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**Datasheet for the decision
of 27 September 2011**

Case Number: T 2164/09 - 3.2.04

Application Number: 01202575.5

Publication Number: 1169921

IPC: A22C 21/00

Language of the proceedings: EN

Title of invention:
Skinner for poultry carcasses

Patentee:
Numafa Holding B.V.

Opponent:
STORK PMT B.V.

Headword:

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Relevant legal provisions:
EPC Art. 100(a), 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Main request - novelty (no)"
"Auxiliary requests 2 to 4 - added subject-matter (yes)"
"Auxiliary request 1 - inventive step (no)"
"Auxiliary request 5 - inventive step (yes)"

Decisions cited:

T 1067/97, T 0714/00

Catchword:-



Case Number: T 2164/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 27 September 2011

Appellant: STORK PMT B.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 18 September 2009
rejecting the opposition filed against European
patent No. 1169921 pursuant to Article 101(2)
EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. By its decision dated 18 September 2009 the Opposition Division rejected the opposition. On 5 November 2009 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 29 December 2009.
- II. The patent was opposed on the grounds based on Article 100(a) EPC (lack of novelty and inventive step).
- III. The following documents played a role in the appeal proceedings
- E1: US-A-4 723 339
E2: US-A-4 998 323
E3: US-A-5 197 917
E4: NL-A-8302207
E12: EP-A-0 695 506.
- IV. Oral proceedings took place on 27 September 2011 before the Board of Appeal.

The Appellant requested that the decision under appeal be set aside and that the patent be revoked.

He mainly argued as follows:

Claim 1 as granted lacks novelty with respect to each of documents E1 to E4. The subject-matter of claim 1 of auxiliary request 1 does not involve an inventive step with respect to E1 and common general knowledge.

Amended claim 1 of Auxiliary requests 2 to 4 contravenes the requirements of Article 123(2) EPC. The subject-matter of claim 1 of auxiliary request 1 does

not involve an inventive step with respect to E12 and common general knowledge.

The Respondent (patentee) contested the arguments of the Appellant. He mainly submitted that claim 1 as granted requires that the "skinner is provided with means for moving the skin gripping means" and that the conveyor "comprises supports" and "means for leading" them. None of E1 to E4 discloses these features. All the amendments made in the auxiliary requests find a basis in the Figures and the original description. The additional feature in claim 1 of auxiliary request 1 that the gripping means are moved "past the carcass" implies a device which is basically different from that of E1. E12 discloses a device which is entirely different from that claimed in auxiliary request 5. The mere fact that the distinguishing features might be disclosed in different prior art citations does not render their combination obvious.

The Respondent requested that the appeal be dismissed or, in the alternative, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of any of the auxiliary requests 1 to 4 filed by letter dated 22 July 2011 or of any of the auxiliary requests 5 to 7 filed during the oral proceedings before the board.

V. Claim 1 of the main request (as granted) reads as follows:

"1. Device (1) for processing poultry carcasses (4) or parts thereof, comprising a conveyor (2) comprising supports (3) for retaining the carcasses or parts

thereof, which conveyor is provided with means for leading the supports in a supply direction (A) past at least one processing installation, in which the device comprises a skinner (5) for skinning the carcasses or parts thereof, which skinner comprises skin gripping means (6) characterised in that said skinner is provided with means for moving the skin gripping means in a plane of symmetry (5) of the carcass, and in that said skin gripping means define a skin gripping line (G) which is substantially perpendicular to the plane of symmetry of the carcass during skinning".

Claim 1 of auxiliary request 1 distinguishes from claim 1 as granted by the addition of the feature: "past the carcass" between "for moving the skin gripping means" and "in a plane of symmetry (5) of the carcass".

Claim 1 of auxiliary request 2 specifies in addition to claim 1 of the main request that "the supports are adapted for retaining the carcasses upright" and that the skin gripping means are moved "up and down, perpendicular to the supply direction (A)".

Claim 1 of auxiliary request 3 specifies in addition to claim 1 of the main request that "the supports are adapted for retaining the carcasses upright", that the skin gripping means are moved " past the carcass in a pull-off direction of the skin" and "perpendicular to the supply direction (A)".

Claim 1 of auxiliary request 4 is a combination of claims 1, 7 and 11 as granted.

Claim 1 of auxiliary request 5 reads as follows
"Device (1) for processing poultry carcasses (4) or parts thereof, comprising a conveyor (2) comprising supports (3) for retaining the carcasses or parts thereof, which conveyor is provided with means for leading the supports in a supply direction (A) past at least one processing installation, in which the device comprises a skinner (5) for skinning the carcasses or parts thereof, which skinner comprises skin gripping means (6) horizontally oriented which comprise two rollers (12, 13) rotating opposite to and considered from the carcass towards each other, which rollers have preferably been provided with a skin gripping surface, characterised in that the supports are adapted for retaining the carcasses upright during skinning, and said skinner is provided with means for moving the skin gripping means up and down during skinning, perpendicular to the supply direction (A) and in a plane of symmetry (S) of the carcass, and in that said skin gripping means define a skin gripping line (G) which is substantially perpendicular to the plane of symmetry of the carcass during skinning."

Reasons for the Decision

1. The appeal is admissible.
2. *Main request - Novelty*
 - 2.1 Novelty has been challenged inter alia with respect to E1. The Respondent has in essence submitted that E1 discloses neither "supports for retaining the carcass", neither "means for leading the supports in a supply

direction past at least one processing installation", nor "skinner provided with means for moving the skin gripping means".

However, in E1 (column 2, lines 13 to 15, 20, 21 and 36, 37; Figure 1) the carcasses are conveyed hanging by their legs from a conveyor track. This implies that the conveyor comprises support means. There are further provided a breast guide element (8) and wing guide bars (18a) and (18b). These are means for leading the supports in a supply direction past at least one processing installation (skinner). In E1 the skin gripping means are formed by rollers (10a) and (10b) defining a gripping line and which are driven so as to rotate in opposite directions (column 2, lines 23 to 30). Thus the skinner is provided with means for rotating i.e. for moving the skin gripping means.

2.2 Thus the subject-matter of claim 1 of the main request lacks novelty with respect to E1.

3. *Auxiliary requests 1 to 5*

3.1 Admissibility

The admissibility of the auxiliary requests 1 to 4 has not been challenged by the Appellant and auxiliary request 5 filed during the oral proceedings is considered as a response to the objections raised during the debate.

3.2 Amendments

3.2.1 Claim 1 of auxiliary request 1 specifies in addition to claim 1 of the main request that the skinner is provided with means for moving the gripping means "past the carcass". A basis for this amendment is to be found on page 7, lines 3 and 4 of the description as originally filed (paragraph [0026] of the patent specification).

Thus amended claim 1 is not objectionable under Article 123(2) EPC.

3.2.2 According to the established case law of the Boards of Appeal, it is normally not admissible to extract an isolated feature from a set of features that have originally been disclosed in combination and to add it to the claimed subject-matter, if there is a structural or functional relationship between those features; see in particular T 1067/97 and T 0714/00.

Claim 1 of auxiliary requests 2 and 3 has been amended to include inter alia that "the supports are adapted for retaining the carcasses upright". Claim 12 as originally filed, which is dependent on claim 7, comprises this feature. However, the feature is disclosed in these claims in combination with skin gripping means in the form of two rollers which cooperate with the support retaining the carcass upright for gripping the skin and pulling it off from the carcass. Extracting the above quoted features from this set of features, with which it is functionally linked, results in an unallowable generalisation beyond the original disclosure and thus contravenes Article 123(2) EPC.

The Respondent argued that Figure 1 as well as paragraph [0037] of the patent specification (page 10, line 22 to page 11, line 4 of the originally filed description) form also a basis for this amendment. However, although the embodiments of Figures 1 and 2 show a "support adapted for retaining the carcasses upright", this support is movably attached to a conveyor for moving the supports along the supply direction. These figures also show inter alia two rollers of the skin gripping means which cooperate with the support retaining the carcass upright for gripping the skin and skinning the carcass. The added feature cannot be isolated from this set of features, since there is a clear functional relationship between the support for retaining the carcass upright and the rollers of the skin gripping means. Likewise, paragraph [0037] relates to the specific embodiment shown in Figures 1 and 2 (see first sentence of this paragraph) and thus the features of this passage are only disclosed in combination with the specific set of features shown in said Figures.

Consequently, adding into claim 1 that "the supports are adapted for retaining the carcasses upright" in isolation from a set of features which had been originally disclosed in combination, infringes Article 123(2) EPC.

- 3.2.3 Claim 1 of auxiliary request 4 is a combination of claims 1, 7 and 11 as granted. However claim 11 as originally filed is dependent on claim 10 as originally filed whose features have not been introduced into claim 1 of auxiliary request 4.

The Respondent contended that paragraph [0014] of the patent specification (page 4, lines 4 to 15 of the originally filed description) does provide adequate support for the proposed combination, omitting the features of claim 10. However this paragraph discloses the features of both claims 10 and 11 and thus does not provide adequate support for incorporating the features of claim 11 into claim 1 in isolation from the features of claim 10.

Consequently this amendment contravenes the requirements of Article 123(2) EPC.

3.2.4 The Appellant has not challenged amended claim 1 of auxiliary request 5 with respect to added subject-matter and the Board is satisfied that these amendments comply with the requirements of Article 123(2) EPC.

3.2.5 Since amended claim 1 of auxiliary requests 2 to 4 contravenes the requirements of Article 123(2) EPC, these requests must already fail for this reason.

3.3 Inventive step - auxiliary request 1

3.3.1 The subject-matter of claim 1 of auxiliary request 1 differs from E1 regarded as closest prior art in that the claimed skinner is provided with means for moving the gripping means "past the carcass", whereas in E1 the skinner is provided with means for moving the carcass past the gripping means.

Thus, the problem solved by the invention with respect to E1 can be seen in providing a device for processing poultry carcasses comprising a skinner permitting an alternative skinning action.

3.3.2 However, it is clear for the skilled person that in order to perform a complete skinning action, the gripping means and/or the carcass must be moved one past the other. It cannot be seen as inventive to carry out a simple kinematic inversion that provides no unexpected advantages and which consists in moving the carcass past the gripping means instead of moving the gripping means past the carcass.

3.3.3 Therefore, the subject-matter of claim 1 of auxiliary request 1 does not involve an inventive step.

3.4 Inventive step - auxiliary request 5

3.4.1 The Appellant considered E12 as closest prior art for the device defined in claim 1 of this request.

E12 discloses a device for processing poultry carcasses or parts thereof according to the prior art portion of claim 1.

The device of claim 1 differs from that of E12 in that

- the supports are adapted for retaining the carcasses upright during skinning,

- said skinner is provided with means for moving the skin gripping means up and down during skinning, perpendicular to the supply direction

- and in a plane of symmetry of the carcass,

- said skin gripping means define a skin gripping line which is substantially perpendicular to the plane of symmetry of the carcass during skinning.

3.4.2 In fact in E12 (column 12, line 46 to column 13, line 4, Figures 13b, 13c) the skinning is accomplished in two steps; first, the skin under the wings of the front

half of the carcass is removed. To this effect the carrier is first held upright and the carcass is brought into contact with rotating pairs of helically ribbed rollers located at each side of the carcass. Subsequently, the carrier is tilted into an approximately horizontal position and the carcass is brought into contact with rotating pairs of helically ribbed skin removal rollers disposed in the plane of symmetry of the carcass for removing skin on the breast side of the front half of the carcass.

This is not only a completely different approach as to how to remove the skin but also a completely different device for performing the operation. There is no disclosure or suggestion in the prior art citations of how a skilled person should adapt or modify this different solution so as to arrive at the claimed invention.

3.4.3 The Appellant argued that each of the distinguishing features is known per se from the prior art. However there is no hint in the prior art of the claimed combination of these features.

In this respect, the point is not whether a skilled person could have arrived at the invention by modifying the prior art, but rather whether, in expectation of the advantages actually achieved (in the light of the technical problem addressed), he would have done so because of promptings in the prior art. What a skilled person would have done depends in large measure on the technical result he had set out to achieve. A skilled person does not act out of idle curiosity but with a specific technical purpose in mind.

3.4.4 Thus, the subject-matter of claim 1 of auxiliary request 5 involves an inventive step with respect to the cited prior art.

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 with the order to maintain the patent with the following claims, drawings and a description to be adapted:

Claims 1 to 22 filed during the oral proceedings
 as auxiliary request 5

Figures 1 to 5 of the patent specification.

The Registrar:

The Chairman:

D. Hampe

M. Ceyte