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**Datasheet for the decision  
of 9 February 2012**

**Case Number:** T 0766/10 - 3.2.04

**Application Number:** 01916947.3

**Publication Number:** 1278425

**IPC:** A22C 21/06

**Language of the proceedings:** EN

**Title of invention:**

Method and system for inspection of slaughtered poultry, in particular broilers

**Patentee:**

Linco Food Systems A/S

**Opponent:**

Meyn Food Processing Technology B.V.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 83, 100(a)(b)(c), 123(2)

**Keyword:**

"Added subject-matter (no)"  
"Sufficiency of disclosure (yes)"  
"Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0766/10 - 3.2.04

**DECISION**  
of the Technical Board of Appeal 3.2.04  
of 9 February 2012

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

**Representative:** Van Breda, Jacobus  
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**Respondent:** Linco Food Systems A/S  
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**Representative:** Indahl, Peter Jensen  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 1 March 2010  
rejecting the opposition filed against European  
patent No. 1278425 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 1 March 2010 the Opposition Division rejected the opposition. On 2 April 2010 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 11 June 2010.

II. The patent was opposed on the grounds based on Article 100(a), (b) and (c) EPC.

III. The following documents played a role in the appeal proceedings

D1: WO-A-99/03354

D2: EP-A-0 819 381

IV. Claims 1 and 4 of the main request (as granted) read as follows:

"1. A method for inspecting slaughtered poultry, particularly broilers, where poultry carcasses suspended by the legs are moved to a processing station by a first conveyor, where viscera packs are eviscerated and are transferred to and suspended from a second conveyor while the carcasses remain suspended in the first conveyor, characterised in that said first conveyor before or after the processing station is moving past a control station for inspection of the carcasses, that selection of a certain carcass for rejection or closer inspection automatically results in taking down this and the associated viscera pack, that the second conveyor moves past a control station after the processing station for inspection of the viscera

packs, that selection of a certain viscera pack for rejection or closer inspection automatically results in taking down this and the associated carcass, and that carcasses that have been taken down and associated viscera packs that have been taken down are placed juxtaposed on a special inspection conveyor belt".

"4. A plant for inspection of slaughtered poultry, particularly broilers, according to the method of claim 1 and comprising a processing station with a number of evisceration means, a first conveyor in which poultry carcasses are suspended by the legs, a second conveyor in which the viscera packs are transferred to and suspended from, and a number of control stations by which the conveyors are moving, characterised in that, in connection with the control stations, the conveyors comprise means arranged to take down selected carcasses and associated viscera packs automatically and means arranged to take down selected viscera packs and associated carcasses automatically and to place carcasses and associated viscera packs juxtaposed on a special inspection conveyor belt."

V. The auxiliary request comprises claims 1 to 3 as granted; claim 4 as granted has been deleted.

VI. Oral proceedings took place on 9 February 2012 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:

The additional feature "and means arranged to take down selected viscera packs and associated carcasses automatically" in claim 4 contravenes Article 123(2) EPC.

The claimed invention is not sufficiently disclosed for it to be carried out by the skilled person (Article 83 EPC). There is no indication as to how, when a first part (either the carcass or the associated viscera pack) is taken down for rejection or closer inspection, the system identifies the position of the corresponding part in order to take it down too and when the carcass or its associated viscera pack have been taken down, as to how they are placed juxtaposed on a special inspection conveyor belt.

The claimed invention differs from the method and plant disclosed in D1 or D2 solely in that the carcasses and associated viscera packs that have been taken down are placed juxtaposed on a special inspection conveyor belt instead of hanging from overhead conveyors. However, to replace an overhead conveyor by a conveyor belt cannot be regarded as inventive.

The Respondent (patentee) contested the arguments of the Appellant. He mainly submitted that the claimed means for taking down selected viscera packs and their associated carcasses are implicit to the skilled reader and thus the requirements of Article 123(2) EPC are fulfilled.

How to synchronise the automatic taking down stations is a matter of common knowledge of the skilled person. Neither the combination of D1 with D2 nor the combination of D2 with the common general knowledge of the skilled person can lead to the claimed invention.

The Respondent requested that the appeal be dismissed, in the alternative, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the auxiliary request filed with letter dated 1 November 2010 as auxiliary request 2.

## **Reasons for the Decision**

1. The appeal is admissible.
2. *Added subject-matter*
  - 2.1 Claim 4 as granted adds to claim 4 as filed the following feature: "means arranged to take down selected viscera packs and associated carcasses automatically".
  - 2.2 An amendment should be regarded as introducing subject-matter which extends beyond the content of the application as originally filed if the skilled person is presented with information which is not directly and unambiguously derivable from the originally filed application, taking into account subject-matter which is implicit to the skilled person.

Claim 1 concerns a method for inspecting slaughtered poultry characterised in particular in that

- i) selection of a certain carcass for rejection or closer inspection automatically results in taking down this and the associated viscera pack,
- ii) selection of a certain viscera pack for rejection or closer inspection automatically results in taking down this and the associated carcass.

Claim 4 relates to a plant for carrying out the method of claim 1 and claims in particular means for implementing the above step i) that is for taking down selected carcasses and associated viscera packs automatically. The skilled reader will immediately understand that not only the above means but also means for taking down selected viscera packs and associated carcasses automatically are necessary for carrying out the claimed method.

If means for taking down selected carcasses and associated viscera packs are present, then means for taking down selected viscera packs and associated carcasses must be present too, since the claimed plant is arranged for inspection of slaughtered poultry "according to the method of claim 1". In other words, there is absolutely no doubt that claim 4 must be so construed as to comprise also means for taking down selected viscera packs and associated carcasses automatically. This added feature is thus implicit to the skilled reader and therefore does not introduce added subject-matter.

2.3 Accordingly, claim 4 as amended during examination does not contravene the requirements of Article 123(2) EPC. The ground of opposition under Article 100c) EPC does therefore not preclude maintenance of the patent as granted.

### 3. *Article 100(b) EPC*

3.1 The Appellant contended that the application as filed does not disclose how when one of the two corresponding parts is rejected the system identifies the position of

the other corresponding part, so that both parts can be taken down from their respective conveyors, when they arrive at their respective release stations and by which means both parts once rejected can end juxtaposed (i.e. at the same time) on a special inspection conveyor belt.

3.2 It is undisputed that the carcass conveyor and the viscera pack conveyor must be driven at the same speed and that a carcass and its corresponding viscera pack leave the evisceration apparatus at the same time ( $t_0$ ). Furthermore, the parts (carcass and viscera pack) are transported on carriers in a sequential manner. It is thus merely a question of calculating at which position each of the corresponding carriers is located at each time when starting together at  $t_0$ . Thus when it is signalled that a part is to be taken down from its carrier, the position of the carrier transporting the corresponding part can be calculated. Accordingly, it is within the capability of the skilled person to arrange the positions of the sensor which triggers the release mechanism and the release stations such that carriers with corresponding parts pass their respective release stations at the same time. These are basic synchronisation problems which also occur in prior art plants and can be solved by a skilled person using its common general knowledge.

The same applies for synchronising the arrival of the two parts which have been taken down at the same time on the special inspection conveyor belt. The two parts start (are taken down) at a given time, travel each along a path of determined length with a given speed and are to be delivered on a same conveyor belt at the same time. This is a simple matter of transportation



speed and length of the respective travel paths. Such calculation lies within the capability of the skilled person.

3.3 It follows that the ground of opposition based on Article 100 b) EPC does not prejudice the maintenance of the patent.

