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**Datasheet for the decision
of 18 April 2012**

Case Number: T 1071/10 - 3.2.04

Application Number: 01906406.2

Publication Number: 1248525

IPC: A22C 21/06

Language of the proceedings: EN

Title of invention:

Eviscerating member, device and method for processing a cluster of viscera of a slaughtered animal

Patentee:

STORK PMT B.V.

Opponent:

Linco Food Systems A/S

Headword:

-

Relevant legal provisions:

EPC Art. 100a)

Relevant legal provisions (EPC 1973):

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Keyword:

"Novelty - claim 1 according to the main and auxiliary request (no) "

Decisions cited:

-

Catchword:

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Case Number: T 1071/10 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 18 April 2012

Appellant:
(Patent Proprietor)

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(Opponent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 22 March 2010
revoking European patent No. 1248525 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: A. de Vries
Members: C. Scheibling
T. Bokor

Summary of Facts and Submissions

- I. By its decision dated 22 March 2010 the Opposition Division revoked the European patent 1 248 525. On 18 May 2010 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 21 July 2010.
- II. The patent was opposed on the grounds based on Article 100a), b) and c) EPC 1973. The Opposition division considered that claim 1 as granted was not new inter alia with respect to D7: WO-A-98/44806.
- III. Oral proceedings took place on 18 April 2012 before the Board of Appeal.
- IV. The Appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims according to the main request, in the alternative on the basis of the claims according to the auxiliary request, both filed with letter dated 16 March 2012.

He mainly argued as follows:

Claim 1 of the main request now specifies that the eviscerating head substantially follows the contour of the breast bone of the bird "substantially without moving the viscera, until the viscera is clamped between the jaw parts". This implies that the organs of the viscera pack are kept in their natural, anatomical position without being moved relatively to each other.

This object is not achieved by the eviscerating member disclosed in D7. Though it is acknowledged that there also the eviscerating member with spoon and grabber are tilted during insertion to follow the breast bone, the spoon is swung away from the grabber in order to substantially move the viscera to free the access to the gullet for the grabber.

V. The Respondent (opponent) mainly submitted that:

According to the claimed invention the eviscerating member is inserted and tilted within the body cavity of the bird. When taking into account the shape of the eviscerating member as shown in the Figures, it is clear for the skilled person that the viscera are compressed during this movement so that they are moved. Consequently, the expression "without substantially moving the viscera" must be interpreted broadly. Accordingly, the eviscerating member disclosed in D7 does not substantially move the viscera either. D7 also discloses that a part of the cluster of viscera is placed between the jaw parts "by moving the jaw parts from the closed to the open and back to the closed position".

The Respondent requested that the appeal be dismissed.

VI. Claim 1 of the main request reads as follows:

"1. Eviscerating member for processing a cluster of viscera of a slaughtered bird, comprising:
- an eviscerating head (4) for removing the cluster of viscera from the body cavity of the slaughtered bird, which eviscerating head (4) comprises a first jaw part

and a second jaw part, which jaw parts are adapted to move with respect to one another between an open position and a closed position, the eviscerating head (4) being tiltable to the body cavity,

- a support member (6) for supporting the eviscerating head (4),
- first actuating means for moving at least the eviscerating head (4) into the body cavity of the bird in order to place a part of the cluster of the viscera between the jaw parts, and for moving the eviscerating head (4) out of the body cavity while said part of the cluster of viscera is clamped between the first and second jaw part in their closed position, the first actuating means being adapted for controlling the movement of the support member and the eviscerating head (4),
- second actuating means for moving the jaw parts from the closed position to the open position such that the part of the cluster of the viscera to be clamped comes to lie between the first and second jaw part, and for moving the jaw parts from the open to the closed position in order to clamp the part of the cluster of viscera,

characterised in that,

the evisceration member further comprises control means which are adapted to move the eviscerating head (4) into the body cavity of the bird and during this movement to effect tilting of the eviscerating head (4) relative to the body cavity such that the eviscerating head (4) substantially follows the contour of the breast bone (50) of the bird, substantially without moving the viscera, until the viscera is clamped between the jaw parts."

VII. Claim 1 of the auxiliary request:

With respect to claim 1 of the main request, the expression "by moving the jaw parts from the closed position to the open and back to the closed position" has been added between "first actuating means ... between the jaw parts" and "and for moving the eviscerating head ..." and the final wording of claim 1 of the main request "until the viscera is clamped between the jaw parts" has been deleted.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty of the subject-matter of claim 1 of the main request:*
 - 2.1 Novelty has been challenged inter alia with respect to D7.

It is undisputed by the Appellant (patentee) that D7 discloses all the features of the subject-matter of claim 1 except for the feature that the movement of the eviscerating head following the contour of the breast bone of the bird is "substantially without moving the viscera, until the viscera is clamped between the jaw parts".
 - 2.2 It has thus to be determined how the expression "substantially without moving the viscera" has to be construed in the meaning of the patent in suit. The description (column 6, lines 40 to 42) refers in this respect to the fact that "until this processing

stage [when the jaw parts are closed], the viscera are substantially in a natural, anatomically undisturbed situation". In claim 26 it is specified "that the jaw parts, in step (iv), grip the cluster of viscera in a situation which is substantially anatomically undisturbed". No other explanation is given in the patent.

The board concludes that in the meaning of the patent in suit the expression "substantially without moving the viscera" means that "the viscera are substantially in a natural, anatomically undisturbed situation", but apparently permitting the presence of the eviscerating tool and inevitably the breaking of some connective tissue, otherwise the eviscerating tool could not be inserted.

This does not mean, as contended by the Appellant, that the different organs of the cluster of viscera are not moved with respect to each other, but rather that the natural anatomical order they have in the cluster of viscera is substantially maintained. This will be the case as long as the connective tissues between the different organs of the cluster of viscera remain substantially unbroken.

- 2.3 According to D7 (page 1, line 30 to page 2, line 7; page 4, lines 15 to 28; Figures 1a to 1g) once the eviscerating member comprising spoon and grabber has travelled along the breast bone, the evisceration spoon encircles the intestine pack (comprising the organs and the intestine; see page 1, line 10) which "now is placed in the hollowness of the evisceration spoon" (page 4, lines 19 and 20). This corresponds to the position shown in Figure 1H. Subsequently, the spoon alone is moved upwardly along the back of the broiler

so that the grabber is free to open and grab around the gullet (see page 2, lines 2 to 6, Figure 1I). As a result the cluster of viscera, which at this moment is still contained in "the hollowness of the spoon" is shifted away from the grabber. This movement compresses the cluster moving the viscera within it closer together, without affecting their general layout within the cluster.

Accordingly, the viscera are maintained substantially in their natural, anatomically undisturbed order within the cluster and no connective tissues between the organs are broken. This means that also in D7 no substantial movement of the viscera occurs before the jaws of the grabber are closed.

Additionally, the movement of the cluster of viscera which takes place in D7 by moving the spoon alone is directly comparable to the movement of the cluster of viscera resulting from the compression exerted by the eviscerating member in the patent when it is tilted within the body cavity (see the patent specification, column 9, lines 17 to 24 and Figures 7d and 7e) and which also does not result in a substantial movement in the meaning of the patent in suit.

2.4 Accordingly, the subject-matter of claim 1 of the main request is not new with respect to D7 and thus, the main request must fail.

3. *Claim 1 of the auxiliary request:*

3.1 Claim 1 of the auxiliary request differs from claim 1 of the main request in that it further specifies in the preamble of the claim that the cluster of viscera is placed between the jaw parts "by moving the jaw parts

from the closed position to the open and back to the closed position". Furthermore, the final expression of claim 1 of the main request "until the viscera is clamped between the jaw parts" has been deleted.

- 3.2 Since the Appellant has already acknowledged with respect to the main request that D7 discloses all features of claim 1 except that the eviscerating head substantially follows the contour of the breast bone of the bird substantially without moving the viscera "until the viscera is clamped between the jaw parts" and since this feature is no longer part of claim 1 of the auxiliary request, it has solely to be determined for assessing novelty with respect to D7, whether this citation also discloses that the cluster of viscera is placed between the jaw parts "by moving the jaw parts from the closed position to the open and back to the closed position".

In D7, page 1, lines 1 to page 2, line 5 it is stated "the evisceration spoon and the grabber immediately after the insertion from above in the body of the broiler are swung outwardly/downwardly close along the breastbone of the broiler before the evisceration spoon and the grabber again are moved inwardly/downwardly and encircle the intestine pack, that the evisceration spoon thereafter alone is moved upwardly along the back of the broiler and at the same time that **a foremost end of the grabber is opened**, that the back of the broiler is pressed outwardly, so that **the open grabber is grabbing around the gullet** between the prestomach (proventriculus) and crop, when **it thereafter is closed again ...**" (emphasis added).

Thus in D7 too, the cluster of viscera is placed between the jaw parts "by moving the jaw parts from the closed position to the open and back to the closed position".

- 3.3 Accordingly, the subject-matter of claim 1 of the auxiliary request is not new with respect of D7. Consequently, the auxiliary request must fail too.

Order

For these reasons it is decided that:

The appeal is dismissed.

The registrar:

The Chairman:

G. Magouliotis

A. de Vries