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Datasheet for the decision of 30 October 2007

Case Number: T 1085/05 - 3.2.04

Application Number: 96203009.4

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Title of invention:
Eviscerator

Patentee:
SYSTEMATE HOLLAND B.V.

Opponent:
STORK PMT B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 100(a), 108
EPC R. 85(1)

Keyword:
"Main request - novelty (no)"
"Auxiliary requests - inventive step (no)"

Decisions cited:
-

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1085/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 30 October 2007

Appellant: (Opponent)	STORK PMT B.V. Handelstraat 3 NL-5831 AV Boxmeer (NL)
Representative:	Mertens, Hans Victor Exter Polak & Charlouis B.V. P.O. Box 3241 NL-2280 GE Rijswijk (NL)
Respondent: (Patent Proprietor)	SYSTEMATE HOLLAND B.V. Burgemeester de Zeeuwstraat 52 NL-3281 AK Numansdorp (NL)
Representative:	Ferguson, Alexander Octrooibureau Vriesendorp & Gaade B.V. P.O. Box 266 NL-2501 AW Den Haag (NL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted 6 June 2005 concerning maintenance of European patent No. 0839455 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 6 June 2005, the Opposition Division found that, taking into consideration the amendments according to the auxiliary request filed by the patent proprietor during opposition proceedings, the European patent and the invention to which it relates met the requirements of the EPC.

On 15 August 2005 the Appellant (patentee) filed an appeal. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 17 October 2005.

II. The patent was opposed on the grounds based on Article 100(a) (54 and 56), 100(b) and (c) EPC. The Opposition Division found that subject-matter of claim 1 according to the main request lacked novelty with respect to D2: EP-A-0 497 014.

III. Oral proceedings before the Board took place on 30 October 2007.

The Appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the set of claims according to the main request, the first or second auxiliary requests, all filed with the grounds of appeal or on the basis of the set of claims according to the third auxiliary request filed with letter dated 28 September 2007.

Claim 1 according to the main request reads as follows:

"1. Device (1) for removing the viscera from the carcass of a slaughtered bird, comprising a carrier bar means (50), means (2) for holding the carcass with its vent upward, means for gripping the gullet, said means comprising at least two jaw members (33a, 33b) which are movable towards each other to fixedly and positively clamp the gullet between them, means (33a, 33b) for engaging under the viscera and means (14, 15, 17, 50) for moving the gripping means and the engaging means downward inside the carcass to the area of the gullet and operating means (38, 46, 72a,b ,73a,b) to move them subsequently in an active position upwards to eviscerate the viscera, wherein the gripping means and the engaging means are formed by one and the same scoop member (33a, 33b) which is hingedly connected to the lower end of the carrier bar means, characterized in that the gripping means and the engaging means are arranged on said carrier bar means (50) for being simultaneously rotated between a non-active position and an active position and vice versa by the operating means (38, 46, 72a,b ,73a,b)."

Claim 1 according to the first auxiliary request reads as follows:

"1. Method for removing the viscera from the carcass of a slaughtered bird, using a device (1) comprising a carrier bar means (50), means (2) for holding the carcass with its vent upward, means for gripping the gullet, said means comprising at least two jaw members (33a, 33b) which are movable towards each other to fixedly and positively clamp the gullet between them, means (33a, 33b) for engaging under the viscera and means (14, 15, 17, 50) for moving the gripping means

and the engaging means downward inside the carcass to the area of the gullet and operating means (38, 46, 72a,b ,73a,b) to move them subsequently in an active position upwards to eviscerate the viscera, wherein the gripping means and the engaging means are formed by one and the same scoop member (33a, 33b) which is hingedly connected to the lower end of the carrier bar means, characterized in that the device is inserted into the carcass so as to bring the lower end of the carrier bar means (50) including said gripping means and said engaging means, that are arranged on said carrier bar means (50) for being simultaneously rotated between a non-active position and an active position and vice versa by the operating means (38, 46, 72a,b ,73a,b), aside the gullet, after which the operating means are operated to move the gripping means and the engaging means into the active position to clamp the gullet and the carrier bar means (50) is seized out of the carcass."

Claim 1 according to the second auxiliary request reads as follows:

"1. Method for removing the viscera from the carcass of a slaughtered bird, using a device (1) comprising a carrier bar means (50), means (2) for holding the carcass with its vent upward, means for gripping the gullet, said means comprising at least two jaw members (33a, 33b) which are movable towards each other to fixedly and positively clamp the gullet between them, means (33a, 33b) for engaging under the viscera and means (14, 15, 17, 50) for moving the gripping means and the engaging means downward inside the carcass to the area of the gullet and operating means (38, 46,

72a,b ,73a,b) to move them subsequently in an active position upwards to eviscerate the viscera, wherein the gripping means and the engaging means are formed by one and the same scoop member (33a, 33b) which is hingedly connected to the lower end of the carrier bar means, characterized in that the device is inserted into the carcass so as to bring the lower end of the carrier bar means (50) including said gripping means and said engaging means, that are arranged on said carrier bar means (50) for being simultaneously rotated between a non-active position and an active position and vice versa by the operating means (38, 46, 72a,b ,73a,b), aside the gullet, after which the operating means are operated to move the gripping means and the engaging means into the active position to clamp the gullet and the carrier bar means (50) is seized out of the carcass."

Claim 1 according to the third auxiliary request reads as follows:

"1. Method for removing the viscera from the carcass of a slaughtered bird, using a device (1) for removing the viscera from the carcass of a slaughtered bird comprising a carrier bar means (50), means (2) for holding the carcass with its vent upward, means for gripping the gullet, said means comprising at least two jaw members (33a, 33b) which are movable towards each other to fixedly and positively clamp the gullet between them, means (33a, 33b) for engaging under the viscera and means (14, 15, 17, 50) for moving the gripping means and the engaging means downward inside the carcass to the area of the gullet and operating means (38, 46, 72a,b ,73a,b) to move them subsequently

in an active position upwards to eviscerate the viscera, wherein the gripping means and the engaging means are formed by one and the same scoop member (33a, 33b) which is hingedly connected to the lower end of the carrier bar means, characterized in that the device is inserted into the carcass so as to bring the lower end of the carrier bar means (50) including said gripping means and said engaging means, that are arranged on said carrier bar means (50) for being simultaneously rotated between a non-active position and an active position and vice versa by the operating means (38, 46, 72a,b ,73a,b), aside the gullet, after which the operating means are operated to move the gripping means and the engaging means into the active position to clamp the gullet and the carrier bar means (50) is seized out of the carcass."

The Appellant mainly argued as follows:
D2 does not unambiguously disclose a carrier bar, nor are the braces hingedly connected to the lower end of the block; additionally the braces are never in a non-active position.
The method claim 1 according to the auxiliary requests differs from the method disclosed in D2 in that the device is inserted into the carcass so as to bring the lower end of the carrier bar means aside the gullet.
There is no incentive for a skilled person for modifying the carrier block of D2, so that the claimed method step is not rendered obvious.

The Respondent (opponent) countered the Appellant's arguments and mainly argued as follows:
The carrier block of D2 is an elongate part and thus a bar; the braces are connected to this bar by means of

two rods which form pins hingedly received in the carrier bar. The braces of the citation have also a non-active position within the meaning of the claimed invention.
The fact that the device is inserted into the carcass so as to bring the lower end of the carrier bar means aside the gullet does not have any technical effect. Consequently, this feature cannot add anything of inventive significance to the claimed subject-matter.

The Respondent requested that the appeal be dismissed.

Reasons for the Decision

1. Since the time limit set in Article 108 EPC for receiving the statement setting out the grounds of appeal expired on a Sunday (16 October 2005), it was extended until the next day according to Rule 85(1) EPC. Accordingly, the appeal is admissible.

2. *Main request - novelty:*

2.1 The Respondent submitted that the subject-matter of claim 1 according to the main request lacks novelty over D2.

2.2 The Appellant considered that D2 does not disclose the following features:
- the braces forming the gripping and engaging means are connected to the lower end of the carrier bar,
- these braces are hingedly connected to the carrier bar,

- the gripping means and said engaging means are simultaneously rotated between a non-active position and an active position and vice versa.

2.3 As clearly disclosed in D2 Figures 1a and 5, the braces forming the gripping means and the rods are made of one piece. The upper part of each rod is rotatably received in a bore provided in an elongated part called "block" which thus forms a carrier bar.

2.4 Furthermore, it is clear from D2, column 6, lines 7 to 10 and Figures 1a and 5, that the rods comprise spindles which are rotatably received in bearings formed in the lower part of the block.

Claim 1 of the patent in suit does not require a "direct connection" between the braces and the carrier bar. From Figure 1a of D2, it can clearly be seen that the braces are "associated" or "connected" within the meaning of the claimed subject-matter to the lower end of the carrier bar by means of the rods.

2.5 According to the Collins Dictionary cited by the Appellant a "hinge" is "a piece of metal … that is used to join a door to its frame or to join two things together so that one of them can swing freely". In the present case, the gripping means comprise rods forming spindles which are received in bores of the carrier bar so that they can swing. The Appellant argued that due to part 30 (called "hinge lip" in D2), the braces cannot swing freely. However since in the patent in suit the gripping and engaging means are controlled by operating means, they cannot swing "freely", either. Therefore, the braces of D2 are hingedly connected to

the lower end of a carrier bar within the meaning of the claimed subject-matter.

2.6 The Appellant further argued that in D2 the braces are never in a non-active position.
In the patent specification column 3, lines 33 to 39 it is stated "… the scoop parts … will automatically approach each other during the movement from the non-active to the active position … to enable clamping of the gullet between them." Thus, in the non-active position the scoop members are at a distance from each other and in the active position the scoop members are close enough to each other to clamp the gullet. In D2, the braces can be positioned either at distance from each other or close to each other to clamp the gullet. Consequently, the braces of D2 also exhibit an active and a non-active position within the meaning of the claimed subject-matter.

2.7 Accordingly, the subject-matter of claim 1 according to the main request lacks novelty with respect to D2.

3. *First, second and third auxiliary requests:*

3.1 Claims 1 of all these auxiliary requests are in essence identical, except that claim 1 of the third auxiliary request additionally specifies that the method uses a device "for removing the viscera from the carcass of the slaughtered bird".

3.2 The Appellant submitted that in the claimed method, the lower end of the carrier bar is brought aside the gullet; whereas in D2 the carrier bar is not introduced into the carcass.

3.3 However, the patent in suit does not indicate any technical effect that can be obtained by the claimed step of bringing the lower end of the carrier bar aside the gullet.

Consequently, starting from D2 as closest prior art, the technical problem solved by the claimed subject-matter can only be seen in providing an alternative embodiment of an eviscerator of the kind disclosed in D2.

In this citation, the carrier bar is not introduced into the carcass, although the rods supporting the braces are introduced into it. As clearly shown in Figure 3a the rods extend longitudinally from the carrier bar.
Therefore, to directly connect the braces to the carrier bar is an obvious design alternative to having the braces fixed on rods which in turn are connected to a carrier bar.
When fixing the braces directly to the carrier bar, the length of the bar must be extended. This implies that when the braces are in position to clamp the gullet, the carrier bar will be positioned at little distance from the gullet and thus, "aside" said gullet within the meaning of the claimed subject-matter.

The Appellant argued that extending the length of the carrier bar such that it will be positioned aside the gullet would imply shorter braces and deprive the eviscerator of its basic function of completely loosening the viscera from the carcass so that a skilled person would not consider this option.

However, D2 does not solely refer to eviscerators performing complete separation but also contemplates the possibility of performing a partial separation of the viscera, see column 8, line 58 to column 9, line 10. In case it is not intended to entirely loosen the viscera from the carcass, D2 teaches that the braces are to be shaped smaller. Consequently, the skilled person would not be deterred from using smaller braces which in turn would imply either longer rods or a longer carrier bar.

3.5 Consequently, the subject-matter of claim 1 of the first to third auxiliary requests does not involve an inventive step.

4. Since the auxiliary requests must fail, it is superfluous to assess whether or not the amended claims of these requests fulfil the requirements of Articles 84 and 123 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The registrar: The Chairman:

G. Magouliotis M. Ceyte