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D E C I S I O N
of 15 February 2006

Case Number: T 0363/04 - 3.2.04

Application Number: 96203580.4

Publication Number: 0769247

IPC: A22C 17/14

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:

Meyn Food Processing Technology B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 84, 100(a), 100(c), 123(2) and (3)

Keyword:

"Clarity (yes)"

"Added subject-matter (no)"

"Extension of the scope of protection (no)"

"Novelty (yes)"

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0363/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 15 February 2006

Appellant: Meyn Food Processing Technology B.V.
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Respondent: STORK PMT B.V.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
14 January 2004 concerning maintenance of
European patent No. 0769247 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

I. In its interlocutory decision posted 14 January 2004, the Opposition Division found that, taking into consideration the amendments according to the first auxiliary request made by the patent proprietor during opposition proceedings, the European patent and the invention to which it relates met the requirements of the EPC. On 12 March 2004 the Appellant (Opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 13 May 2004.

II. The opposition was based on Article 100(a) (Articles 54 and 56) and 100(b) EPC.

The Opposition Division found that the subject-matter of claim 1 as granted was not novel with respect to D3, but that the set of claims according to the first auxiliary request did meet the requirements of the EPC.

The Appellant also raised objections under Articles 100(c) (76(1), 123(2) and (3)) and 84 EPC against claims 1 and 11 according to the first auxiliary request.

III. The following prior art played a role during the appeal proceedings:

D1: EP-A-0 541 150

D2: US-A-4 057 875

IV. Oral proceedings took place on 15 February 2006.

The Appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

He mainly argued as follows:

The independent claims as originally filed mentioned that the tissues are broken. In the light of the dependent claims referring to complete separation of the organs, breaking the tissues could only be interpreted as meaning completely separating. Furthermore, the aim of the application as filed was to carry out a complete separation of the organs. The wording of the independent claims 1 and 11 of all requests now on file implies that the tissue connections are broken without complete separation of the organs. Therefore, the amendments made introduce an ambiguity and thus, the requirements of Article 84 EPC are not met. Furthermore, for the same reasons the amendments are not supported by the application as filed (Articles 76(1) and 123(2) EPC).

The amended wording, which specifies "without separating" is directed to different subject-matter, thus constituting a violation of Article 123(3) EPC.

Additionally, the subject-matter of the independent claims according to all the requests lacks novelty or at least inventive step when taking into consideration the teaching of D2.

The Respondent (patentee) countered essentially as follows:

The application as filed mainly discloses two embodiments, a first one where breaking tissue connections does not result in a complete separation of organs (as shown in Figures 5a to 5c) and a second one where breaking tissue connections results in a complete separation of organs (as shown in Figures 3a to 3c). These embodiments are present in the application as filed and in the parent application. The amended claims only relate to the first embodiment and are thus supported by the description. They define the invention more narrowly than the claims as granted. Therefore, the requirements of Articles 123(2) and (3) and 76(1) EPC are met.

Since the claims now require incomplete separation of an organ to be followed by complete separation or a further processing of the organ, any inconsistency with respect to the dependent claims or the description is removed, so that the requirements of Article 84 EPC are met.

D2 teaches to orient the organs prior to complete separation. The breaking of tissue connections without separating organs is neither disclosed nor suggested in D2.

The respondent requested that the appeal be dismissed and that the patent be maintained on the basis of the set of claims according to the main request, or according to the first to fifth auxiliary requests all filed during oral proceedings.

V. The independent Claims according to the main request read as follows:

"1. Method for mechanically processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs from the body of a slaughtered animal (80), in particular a slaughtered bird, the method comprising:

- taking the cluster out of the body of the slaughtered animal;
- fixing the strong organ at a point of fixing when the cluster of organs has already been taken out of and separated from the body of the slaughtered animal, for bringing the cluster (38; 161; 210) in a spatial orientation which is determined by the way of fixing; and

- conveying the cluster along a predetermined path and breaking tissue connections in the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing, wherein the tissue connections are broken by exerting a force in a direction away from the point of fixing on one or more organs of the cluster, the force engaging the one or more organs at a distance from the point of fixing for moving the one or more organs away from the point of fixing without separating the one or more organs completely from the remaining organs, and wherein the cluster is subsequently fed to an organ cluster dividing device or an organ processing device."

"11. Device for mechanically processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs taken out of and

separated from the body of a slaughtered animal (80), in particular a slaughtered bird, the device comprising:

means for fixing (144, 146) the strong organ at a point of fixing, which 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) in a certain spatial orientation which is determined by the way of fixing to a processing station (230, 232, 234, 238) for breaking tissue connections in the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing thereof,

wherein the processing station comprises one or more stripping means for exerting a force in a direction away from the point of fixing on one or more organs of the cluster, the force engaging the one or more organs at a distance away from the point of fixing for moving the one or more organs away from the point of fixing without separating the one or more organs completely from the remaining organs, and

wherein the fixing means are adapted to subsequently feed the cluster of organs to an organ cluster dividing device or an organ processing device."

