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**Datasheet for the decision  
of 8 December 2009**

**Case Number:** T 0179/08 - 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:**

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**Relevant legal provisions:**

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**Relevant legal provisions (EPC 1973):**

EPC Art. 83, 100(a)(b), 111(2), 112(1)(a)

**Keyword:**

"Substantial procedural violation (no)"

"Remittal (no)"

"Referral of questions to the Enlarged Board of Appeal (no)"

"Novelty (yes) - inventive step (no)"

**Decisions cited:**

T 0706/04

**Catchword:**

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Case Number: T 0179/08 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 8 December 2009

**Appellant:** Meyn Food Processing Technology B.V.  
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**Respondent:** STORK PMT B.V.  
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**Representative:** Mertens, Hans Victor  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
27 November 2007 concerning maintenance of  
European patent No. 0916265 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 27 November 2007, the Opposition Division found that taking into consideration the amendments made by the patent proprietor, the European patent 0 916 265 and the invention to which it relates met the requirements of the EPC. On 23 January 2008 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 11 March 2008.
- II. The patent has been opposed on the grounds based on Article 100(a) and (b) EPC 1973. First opposition proceedings led to the revocation of the patent for insufficiency of disclosure. After first appeal proceedings, in its decision T 706/04 the Board came to the conclusion that the ground for opposition based on Article 100(b) EPC 1973 did not prejudice maintenance of the patent in suit and remitted the case to the department of first instance which issued the above mentioned interlocutory decision.
- III. Claims 1 and 18 on which the contested interlocutory decision is based read as follows:
- "1. Device for processing slaughtered animals (7), in particular birds, or a part thereof on the basis of data recorded by recording means concerning the slaughtered animals (7) or parts thereof, which are conveyed along a route along which the device is disposed, the device comprising:
- a conveyor (1) comprising a plurality of trolleys (2) and carriers (6) for the slaughtered animals (7) or

parts thereof, the conveyor (1) running along the route, and

- a processing machine along the route, said processing machine having a working range,
- operating means (19) disposed along the route for taking a slaughtered animal (7) or part thereof into or out of the working range of the processing machine, and
- means for controlling the operating means (19) on the basis of the data recorded such that a slaughtered animal (7) or part thereof is taken into or out of the working range of the processing machine, characterized by a plurality of connecting means (8) each connecting a carrier (6) to a trolley (2), the operating means (19) being adapted to interact with the connecting means (8) for taking a slaughtered animal (7) or part thereof into or out of said working range."

"18. Method for processing slaughtered animals (7), in particular birds, or parts thereof, comprising:

- conveying the slaughtered animals (7) or parts thereof along a route with a plurality of trolleys and carriers, connecting means connecting a carrier to a trolley, along which route a processing machine having a working range is disposed and
- taking a slaughtered animal (7) or part thereof into or out of the working range of the processing machine on the basis of data recorded with recording means concerning each slaughtered animal (7) or part thereof by controlling operating means disposed along the route, the operating means interacting with the connecting means."

IV. The Appellant (opponent) requested that the decision under appeal be set aside and that the case be remitted

to the department of first instance for consideration of the remaining issues of sufficiency of disclosure, in the alternative that two questions (annexed to the minutes) be referred to the Enlarged Board of Appeal, in the alternative that the patent be revoked.

The Respondent requested that the appeal be dismissed, i.e. that the patent be maintained in accordance with the interlocutory decision.

V. The following documents played a role in the present proceedings:

D1: WO-A-86/06587

D2: EP-A-0 259 920

D6: US-A-4 689 855

D9: US-A-3 596 749

VI. The Appellant (Opponent) mainly argued as follows:

A substantial procedural violation has occurred during the oral proceedings before the Opposition Division since it refused to consider the objections raised under Article 83 respectively 100b) EPC 1973 with respect to claims 2, 3, 5, 7 and 17.

The subject-matter of the independent device and method claims is not new with respect to either D2 or D9.

Furthermore, the invention does not involve an inventive step with respect to inter alia D6 when taking into account the general knowledge of a skilled person as illustrated by D1.

The Respondent (Patentee) contested the arguments of the Appellant and submitted that:

No procedural violation occurred during the opposition proceedings, since the Opposition division was bound by the *ratio decidendi* of the Board's decision.

D2 does not comprise operating means interacting with the connecting means. D9 does not disclose any recording of data concerning the slaughtered birds.

D6 does not comprise operating means which interact with the connecting means. Since no other document discloses this feature either, D6 cannot lead to the claimed invention in an obvious way, even when taking into account the general knowledge of the skilled person.

## **Reasons for the Decision**

1. The appeal is admissible.
2. *Procedural issues*
  - 2.1 Before descending on the substantive merits of the claims on file, it is necessary to consider whether a substantial procedural violation has occurred, justifying remittal of the case to the department of first instance and additionally, whether the questions presented by the Appellant should be referred to the Enlarged Board of Appeal.
  - 2.2 The decision of the Board of Appeal T 706/04 mentions in point 2.5 "... 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 1973 does not prejudice the maintenance of the patent in suit" and further at the end of point 3 "The Board therefore considers it appropriate to remit the case to the first instance for consideration of the undecided issues".

- 2.3 In this respect, the clear wording of the Board's decision leaves no doubt that the ground for opposition based on Article 100(b) EPC 1973 was dealt with comprehensively. Whether the breadth of this statement was supported by sufficient arguments is not a matter of concern for the Board in these proceedings.

According to Article 111(2) EPC 1973 the Opposition division is bound by the *ratio decidendi* of the Board of Appeal and had therefore no power to reopen the discussion of the objection based on Article 83 respectively 100b) EPC 1973. The Board's decision taken in case T 706/04 unequivocally shuts the door to any further arguments on an alleged insufficiency of disclosure, be it before the Opposition division or before the Board during the current proceedings.

Consequently, no substantial procedural violation was committed and the request for remittal must be rejected.

- 2.4 According to Article 112(1)(a) EPC 1973, a Board shall refer a question to the Enlarged Board of Appeal if it considers that a decision is required in order to ensure uniform application of the law or if an important point of law arises. Although a question may involve an important point of law, it is only referred to the Enlarged Board of Appeal if the answer to it is necessary to decide the case under consideration.

In the present case, the Board believes that the answer to the first question of the request for referral to the Enlarged Board of Appeal can be deduced directly and unequivocally from the provisions of the EPC (as explained under 2.3 above). The Board is not aware of any contrary decision which would justify a ruling by the Enlarged Board of Appeal with a view to ensuring uniform application of the law.

The answer to the second question is irrelevant for deciding whether a substantial procedural violation justifying remittal of the case occurred during the first instance proceedings.

Accordingly, no ruling of the Enlarged Board of Appeal is needed (Article 112(1)(a) EPC 1973) and the request is therefore rejected.

### 3. *Novelty*

#### 3.1 With respect to D2

The device for processing slaughtered birds according to D2 (column 6, lines 11 to 18; Figures 2 and 3) comprises hooks (referenced 34a to 34j, Figure 3) which take over the birds from the carriers (hooks 12).

The Appellant contended that these hooks (34) constitute "operating means" in the meaning of the contested patent. According to claim 1, the operating means are adapted to interact with the connecting means for taking a slaughtered animal into or out of the working range of a processing machine.

Although D2 discloses carriers (hooks 12), a conveyor (5) and thus, implicitly trolleys and connecting means for attaching the carriers to the trolleys, there is no



mention of the operating means (hooks 34) interacting with such connecting means.

The Appellant submitted that the term "interacting" has to be understood as meaning "synchronised with".

This definition cannot be accepted. In the absence of any special meaning explicitly specified in the patent specification, this term is to be given the meaning and scope it normally has, which is that two things interact when they have an effect on each other.

In the present case, the operating means have no effect on the connecting means and thus these means do not interact.

Consequently, the subject-matter of claim 1 is novel with respect to D2. The same reasoning is applicable *mutatis mutandis* to the subject-matter of claim 18.

### 3.2 With respect to D9

D9 discloses a device for processing slaughtered birds in dependence on their weight. If the weight of the bird is below or above a predetermined weight limit the bird is released from the carrier (column 1, lines 13 to 19). There is no mention that any data concerning the slaughtered bird is recorded. The fact that the birds are weighed does not imply that the results are recorded, nor does energising the power operated release mechanism require any record of data.

Thus, since recording data concerning the slaughtered bird is neither disclosed nor required for operating the device in the manner described in D9, such recording cannot be implicit either.

Consequently, the subject-matter of claim 1 is novel with respect to D9. The same reasoning is applicable *mutatis mutandis* to the subject-matter of claim 18.

4. *Inventive step*

4.1 D6 (column 2, line 65 to column 3, line 48; column 3, line 63 to column 4, line 24; Figure 1) discloses a device for processing slaughtered birds, which are conveyed along a route along which the device is disposed, the device comprising:

- a conveyor (11) comprising a plurality of trolleys (Figure 1) and carriers (21) for the slaughtered animals, the conveyor (11) running along the route, and
- a processing machine along the route, said processing machine having a working range,
- operating means (42) disposed along the route for taking a slaughtered animal into or out of the working range of the processing machine, and
- a plurality of connecting means (18) each connecting a carrier (21) to a trolley, the operating means (42) being adapted to interact with the connecting means (18) for taking a slaughtered animal into or out of said working range.

4.2 The Respondent argued that in D6 the operating means (deflector bar 42) do not interact with the connecting means. This cannot be accepted. Claim 1 solely defines trolleys, carriers and connecting means for linking both together. How the connecting means are configured is not specified. In D6 (column 3, lines 4 to 12), the trolleys are linked to the carriers (21) i.e. the hooks supporting the birds by stems (18) are provided at their upper ends with hooks (19). There is no reason why these

stems which link the carriers to the trolleys should not constitute connecting means in the meaning of claim 1. The Respondent further submitted that in D6 every bird is processed, i.e. no bird is brought out of the working range of a processing machine. This point of view cannot be shared either. In D6 the birds are divided either to follow a first or a second processing line. Consequently, the birds which are diverted into the second processing line are taken out of the working range of the processing machine positioned along the first processing line and vice versa.

- 4.3 Thus, the device of claim 1 differs from that according to D6 in that:
- the birds are processed on the basis of data recorded by recording means concerning the slaughtered animals,
  - means are provided for controlling the operating means on the basis of the data recorded.

Accordingly, the problem to be solved by the invention starting from D6 as closest prior art, could be seen in improving automation of the processing plant.

- 4.4 In D6, it is stated "The apparatus can be conveniently modified to separate one bird from a series of two, three or more birds so as to be compatible with the speed of the conveyor line" (column 2, lines 23 to 26). This is obtained by a mere change of a gear within a gear box which has an output shaft to which is mounted the operating means (deflector bar) (column 3, lines 44 to 46).

However the mere automation of functions (here change of the speed of the operating means) previously performed

by human operators (by changing a gear) is in line with the general trend in techniques and thus cannot as such be considered inventive.

Therefore automatically controlling the operating means such as to adjust the number of birds taken out of the first processing line in function of the speed of the conveyor, i.e. the number of birds to be processed in a given time must be considered as the normal task of the skilled person.

Furthermore, it is within the general knowledge of the skilled person to achieve this by controlling the operating means on the basis of data recorded concerning the slaughtered animals and especially data concerning the number of birds to be processed in a given time and thus, to control the operating means such as to divert the birds which for capacity reasons cannot be processed in a first processing line so as to be processed in a second processing line.

D1 and NL-A-8901510 (cited in the patent specification) are examples of devices for processing slaughtered birds on the basis of data recorded by recording means concerning the slaughtered birds. Accordingly there was no prejudice against using bird related data for automating purposes in processing lines for slaughtered birds.

Accordingly, the subject-matter of claim 1 does not involve an inventive step. For the very same reasons the subject-matter of the corresponding method claim 18 does not involve an inventive step either.

**Order**

**For these reasons it is decided that:**

The decision under appeal is set aside.

The European patent is revoked.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte