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D E C I S I O N
of 20 April 2006

Case Number: T 0706/04 - 3.2.04

Application Number: 98203939.8

Publication Number: 0916265

IPC: A22C 21/00

Language of the proceedings: EN

Title of invention:

Device and method for processing slaughtered animals, in particular birds

Patentee:

STORK PMT B.V.

Opponent:

Meyn Food Processing Technology B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 83, 100(b), 111(1)

Keyword:

"Sufficiency of disclosure (yes) "

"Remittal (yes) "

Decisions cited:

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Catchword:

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Case Number: T 0706/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 20 April 2006

Appellant: STORCK PMT B.V.
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Respondent: Meyn Food Processing Technology B.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 26 March 2004
revoking European patent No. 0916265 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
H. Preglau

Summary of Facts and Submissions

- I. By its decision dated 26 March 2004 the Opposition Division revoked the patent. On 4 June 2004 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 4 August 2004.

- II. The patent was opposed on the grounds based on Articles 100 (a) (54 and 56) and 100 (b) EPC. The Opposition Division based its decision solely on the ground of insufficiency of disclosure under Article 100(b) EPC.

- III. Oral proceedings before the Board took place on 20 April 2006.

The Appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request as filed on 9 March 2004.

He mainly argued as follows: Maltese crosses are part of the general knowledge of a person skilled in mechanics, who is aware that a Maltese cross can be rotated by moving an arm operating element into the path of the Maltese cross. To provide a mechanism for moving said arm operating elements lies within the capability of a person skilled in the art. Control means for selecting certain processing operations are already known from the prior art as disclosed in paragraph [0002] of the description and are part of the common general knowledge of a skilled person. Furthermore, there is no contradiction between paragraphs [0020], [0021] and [0022], since paragraph

[0020] does not imply that the arm operating elements are fixed (unmovable) and since the device according to Figure 5 and corresponding paragraph [0021] represent only an advantageous but not compulsory embodiment. Finally, it is clear from the description that the arm operating elements referred to in paragraph [0022] are not those disclosed with reference to Figure 5.

The Respondent (opponent) countered the Appellant's arguments and mainly argued as follows:

The teaching of the patent has to be considered as a whole. Paragraphs [0020] to [0022] are clearly contradictory, since according to paragraphs [0020] and [0021] the arm operating elements are clearly unmovable and according to paragraph [0022] the same arm operating elements are to be movable. Furthermore, there is neither a disclosure of means for operating said arm operating elements, nor of any means for controlling said operating means. Thus the skilled reader is at loss with respect to how to implement these essential features. Consequently, the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a skilled person.

The Respondent requested that the appeal be dismissed (main request) or that the case be remitted to the first instance if the impugned decision were not confirmed by the Board (subsidiary request).

Reasons for the Decision

1. The appeal is admissible.
2. *Sufficiency of disclosure:*
 - 2.1 The passages of the description of the patent in suit which relate to how a slaughtered animal or part thereof is taken into or out of the working range of a processing machine are paragraphs [0020] to [0022].
 - 2.2 In paragraph [0020] it is disclosed that the eccentric carrier is fitted with a Maltese cross with four radial segments, the radial dimension of one of them being smaller than the radial dimension of the three others. The three longer segments of the cross are intended to interact with three arm operating elements fitted at the bottom of a wall (see Figure 5). Each time one segment of the cross interacts with an arm operating element, the cross and thus the carrier accomplishes a 90° rotation.

Paragraph [0021] makes it clear that the cross segment with the small dimension passes the operating elements without interacting therewith. In this way "the cross always takes up the same position, which is advantageous for then making a processing selection" (column 3, lines 56 and 57). Accordingly no angular orientation in order to bring the carrier into or outside the working range of a processing station has been accomplished yet, but that at this point of the route, all crosses and carriers are in the same angular position, so that it will be easy to determine over which angle each of them has to be rotated to be

brought into or outside the working range of the processing station.

In paragraph [0022] it is then stated that, on the basis of the recorded data, it is possible "to operate the arm operating elements 19, so that an angular orientation to be achieved by the carrier 6 can be selected".

- 2.3 The Respondent argued that the arm operating elements of Figure 5 cannot be moved and concluded that paragraph [0022] which states that the same arm operating element can be operated, is contradictory to paragraph [0021] and hence incomprehensible.

According to the patent in suit, the slaughtered animals to be processed are conveyed along a route along which a device for processing said slaughtered animal is disposed (see claim 1). Thus, the processing selection is necessarily made after the carriers have left the device according to Figure 5, so that said device has to be situated along the route prior to a processing station. Since it would be illogical to suppose that the carrier after leaving the device according to Figure 5 will move back in the reverse direction and re-enter said device, it is clear for a skilled person that the sentence of paragraph [0022] "it is possible ... to operate the arm operating elements 19" cannot refer to the arm operating elements of the device according to Figure 5. Consequently, there must be a further not explicitly disclosed device, which is provided with arm operating elements which are movable into and out of the path of the Maltese cross.

It is clear that this device cannot be identical with the device as disclosed in Figure 5, since the carriers are always in the same angular position when they leave the device of Figure 5, and they are so angularly oriented that the cross segment with the small dimension can pass the operating elements without interacting with them.

- 2.4 The Respondent argued that there is neither a disclosure of means to operate the arm operating elements, nor a disclosure of means for controlling these operating means.

However, the description indicates that "it is possible with the aid of the result of the check to operate the arm operating elements 19, so that an angular orientation to be achieved by the carrier 6 can be selected" (column 4, lines 3 to 6).

The patent specification does not have to describe points which belong to the common general knowledge of a skilled person.

The Board holds that it clearly lies within the normal capability of a person skilled in the art to provide movable arm operating elements and operating means for moving them into or out of the path of a Maltese cross so as to achieve an angular orientation of the corresponding carrier, and further to provide means for controlling the operating means of said elements, all the more claim 1 refers to "data recorded by the recording means" which suggests the use of electronic data processing, i.e. the use of a computer.

2.5 Therefore the Board concludes that the patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a skilled person. Thus, the ground for opposition based on Article 100(b) EPC does not prejudice the maintenance of the patent in suit.

3. *Further processing:*

Since proceedings before the Boards of Appeal are primarily concerned with the examination of the contested decision, remittal of the case to the Opposition division in accordance with Article 111(1) EPC is normally considered by the Boards in cases where the Opposition division issues a decision solely upon a particular issue (sufficiency of disclosure) and leaves substantive issues regarding novelty (Article 54 EPC) or inventive step (Article 56 EPC) undecided.

The Board therefore considers it appropriate to remit the case to the first instance for consideration of the undecided issues.

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:

G. Magouliotis

M. Ceyte