The set of claims according to the first auxiliary request differs from that of the main request in that dependent claims 7 to 10 and 21 to 26 are deleted.

The independent Claims according to the second auxiliary request read as follows:

"1. Method for mechanically processing a cluster (38;161; 210) of organs consisting of a strong organ and other interconnected internal organs from the body

of a slaughtered animal (80), in particular a slaughtered bird, the method comprising:

- taking the cluster out of the body of the slaughtered animal;
- fixing the strong organ at a point of fixing when the cluster of organs has already been taken out of and separated from the body of the slaughtered animal, for bringing the cluster (38; 161; 210) in a spatial orientation which is determined by the way of fixing; and
- conveying the cluster along a predetermined path and breaking tissue connections in the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing, wherein the tissue connections are broken by exerting a force in a direction away from the point of fixing on one or more organs of the cluster by sweeping along the cluster with stripping means, the force engaging the one or more organs at a distance from the point of fixing for moving the one or more organs away from the point of fixing without separating the one or more organs completely from the remaining organs, and wherein the cluster is subsequently fed to an organ cluster dividing device or an organ processing device."

"11. Device for mechanically processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs taken out of and separated from the body of a slaughtered animal (80), in particular a slaughtered bird, the device comprising:

means for fixing (144, 146) the strong organ at a point of fixing, which 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) in a certain spatial orientation which is determined by the way of fixing to a processing station (230, 232, 234, 238) for breaking tissue connections in the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing thereof,

wherein the processing station comprises one or more stripping means for exerting a force in a direction away from the point of fixing on one or more organs of the cluster by sweeping along the cluster with the stripping means, the force engaging the one or more organs at a distance away from the point of fixing for moving the one or more organs away from the point of fixing without separating the one or more organs completely from the remaining organs, and

wherein the cluster is subsequently fed to an organ cluster dividing device or an organ processing device."

The set of claims according to the third auxiliary request differs from that of the second auxiliary request in that dependent claims 7 to 10 and 21 to 26 are deleted.

The independent Claims according to the fourth auxiliary request read as follows:

"1. Method for mechanically processing a cluster (38;161; 210) of organs consisting of a strong organ and other interconnected internal organs from the body of a slaughtered animal (80), in particular a slaughtered bird, the method comprising:

- taking the cluster out of the body of the slaughtered animal;

- fixing the strong organ at a point of fixing when the cluster of organs has already been taken out of and separated from the body of the slaughtered animal, for bringing the cluster (38; 161; 210) in a spatial orientation which is determined by the way of fixing; and

- conveying the cluster along a predetermined path and breaking tissue connections in the cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing, wherein the tissue connections are broken by exerting a force in a direction away from the point of fixing on one or more organs of the cluster by stripping means adapted to move relative to means for fixing, the force engaging the one or more organs at a distance from the point of fixing for moving the one or more organs away from the point of fixing without separating the one or more organs completely from the remaining organs, and wherein the cluster is subsequently fed to an organ cluster dividing device or an organ processing device."

"11. Device for mechanically processing a cluster (38; 161; 210) of organs consisting of a strong organ and other interconnected internal organs taken out of and separated from the body of a slaughtered animal (80), in particular a slaughtered bird, the device comprising:

means for fixing (144, 146) the strong organ at a point of fixing, which 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) in a certain spatial orientation which is determined by the way of fixing to a processing station (230, 232, 234, 238) for breaking tissue connections in the

cluster on the basis of the spatial orientation of the cluster in the maintained condition of fixing thereof, wherein the processing station comprises one or more stripping means for exerting a force in a direction away from the point of fixing on one or more organs of the cluster by moving the stripping means relative to the means for fixing, the force engaging the one or more organs at a distance away from the point of fixing for moving the one or more organs away from the point of fixing without separating the one or more organs completely from the remaining organs, and wherein the cluster is subsequently fed to an organ cluster dividing device or an organ processing device."

The set of claims according to the fifth auxiliary request differs from that of the fourth auxiliary request in that dependent claims 7 to 10 and 21 to 26 are deleted.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments:*
 - 2.1 The independent claims of all requests differ from the independent claims as originally filed by the addition of the following features:
 - without separating the one or more organs completely from the remaining organs, and

- the cluster is subsequently fed to an organ cluster dividing device or an organ processing device.

These features are disclosed in the application as originally filed, page 6, lines 23 to 32.

- 2.2 Furthermore, the expression "by sweeping along the cluster with stripping means" has been added to the independent claims according to second and third auxiliary requests, whereas "by stripping means adapted to move relative to means for fixing" has been added to the independent claims according to fourth and fifth auxiliary requests.

These features are disclosed in the application as originally filed, page 19, lines 27 to 33 and Figures 5a to 5c.

- 2.3 The Appellant argued that from the claims and the description of the application as originally filed it would be clear for a skilled person that breaking the tissue connections can only be understood as meaning completely separating.

However, it is clearly stated in the description as originally filed, page 6, lines 14 to 24 that by breaking the tissue connections by exerting a force away from the point of fixing, "organs can be separated selectively, or can be moved without separating the organs completely from the remaining organs". This last possibility is said to be important since "organs can be positioned in this way relative to the fixing means and can subsequently be fed automatically with the aid

of simple guides to organ cluster dividing devices or organ processing devices".

- 2.4 Thus, the breaking of tissue connections without complete separation, prior to a dividing or processing step is one of the alternatives, which are clearly disclosed in the application as originally filed (as well as in the parent application). Thus, the requirements of Articles 84 and 123(2) and 76(1) EPC are met.

Since these amendments further limit the scope of protection of the independent claims the requirements of Article 123(3) EPC are met too.

3. *Novelty:*

- 3.1 D1 is state of the art under Article 54(3) and (4) EPC.

D1 discloses a method and an apparatus for dividing a cluster of organs removed from a bird. In the embodiment according to Figure 2, the cluster is engaged by a plate-shaped guiding 9, which branches off into two guiding sections 10 and 11 such that the upper side of the guiding section 10 engages the liver and the lower side of guiding section 11 engages the heart-lungs assembly. As a result the liver and heart-lungs assembly will be spread apart before reaching a knife, which cuts loose the heart-lungs assembly from the liver.

- 3.2 D1 does not explicitly mention that the guiding sections break the tissue connections when spreading the organs apart.

The Appellant argued that this will necessarily occur.

The Board cannot agree to this. In D1 column 1, line 55 to column 2, line 1 it is stated "Preferably the cutting means is a rotating knife, such that cutting loose the heart-lungs assembly may occur **without strong forces** being applied thereupon. **Thus an unwanted damage of the package and its parts is avoided**" (emphasis added).

The Appellant argued that this passage indicates that a knife is used in order not to apply strong forces due to the separating tool.

Nevertheless, this passage clearly indicates that the method of D1 seeks to avoid strong forces, which could break apart the cluster (and thus, the connecting tissues). Hence, the breaking of the tissue connections is not implicitly disclosed.

3.3 The Appellant further referred to the embodiment of D1 according to Figures 3 and 4, the passages, column 2, lines 37 to 51, column 5, lines 13 to 22 and especially to the action of the stripper discs 29 and 30 loosening the membrane 32.

3.4 According to this embodiment the organs are positioned above and below carrier plate 23 and the membrane extends in a "forward reception slot 25". This membrane is engaged and loosened by the stripper discs during the passage of the carrier.

- As a result, in this embodiment the force applied by the discs engages the membrane itself rather than an organ and is not directed away from the point of fixing.
- 3.5 D2 (see column 2 lines 65 to 68) refers to an apparatus for processing a cluster of organs. Accordingly, the cluster is dropped onto rolls 21, 22 (Figures 1, 2, 4) which are spaced apart to define a slot 29 therebetween. The gut and gullet pass through the slot 29, whereas stomach and gizzard ride on the upper surface of the rolls, subsequently the cluster is fed into a chute while gut and gullet are cut by a knife 55.
- 3.6 There is no explicit disclosure of the "breaking of the tissue connections".
- 3.7 The Appellant argued that it is clear for a skilled person that the cluster of organs to be processed can only be brought into the spatial orientation shown in Figure 2 of D2 if the tissue connections are broken. Therefore, D2 implicitly discloses breaking of the tissue connections.
- 3.8 However, although the drawings are an integral part of a document, they can only disclose features which are clearly, unmistakably and fully derivable by a skilled person. In the present case, the Board is not convinced that a skilled person would consider that the spatial orientation of the cluster, as represented in Figure 2 of D2, compulsorily implies that the tissue connection between the organs of the cluster have been broken by the action of the rolls 21 and 22.

3.9 Consequently, the subject-matter of claims 1 and 11 according to all requests is novel with respect to both D1 and D2. The Board is satisfied that none of the other documents cited during the opposition proceedings is novelty destroying for the subject-matter of the independent claims according to any of the requests.

4. *Inventive step:*

4.1 D2 is considered to be the closest prior art document.

4.2 The method claim 1 and device claim 11 of the main request and of the first auxiliary request differ from the disclosure of D2 in that the tissue connections are broken without separating the one or more organs completely from the remaining organs.

4.3 Thus the problem to be solved can be seen in facilitating or further improving the mechanical processing of the cluster.

This is achieved by breaking the connecting tissue connections without separating organs completely from the remaining organs in order to obtain a positioning of the organs relative to a point or points of fixing.

4.4 Also in D2, a positioning of the organs has to be achieved prior to separation. To this effect, the rolls 21, 22 draw the intestines 62, the gullet 63 and the crop 64 towards slot 29 between the rolls (column 3, lines 4 to 6; Figures 1, 2). As a result, the stomach and gizzard will be positioned in the chute on plates 12 and 13, whereas the intestines, the gullet and the crop are positioned below the chute, where they are

engaged by pinching means 39, 40, so that the knife edge 55 can slice off the gullet near the stomach and cut off the intestines (column 3, lines 21 to 27).

- 4.5 In the event that connecting tissues are not sufficiently loosened by the rolls, there is no guarantee that the correct spatial orientation will be achieved, i.e. the intestines and gullet might not be positioned entirely below the chute.

A skilled person would immediately realise that this can only be due to the fact that the stripping force applied by the rolls to the gullet and intestines to draw them into the slot is insufficient to overcome the retaining force exerted by the connecting tissues and that said tissues must be broken. However, it lies within the capability of a person skilled in the art to increase the stripping force that is applied by the rolls to the organs, so as to break the tissues which prevent the organs from being drawn into the slot and thus, to arrive at the method defined in claim 1 or the device defined in claim 11 of the main request or of the first auxiliary request.

The Respondent argued that in D2 the connecting tissues have been removed from the cluster prior to feeding it into the apparatus, so that the problem of breaking the connecting tissues will not occur.

However, the Board can find no basis in D2 for such an assertion. In D2 it is stated that the invention seeks to eliminate the manual steps involved in separating organs and that an operator need only sever the gullet and gut from the carcass and drop the cluster onto the

machine (column 1, lines 13 to 24; column 2, lines 62 to 68). Thus, there is no indication which could lead to the assumption that said cluster has previously been processed; on the contrary it is fed into the machine as soon as it is detached from the carcass.

4.6 Accordingly, the Board comes to the conclusion that the subject-matter of method claims 1 and device claim 11 according to the main request or according to the first auxiliary request does not involve an inventive step. The main request and the first auxiliary request can therefore not be accepted.

4.7 The independent claims according to the second and third auxiliary requests differ from the independent claims according to the main request by the following additional feature "by sweeping along the cluster with stripping means". The independent claims according to the fourth and fifth auxiliary requests differ from the independent claims according to the main request by the following additional feature "by stripping means adapted to move relative to means for fixing".

The Respondent argued that in D2, the ribs 24 do not sweep along the cluster and are not moving relative to the fixing means, since the point of contact between the ribs and the cluster remains at the same vertical distance from the slot during the motion of the cluster towards the cutting knife. He further submitted that the rolls do not act on the organs as specified in the claims of the patent in suit.

The Board agrees that the ribs do not act as stripping means. However, the circumferential surfaces of the rolls must be considered as stripping means in the meaning of the patent in suit, because they are moving relative to the cluster, engage organs and are adapted to perform breaking of the tissue connections. Indeed in D2, at the moment the cluster is fed to the apparatus it is positioned entirely above the rolls, subsequently, as indicated column 3, lines 4 to 6, "Rotation of the rolls, with the tops thereof moving toward each other, will draw the gut and gullet towards slot 29 between the rolls." Thus, D2 clearly indicates that the rolls act on the organs, especially on the gut and the gullet. It is observed that the gut (intestines) is to be considered as an organ in the meaning of the patent in suit. Reference is made in this respect to column 3, lines 3 to 5 of the patent specification, where the intestines are cited as a possible fixing point. The following line 6 then starts with the wording "These organs ..." thus, the intestines are explicitly included in this generic term.

Because the rolls of D2 are rotating, the contact points of their circumferential surfaces with the cluster must move relative to the means for fixing (the chute) and thus, the rolls (stripping means) sweep along the cluster.

Consequently, the additional features "by sweeping along the cluster with stripping means" and "by stripping means adapted to move relative to means for fixing" are disclosed in D2. Accordingly, the Board concludes that the subject-matter of method claim 1 and that of device claim 11 according to the second, third,

fourth and fifth auxiliary request do not involve an inventive step.

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:

G. Magouliotis

M. Ceyte