4. *Inventive step (main request)*

4.1 Starting from D1 as closest prior art

4.1.1 D1 (page 1, lines 1 to 9 and 20 to 26; page 2, lines 12 to 17; Figures 1, 2, 14a, 14b) discloses a method and a plant for inspecting slaughtered poultry, where poultry carcasses are moved suspended by the legs to a processing station by a first conveyor (2, 30a) where the poultry is eviscerated in a processing station (10) with a number of evisceration means and the viscera packs are transferred to and suspended from a second conveyor (4, 52) while the carcasses remain suspended in the first conveyors (page 2, line 35 to page 3, line 3). When arriving at the inspection station (Figure 14a) the viscera packs are transferred back to the first conveyor (page 13, line 37 to page 14, line 4). Alternatively, the viscera packs are transferred to a third intermediate conveyor (Figure 14b) (page 13, lines 8 to 13). During inspection the carcass conveyor and the viscera conveyor may be coupled together (page 17, lines 14 to 18). The viscera pack and the associated carcass are then inspected by an inspector; rejected viscera packs and carcasses are removed from the conveyors by the inspector (page 14, lines 15 to 17 and 31, 32).

D1 specifies with respect to all embodiments that "rejected viscera packages and/or carcasses are removed from the conveyors by the inspector". This statement does however not imply that when a viscera pack or a carcass is rejected its corresponding part is rejected too.

- 4.1.2 Thus the method of claim 1 differs from that disclosed with respect to D1 in that:
- i) the carcasses in the first conveyor pass a control station for inspection of the carcasses and the viscera packs in the second conveyor a control station for inspection of the viscera packs,
  - ii) selection of a certain carcass for rejection or closer inspection automatically results in taking down this and the associated viscera pack,
  - iii) selection of a certain viscera pack for rejection or closer inspection automatically results in taking down this and the associated carcass,
  - iv) carcasses that have been taken down and associated viscera packs that have been taken down are placed juxtaposed on a special inspection conveyor belt.
- 4.1.3 The embodiment of Figure 14b of D1 presents a further difference with respect to the claimed method in that in D1 it is not the viscera conveyor but an intermediate conveyor which moves the viscera pack past the inspection station.
- 4.1.4 The Appellant has argued that claim 1 does not require separate control stations. This point of view cannot be shared. Claim 1 requires that the conveyor for the carcasses moves past a control station that is located

before or after the processing station (where viscera packs are eviscerated), whereas the second conveyor for viscera packs moves past a control station after the processing station.

Since claim 1 comprises the possibility that the carcasses pass the control station before the processing station (when the viscera pack is still inside the poultry), and requires that the viscera pack control station is located after the processing station, this implies that both control stations are separate.

The Appellant further submitted that the portion of conveyor 2 in Figure 14a of D1 between the two transfer devices 139a and 139b corresponds to the special inspection conveyor belt of the claimed invention. This point of view cannot be shared. At the location of the transfer device 139a the viscera packs associated with every second carcass conveyed in the conveyor 2 are transferred from the conveyor 4 to the conveyor 2. It is true that the veterinary inspector 14a inspects only the viscera packs and carcasses which are hanging together in the conveyor 2. However, not only viscera packs and their associated carcasses but also carcasses without associated viscera packs are presented to the veterinary inspector. Rejected viscera packs and/or carcasses are removed from conveyor 2 by the veterinary inspector 14a (see page 14, lines 7 to 17).

- 4.1.5 With respect to D1 as closest prior art, the problem underlying the claimed invention may be seen in improving the method for inspecting carcasses and viscera packs while substantially reducing the possibility of cross-contamination (see section [0003] of the patent specification).

This problem is solved by the above features i) to iv) defined in claim 1.

According to the claimed invention only the viscera packs that have been taken down for rejection or closer inspection and their associated carcasses together with only the carcasses that have been taken down for rejection or closer inspection and their associated viscera packs are placed juxtaposed on a special inspection conveyor belt for additional inspection by a veterinary inspector. There are no carcasses which are advanced without their associated viscera packs on the special inspection conveyor belt.

- 4.1.6 D2 does not give the skilled person any indication of this improved method for inspecting carcasses and viscera packs.

In D2 inspection occurs in a single inspection station 50 (Figure 5a) where the viscera packs in viscera conveyor 54 and carcasses in a carcass conveyor 41 are advanced past the veterinary inspector 49. However, upstream of the inspection station 50 rejected or unconditionally approved carcasses are transferred to a by-pass conveyor 45 and thus are not inspected by the veterinary inspector 49. Furthermore, upstream of the inspection station 50 rejected viscera packs are transferred to conveyor 43 and thus are not inspected either. As a result conditionally approved and unconditionally approved viscera packs as well as conditionally approved carcasses pass the inspection station 50, where only the conditionally approved carcasses are inspected in so far as these are

associated with their corresponding viscera packs (column 11, lines 48 to 53). It also follows that viscera packs for which no corresponding carcass is present pass the inspection station 50.

Therefore there is no disclosure or suggestion in D2 of transferring to a special inspection conveyor belt for additional inspection by a veterinary inspector, only the viscera packs that have been taken down for rejection or closer inspection and their associated carcasses together with only the carcasses that have been taken down for rejection or closer inspection and their associated viscera packs.

It follows that a combination of D1 and D2 cannot lead to the method for inspecting slaughtered poultry according to claim 1.

- 4.1.7 Independent claim 4 concerns a plant for inspection of slaughtered poultry according to claim 1 and is characterised in that the carcass conveyor and the viscera pack conveyor comprise
- i) means for taking down selected carcasses and associated viscera packs automatically,
  - ii) means for taking down selected viscera packs and associated carcasses automatically,
  - iii) placing the carcasses and associated viscera packs juxtaposed on a special inspection conveyor belt.
- Thus, only the viscera packs that have been taken down and their associated carcasses together with only the carcasses that have been taken down and their associated viscera packs are transferred to the special inspection conveyor belt for closer inspection or rejection. Accordingly, the aspects referred to with

respect to inventive step of the method according to claim 1 apply mutatis mutandis to the plant according to claim 4.

#### 4.2 Starting from D2 as closest prior art

4.2.1 As has been explained, only conditionally and unconditionally approved viscera packs in the conveyor 54 and only conditionally approved carcasses in the carcass conveyor 41 are advanced past the veterinary inspector 49 in the single inspection station 50 (Figure 5a). Viscera packs for which no corresponding carcass is present pass the inspection station; rejected or unconditionally approved carcasses are transferred to a by-pass conveyor and thus do not pass the inspection station. The veterinary inspector needs only to inspect the conditionally approved viscera packs and the conditionally approved carcasses "in so far as these are associated to each other" (column 11, lines 52 and 53) and thus, the veterinary inspector may disregard the remaining carcasses and the unconditionally approved viscera packs that are advanced past him. The inspection task of the veterinary inspector is said to be greatly reduced. There is also no disclosure or suggestion in D2 of the claimed improved method for inspection of slaughtered poultry, where only the viscera packs that have been taken down for rejection or closer inspection and their associated carcasses together with only the carcasses that have been taken down for rejection or closer inspection and their associated viscera packs are placed juxtaposed on a special inspection conveyor belt in order to be inspected by a veterinary inspector.

Thus contrary to the teaching of D2, only pairs of carcasses and corresponding viscera packs which need to be inspected are moved past the veterinary inspector by the special inspection conveyor belt. There are in particular no viscera packs which are advanced without their associated carcasses in the special inspection conveyor belt.

- 4.2.2 The Board is unable to agree with the Appellant's submissions that the only difference between the claimed invention and the prior art according to document D2 is that the inspection is carried out at the location of a special inspection conveyor belt carrying carcasses and viscera packs. It is true that the provision of a special inspection conveyor belt transferring carcasses and viscera packs along a veterinary inspector might belong to common general knowledge, but as has been set out the claimed invention lies in transferring in this special inspection conveyor belt for additional inspection by a veterinary inspector only the viscera packs that have been taken down for rejection or closer inspection and their associated carcasses together with only the carcasses that have been taken down for rejection or closer inspection and their associated viscera packs.
- 4.3 Accordingly neither the combination of D1 with D2 nor the combination of D2 with common general knowledge can lead to the method according to claim 1 or to the plant according to claim 4.

**Order**

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

The appeal is dismissed.

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte