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D E C I S I O N
of 1 July 2005

Case Number: T 0314/04 - 3.2.4

Application Number: 97202354.3

Publication Number: 0820697

IPC: A22B 5/00

Language of the proceedings: EN

Title of invention:
Skin-holding vent cutter

Patentee:
Stork Gamco Inc.

Opponent:
SFK-DANFOTECH A/S

Headword:

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Relevant legal provisions:
EPC Art. 54, 111(1), 123(2) and (3)

Keyword:
"Novelty main request (yes)"
"Remittal to the first instance"

Decisions cited:

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Catchword:

-



Case Number: T 0314/04 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 1 July 2005

Appellant: Stork Gamco Inc.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 18 December 2003
revoking European patent No. 0820697 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. By its decision dated 18 December 2003 the Opposition Division revoked the patent because the subject-matter of claim 1 was not considered to be new with respect to D3: WO-A-96/09770. On 20 February 2004 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 15 April 2004.

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

III. In response to the Board's communication dated 10 March 2005, the Appellant withdrew his former main request and maintained his first, second, third, and fourth auxiliary requests as filed with the statement setting out the grounds of appeal. He further withdrew his request for oral proceedings should the Board decide to remit the case to the Opposition division for further prosecution.

The Respondent (opponent) implicitly requested the rejection of the appeal, since he considered that the claimed subject-matter did not involve an inventive step.

IV. Claim 1 of the main request (former first auxiliary request) reads as follows:

"1. Apparatus for removing the vent from a slaughtered animal, comprising:

- means (30), movable relative to the animal, for cutting the vent;

- means (10) for centering the cutting means within the vent;
- means (20) for holding the skin (60) of the animal near the vent,
the holding means comprising a roughened face surface (22) that captures the skin so that the centered cutting means cooperates with the holding means to shear through a section of the skin near the vent, characterized in that the cutting means are rotatable, and that the roughened face surface is adapted to prevent the skin from twisting."

V. The Appellant mainly argued that D3 does not disclose rotatable cutting means but knives, which perform a translational movement, so that the holding means disclosed therein are not adapted to prevent the skin from twisting.

The Respondent argued that the subject-matter of claim 1 does not involve an inventive step.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

2.1 Claim 1 according to the main request differs from claim 1 as granted (and as originally filed) by the addition of the following features:
the cutting means are rotatable, and the roughened face surface is adapted to prevent the skin from twisting.

- 2.2 A basis for these amendments can be found in the description as originally filed, page 2, lines 17 and 18, and page 2, line 22 to page 3, line 1 (patent specification, column 1, line 57 to column 2, line 1, and column 2, lines 7 to 9).
- 2.3 These additional features do not extend the protection conferred by the claim; consequently the requirements of Article 123(2) and (3) EPC are met.
- 2.4 Dependent claims 2 to 8 and 10 to 12 of the main request correspond to claims 2 to 8 and 10 to 12 as granted, whereas in claim 9 of the main request the words "or the pin" have been deleted with respect to claim 9 as granted. This amendment is not objectionable.

3. *Novelty*

- 3.1 D3 does not disclose the claimed rotatable cutting means; in this citation, the skin is held between shoulder 23 and clamp 25 (Figures 1c and 3), while the cutting means are operated in a direction perpendicular to the surface of the skin to perform a translational movement.

Furthermore, although in D3 the surface of the holding means comprises a roughened face surface (groove in Figure 4), there is no indication in D3 that this roughened surface could be adapted to prevent the skin from twisting.

These points have not been questioned by the Respondent.

- 3.2 Consequently, the subject-matter of claim 1 according to the main request is novel with respect to D3.

3.3 Since novelty of the subject-matter of claim 1 according to the main request has not been disputed with respect to any of the other documents cited during the opposition proceedings, the Board is satisfied that the subject-matter of claim 1 according to the main request is novel with respect to this cited prior art.

4. *Remittal*

The Opposition division issued a decision upon lack of novelty and thus left the issue of inventive step undecided. Therefore, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the first instance for consideration of this undecided issue.

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 for further prosecution.

The Registrar:

The Chairman:

R. Schumacher

M. Ceyte