

**Internal distribution code:**

- (A) [ ] Publication in OJ  
(B) [ ] To Chairmen and Members  
(C) [X] To Chairmen  
(D) [ ] No distribution

**Datasheet for the decision  
of 22 June 2010**

**Case Number:** T 2151/08 - 3.2.04

**Application Number:** 95202007.1

**Publication Number:** 0695506

**IPC:** A22C 21/00

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for filleting the body of slaughtered poultry

**Patentee:**

STORK PMT B.V.

**Opponent:**

Meyn Food Processing Technology B.V.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 108

EPC R. 99

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

EPC Art. 100(a)(b)

**Keyword:**

"Admissibility of the appeal (yes)"

"Sufficiency of disclosure (yes)"

"Main request - novelty and inventive step (yes)"

**Decisions cited:**

T 0774/97

**Catchword:**

-



Case Number: T 2151/08 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 22 June 2010

**Appellant:** Meyn Food Processing Technology B.V.  
(Opponent) Noordeinde 68  
NL-1511 AE OOSTZAAN (NL)

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

**Respondent:** STORK PMT B.V.  
(Patent Proprietor) Handelstraat 3  
NL-5831 AV Boxmeer (NL)

**Representative:** Mertens, Hans Victor  
Exter Polak & Charlouis B.V.  
J.J. Viottastraat 31  
NL-1071 JP Amsterdam (NL)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 30 September 2008  
rejecting the opposition filed against European  
patent No. 0695506 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** C. Scheibling  
T. Bokor

## Summary of Facts and Submissions

- I. By its decision dated 30 September 2008 the Opposition Division rejected the opposition. On 17 November 2008 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 23 January 2009.
- II. The patent was opposed on the grounds based on Article 100(a) (lack of novelty and inventive step) and (b) EPC 1973.
- III. The following documents played a role in the present proceedings:
- D2: US-A-4 993 114  
D3: US-A-4 827 570  
D4: US-A-5 314 374  
D5: EP-A-0 168 865
- IV. Oral proceedings took place on 22 June 2010 before the Board of Appeal.

The Appellant requested that the decision under appeal be set aside and that the patent be revoked. Conditionally on the finding of the Board on inventive step, he requested that the patentee should file comparative proof showing the improved effect of the patent.

He mainly argued as follows:

The ground of insufficiency of disclosure has duly been motivated. Whether the presented arguments are

convincing is not a matter of admissibility but relates to the merits of the case.

The patent under appeal envisages that the clavicle may be removed from the poultry prior to applying the claimed method, but is silent on how to carry it out in this case. Thus, the requirement of sufficiency of disclosure is not met.

The independent method and apparatus claims lack novelty with respect of D2, D3, D4 as well as D5. Since releasing the membrana sternocoracoclavicularis (hereinafter called membrana) by removing the clavicle does obviously not result in that no meat remains behind on the carcass, the claimed invention is unable to achieve the expected result. Therefore, the patentee should provide comparative tests to proof that the invention is able to achieve the expected result. In absence of such proof, the invention must be considered as not solving the problem stated in the patent specification and therefore as lacking inventive step.

The Respondent (patentee) contested the arguments of the Appellant. He mainly submitted that the ground of insufficiency of disclosure is not correctly substantiated and therefore not admissible.

The objections forwarded by the Appellant concerning the insufficiency of disclosure merely relate to clarity and not to feasibility.

None of D2, D3, D4 or D5 discloses all the features of the independent claims.

Each party bears the burden of proof for the facts it alleges, it was therefore the Appellant's duty to demonstrate that the invention does not achieve the expected results and not the reverse. The Appellant has not provided such evidence and it is contested that the

invention does not achieve the expected result. Thus the argumentation presented against inventiveness must fail.

The Respondent requested that the decision under appeal be set aside and that the patent be maintained in amended form, based on claims 1 to 16 filed as auxiliary request 1 (now main request) or in the alternative based on claims 1 to 12 filed as auxiliary request 2 (now auxiliary request). Both requests were filed by letter dated 18 Mai 2010. The former main request (maintenance of the patent as granted) was withdrawn during the oral proceedings.

V. Claims 1 and 5 of the main request read as follows:

"1. Method for automatic removal of at least an inner fillet (70) from slaughtered poultry or a part thereof by scraping off the inner fillet from slaughtered poultry or a part thereof, characterized in that prior to scraping off the inner fillet the membrana sternocoracoclavicularis is released by inserting the separating elements (24) on opposite sides of the breastbone (8b), moving the separating elements (24) along the breastbone (8b) into the openings defined by the natural position of the clavicle (8c; 80) and the breastbone (8b)."

"5. Apparatus for automatic removal of at least an inner fillet (70) from slaughtered poultry or a part (8) thereof, comprising  
a carrier (6) for fixing thereon the poultry or a part (8) thereof, at least comprising the breast with the inner fillets (70) attached; and

scraping means (58) for scraping off the inner fillets (70) from the slaughtered poultry or a part thereof,

characterized in that the apparatus is provided with separating elements (24) for the inner fillets (70), which elements (24) are adapted to be inserted, on opposite sides of the breastbone (8b), into the openings defined by the natural position of the clavicle (8c; 80) and the breastbone (8b) for the purpose of releasing the membrana sternocoracoclavicularis."

## **Reasons for the Decision**

### 1. *Admissibility*

1.1 The Respondent argued that the statement of grounds of appeal does not meet the requirements of Article 108 and Rule 99 EPC inasmuch as the ground of insufficiency of disclosure is concerned, because the Appellant has merely repeated the arguments already presented before the first instance and failed to indicate why the impugned decision should be set aside.

1.2 However, the appeal was also based on the ground of lack of novelty in view of D2, D3, D4 and D5. The Board has no doubt, and there was also no objection from the Respondent that this ground of opposition was sufficiently substantiated in the statement setting out the grounds of appeal.

There is no support in the EPC for a notion of "partial admissibility" of an appeal. An appeal is either

admissible or inadmissible (decision T 774/97, point 1 of the reasons).

Thus, if the requirement for an adequate substantiation is fulfilled at least for one ground of opposition the appeal as a whole is admissible, even if this requirement were not fulfilled for another ground of opposition raised in the statement of the grounds of appeal.

2. *Objection under Article 100 (b) EPC*

2.1 The Appellant submitted that the specification of the patent under appeal as well as claim 4 as granted refer to the possibility of having the clavicle removed before scraping off the inner fillets. This however would imply that the membrana has already been released and that therefore the method of claim 1 cannot be carried out anymore.

2.2 This view cannot be shared. The claimed method requires that prior to scraping off the inner fillet (second method step) the membrana has to be released "by inserting the separating elements (24) on opposite sides of the breastbone (8b), moving the separating elements (24) along the breastbone (8b) into the openings defined by the natural position of the clavicle (8c; 80) and the breastbone (8b)" (first method step). Removing the clavicle certainly damages the membrana, which however may still extend between the breastbone and the coracoids. Thus, inserting the separating elements in the claimed manner (so that the membrana is severed in a different way to obtain a different result) can still be effected.

Indeed, the claimed method can be carried out in the absence of the clavicle, since in this case the term clavicle merely defines the natural position of the clavicle, i.e. serves to define the location where the separating elements are to be inserted (see also patent specification, column 6, lines 49 to 51).

2.3 Accordingly, the invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100 b) EPC).

### 3. *Amendments*

Claim 1 has been amended by adding the following features [the membrana sternocoracoclavicularis] "is released by inserting the separating elements (24) on opposite sides of the breastbone (8b), moving the separating elements (24) along the breastbone (8b) into the openings..."

The Appellant made no objections under of Articles 84 and 123 EPC, nor did the Board see any reason to raise objections on its own motion.

### 4. *Novelty*

4.1 Novelty has been challenged with respect to D2, D3, D4 and D5.

#### 4.2 D2

This document (column 5, lines 26 to 37; Figures 1, 3 to 8) describes a method and an apparatus for automatic removal of at least an inner fillet of a slaughtered



poultry. This is performed in that "scrapers 12 are introduced into the meat directly behind the wing joints 63 and between the wish-bone 64 and the coracoid bones 62".

No reference is made to the membrana and there is no indication that the membrana is released.

The Appellant argued that introducing the scrapers into the meat directly behind the wing joints and between the wish-bone (clavicle) and the coracoids results in releasing the membrana.

However, D2 solely discloses that the scrapers are introduced into the meat and not all way through the meat. Since the membrana is located under the meat, it cannot be derived from D2 whether or not the separating elements move into the opening defined by the natural position of the clavicle and the breastbone such that the membrana is released; respectively whether or not the separating elements are adapted to be inserted into the openings defined by the natural position of the clavicle and the breastbone for the purpose of releasing the membrana.

Thus novelty of the subject-matter of claims 1 and 5 is given with respect to D2.

4.3 D3

This document (column 11, line 58 to column 12, line 30; Figures 21 to 26) discloses a method and an apparatus for automatic removal of at least an inner fillet of a slaughtered poultry. First knives 170 effect slight cuts to relieve connections between the

clavicle, the carcass and the inner fillets (Figure 21). Next peeling fingers 42 enter the cuts initiated by the knives, adjacent the keel bone and peel away the connection between the inner fillet and the keel bone; whereas a second set of peeling fingers 44 extends the cut somewhat deeper (Figures 22, 23). Finally, wiping elements 46 engage the moving carcass to shave apart the remaining connection between the inner fillets and the carcass (Figures 24 to 26).

The Appellant contended that by extending downwardly closely adjacent the keel bone and by peeling away an upper portion of the connection between the inner fillets and the keel bone, the peeling fingers 42 must release the membrana.

This point of view cannot be shared. According to D3 the knives 170 act along the top of the carcass (column 11, line 61, 62; Figure 21). The peeling fingers 42 then enter the cuts initiated by the knives 170. There is no indication how with respect to the clavicle and the breastbone these fingers are positioned and how deep the peeling fingers 42 and 44 will penetrate into the meat.

Therefore it cannot be derived from D3 whether the peeling fingers are adapted to be inserted into the openings defined by the natural position of the clavicle and the breastbone, let alone that they are able to release the membrana.

Thus novelty of the subject-matter of claims 1 and 5 is given with respect to D3.

4.4 D4

This document (column 2, line 49 to column 3, line 6; Figures 1 to 4) describes a method and an apparatus for automatic removal of the inner fillets of a slaughtered poultry. Prior to removing the inner fillets, some parts of the carcass including the wings, the clavicle, the coracoids and thus the membrana have been severed (Figure 2). The separating elements for removing the inner fillets, knives 17 and plows 19 and 21 extend parallel to the keel bone and act between the carcass and the inner fillets to effect a separation. Since the part of the carcass comprising the opening defined by the natural position of the clavicle and the breastbone has been removed, the position in which the separating elements become active (i.e. act on the inner fillets and the carcass) is located beyond the position where the opening extended previously. It can therefore not be derived from D4 whether the separating elements would have been able to move into said opening, which is no longer present, and in such a manner that said movement would have resulted in releasing the membrana if it had been still there.

The Appellant argued that at least the features of the apparatus claim 5 are disclosed by D4. However, as stated above, there is no indication in D4 which could lead to the assumption that the separating elements disclosed therein would be adapted to be inserted into the openings defined by the natural position of the clavicle and the breastbone such that the membrana would be released.

Thus novelty of the subject-matter of claims 1 and 5 is given with respect to D4.

4.5 D5

This document (page 9, line 16 to page 10, line 32; Figures 1, 9 to 20) describes a method and an apparatus for automatic removal of the inner fillets of a slaughtered poultry. Prior to scraping off the inner fillets, the top 56 of the clavicle 57 is removed by a cutting die 22 which is moved into the neck opening of the carcass (Figures 9 and 10).

The Appellant contended that this operation releases the membrana. This is accepted by the Board, however the die used to release the membrana is a single tool which is introduced into the carcass through the neck opening.

Thus D5 does not disclose the features that the membrana "is released by inserting the separating elements on opposite sides of the breastbone, moving the separating elements along the breastbone into the openings" respectively that the separating elements "are adapted to be inserted, on opposite sides of the breastbone (8b), into the openings defined by the natural position of the clavicle (8c; 80) and the breastbone (8b) for the purpose of releasing the membrana sternocoracoclavicularis".

Thus novelty of the subject-matter of claims 1 and 5 is given with respect to D5.

5. *Inventive step*

5.1 The Appellant has submitted that the subject-matter of claims 1 and 5 lacks inventive step since the technical problem stated in paragraph [0008] of the patent specification, i.e. the provision "of a method and an apparatus by means of which inner fillets can be removed mechanically and automatically from the carcass of a bird, while the greatest possible amount of meat is obtained and damage to the meat is prevented as much as possible" has not been credibly solved.

5.2 However as submitted by the Respondent, from the anatomy of the poultry it can be seen that the membrana is situated behind the inner fillets and stretched like a tent between both coracoids, the two bones of the clavicle and the front side of the breast bone. To remove the inner fillets and thereby preventing damage to the structure of the meat surface as much as possible, the membrana is released according to the invention by making a separation with separating elements in the opening defined by the natural position of the clavicle and the breastbone. By the movement shown in particular in Figure 4a of the patent specification, the separating elements separate the inner fillets from the breastbone along the path of the separating elements. When entering the opening defined by the natural position of the clavicle and the breastbone a separation is made so that the tent-shaped membrana is released from the breastbone. This separation is sufficient for intact removal of the inner fillets and thus without any loss or damage of meat.

Thus in the light of the described method, the above technical problem has been in essence plausibly solved by the claimed method or device.

- 5.3 Under these circumstances the patent proprietor is not required to provide further evidence, such as comparative examples to demonstrate that the technical problem stated in the patent specification has been solved. It is enough for it to appear plausible to the skilled person having regard to the described method that this technical problem can be solved by the claimed method or device.
- 5.4 Moreover, the Appellant argued that the subject-matter of claims 1 and 5 lacks an inventive step merely by stating that the technical problem stated in the patent specification has not been credibly solved, without reformulating the problem in question in a less ambitious way and without assessing the obviousness of the claimed solution in the light of the cited prior art as requested by Article 56 EPC. Article 56 EPC (first sentence) states that "an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art". For this reason the Appellant's objection pursuant to Article 56 EPC, which is not assessed in the light of the state of the art, is unfounded.
- 5.5 The Board is also satisfied that none of D2 to D5 either taken alone or in combination, even if taking into account the skilled person's common general knowledge can lead in an obvious manner to the subject-matter of claims 1 and 5 of the main request.

## 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 with the order to maintain the patent as amended in the following version:

Description:

columns 1 and 2 filed during the oral proceedings  
columns 3 to 7 of the patent specification

Claims:

1 to 16 as filed with letter dated 18 May 2010 as  
auxiliary request 1.

Drawings:

Figures 1 to 6 of the patent specification

The registrar:

The Chairman:

A. Counillon

M. Ceyte