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Datasheet for the decision of 31 January 2013

Case Number: T 0133/11 - 3.2.04

Application Number: 97201044.1

Publication Number: 800768

IPC: A22C 21/00

Language of the proceedings: EN

Title of invention:
Apparatus for filleting the breast piece of slaughtered poultry

Patent Proprietor:
Machinefabriek Meyn B.V.

Opponent:
STOCK PMT B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 100a)

Keyword:
"Main request -novelty (yes) - inventive step (yes)"

Decisions cited:
T 0570/91

Catchword:
-

Case Number: T 0133/11 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 31 January 2013

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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 16 November 2010 concerning maintenance of European patent No. 800768 in amended form.

Composition of the Board:

Chairman: A. de Vries
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

I. In its interlocutory decision posted on 16 November 2010, the Opposition Division found that, taking into consideration the amendments made by the patent proprietor, the European patent and the invention to which it relates met the requirements of the EPC. On 6 January 2011 the Opponent (Appellant) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 15 March 2011.

II. The patent was opposed on the grounds of Articles 100a) and b) EPC. The objection based on insufficiency of disclosure was withdrawn by letter dated 19 December 2005.

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

D1-1:User's Manual "Semi-automatic filleting system AMF 2000, Wishbone remover module 1218601/E/H3461, 03-06-1994
D10: EP-B-0 709 032
D11: US-A-5 071 388
D12: US-A-3 986 231
D13: EP-A-0 544 094

IV. Oral proceedings before the Board took place on 31 January 2013.

V. The Appellant (Opponent) requests that the decision under appeal be set aside, the patent be revoked.

The Respondent (Proprietor) requests that the appeal be dismissed, in the alternative that the decision under appeal be set aside and the patent be maintained on the basis of the set of claims filed as auxiliary request 3 with letter dated 12 July 2011.

VI. Claim 1 of the main request (as held allowable by the Opposition division) reads as follows:

"Apparatus for filleting the breastpiece (1) of slaughtered poultry, which breastpiece (1) at least comprises the sternum (2) and the wishbone (3) defined by both clavicles, with means (4) for supporting and conveying the breastpiece (1) and with cutting means (7) for cutting loose the breastmeat from the sternum (2) and wishbone (3), characterised in that the cutting means comprise a cutting device (7) having a V-shape which basically corresponds with the outermost boundary of the wishbone (3), wherein said cutting device (7) is driven such that it severes the breastmeat from the wishbone (3) closely adjacent said outermost boundary and, as seen in the direction of conveyance (6) of the apparatus, moves along substantially synchronously with the breastpiece (1) while severing, wherein the substantially synchronous motion of breastpiece (1) and cutting device (7) is realised by a cutting device (7) driving apparatus synchronised with the conveying means (4), offering said cutting device (7) a circular track which along part of its circumference substantially coincides with the track followed by the wishbone (3)."

VII. The Appellant mainly argues that the subject-matter of claim 1 of the main request lacks novelty with respect to D10 as well as with respect to the alleged prior art

illustrated by D1-1. Both documents disclose a filleting apparatus comprising a cutting device that is moved along a closed loop. If a closed loop is not considered to form a circular path in its broadest meaning, then the problem to be solved would be to propose an alternative path. However providing a circular path is merely one of the obvious alternatives to a path forming closed loop, as shown for example in D12. Since providing a circular path has no particular advantage over a closed loop, choosing this obvious alternative cannot imply any inventive skill. Moreover, starting from D11 or D13 which disclose punching out a central joint, especially of poultry legs or wings, the skilled person would find it obvious to replace the punching tool of these devices by a tool adapted for punching out the wishbone and so arrive at the claimed apparatus.

VIII. The Respondent mainly submits that neither D10 nor D1-1 discloses a cutting device driving apparatus providing the cutting device with a circular track.
Additionally D1-1 does not disclose a V-shaped cutting element. Starting from D1-1 there is no hint for the skilled person to provide a circular track and a specific driving apparatus for the cutting element in order to allow for continuous flow of poultry breastpieces to be processed. D12 relates to evisceration, a totally different kind of process, so that the skilled person would not take D12 into consideration for solving a problem relating to filleting. D11 and D13 cannot be considered as realistic starting points for the claimed invention.

Reasons for the Decision

1. The appeal is admissible.

2. Novelty - main request

2.1 Novelty has been challenged with respect to D10 and the alleged public prior use.

2.2 D10

2.2.1 This document is a post-published European application that claims an earlier priority and thus belongs to the prior art according to Article 54(3) EPC for the purpose of novelty.
It discloses, figures 1, 2 and 4, a filleting device with a cutting brace 15 which is driven (by rod 9 and follower roller 10 in a curved track 11) to move in synchronism with carriage 1 conveying the breastpiece 3 to sever the breastmeat from the wishbone closely adjacent to the wishbone's outer boundary. Carriages 1 are said to follow an endless round going track, paragraph [0015].

The critical question in this respect is whether or not D10 discloses that the substantially synchronous motion of breastpiece and cutting device is realised by a cutting device driving apparatus synchronised with the conveying means, offering said cutting device a circular track which along part of its circumference substantially coincides with the track followed by the wishbone.

Leaving aside whether the loop-like brace 15 of figure 4 is a V-shaped cutting device in the meaning of claim 1, there is no direct and unambiguous disclosure in D10 that this brace follows a circular track to act on the breastpiece.

2.2.2 The Appellant argues that in D10 (figures 1 and 2) the movement of the brace 15 driven by operating rod 9 with roll 10 in curved track 11 is in synchronism with the carriage 1 which follows an "endless round going track", means that brace 15 follows a circular track in its broadest meaning.

2.2.3 The indication "endless round going track" however means nothing more than that the carriage is conveyed round and round in an endless loop. It implies nothing as to the particular shape of the loop, which needs not be circular but could have for example an elongate shape with long straight sections as is common in endless conveyors. Nor can anything conclusive be said to the up and down movement of the brace 15 on the carriage. The shape of the curved track 11 in figures 1 and 2 might suggest a linear movement (assuming linear movement of the carriage). The trajectory of the brace as it moves along with the carriage will describe some complex cyclical shape - that of the conveyor loop with the up/down movement superimposed. That this should be "circular" in some way, however broad the term is read, is by no means clear.
Accordingly, D10 at least does not disclose a cutting device following a circular track.

2.3 Alleged public prior use.

2.3.1 As shown in figures 8.1 to 8.5 (page 8) of the User's Manual D1-1, the cutting device comprises two cutter blades (10) and a wishbone cutter knife (9) in the shape of the head of an arrow. These cutting elements are moved by cylinders as shown in figure 28.1, page 28. In particular the arrow shaped cutter knife is shown in the figures as moving perpendicularly up and down with respect to the breastpiece support, while the two side cutters 10 move obliquely towards and then perpendicularly (together with knife 9) away from the breastpiece support.
On page 15 it is stated with respect to figure 15.1, in the paragraph referring to chain tensioning: "Drive chain 26 has the correct tension, if the carrier moves from left to right without jolting". From this statement it can be inferred that the carrier which is the entire cutting head shown at 3 in figure 14.1 with knife 9 and cutters 10, performs a lateral movement parallel to the conveyor movement. This movement is obtained by a coupling and chains that couple the carrier to the conveyor as seen in figures 7.1, 12.1, 13.1 and 14.2.

2.3.2 The Board holds therefore, that in operation the carrier of the cutting device moves substantially synchronously with the conveyor, i.e. with the breastpiece (due to the connection between the carrier drive and the conveyor via coupling in figure 14.1) while the cutting device as a whole performs at the same time a down and up movement (due to the actuation of the cylinders A, figure 28.1 via the control system shown in figure 17.1) after which the carrier returns

to its starting position. This results in a composite movement in which the cutting device as a whole describes a trajectory in the form of a closed loop. Part of this trajectory necessarily coincides with the track followed by the wishbone. Thus, D1-1 discloses a cutting device driving apparatus (cylinders and coupling device) that synchronises the cutting device with the conveying means, offering said cutting device a track forming a closed loop which along part of its circumference substantially coincides with the track followed by the wishbone.

However, as already discussed in connection with D10, a closed loop is not necessarily a circular track. Its exact shape depends on the particular nature of the motion in the two perpendicular directions and their relationship which e.g. depends on the gear ratio of the coupling of figure 15.1, which is not given in D1-1. Consequently, the exact shape of the closed loop is not known.

2.3.3 Moreover, even if in use the two blades (10) of the cutting device form a "V" in their end positions (of figure 8.3), it can hardly be said that the cutting device of D1-1 is "V-shaped". This indication "V-shaped" implies a permanent condition of the cutting device rather than that it refers to a transient configuration of the moving blades that they only assume after actual cutting is completed. The cutting element of D1-1 comprises three blades that move with respect to each other. The two blades (10) move together to meet and form a "V" in the end position of the cutting device with the cutter knife (9) closing one side of the V forming a kind of prismatic receptacle which holds the wishbone while it is removed

to be blown away. The knife and blades then separate. Thus, even if the blades and knife assume briefly a V-like configuration, the complete cutting device, i.e. all blades together, does not posses a V-shape as required by the claim.

The Appellant submits that at least the cutter (9) is V-shaped (in the form of the head of an arrow). However, according to claim 1 there is provided "cutting means (7) for cutting loose the breastmeat from the sternum (2) and wishbone". The said arrow-shaped cutter of D1-1 is not able to perform this task on its own and thus is not a "cutting means" in the meaning of claim 1.

2.4 Consequently, the subject-matter of claim 1 is novel with respect of D10 and with respect to the alleged public prior use.

3. Inventive step - main request

3.1 D10 is comprised in the state of the art according to Article 54(3) EPC and thus to be disregarded when assessing inventive step.

3.2 Starting from the alleged public prior use (D1-1)

3.2.1 The claimed device differs in essence from the device of D1-1 in that:

- the cutting device follows a circular track,
- the cutting device has a V-shaped form.

3.2.2 The Respondent sees the problem underlying the invention in providing an apparatus that allows for

filleting breastpieces in a continuous manner at an almost constant speed.

The Appellant submits that D1-1 already provides for a continuous processing of the breastpieces and that the problem to be solved can therefore only be seen in providing an alternative path for the cutting device. He further contends that the skilled person would on the basis of his common general knowledge or in view of D12 use a V-shaped cutting device that follows a circular track as a straightforward alternative.

3.2.3 However, even if the skilled person were to consider that a V-shaped cutting device is an obvious alternative to the knife and blades (9 and 10 in figure 8.3) of D1-1 on the one hand and that a circular track could be an obvious way of realising a closed loop on the other, the apparatus shown in D1-1 would not work if it were equipped with a V-shaped cutting device and in which the closed loop is realised as a circular track.

As stated the requirement of a V-shaped cutting device implies that the cutting device is permanently so shaped. In D1-1, the movement of the cutting device is always more or less along the longitudinal axis of the sternum. Made to move along this axis a V-shaped cutting device will bump into the wishbone and be unable to cut loose the breastmeat from the wishbone. Cutting the breastmeat loose from the wishbone with a V-shaped cutting device is indeed only possible if the movement of the cutting device is effected in a direction that is perpendicular to the longitudinal axis of the sternum. Considering that the device of D1-1 is specifically configured for cutting and removal in

the axis of the sternum, the Board finds that such a further modification of D1-1's teaching, which is necessary to allow a V-shaped cutter to work, goes beyond the routine activities of the skilled person. The skilled person would therefore not as a matter of obviousness modify such an apparatus to provide it with a V-shaped cutting device following a circular track as claimed.
This finding is irrespective of whether circular conveying tracks are known to him from his common general knowledge in the field or from a specific teaching such as D12.

3.3 Starting from either D11 or D13

3.3.1 D11 relates to "processing poultry extremities containing upper and lower bone member portions joined together by a central joint" comprising "removing the central joint" (column 1, line 62 to column 2, line 5). D13 relates to processing poultry legs by punching out the central joint (column 1, lines 1 to 7).

The Appellant submits that it would be obvious for the skilled person to replace the specific die used for punching out the central joint by another die adapted for punching out the wishbone.

In the case at hand starting from a device for processing poultry extremities by removing or punching out a central joint, the skilled person applying routine skills will only arrive at a device, albeit modified, that removes the central joint. The idea that he might be able to modify the device, by replacing the cutting die but also by adapting other parts such as

the carriage to hold and orient a breastpiece, so that the device removes wishbones from a breastpiece instead of joints from legs goes far beyond his routine skills and abilities.

3.3.2 In principle any prior art can serve as a starting point for assessing inventive step. Inventive step is then confirmed if there is no path that leads the skilled person in obvious manner from any prior art to the claimed invention. Conversely, only one obvious path is sufficient to deny inventive step. However, whatever prior art the person skilled starts from, he will of course be bound afterwards by that choice. If, for instance, the person skilled in the art starts from a device which is specifically designed for a particular aim and purpose, he can further develop that apparatus within the limits of his routine skill and abilities. However, at the end of that development the modified device must still serve that particular aim and purpose (cf. T 570/91, point 4.4).

3.3.3 Therefore, neither D11 nor D13 can lead the skilled person in an obvious manner to the claimed invention.

3.4 In conclusion the Board finds that none of the cited prior art leads in an obvious manner to the subject-matter of claim 1 of the main request as held allowable in the decision under appeal. The appeal must therefore fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis A. de Vries