hand side of the drum.
- 3.5.7 Nor is the spraying arm described or shown as being arranged to rotate around the drum or that there could be a plurality of them, as the appellant-proprietor has suggested would be possible. These speculative ideas cannot negate the patent's direct and unambiguous and indeed only disclosure, namely that the drum must rotate whilst undergoing its initial coarse [spray] cleaning. Therefore, the spraying means are inextricably linked with the cleaning means' supporting means for rotationally supporting the drum, which have not been claimed. Consequently, the claim represents an unallowable intermediate generalisation.
- 3.5.8 Thus, the Board agrees with the finding of the opposition division (cf. reasons 2.2 and 3, first half of page 7) that claiming the spraying means without these supporting means adds subject-matter extending beyond the application as filed.

4. Claim 1 of auxiliary request AP1 has all the features of auxiliary request 1B, yet does not add the features of the cleaning device having a distributor that comes to bear against the end face of the drum, nor supporting means for rotationally supporting the drum during cleaning. Rather, it adds a different feature. Therefore, irrespective of the question of its admissibility, auxiliary request AP1 fails for the same reasons as auxiliary request 1B.

5. In conclusion, the appellant-proprietor's auxiliary requests 1B and AP1 add subject-matter extending beyond the application as filed, Article 123(2) EPC. Therefore, both requests fail and the Board must dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated