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**Datasheet for the decision
of 13 October 2016**

Case Number: T 1585/12 - 3.2.04

Application Number: 07075198.7

Publication Number: 1834526

IPC: A22C21/06

Language of the proceedings: EN

Title of invention:

Device for taking entrails packages

Patent Proprietor:

Numafa Holding B.V.

Opponent:

Marel Stork Poultry Processing B.V.

Headword:

Relevant legal provisions:

EPC Art. 100(c), 54, 56

Keyword:

Grounds for opposition - added subject-matter (no)
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 1585/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 13 October 2016

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 15 May 2012 rejecting the opposition filed against European patent No. 1834526 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman A. de Vries
Members: S. Oechsner de Coninck
C. Heath

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal, received on 9 July 2012 against the decision of the opposition division dated 15 May 2012 to reject the opposition against the patent EP1834526, and paid the appeal fee the same day. The statement setting out the grounds of appeal was filed on 12 September 2012.
- II. Opposition was filed against the patent as a whole and based on Article 100a) together with 52(1), 54(3) and 56 EPC as well as Article 100c) together with 123(2) EPC.
- The opposition division held that the grounds for opposition mentioned in Article 100 (a) and (c) EPC did not prejudice the maintenance of the granted patent unamended having regard to the following documents in particular:
- D5: US 4 467 498 A
D6: US 3 663 991 A
D7: US 4 293 978 A
D8: BE 813 138 A
- III. Oral proceedings were held on 13 October 2016 in the absence of the respondent who had confirmed their absence by telephone.
- IV. The appellant (opponent) requests that the decision be set aside and the patent be revoked in its entirety.
- The respondent (patent proprietor) requests that the appeal be dismissed and the patent thus maintained as granted (main request), in the alternative that the decision be set aside and the patent be maintained in amended form according to one of the auxiliary requests I to V, filed with letter of 6 December 2012.

V. The independent claims 1 and 22 as granted read as follows:

1."Device (1) for separating carcasses (K) of small live stock animals from the packages (80) of entrails eviscerated from the carcasses and connected thereto by the gullet (S), comprising a first conveyer (10) provided with respective holders (13) for the carcasses for transportation in series of the carcasses according to a first path, and a second conveyor (20) provided with a series of shielders/retainers (28,29) for shielding/retaining the packages from the carcasses held by the holders, wherein the second conveyor (20) is positioned for movement according to a second path having a first track (10b) going up together with the first conveyor, wherein the packages (90) can be engaged by the shielders/retainers, and a second subsequent track (10), diverging from the first path, for increasing the distance between the carcasses (K) and the related packages (80) to pull the gullet (S) loose or rupture it, wherein the shielders/retainers (28,29) are adapted for discharging the released packages."

22."A method for separating carcasses (K) of small live stock animals from the packages (80) of entrails eviscerated from the carcasses and connected thereto by the gullet (S), wherein the carcasses are transported in series according to a first path, wherein shielders/retainers that move along are moved between the carcasses (K) and the related packages (80), after which the packages according to a second path followed by the shielders/retainers (28,29) are diverging (10e) from the first path followed by the carcasses are diverted from carcasses following the first path in

order to detach or rupture the gullet (S), after which the packages (80) are collected for discharge."

VI. The appellant argues as follows:

- With respect to added-matter the mistranslation of "af/tegenhouders" by "shielders/retainers" introduces the new function of shielding not originally disclosed in the authentic text of the Dutch application as filed.

- As for novelty, claims 1 and 22 do not specify that the packages should be retained outside the carcass, therefore the grippers of D5 also retain the gullet and diverge from the conveyor path, thereby also falling within the scope of claims 1 and 22 thus destroying novelty.

- Relating to inventive step: Starting from D5 the subject-matter of claims 1 and 22 differs from the disclosed device and method by the shielders/retainers gripping the package outside the carcass. The skilled person would obviously regard the gripping means of D5 suitable for gripping the packages outside instead of inside the carcass if needing to catch these packages in a more eviscerated condition than in D5. Starting from D6 the skilled person would be faced by the problem of separating the packages in an appropriate way, he would turn to D7, which discloses the concept of pulling the head of a fowl apart from the carcass, and apply its adapted teaching to pull the packages away from the carcass.

Likewise starting from the diverging conveyor and rods of D8, the skilled person would increase speed and efficiency by using a carousel device common in the

field and shown in D7 and obviously adapt the V-shaped loop to separate the packages from the carcass instead of the rods used in D8 for that purpose.

VII. The respondent argues as follows:

- In the original Dutch application the units 28,29 operate the same way as in the patent and also have a shielding function as originally disclosed in paragraph 45 of the corresponding application as published.

- As for novelty, the gripping means of D5 engage a small portion of the gullet inside the carcass and not outside the carcass as required by claims 1 and 22 when properly interpreted in the light of the description and drawings. D5 therefore does not disclose shielders/retainers or moving them along diverging tracks or paths.

- Turning to inventive step, separation in D5 is achieved in a completely different manner to that claimed and requires completely different parts. There is no indication in D5 to arrive at a device as claimed that could be used for separation.

Starting from D6, this document does not disclose separation of the viscera from the carcass, nor does it disclose a series of shielders/retainers, or movement of the second conveyor as claimed, which furthermore does not have a second track diverging from a first track.

D8 as alternative starting point does not disclose a second conveyor provided with a series of shielders/retainers or the second conveyor movement along first and second tracks as claimed.

In any case starting from D6 or D8 the skilled person would not consider D7 so as to separate viscera from the carcass. As D7 concerns pulling the head from a chicken's carcass it has no relevance for the present invention.

Reasons for the Decision

1. The appeal is admissible.
2. Background of the invention, interpretation of claims 1 and 22
 - 2.1 The patent relates to a device and a method for separating packages of entrails from small livestock carcasses after evisceration. It is sought to provide a device and/or method with which in a simple and reliable way packages of entrails can be separated from the carcasses in series, patent specification, paragraph [0008].
 - 2.2 In claim 1 this idea is realised by a second conveyor carrying a series of shielders/retainers in addition to a first conveyor with holders conveying the carcasses in series. The second conveyor travels a first climbing track to reach the first conveyor carrying the carcasses. There the packages are engaged by the shielders/retainers, and a second subsequent track, diverging from the first path of the first conveyor. By increasing the distance between the carcasses and the related packages the gullet is pulled away and eventually detached.

The independent claim 22 defines the corresponding steps of providing shielders/retainers that are moved between the carcasses and the related packages, after

which the second path followed by the shielders/retainers is defined to diverge from the first one. The retained packages move away from the carcasses that follow the first path. By this relative divergent motion the gullet is ruptured or detached.

2.3 When interpreting a claim the skilled person should try with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation which is technically sensible and takes into account the whole of the disclosure of a patent, see Case Law of the Boards of Appeal, 8th edition, 2016, (CLBA) II.A 6.1. In this regard, the term "shielders/retainers" is not self explanatory. From a contextual reading of both independent claims the skilled person learns that the components identified by these terms are used for "shielding/retaining" the packages from the carcass and are moved between the carcasses and related packages. In the term "shielders/retainers" the retainer and corresponding retaining function is relatively clearly delimited as a means for holding the packages in some form or another. However, the shielding function does not appear immediately and clearly from that expression. In particular it is not self-evident in what respect or against what shielding is effected, much less what particular structural features might be implied.

2.4 Since the claims are silent on the particular meaning of the term "shielders/retainers", the skilled person will need to interpret the claim by turning to the whole content of the application and in particular the detailed operation of the units 28,29 disclosed in paragraphs 45 and 46 and depicted in figures 5a to 5g. There shielders/retainers are disclosed and depicted to be composed of two separate units. The lower unit 28

has a rod 45 and plate 44 that move upward between the carcass and eviscerated packages, specification paragraph [0045], last sentence. By this operation the packages are thus clamped between rod 45 of the lower unit 28 and the thickened end 56a of the upper unit 29, thereby performing the retaining function. The plate 44 of the lower unit comes between the carcass and package and therefore separate both parts and isolates the package from the carcass, thereby performing a shielding function by holding the carcass and the package apart. It is furthermore quite clear from the figures 5a to 5g in combination with the plate configuration in figure 3A that in operation this plate 44 is interposed between the hanging package 80 and the carcass and thereby provides a screen between the package and the carcass. In the context of the claims the term "shielders/retainers" will therefore be interpreted by the skilled person as a means holding the packages apart and separate, thus preventing their contact with the carcass.

2.5 Turning to the other issue of the location of the packages with respect to the carcass, the skilled person will use the same interpretation principles i.e. read the claims contextually and give the terms their usual meaning. In normal usage to "eviscerate" means to "take out the internal organs or entrails" (OED). Thus, the skilled person understands "packages of entrails eviscerated from the carcass" as referring to entrail packages that have already been taken out of the carcass and therefore located on its outer side. Consequently when reading the instruction further down in claim 1 that the packages are engaged by the shielders/retainers, the skilled person intent on making technical sense of the claim, will understand that the external retainers engage the eviscerated

packages of the claim, i.e. that have already been taken out and hang outside the carcass. Claim 22 read in context will be interpreted in the same consistent manner as referring to moving the retainer between the carcasses and outwardly located entrail packages.

The above interpretation of the wording of claims 1 and 22 is entirely consistent with the description, as is apparent from the figures 3a to 3c in conjunction with 5a to 5g and the passages relating thereto, e.g. specification paragraphs [0041], [0044] to [0049]. These clearly show how the lower one of two shielders/ retainers 28, 29 (using the reference signs of the claim) has a plate 44 that moves upward between the carcass and eviscerated entrail packages outside the carcass thereby holding the two apart and separate.

3. Added subject-matter

3.1 The present application Nr 07075198.7 was originally filed in the Dutch language and subsequently translated into English pursuant to Art. 14(2) EPC.

Pursuant to Art 70(2) EPC the Dutch filing therefore constitutes the authentic text of the application as filed. For the purpose of determining whether the patent extends beyond the application as filed, it should be examined whether the subject-matter of claims 1 and 22 has a basis in the original Dutch application. In particular, does the use of the term "shielders" introduce subject-matter not originally disclosed in the application as filed in Dutch.

3.2 Using the above understanding of the claims in the light of the description, the skilled person does not recognise any new subject-matter arising from the

device or method defined in claims 1 and 22. Other than the translation of Dutch "af-/tegenhouders" by "shielders/retainers" there are no apparent discrepancies between the description of the original application in Dutch and its translation into English which also contains identical drawings. Both documents convey to the skilled person the same teaching of the invention, in particular regarding the action of its various components. Specifically, it is clear from both texts and figures that that the "af-/tegenhouders " from the Dutch application and the "shielders/retainers" of the patent as granted are identical, having identical structure and operating in an identical manner. From the patent specification and from the claims when read in the light of the description the skilled person receives the same information as from the authentic Dutch text. Consequently, no information has been added to the patent that extends beyond the disclosure of the original application as filed, Article 123(2) EPC.

- 3.3 The Appellant further submits that the terms "shielders" and the function of "shielding" would introduce an unallowable intermediate generalisation between the general function of holding apart as originally found in the application in Dutch and the shielding as now claimed. The term "shielders" would also allow for shielding for example by a foil whereas simple rods can keep the packages away within the original meaning of "afhouden" (keep off). Furthermore, the description would not provide a suitable source for the shielding function since the plate 44 according to paragraphs [0041] and [0046] has a sliding and supporting function only.

3.4 The Board does not concur with this view. As follows from above the unclear term "shielder" only derives its full meaning in the light of the description and figures, and therefore cannot have a broader meaning than what can be inferred therefrom. Nor is this in conflict with the sliding and supporting function of plate 44, which in fact contributes to the insertion between carcass and package, cf paragraph [0045], last sentence. The example of a foil would not fulfill the function of holding apart and separate, and therefore does not fall within the technical meaning given to this term.

3.5 Thus, the subject-matter of Claims 1 and 22 of the patent as granted does not extend beyond the content of the application as filed and the ground for opposition mentioned in Article 100(c) EPC does not prejudice the maintenance of the patent as granted.

4. Novelty

4.1 Document D5 describes a device (and corresponding method) for pulling out the viscera from carcasses of small live stock animals, comprising a first conveyor provided with respective holders for the carcasses for transportation in series of the carcasses according to a first path. Carrier means B are rotatably mounted on a frame carrying gripping means A, and insertion means C for moving the gripping means to a viscera clamping position inside an interior cavity of the fowl are also provided (col 3, lines 31-35; figures 1-5). Furthermore, means C also allows retraction of the closed gripping means A so that the viscera section is pulled away from and completely separated from the carcass of the fowl (col 3, lines 42-45; fig 1-5).

4.2 On the basis of the same contextual reading of the claims 1 and 22, the gripping means C of D5 cannot be equated with the shielders/retainers of the claims 1 or 22 since they neither catch the portion of the packages hanging outside the carcass but only a small portion of the gullet, nor do they shield the packages from the carcass but merely the same small gullet portion.

4.3 Even considering that the claim wording does not exclude that part of the package could still be located in the carcass after evisceration, a contextual reading does require the eviscerated package, i.e. the package *outside* the carcass, to be engaged by the shielders/retainers. Contrary to the appellant's interpretation, the grippers of D5 do not engage the entrail packages outside of the carcass. The eviscerated package includes a plurality of different viscera. The small gullet portion between the crop 144 and stomach 143 effectively caught by the gripping means A in D5 is located inside the carcass. Hence the gripping means A do not operate on the part of the packages outside the carcass.

4.4 Therefore, the subject-matter of claim 1 is considered novel with respect to the disclosure of D5.

5. Inventive step

5.1 D5 in combination with the skilled person knowledge

5.1.1 The appellant substantiated a lack of inventive step in particular starting from the document D5. D5 also discloses a machine for harvesting viscera and indeed represents a suitable starting point.

5.1.2 As identified here above, the subject-matter of

claims 1 and 22 differs therefrom at least by the shielders/retainers for shielding/retaining retaining the packages from the carcass engaging the eviscerated packages (outside the carcass) and the corresponding step of being moved between the carcasses (K) and the related eviscerated packages in the method claim 22.

- 5.1.3 The patent in paragraph [0005] describes the device of D5 to be complex and failure prone, and the corresponding objective problem to simplify and increase reliability may be formulated.
- 5.1.4 The Board does not concur with the submission of the Appellant that the skilled person would obviously use the grippers of D5 to catch the gizzard or muscular stomach 143 that hangs outside the carcass depending on the level of evisceration as a straightforward measure. In particular, the gripping jaws 10,14 formed as two halves of a massive contoured body 20 made of a cylindrical section 20 and tapering section 22 would be unsuitable to reliably reach a tiny gullet section attached to the carcass. Even gripping the somewhat larger stomach section 143 could not be reliably achieved. This is especially true since the gullet portion hanging outside after evisceration would not be located at a precise and reproducible location on the carcass. The gripping jaws of D5 are themselves much too bulky and unprecise to be able to catch a thin portion of the viscera even if its location after evisceration would be known. In the Board's view, it would therefore require extensive modification of the gripping jaws to be able to retain a package hanging on and outside the carcass, let alone holding this package apart from the carcass while doing so. Such modification goes well beyond the standard adaptation abilities of the skilled person.

5.2 D6 in combination with D7

5.2.1 D6 is also used by the Appellant as a starting point and describes an eviscerating tool to pull the packages out of the carcass using a cup shaped member that is moved to enter the carcass and catch the entrails, and subsequently moved upwardly away to empty the carcass (col 4, lines 28; fig 8-10). D6 does not disclose separation of eviscerated packages, in particular no second conveyor with shielders/retainers operating as defined in claims 1 or 22 is disclosed.

5.2.2 The second conveyor effects automatic removal of the packages and the corresponding problem of providing such an automated separation of the eviscerated packages can be formulated.

5.2.3 D7 discloses a carousel type separation unit for automatically separating the head with a portion of the alimentary canal from a bird or fowl with an upper pair of fingers 96,98 retaining the fowl on either side of its neck and a lower V-shaped loop 52 catching the head and moving downwardly away from the fingers 96 and 98 according to a track until the head is eventually separated from the carcass. As shown in figures 9 to 14, the bird is hung upside down and the loop 52 is inserted just above the head.

D7 thus provides a solution to the separation of the head with oesophagus and crop from the main body in a well defined arrangement, with easily accessible engagement points. It does not address separating entrail packages that have been removed from the carcass and hang loosely outside it. Therefore, the skilled person would not look to D7 to find a solution

to automatically remove eviscerated packages hanging outside the fowl as in D6.

The Board cannot follow the appellant's argument that the skilled person would recognize in D7 the general teaching of pulling away and would then obviously apply it to pull the packages of D6 away as a straightforward measure. Indeed D7 relies on a different concept of pulling the head with a V-shaped loop while retaining the feet and subsequently separating it by a movement in opposing, upward and downward directions. Separating an entrail package hanging outside a carcass cannot be performed using such a V-shaped loop or by opposing, upward and downward movement of respective retaining elements. Hence contrary to the appellant's opinion the Board cannot recognise in D7 a suitable teaching to modify or even complement the eviscerating line of D6.

5.3 D8 in combination with D7

5.3.1 D8 discloses an eviscerating unit where an intestinal packet ("darmenpakket") is pulled off or away from the carcass by means of a first guide 5 (a rod, plate or shield), which follows the movement of the suspended carcasses (page 3, bottom paragraph), and bent rods 10 and 11, which are provided at curve 9 in guide 5. The packet is caught between rods 10, 11 and is separated by the diverging motion of the carcass (page 4, line 7 onwards; figure 1). The guide 5 in the form of plate or shield might be identified as the second conveyor of claim 1 travelling a second path according to claim 22. The subject-matter of claims 1 and 22 therefore differs from D8 by the series of shielders/retainers for shielding/retaining the packages from the carcass engaging the packages and the corresponding step of

being moved between the carcasses (K) and the related packages in the method claim 22.

5.3.2 Travelling shielders/retainers are active movable means as opposed to the bent static rods. They therefore increase the speed or efficiency of the separation step. The associated objective technical problem can be formulated accordingly as finding an alternative or a more efficient way of separating packages from the carcass.

5.3.3 As already seen above D7 discloses the concept of pulling the head apart from the carcass by diverging motion of a lower retainer moving away from an upper one according to a vertical direction. Although the appellant submits that a carousel type of device would be recognised by the skilled person as an effective means of increasing the output or efficiency, the Board does not see how the skilled person as a matter of obviousness would modify the diverging path of D8 comprised of two rods to incorporate a carousel and then adapt the teaching of D7 to produce the required relative movement. Indeed the static rods provide an effective way of clamping the packages and retaining them as they follow the laterally diverging path 5. In contrast D7 discloses two holding means comprising a specific V-shaped loop 52 and a standard 88 comprising fingers 96 and 98 and adapted for vertical movement. Both concepts and structural implementation are distinct and different from each other and it is not obvious how the skilled person would implement the holding means of D7 designed for vertical movement to replace the two rods of D8 diverging from the path 5 in the horizontal plane without extensive redesign or modification of these devices.

- 5.3.4 In particular, contrary to the appellant's submission the Board holds that it is well beyond the skilled persons routine skills and abilities to apply and adapt the pulling action of the neck as in D7 to the packages hanging on the carcass as disclosed in D8. Neither the v-shaped loop of the holding means nor the fingers are suitable to catch a package because they would contact the carcass with their end portion without being able to clamping the whole soft package resting on its surface and without holding package and carcass apart and separate. To do so would require extensive modification of the holding means of D7 to make it suitable to engage the hanging packets of D8 while holding them apart.
- 5.4 The Board concludes, therefore, that considering the various combinations of D5,D6,D7 and D8 as submitted by the appellant, the subject-matter of claim 1 as granted involves an inventive step within the meaning of Article 56 EPC.
6. In the light of the above, the Board confirms the opposition division's decision to reject the opposition, Article 101(2) EPC. Thus, there is no need for the Board to consider the respondent's auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated