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**D E C I S I O N**  
**of 27 March 2003**

**Case Number:** T 0576/02 - 3.2.4

**Application Number:** 98200479.8

**Publication Number:** 0852908

**IPC:** A22C 21/06

**Language of the proceedings:** EN

**Title of invention:**

Method and device for processing a cluster of organs from a slaughtered animal

**Patentee:**

STORK PMT B.V.

**Opponent:**

LINDHOLST & CO A/S

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 100(a), 123(2) and (3)

**Keyword:**

"Priority: main request (no), auxiliary request (yes), novelty (yes)"

"Inventive step: main request (no), auxiliary request (yes)"

**Decisions cited:**

T 0134/94, G 0002/98

**Catchword:**

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Case Number: T 0576/02 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 27 March 2003**

**Appellant:** LINDHOLST & CO A/S  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 25 February 2002  
rejecting the opposition filed against European  
patent No. 0 852 908 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** C. D. A. Scheibling  
M. B. Tardo-Dino

## Summary of Facts and Submissions

I. By its decision dated 25 February 2002 the Opposition Division rejected the opposition. On 2 May 2002 the appellant (opponent) filed an appeal. The appeal fee was paid on 1 May 2002. The statement setting out the grounds of appeal was received on 5 July 2002.

II. The patent was opposed on the grounds based on Articles 100(a) (54 and 56) and 100(b) EPC.

In the statement setting out the grounds of appeal the appellant solely referred to grounds based on Article 100(a) (54 and 56) EPC.

III. The following documents played a role in the appeal proceedings:

D1: EP-A-0 530 868

D2: US-A-4 538 325

D4: US-A-4 467 498

D5: NL-A-91 00 153 (priority document for D5')

D5': EP-A-0 497 014

D6: NL-A-92 01 574

D7: NL-A-93 00 815

D8: English translation of NL-A-92 01 574

D9: English translation of NL-A-93 00 815

D10: Broiler Industry, January 1981, pages 66 and 68

- IV. Oral proceeding took place on 27 March 2003.
- V. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patentee) requested that the appeal be dismissed (main request) or that the patent be maintained according to the auxiliary request filed during the oral proceedings.

- VI. Independent claims 1 and 10 as granted (main request) read as follows:

"1. Method for processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs of a slaughtered animal (80), in particular a slaughtered bird, the method comprising the following steps:  
fixing at least one of the organs, a part thereof or a connection between the organs when the cluster is in or partly out of the body of the slaughtered animal; and taking the cluster out of the body, while maintaining the condition of fixing, characterized by the step of: inspecting the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing".

"10. Device for processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs of a slaughtered animal (80), in particular a slaughtered bird, the device comprising means for fixing (144, 146) at least one of

the organs, a part thereof or a connection between the organs when the cluster is in or partly out of the body of the slaughtered animal, characterized in that the means for fixing are part of a conveyor system (138, 140) to feed the organs of the cluster (161, 210) along a predetermined path (200) and in a certain spatial orientation to an inspection station (226) for inspecting the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing".

Independent claims 1 and 10 of the auxiliary request read as follows:

"1. Method for processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs of a slaughtered animal (80), in particular a slaughtered bird, the method comprising the following steps:  
fixing at least one of the organs or a part thereof when the cluster is in or partly out of the body of the slaughtered animal, using a fixing means which is moved through an evisceration opening in the body of the slaughtered animal, and  
taking the cluster out of the body, while maintaining the condition of fixing, characterized by the step of: inspecting the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing".

"10. Device for processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs of a slaughtered animal (80), in particular a slaughtered bird, the device comprising means for fixing (144, 146) at least one of

the organs or a part thereof when the cluster is in or partly out of the body of the slaughtered animal, the means for fixing being movable through an evisceration opening in the body of the slaughtered animal, characterized in that the means for fixing are part of a conveyor system (138, 140) to feed the organs of the cluster (161, 210) along a predetermined path (200) and in a certain spatial orientation to an inspection station (226) for inspecting the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing".

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Interpretation of the independent claims*
  - 2.1 All independent claims comprise the word "fixing" and the expression "spatial orientation of the cluster in the maintained condition of fixing".
  - 2.2 The description of the patent in suit (column 5, lines 6 to 10) makes clear that the fixing means are designed to tightly hold at least one of the organs in a manner such that the cluster is positioned in a way to allow transfer to the conveyor (column 8, line 43 to column 9, line 1).

Since "fixing" can be effected by clamping or by suction (see patent in suit, column 5, lines 6 to 10; column 7, lines 40 to 44) the interpretation of the word "fixing" in the claims cannot be limited to one of these specific manners of how "fixing" is carried out,

but has to be interpreted in a general manner.

Therefore, "fixing" has to be interpreted as implying no more than "holding by applying an external force" (i.e. not simply lying on or resting by gravity).

- 2.3 In the patent specification, column 4, lines 11 to 15 it is indicated "Once a part of a cluster has been fixed according to the invention, the organs of the cluster, thereby assuming a defined spatial orientation, preferably are conveyed along a predetermined path ...". In another passage, column 3, lines 43 to 45 it is indicated "In a preferred embodiment of the inventive method the cluster is allowed to hang free from the point or points of fixing".

Thus, the term "spatial orientation of the cluster" is to be interpreted as meaning the position the cluster of organs normally takes when hanging freely from the point or points of fixing.

- 2.4 During the oral proceedings the respondent confirmed that the expression "maintained condition of fixing" does not exclude a transfer from first fixing means to second fixing means as it is for example provided for by the features of claims 9, respectively 15 as granted.

Thus, the Board concludes that the expression "in the maintained condition of fixing" has to be interpreted as meaning that the cluster is continuously fixed in an uninterrupted manner.

3. *Entitlement to claim a right of priority with respect*

*to the first mentioned priority document D6*

- 3.1 The appellant argued that the patentee was not entitled to claim a right of priority based on D6: NL-A-9201574 (and its translation D8) since the patent in suit does not rely on the same invention as D6, because the patent in suit omits an essential feature disclosed in D6. He referred in this respect to decision T 134/94.

The said omitted feature of D6 being a two point fixing of the cluster of organs.

- 3.2 However, taking account of the whole content of D6/D8, the Board comes to the conclusion that "a two point fixing of the cluster of organs" is not an essential feature of the invention as presented in D6/D8, all the more since said feature does not even appear in the independent claim 1 of D6/D8 which by definition specifies all essential features of the invention. Fixing at two points lying at distance from each other is only disclosed in D6/D8 as being an alternative. This is further confirmed by the fact that the two point fixing appears in dependent claim 4 and in the passage, page 4, lines 24 to 36 in D8 where advantages of this two point fixing are mentioned and which passage starts with the word "If, ..." (see D6, page 4, line 29 to page 5, line 4).

- 3.3 Moreover, the Board considers that the opinion G 2/98 (OJ EPO 2001, 413) of the Enlarged Board of Appeal which is posterior to the decision cited by the appellant, takes precedence of it. In G 2/98 it is indicated that priority of a previous application in respect of a claim in a European patent application is to be acknowledged only if the skilled person can



derive the subject-matter of the claim directly and unambiguously, using common general knowledge, from the previous application as a whole (the so called disclosure test). This means that neither an independent claim of the priority document alone nor a specific embodiment described in that priority document is decisive, but its whole content. That means that if the combination of all features present in a claim present in the patent in suit can be found as such a combination in the priority document, then the claim and the claimed invention has the right to priority.

- 3.4 In this respect, the Board found that the feature (i) "fixing a connection between the organs" cannot be identified in D6/D8, whereas the feature (ii) "when the cluster is partly out of the body" which is not explicitly disclosed in D6/D8 is unclear and has first to be interpreted in the light of the description before it is possible to assess the right to priority.

Concerning this second feature (ii), the Board agrees with the respondent when he argues that in the patent in suit (see column 3, lines 31 to 34; column 4, lines 52 and 53; column 12, lines 12 to 14) as well as in D8 (page 6, lines 17 to 21) or D6 (page 6, lines 10 to 25) it is indicated that fixing can take place during the evisceration operation. The appellant confirmed that the evisceration operation is completed when the cluster of organs has been entirely taken out of the body of the animal. Thus, it is clear for a skilled person that during an evisceration the cluster of organs is progressively brought out of the body of the animal and thus, comes during evisceration in a position where it is partly out of the body of the animal. Therefore, the feature "when the cluster is in

or partly out of the body of the slaughtered animal" is supported by the statement made in D6/D8, according to which fixing takes place "prior or during an evisceration operation".

Concerning the first feature (i) "fixing a connection between the organs", the respondent conceded that there was no disclosure of said feature in D6/D8.

- 3.5 Consequently, claims 1 and 10 of the patent as granted (main request) are not entitled to claim a right of priority based on D6: NL-A-9201574, since the alternative consisting in "fixing a connection between the organs" is not disclosed in the priority document.

However, claims 1 and 10 of the auxiliary request which do not comprise the feature (i) can validly claim a right of priority based on D6: NL-A-9201574.

4. *Main request - Novelty*

4.1 Claim 1 as granted

The respondent argued that D1 does neither disclose to fix the cluster of organs when it is in or partly out of the body of the animal nor that the cluster takes a predetermined spatial orientation.

The appellant argued that said features are implicitly disclosed by D1.

- 4.2 The Board cannot fully agree with either of these points of view. In D1 (figure) the cluster of organs (7) is removed from the body cavity by an automatic evisceration device (6) and subsequently transferred to

gripping means (10) which transport it to an inspection station.

In order that the cluster can be successfully pulled out and separated from the body cavity, it is clear for a skilled person that the evisceration means must either be able to exert a force on the cluster, or as suggested by the respondent, comprise a scoop and cutting means.

However, a scoop - as such - would not be able to present the cluster in a reliable manner to the gripping means (10) such that the automated gripping means of D1 could take it over successfully. It cannot be accepted by the Board, that the eviscerated cluster would not be fixed, endangering thereby at least the reliable transfer to the gripping means. Thus, the evisceration means of D1, in order to be able to exert an external force on the cluster, must comprise a fixing means to fix at least a part of the cluster, leaving the organs hanging freely from the point or points of fixing, such that they can be gripped (by the gripping means 10), thereby also assuming a defined spatial orientation (see also section 2.3, above).

However, there is no indication in D1 as to "when" such a fixing occurs, thus D1 gives no information which could lead to the assumption that the fixing has to take place when the cluster is in or partly out of the body of the slaughtered animal.

4.3 Consequently, the subject-matter of claim 1 as granted is novel with respect to D1.

4.4 Claim 10 as granted

With reference to the reasoning forwarded in section 4.2 above, the Board concludes that D1 does not disclose means for fixing when the cluster is in or partly out of the body of the slaughtered animal, i.e. that the said fixing means are able to be moved in the body of the animal.

Thus, the subject-matter of claim 10 as granted is novel.

5. *Closest prior art*

Since claim 1 as granted cannot take advantage of the priority of D6, D1 which has been published before the filing date of the patent in suit and before the indicated second priority date, is comprised in the state of the art according to Article 54(2) EPC.

Thus, the Board, in agreement with the appellant, considers D1 to be the closest prior art document.

From D1 (column 2, line 41 to column 3, line 54) there is known:

a method for processing a cluster (7) of organs consisting of a strong organ and other interconnected internal organs of a slaughtered bird (3), the method comprising the following steps:

fixing at least a part of the entrails (column 2, lines 46 to 58 and above section 4.2); and

taking the entrails out of the body (column 2, lines 57, 58), while maintaining the condition of fixing (it is clear that in D1 the cluster has to

be fixed - see section 4.2, above) and that fixing is maintained since as shown in Figure 1, once the entrails are loosened from the bird they have to be conveyed (without releasing them) by the evisceration means 6 until the gripping means 10 of the chain conveyor take them over (column 3, lines 15 to 19)),

inspecting (column 3, lines 45 to 50) the entrails on the basis of the spatial orientation of the cluster in the maintained condition of fixing (spatial orientation is given since the entrails are freely hanging on the gripping means 10 - see section 2.3, above - and are also continuously fixed in an uninterrupted manner).

6. *Main request - Inventive step of claim 1 as granted*

6.1 Thus, the method according to claim 1 differs from that of D1 in that the fixing takes place when the cluster is in or partly out of the body of the slaughtered animal.

6.2 Thus, the problem to be solved is to provide fixing means able to fix the cluster of organs so that the fixing can be reproduced in a repeatable manner in order that said cluster can be removed with the organs almost in the same mutual position.

6.3 In D1 it is also indicated "... a rotating processing apparatus 5 which carries regularly spaced about its circumference means 6 **known per se** too for removing the entrails from the abdominal cavity of the bird" (D1, column 2, lines 46 to 50; emphasis added). Thus, a skilled person is given the information to use a known

device to remove the cluster of organs from the abdominal cavity.

- 6.4 As already indicated in section 4.2 above, the evisceration means of D1 must comprise a fixing means to fix a part of the cluster such that the cluster of organs, once removed from the body of the animal, takes a spatial orientation which guarantees the transfer of said cluster to the gripping means of D1.
- 6.5 From D5 (D5', column 8, lines 17 to 57) it is known to use in the evisceration apparatus a processing member consisting of two c-shaped braces 28, 29 which can be moved relative to each other so as to grip the gullet and the craw of a bird, and with which the entrails package can be removed completely from the slaughtered bird in a single processing step by gripping the cluster of organs when the different organs are in the position they normally have within the body of the slaughtered animal. Although it is indicated in D5 (D5'), that the entrails package **may** be discharged directly when leaving the body cavity, it is clear to a skilled person that by modifying the curved tracks (5 and 7) the moment of discharge can be changed to a later moment. If this takes place, the entrails package remains fixed by the fixing means at the gullet after the evisceration operation, thereby providing a reliable spatial orientation of the cluster (see section 2.3, above).
- 6.6 Therefore, if a skilled person wants to put into practice the method and apparatus of D1, he has to use one of the known evisceration apparatuses, and to adapt it to the method and apparatus of D1, that means that the evisceration apparatus not only has to eviscerate

but also has to transport the cluster of organs up to the gripping means (10). One of the obvious possibilities is according to the Board, the apparatus according to D5, which performs the evisceration and which allows the obvious adaptation of its curved tracks (5 and 7) to perform the transport.

Consequently, it would be obvious for a person skilled in the art to provide a method step of fixing the cluster of organs when the cluster is in the body of the slaughtered animal as known from D5 in a method for processing a cluster of organs according to D1 so that the transfer of the cluster of organs between the evisceration means and the gripping means (10) in D1 can take place in a reliable manner and thereby to arrive at the method according to claim 1 of the patent in suit.

6.7 The respondent argued that a skilled person would not use the teaching of D5 because there were special requirements for the fixing means in order to achieve the needed spatial orientation of the cluster.

This cannot be accepted by the Board. The description of the patent in suit clearly indicates in column 2, lines 26 to 32 that "... cluster of organs ... is fixed as known per se, ..." which does not suggest any special requirement. Furthermore, as pointed out in section 2.3 above the spatial orientation of the cluster is the position the cluster normally takes once it is fixed, it has never been stated or suggested in the patent in suit that the spatial orientation of the cluster is obtained by the use of special fixing means.

6.8 Consequently, the subject-matter of claim 1 of the main

request does not involve an inventive step, and therefore it cannot be acceded to the respondent's main request.

7. *Auxiliary request - compliance with Article 123 EPC*

7.1 Claims 1 and 10 of the auxiliary request differ from claims 1 and 10 as filed and granted in that:

(a) the feature "or a connection between the organs" has been deleted and,

(b) the expression "using a fixing means which is moved through an evisceration opening in the body of the slaughtered animal" has been added to claim 1 whereas the feature "the means for fixing being movable through an evisceration opening in the body of the slaughtered animal" has been added to claim 10.

7.2 The deletion of the feature (a) removes one of the alternative possibilities of fixing and thus, does not contravene the requirements of Article 123(2) and (3) EPC.

7.3 The added feature (b) is disclosed in the application as filed page 4, lines 1 to 3 and page 7, lines 9 to 11. Therefore the requirements of Article 123(2) EPC are met. This feature makes clear that although the cluster of organs may be partly out of the body when the fixing occurs, nevertheless the fixing itself is always performed inside the body. Thus, it contributes to limit the protection conferred by the claims and therefore, meets the requirements of Article 123(3) EPC.



7.4 Claim 9 has been adapted to the modification made in claim 1, i.e. the deletion of feature "or a connection between the organs" (see above section 7.1 (a)).

7.5 The description has been adapted to the modifications made in claim 1 (see above section 7.1 (a) and (b)).

7.6 The amendments made do not contravene the requirements of Article 123 EPC.

8. *Auxiliary request - Novelty*

The Board considers that the subject-matter of the independent claims 1 and 10 of the auxiliary request is novel. This point has not been disputed by the appellant.

9. *Auxiliary request - Inventive step*

9.1 The appellant argued that D2 would be the closest prior art document.

9.2 Claim 1

The appellant further argued that D2 discloses a method for processing a cluster of organs consisting of a strong organ and other interconnected internal organs of a slaughtered animal, in particular a slaughtered bird and that the method discloses the following steps:

taking the cluster out of the body,

fixing the cluster,

inspecting the cluster on the basis of the spatial

orientation of the cluster in the maintained condition of fixing.

Thus, the method according to claim 1 would differ from that of D2 in that it further comprises the steps of:

fixing at least one of the organs or a part thereof when the cluster is in or partly out of the body of the slaughtered animal, using a fixing means which is moved through an evisceration opening in the body of the slaughtered animal,

maintaining the condition of fixing while taking the cluster out of the body and inspecting the cluster in the maintained condition of fixing.

9.3 The appellant considered that the problem to be solved is to achieve a fully automated process.

He argued that a skilled person would obviously use a known evisceration device as known for example from D5 since it would be obvious for a skilled person that "transfer from the removal means to the holding hooks will only be carried out in a reliable manner if the organs are fixed by the removal means" and that it would be obvious for a skilled person to automate the transfer from the fixing means of D5 to the transporting means of D2.

9.4 This however cannot be accepted by the Board. On the one hand D5 discloses to discharge the cluster directly when leaving the body cavity (see D5', column 9, lines 4, 5), on the other hand D2 (column 5, lines 37 to 41) only discloses that the viscera is removed from the body cavity of the poultry, separated from the

poultry and hung on the viscera holding hooks.  
As a matter of fact, D2 remains silent about how the cluster of organs is removed from the body cavity and hung on the hooks.

It is known from US-A-4 467 498 (D4) and NL-A-9100153 (D5) to use fixing means which inserted through a vent opening into the body of a slaughtered bird, grip one of the organs or a part thereof and move the cluster out of the body.

However, in said prior art documents (D5 included) the cluster of organs is dropped as soon as it has been removed from the body.

Thus, the prior art does not disclose to maintain the condition of fixing when taking the cluster out of the body.

As a matter of fact, there is no prior art (except D1 which is not to be considered in deciding whether there is an inventive step) which describes an automated transfer.

Thus, since according to the prior art documents, the cluster is dropped as soon as it has been removed from the body, even if a skilled person would try to combine such a method of eviscerating with the method of D2, it would still be necessary to reposition manually the cluster (once dropped) on the hook (as this is disclosed for example in D10).

Consequently, the method of D2 even in combination with the known eviscerating method of D5 does not render the method as claimed in claim 1 of the auxiliary request

obvious.

9.5 Claim 10

The same reasoning can be applied with respect to the device according to claim 10 of the auxiliary request.

9.6 Other documents cited by the appellant

In his statement setting out the grounds of appeal, the appellant also referred to a line of arguments starting from D4, D5 and D10.

9.7 With respect to D4

According to D4 the processing of the bird up to inspection is done by an eviscerator not further described in D4 which pulls the viscera from the interior cavity of the bird so that it hangs outside the bird.

The gripping device according to D4 realises then the complete removal of the viscera from the bird carcass and drops them on a chute.

Thus D4 does not disclose to take the cluster out of the body, while maintaining the condition of fixing, and subsequently to inspect the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing.

There is no reason and no incentive for a skilled person to modify the method/device according to D4 without hindsight in such an extensive manner as suggested by the appellant in order to arrive at a

method/device as claimed in the auxiliary request.

Thus D4 cannot render the method or device as claimed in the auxiliary request obvious.

9.8 With respect to D5 (D5') solely

On the basis of D5' which claims the right to priority from the first filed document D5, it can be concluded that:

D5 relates to a fixing and eviscerating means (see also section 6.5, above). In D5', column 9, lines 3 to 13 it is indicated "such that the entrails package is entirely loosened from the bird and may be discharged directly when leaving the body cavity. If however the braces are shaped smaller ... such that ... the entrails package is removed out of the body cavity of the bird, however remains connected with the bird through the abdominal grease and stays suspended at the outside of the bird. In such a position the entrails package may be inspected for irregularities before being discharged".

Thus, D5' respectively D5 teaches to carry out inspection when the cluster has been removed from the body cavity but still is attached to the body cavity (through the abdominal grease) and thus, is in a non-fixed condition (non-fixed in the meaning of the patent in suit). Thus, D5 clearly leads away from the method and device claimed in the auxiliary request.

Therefore, D5 cannot render the method or device as claimed in the auxiliary request obvious.

9.9 With respect to D10

As indicated by the appellant in his statement setting out the grounds of appeal, D10 clearly refers to the "draw hands" or "positioners". Indeed, in D10 the gizzard is placed in a spatial orientation on the shackle by hand (manual operation). There is no indication in D10 that said operation could be performed automatically. Thus, the feature according to which the condition of fixing is maintained is neither disclosed nor suggested by D10.

Thus D10 cannot render the method or device as claimed in the auxiliary request obvious.

10. Conclusion

The arguments presented by the appellant failed to demonstrate the obviousness of the subject-matter of claims 1 and 10 of the auxiliary request, which therefore is considered as involving an inventive step.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent on the basis of the following documents:

**Claims:** No. 1 to 20 of the auxiliary request as filed during oral proceedings,

**Description:** columns 1 to 6, 11 and 12 as filed during oral proceedings,  
columns 7 to 10 as granted

**Drawings:** Figures 1a, 1b, 2a to 2g, 3a to 3d, 4a, 5a, 5b and 6 as granted.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries