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**Datasheet for the decision
of 5 November 2013**

Case Number: T 0386/11 - 3.2.04

Application Number: 00204193.7

Publication Number: 1108361

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:

Apparatus for conveying slaughtered animals

Patent Proprietor:

Meyn Food Processing Technology B.V.

Opponent:

STORK PMT B.V.

Headword:

Relevant legal provisions:

EPC Art. 100(a)

Keyword:

"Main request - inventive step (yes)"

Decisions cited:

T 0570/91

Catchword:



Beschwerdekammern
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Case Number: T 0386/11 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 November 2013

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 17 December 2010 rejecting the opposition filed against European patent No. 1108361 pursuant to Article 101(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. By its decision dated 17 December 2010 the Opposition Division rejected the opposition. On 11 February 2011 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 20 April 2011.

The patent was opposed on the grounds based on Article 100(a) EPC (lack of novelty and inventive step) having regard to the following documents in particular:

D1: WO-A-93/13671
D2: US-A-2 557 707
D3: EP-A-0 086 700
D4: US-A-5 875 738
D5: US-A-4 689 855
D6: US-A-2 129 968
D7: US-A-3 518 717
D11: Turkey World, July 1969, front page and page 22

By a first decision posted 12 October 2007 the Opposition division revoked the patent for lack of novelty. In the subsequent appeal by the Proprietor the Board (in a different composition) in its decision T1979/07 held that the subject-matter of granted claim was novel over D1, D2 and D3.

In its second decision of 17 December 2010 the Opposition Division held that that the remaining ground for opposition of inventive step did not prejudice maintenance of the patent as granted.

II. Oral proceedings took place on 5 November 2013 before the Board of Appeal.

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

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 any of the auxiliary requests 1 to 5 filed with letter dated 26 July 2011.

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

"An apparatus for conveying slaughtered animals, in particular birds or parts of birds, which apparatus comprises a plurality of carriers for the animals, each of which carrier is connected via adjustable coupling means with a conveyor, and which travel a path passing at least one inspection or processing station, wherein during operation of the conveyor each carrier at a predetermined position in the conveyor's path is rotatable about a substantially vertical axis by means of adjusting the coupling means via at least one operating unit positioned along the path, and wherein along the conveyor's path there is at least one guide member provided which is capable, after the carrier is rotated to a predetermined position, of moving the animal suspended from the carrier such that it is diverted around the processing station, characterized in that each carrier possesses at least one arm extending substantially sideways, and in that the guide member is equipped to cooperate with the arm when, as a result of the carrier's rotation to the predetermined position, the arm is placed at right angles to the conveyor's path of travel."

V. The Appellant mainly argued as follows:

D1 is the closest prior art. The problem underlying the invention can be seen in providing an apparatus for conveying slaughtered animals such that they can be diverted in a more hygienic way around a processing station. In order to solve this problem the skilled person would on the basis of his common knowledge avoid any contact between the bird and the guide means, all the more when taking into account the teaching of one of the documents D2 to D7 or D11 and thus arrive at the claimed object in an obvious manner. In particular the skilled person would combine D1 with D2 or with D5 to this effect. The subject-matter of claim 1 also lacks an inventive step when starting from D2 and taking into consideration the teaching of D5.

- VI. The Respondent (patentee) contested the arguments of the Appellant. He mainly submitted that none of the cited prior art documents D2 to D7 and D11 specifically relates to diverting slaughtered animals around a processing station. The apparatus of D2 is not only unable to divert a slaughtered animal around a processing station and therefore not a suitable starting point for the invention, but also unable to suggest the specific apparatus as claimed to the skilled person. D5 is an apparatus for engaging and moving a given sequence of shackles and does not engage a shackle depending on whether it has been rotated or not, but at fixed intervals and thus cannot lead to the claimed invention.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request - inventive step*

2.1 Starting from D1

2.1.1 It is common ground that D1 discloses the closest prior art, namely an apparatus for conveying slaughtered birds, comprising a plurality of carriers for the birds which travel a path passing at least one processing station and which is also capable of moving the bird suspended from the carrier such that it is diverted around the processing station. In D1 (see figures 3, 4 and 6) if a slaughtered animal has to be diverted so as to bypass a processing station, the carrier 6 of the animal is rotated over 90° (page 7, third paragraph). Because the carrier is eccentric, by rotating the animal is brought in an eccentric position (B in figure 6), so that it contacts a guide bar (106 in figure 6) that guides it sideways out of the working range of the processing station to be by-passed (page 8, lines 2 to 5).

2.1.2 The subject-matter of claim 1 of the main request differs from D1 regarded as closest prior art in that it comprises a guide member which is equipped to cooperate with an arm of the carrier when, as a result of the carrier's rotation to the predetermined position, the arm is placed at right angles to the conveyor's path of travel.

2.1.3 As a result direct contact between the animal and the guide member is avoided. The problem underlying the invention with respect to D1 can thus be seen in providing an apparatus for conveying slaughtered animals such that it can be diverted in a more hygienic way around a processing station (see patent in suit, paragraph [0002]).

2.1.4 The Appellant submitted that on the basis of its common general knowledge the skilled person would immediately recognise that hygiene could be improved by avoiding any contact between the guide member and the animal. The straight forward solution would therefore be to modify the apparatus such that the guide member contacts a part of the carrier and not the animal.

2.1.5 The Board can agree so far. However, it does not share the Appellant's point of view when he contends that in reference to D1 it would also be obvious to realize the part of the carrier contacted by the guide member in the form of an arm. According to this argument, the part of the carrier of D1 (see figure 4) in which the legs of the animal are accommodated and that can be tilted about the axis (12) with respect to the connecting means (8) by acting on the levers 14 or 15 (figure 2 and 3, shown but without reference sign in figure 4) is an arm in the meaning of the claimed invention.

The Board is firstly of the view that there are many different ways of realizing a contact part on the carrier other than an arm. Moreover, an arm is normally defined as a slender part projecting from a trunk. This is certainly not the case for the tiltable part of the carrier accommodating the animals legs.

Nor does the Board consider either of the control levers (14) and (15) shown in figures 2 and 4 of D1 to itself be an arm in the meaning of the claimed invention. Neither lever is suitable to cooperate with a guide member which is capable of moving the animal suspended from the carrier such that it is diverted around the processing station as required by claim 1, as this would interfere with their combined main

function (as shown in figure 3) of discharging the animal.

Finally, the Board is unable to see how, in D1, the bird itself can be considered to fulfil the function of an arm (as contended by the Appellant). Even if this were so, this would not, in the Board's view, suggest to the skilled person as a matter of obviousness to provide the carrier with a separate arm.

2.1.6 The Appellant also referred to any of D2 to D7 and D11 to demonstrate that it is well known to move the animal by contacting the carrier and not the animal itself. However, although all these documents refer to carriers for slaughtered animals where a movement is induced by a guide member that contacts the carrier, none of these documents shows a carrier provided with an arm adapted to cooperate with a guide member when, as a result of the carrier's rotation to a predetermined position, the arm is placed at right angles to the conveyor's path of travel so as to move the animal suspended from the carrier such that it is diverted around a processing station.

2.1.7 The Appellant further submitted that in this respect D2 was of particular interest. D2 (figures 1, 5) discloses an apparatus for conveying slaughtered birds comprising carriers (figure 3) provided with arms (25) which are capable of engaging guide means (24) so as to rotate the transported birds over 90°. However, this movement is not used for diverting an animal around a processing station. There is no hint in D2 that the coupling comprising the arms (25) and the guide means (24) can be used for any other than the purpose described there of rotating the bird. Moreover, D1 already comprises coupling means for rotating the carrier over 90° by

means of a Maltese-cross (8) (see figures 1, 5). Thus D2 can solely teach the skilled person an alternative coupling means to that of D1 for rotating the carrier over 90°, but not a system for diverting a slaughtered bird around a processing station.

Moreover in D2 (see figure 3) the rod (30) and the sleeve (21) of the carrier cannot be tilted with respect to the U-shaped member (17) so that the arrangement disclosed in D2 cannot be used in combination with a conveying device comprising a guide member as disclosed in D1 that necessitates to tilt the carrier with respect to the trolley in order to move the animal suspended from the carrier such that it is diverted around a processing station.

Finally, even if D2 refers in column 1, line 39 to "sanitary conditions", it never states that these are in any way related to the fact that the carrier disclosed in this document comprises arms cooperating with guide means.

Therefore, the skilled person would not rely on D2 for solving the problem underlying the claimed invention, and even if he would consider the teaching of D2 this teaching would not lead him in an obvious manner to the claimed apparatus.

2.1.8 The Appellant also considered in writing that starting from D1 the skilled person would rely on D5 for solving the problem underlying the invention.

D5 (see abstract, figures) is an apparatus for engaging and moving shackles 16 in a given sequence (i.e. every second, third, fourth ... shackle) to one side of a line divider guide (50 in the figures) while permitting the

other shackles to pass unengaged onto the other side of the line divider guide.

According to D1, the carriers which are to be diverted are those which have been rotated over 90°.

However, the apparatus of D5 does not engage a carrier depending on whether it has been rotated or not, but at fixed intervals under action of a deflector bar 42 acting as a rotatable cramming device which periodically contacts and urges outwards shackles 16 (column 3, lines 33 to 41). Consequently, the system of D5 is not suitable for having selected carriers (those that have been rotated through a quarter turn) by-passing a processing station.

Moreover, the carriers of D5 (see figure 1) do not comprise an arm which is engaged by the guide means. The deflector bar 42 is not part of the shackles 16. Nor is the carrier of D1 (figure 4) provided with a sideways extending arm in the meaning of claim 1. Consequently, the hypothetical combination of D1 with D5, even if this might be obvious, would also miss this feature and would thus not result in the claimed subject-matter.

2.2 Starting from D2

The Appellant further considered in writing that D2 would also be a suitable starting point for the invention.

However, as explained in section 2.1.7 above, D2 discloses an apparatus comprising carriers that can rotate the transported birds over 90° but that do not

divert them around a processing station, which is a central aspect of the present patent.

Although a person skilled in the art is completely free in choosing a starting point, he will of course be bound afterwards by that choice. If, for instance, for whatever reason it may be, a person skilled in the art prefers and decides to start from a specific apparatus for rotating the transported birds over a quarter turn, he can further develop that apparatus, but at the end of that development the normal result will still be an apparatus for rotating the transported birds over a quarter turn and not an apparatus for diverting the transported birds around a processing station. In other words, the chosen closest prior art must be able or at least potentially able, perhaps after modifications, to obtain the same effects as those resulting from the claimed embodiment. Otherwise, such starting point prior art could not lead a skilled person in an obvious way to the claimed invention (see T 0570/91, point 4.4). Therefore, D2 is not a suitable starting point for the invention.

3. Consequently, the subject-matter of claim 1 of the main request involves an inventive step with respect to D1 in combination with either of D2 to D7 or D11 even when taking into consideration the common general knowledge of the skilled person, as well as with respect to D2 in combination with D5.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated