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**Datasheet for the decision
of 15 September 2009**

Case Number: T 1979/07 - 3.2.04

Application Number: 00204193.7

Publication Number: 1108361

IPC: A22C 21/00

Language of the proceedings: EN

Title of invention:

Apparatus for conveying slaughtered animals

Patentee:

MEYN FOOD PROCESSING TECHNOLOGY B.V.

Opponent:

STORK PMT B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 111(1)

Relevant legal provisions (EPC 1973):

EPC Art. 100(a)

Keyword:

"Main request -novelty of claim 1 (yes)"

"Remittal for consideration of the undecided issues (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 1979/07 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 15 September 2009

Appellant: MEYN FOOD PROCESSING TECHNOLOGY B.V.
(Patent Proprietor) Noordeinde 68
NL-1511 AE Oostzaan (NL)

Representative: Van Breda, Jacobus
Octrooibureau Los & Stigter
P.O. Box 20052
NL-1000 HB Amsterdam (NL)

Respondent: STOCK PMT B.V.
(Opponent) Handelstraat 3
NL-5831 AV Boxmeer (NL)

Representative: Dorna, Peter
Algemeen Octrooi- en Merkenbureau
P.O. Box 645
NL-5600 AP Eindhoven (NL)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 12 October 2007
revoking European patent No. 1108361 pursuant
to Article 102(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. By its decision dated 12 October 2007 the Opposition Division revoked the European patent 1 108 361. On 6 December 2007 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 8 February 2008.
- II. The patent was opposed on the grounds based on Article 100(a) EPC 1973 (lack of novelty and inventive step). The Opposition division came to the conclusion that the subject-matter of claim 1 lacked novelty with respect to D3.
- III. The following documents played a role in the present proceedings:
- D1: WO-A-93/1367
D2: US-A-2 557 707
D3: EP-A-0 086 700
- IV. Claim 1 as granted reads as follows:
- "1. An apparatus for conveying slaughtered animals, in particular birds or parts of birds, which apparatus comprises a plurality of carriers for the animals, each of which carrier is connected via adjustable coupling means with a conveyor, and which travel a path passing at least one inspection or processing station, wherein during operation of the conveyor each carrier at a predetermined position in the conveyor's path is rotatable about a substantially vertical axis by means of adjusting the coupling means via at least one

operating unit positioned along the path, and wherein along the conveyor's path there is at least one guide member provided which is capable, after the carrier is rotated to a predetermined position, of moving the animal suspended from the carrier such that it is diverted around the processing station, characterized in that each carrier possesses at least one arm extending substantially sideways, and in that the guide member is equipped to cooperate with the arm when, as a result of the carrier's rotation to the predetermined position, the arm is placed at right angles to the conveyor's path of travel."

- V. Oral proceedings took place on 15 September 2009 before the Board of Appeal.

The Appellant (patentee) requested that the decision under appeal be set aside and that the patent be maintained as granted, or on the basis of one of the auxiliary requests 1 to 5 filed with the grounds of appeal. He further requested that the case be remitted to the department of first instance for consideration of the remaining issue of inventive step.

He mainly argued as follows:

D1 solely discloses that an animal suspended from the carrier can be diverted around a processing station by being contacted by a guide member. D2 refers to rotatable carriers but does not address the problem of diverting an animal suspended from a carrier around a processing station. In D3 none of the animals suspended from the carriers is diverted around a processing station. Furthermore, in this document the arm of the

carrier extending sideways does not cooperate with the guide member as required by claim 1.

The Respondent (opponent) contested the arguments of the Appellant. He mainly submitted that the presence of a processing station is not a positive feature of claim 1 as granted. Furthermore this claim solely requires that the guide member is capable of moving an animal around a processing station and not that it is effectively moved around such a processing station. However, D1 would be capable of diverting an animal suspended on the carrier from its normal path when the discharge lever is lifted by the guide member. Likewise D2 shows that when rotated by 90° the animal suspended on the carrier has a different lateral position with respect to the conveying direction which could serve to guide it around a possible processing station. D3 discloses a guide member which cooperates with an arm extending sideways and which brings the suspended animal in an inclined position in which it could be moved around a possible processing station. Therefore, D1, D2 or D3 are all novelty destroying for the subject-matter of claim 1 as granted.

The Respondent requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. *Interpretation of claim 1*

Claim 1 as granted comprises the following features "carriers ... which travel a path passing at least one inspection or processing station" and "there is at least one guide member provided which is capable, after the carrier is rotated to a predetermined position, of moving the animal suspended from the carrier such that it is diverted around the processing station".

The first of these two features defines a travel path for the carriers and the animals suspended thereon, through a processing station. The second of these features requires that there is a path for diverting the animal (when its carrier has been rotated) around the processing station, i.e. making the animal following an alternative path passing around the processing station.

Consequently, the wording of claim 1 implies two possible paths for the animals: either a "normal" path passing through or along the processing station where the animals are processed or an alternative path where the animals are diverted away from the normal path, this alternative path passing around the processing station.

The Respondent argued that "diverting" does not imply two paths. This however does not correspond to the normal meaning of "diverting" which is rather "to turn away from its usual path". Furthermore, the

interpretation of a claimed feature should be technically sensible and take into account the whole of the disclosure of the patent. However from the patent specification is clear that only the animals which have been selected by rotating the carrier in a predetermined position are to be diverted so as to pass around the processing station while the remaining animals are processed in the processing station.

3. *Novelty with respect to D1*

3.1 In D1 as shown in Figure 6 and stated page 8, lines 2 to 8, the poultry in its rotated position, is moved outside the working range of the processing station by a guide member 106 which acts directly on the poultry.

Thus the guide member is equipped to cooperate with the poultry and not with the arm of the carrier extending sideways as required by claim 1 as granted.

3.2 The Respondent submitted that the discharge lever 14 in D1 forms a laterally extending arm in the meaning of claim 1 as granted, which lever can be engaged by a guide groove 16 (see figure 3). Thus, a bird still suspended on the carrier when the discharge lever 14 is engaged and lifted by the guide groove 16 would be diverted from its normal path.

However, figure 3 shows three carriers of the conveyor disposed one after the other in different positions; the left hand carrier is in the closed position and carries a bird hanging by the legs, the carrier in the centre of the figure is in the open position and the bird has been discharged, and the carrier on the right

of the figure shows how the shut-off device of a carrier closes again by having the control lever 15 moved upwards by the guide groove 16 after the bird has been discharged.

Further, in lines 24 to 29 it is mentioned that discharging of the bird can take place by forcing the carrier control lever 14 upwards when the shut-off device is open.

3.3 Thus, the sole function of lever 14 is to discharge the poultry. There is no disclosure of control lever 14 being used to divert the poultry away from its normal path.

Therefore, even if control lever 14 would form an arm extending sideways in the meaning of claim 1 as granted, the feature that "there is at least one guide member provided which is capable, after the carrier is rotated to a predetermined position, of moving the animal suspended from the carrier such that it is diverted around the processing station" would still be missing.

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

4. *Novelty with respect to D2*

4.1 D2 (see Figure 1) shows that the poultry can be brought in two rotational positions at right angles to each other. As it is clear from Figure 1, all animals follow the same path and are likewise rotated when the follower 25 engages the cam 24. There is no mention in this document of selectively rotating some carriers so that animals suspended on these rotated carriers are

diverted around a given processing station, while other animals are not.

4.2 Accordingly, D2 does not disclose the claimed feature that "there is at least one guide member provided which is capable, after the carrier is rotated to a predetermined position, of moving the animal suspended from the carrier such that it is diverted around the processing station".

4.3 Consequently, the subject-matter of claim 1 as granted is novel with respect to D2.

5. *Novelty with respect to D3*

5.1 In D3, too, all animals follow the same path. As described in column 5, lines 3 to 42 with respect to Figures 5 to 8, all birds are presented in an inclined position to the operator and are successively rotated by increments of 90° from position III to position V. Thus, since there is no "diverted path" passing around the processing station with respect to the "normal path" passing through or along the processing station where the animals are processed, the feature "of moving the animal suspended from the carrier such that it is diverted around the processing station" is not disclosed in this document (see also point 2 above).

5.2 Furthermore, as indicated in column 5, lines 26 to 31, with respect to Figure 6, the guide members 24 and 25 engage the cover 14 below the fingers 18, which fingers extend between the guide members. In contrast to the Respondent's assertion, the Board is unable to derive from the figures 6 to 8 that the fingers 18 rest on the

guide members 25, 26 and 28, all the more so because this is technically not necessary, since the guide members already engage the cover 14.

5.3 Accordingly, D3 does not disclose the feature that "the guide member is equipped to cooperate with the arm when, as a result of the carrier's rotation to the predetermined position, the arm is placed at right angles to the conveyor's path of travel".

5.4 Consequently, the subject-matter of claim 1 as granted (main request) is novel with respect to D3.

6. 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 issued a decision solely upon novelty and left other substantive issues especially inventive step undecided.
Moreover, in the present case remittal has been requested by the Appellant and has not been objected to by the Respondent.

The Board therefore considers it appropriate to remit the case to the department of 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 department of first instance for further prosecution.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte