

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 28 February 2018**

**Case Number:** T 0813/13 - 3.2.04

**Application Number:** 04762919.1

**Publication Number:** 1677611

**IPC:** A22C21/06

**Language of the proceedings:** EN

**Title of invention:**

PROCESS FOR EVISCERATION OF SLAUGHTERED POULTRY, SLAUGHTERING SYSTEM FOR THE TREATMENT OF VISCERA FROM SLAUGHTERED POULTRY AND A VISCERA HOLDER FOR A VISCERA CONVEYOR IN A SLAUGHTERING SYSTEM

**Patent Proprietor:**

Linco Food Systems A/S

**Opponent:**

Marel Stork Poultry Processing B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 83, 54(2), 56

**Keyword:**

Sufficiency of disclosure - (yes)

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

G 0009/92

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0813/13 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 28 February 2018**

**Appellant:** Marel Stork Poultry Processing B.V.  
(Opponent) P.O. Box 118  
5830 AC Boxmeer (NL)

**Representative:** EP&C  
P.O. Box 3241  
2280 GE Rijswijk (NL)

**Respondent:** Linco Food Systems A/S  
(Patent Proprietor) Vestermøllevej 9  
8380 Trige (DK)

**Representative:** Awapatent A/S  
Strandgade 56  
1401 Copenhagen K (DK)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 25 February  
2013 rejecting the opposition filed against  
European patent No. 1677611 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** G. Martin Gonzalez  
C. Schmidt

## Summary of Facts and Submissions

- I. The appellant-opponent lodged an appeal, received on 2 April 2013, against the decision of the Opposition Division of the European Patent Office posted on 25 February 2013 rejecting the opposition filed against European patent No. 1 677 611 pursuant to Article 101(2) EPC and simultaneously paid the required fee. The statement setting out the grounds of appeal was received on 25 June 2013.
- II. The opposition was filed against the patent as a whole and based on Article 100(a), lack of novelty and inventive step, and on Article 100(c), insufficiency of disclosure. The Opposition Division rejected the opposition holding that the invention was sufficiently disclosed and that the three independent claims 1, 7 and 11 were new and inventive, having regard *inter-alia* to following documents
- (D2) US 5299975 A  
(D7) WO 96/16553 A
- III. In the appeal proceedings the Board also considered the following further document filed with the statement of grounds:
- (D10) US 5993308 A
- IV. The appellant-opponent requests that the decision under appeal be set aside and that European patent No. 1 677 611 be revoked.
- V. The respondent-proprietor requests that the appeal be dismissed and that the patent be maintained as granted (main request) or, alternatively, on the basis of one

of the auxiliary requests 1 to 7, all filed with letter dated 26 January 2018.

VI. The wording of independent claims 1 and 7 as granted reads as follows

**1.** "A process for evisceration of slaughtered poultry, a viscera set (16) of a bird being gripped by a mechanical eviscerator (9) inside the bird and moved out of the bird and automatically delivered to a viscera holder (17) on a viscera conveyor (4) leading the viscera set away from the eviscerator (9), **characterized in that** the eviscerator (9) releases the viscera set (16) in a position above the top side of a carrier surface (38) of a viscera holder (17), whereupon the viscera set falls downwards and is received on the viscera holder in a manner so that the intestines (40) are suspended below the carrier surface while the heart (41), liver (42) and crop (43) lie on top of the top side of the carrier surface."

**7.** "A slaughtering system for the treatment of viscera from slaughtered poultry, comprising at least a bird conveyor (1), an eviscerator (2) and a viscera conveyor (4), the eviscerator having eviscerator units (9) automatically eviscerating viscera sets (16) from birds suspended in the bird conveyor, the eviscerated viscera sets being automatically transferred from the eviscerator units to viscera holders (17) on the viscera conveyor, **characterized in that** the viscera holders (17) are synchronously movable to positions under the eviscerator units (9) so that, after being released by the eviscerator unit, a viscera set (16) falls downwards and is gripped by the viscera holder in a manner so that the heart (41), liver (42) and crop (43) of the viscera set are lying on the top side of

the carrier surface (38) and the intestines (40) are suspended through an opening (39) in the carrier surface."

VII. The appellant-opponent argues as follows:

Claim 1 cannot be carried out over the whole breadth of the claim and consequently violates the requirements of Article 83 EPC. The subject-matter of independent claims 1 and 7 is not new over D2 and D10 and not inventive in the light of documents D2 and D7.

VIII. The respondent-proprietor argues as follows:

Late filed document D10 should not be admitted into the proceedings. Independent claims 1 and 7 are new and inventive over the cited prior art.

### **Reasons for the Decision**

1. The appeal is admissible
2. *Background of the invention*

The patent relates to evisceration and visual inspection of viscera in a conveyor for slaughtered poultry. Through visual inspection of the viscera, diseases of the bird that may lead to discarding the infested animal can be identified. After evisceration, each viscera set and associated carcass must thus remain associated through the veterinary visual inspection step. This is done by two parallel conveyors, the main one and the viscera holder conveyor. Both the process claim 1 and the apparatus or system claim 7 require for the transfer of viscera that the eviscerator releases the viscera set, whereupon the

viscera set falls downwards and is received on the viscera holder of the viscera conveyor or gripped by it in a manner so that the intestines are suspended below the carrier surface or through an opening in it while the heart, liver and crop lie on top. This has a twofold advantage. On the one hand suspended intestines are not barring the inspector's view of important organs - heart, liver and crop. This avoids the need for inspectors to turn the viscera around to see concealed parts. Viscera can thus be inspected at a higher speed and cross-contamination due to handling is prevented, see patent specification paragraphs [0005]-[0008] and [0014]. On the other hand, transfer from the eviscerator to the conveyor is performed by letting viscera fall instead of passing the viscera between e.g. grippers. The viscera can be deposited on the moving viscera conveyor holder without special transfer accuracy. It facilitates the transfer of viscera sets and allows faster speed of operation, see paragraphs [0010], [0011] of the specification. In sum, the claimed invention improves the transfer process of viscera sets from the eviscerator to the viscera conveyor and allows for subsequent veterinary inspection at higher speed, see paragraph [0008] of the specification.

3. *Sufficiency of disclosure - claim 1*

3.1 As held by the Opposition Division, an invention is in principle sufficiently disclosed if at least one way is clearly indicated enabling the person skilled in the art to carry out the invention, see also Case Law of the Boards of Appeal, 8th edition 2016 (CLBA), II.C. 4.2. The appellant-opponent does not contest the fulfilment of this condition, but submits that the above condition would be insufficient in cases where

the skilled person cannot successfully realize embodiments to cover the whole of the broad field claimed.

They submit, in particular, that features of the viscera holder that are essential for its operation are absent from claim 1, namely an opening in the viscera holder and a gripping action of the viscera holder. As a result the scope of claim 1 could then be construed to cover the use of a viscera holder having just "a carrier surface" and nothing else. It must however also be able to perform its task of receiving the heart, liver, and crop on the carrier surface whilst the intestines are suspended below as required by claim 1. An embodiment of such a minimal design of the viscera holder that also performs the above task is not taught by the patent specification, nor is such an embodiment indeed conceivable by the skilled person.

In the Board's opinion this reasoning ignores the fact that this task is also a functional feature of claim 1 and, as such, a limitation of the claimed scope. An embodiment not meeting a functional limitation is excluded from the scope of the claim and, consequently, cannot substantiate a lack of sufficiency of disclosure of the invention according to that claim. In the present case an embodiment that cannot perform the claimed task of receiving the heart, liver, and crop on the surface whilst the intestines are suspended below does not form part of the invention as claimed and cannot establish a lack of sufficiency of the invention.

- 3.2 The Board adds that the substance of the objection of missing essential features relates to clarity, Article 84 EPC, which is not a ground for opposition for a



granted claim. Such a lack of clarity can only result in a lack of disclosure if the essential features are also missing from the disclosure as a whole. That is not the case here, as the relevant features (leaving aside the question whether they are essential or not) , namely an opening in the viscera holder and a gripping action, are undoubtedly detailed in figures 4-7 and 11-14 together with their associated description and are indeed the subject of claim 7.

The Board therefore concludes that the invention according to granted claim 1 is sufficiently disclosed in the sense of Article 83 EPC.

4. *Claim interpretation*

- 4.1 The subject-matter of a claim is not only delimited by the meaning of isolated features but also by their interrelationship as defined by the claim wording. Additionally, according to general principles of claim interpretation the skilled person when considering a claim should try, with synthetical propensity, to arrive at an interpretation of the claim which is technically sensible and takes into account the whole disclosure of the patent, see CLBA, II.A.6.1.
- 4.2 The appellant-opponent reads the last feature of claim 1 such that the final position of the viscera set is not required to be the result of how they are received by the viscera holder after falling, but may be the result of a following or intermediate step or sequence of steps in which the viscera are subsequently arranged.
- 4.3 The Board however considers that such an interpretation is not derivable from the wording of the claim, when

interpreting the claim according to the general principles above. The skilled person, with a mind willing to understand and reading the claim contextually, readily comprehends that the characterising portion of claim 1 defines the transfer between eviscerator and viscera holder as a sequence of directly causally linked actions. Thus, as a consequence of being released from above the holder the viscera fall ("whereupon ...") and are received on the holder in the particular manner claimed ("in a manner so that ..."). The latter formulation defines the end result as a consequence of the falling from above and then reception onto the holder. Such a functional formulation implies otherwise unspecified features of the holder that produce the claimed arrangement of the viscera (heart, liver, crop on top, intestines suspended below the holder carrier surface) when the viscera are dropped onto the holder from above.

A similar formulation is used in claim 7 which requires that the viscera set "...falls downwards and is gripped by the viscera holder in a manner so that...". The same considerations apply when interpreting this claim.

- 4.4 The above interpretation fully corresponds to the two embodiments of the description, which describe the above sequence in detail and which achieve the final position of the viscera set as the direct result of the falling and then receipt onto the holder without any intermediate step. This course of events of the transfer action between eviscerator and viscera holder also corresponds with the main aim of the patent of improving the transfer process, see specification paragraphs [0008], [0011], including avoiding any manipulation of the viscera. Nor indeed is anything else suggested by the detailed description and figures.

The other parts of the specification cited by the appellant-opponent do not lead to a different conclusion. Claim 4 further specifies the final position of viscera, but explicitly claiming that it is also achieved "in connection with the receipt thereof on the carrier surface", thus also as linked to the receipt action and not as the result of a separate step. Paragraph [0012] describes replacing one grip by another grip without the viscera set falling downwards. This is however to be read in the context of transfer within the eviscerator, for example by means of an intermediate wheel 5 as shown in figures 1 and 3, before the claimed transfer from the eviscerator onto the holder. Paragraph [0018] discloses advantages of the final position of the viscera set for subsequent operations in the slaughtering system. These further advantages are not in disagreement with achieving the final position during viscera transfer as one single process but recite further benefits of the result of that process.

4.5 In sum, the Board holds that the wording of claims 1 and 7 are not open to the interpretation that the final viscera position can be achieved by an intermediate viscera accommodating step unlinked to the viscera holder receiving or gripping action, and that such interpretation is furthermore neither suggested by a reading of the patent specification as a whole.

5. *Novelty - claims 1 and 7*

5.1 Novelty is challenged in the light of D2 and late filed document D10. It is undisputed that D2 describes a two step process. In D2, see figure 1 and col.3, line 40, to col.4, line 15, the viscera set is first delivered

to tray 4 for veterinary inspection and then, having passed that inspection are arranged in the slot 10 of plate 5 in a second or intermediate manipulation in preparation for the following viscera separation process, see D2 column 2, lines 3-26. Reading the claim as indicated in the previous section the Board considers that the terms of claims 1 and 7 exclude any intermediate manipulation step, see previous section. Thus, in the context of the contested patent, D2 describes a transfer process that does not fulfil the last feature of either granted claim 1 or 7 because the viscera set in D2 is in the transfer process received by tray 4 in a manner so that the whole of the set lies on top of the top side of the viscera holder or tray 4. Consequently, the viscera set is neither received nor gripped by the viscera holder or tray 4 of D2 in a manner so that the intestines are suspended below the carrier surface or through an opening thereof as required by the contested claims. The Board thus holds that D2 does not anticipate the subject-matter of claims 1 and 7.

5.2 It is also immediately apparent that, as also acknowledged by the appellant, when claims 1 and 7 are read as above, that late filed D10 does not directly and unambiguously disclose all their features. Firstly, claims 1 and 7 call for a viscera holder on a viscera conveyor. The vacuum receiver 190 shown in figure 13, see col.6, lines 41 to 56, and onto which the viscera fall after evisceration, is described as fixed and is therefore unlikely to form part of cars 199 that convey the remaining package to the inspection stage (col. 6, lines 58 to 65). Furthermore, in the system according to D10, the intestines in their final position after transfer, are not suspended below the top surface of "holder" 190 but "are sucked away" through handle 194

connected to a source of vacuum, see D10 column 6, lines 41-48. They cannot therefore be led away from the eviscerator by the viscera conveyor while being suspended from the carrier surface, as required by the contested claims. The Board thus holds that, irrespective of the question of formal admissibility of D10, it cannot anticipate the subject-matter of claims 1 and 7.

The Board can but conclude that the process of claim 1 and the system of claim 7 are novel over the prior art as required by Article 54(2) EPC.

6. *Inventive step*

6.1 The appellant challenges the decision's positive finding for inventive step in the light of D7 and D2. D7 is indeed considered to be an appropriate starting point for assessing inventive step. Suspended viscera on viscera holders in a conveyor for veterinary inspection are described by this document, see D7 fig. 30 and page 4, lines 31,32. The appellant-opponent acknowledges that D7 only describes entrail packages partly lying on a horizontal surface of the viscera holder, but that the document D7 does not disclose a viscera set in its final position being held on the viscera holder so that the intestines are suspended while the heart, liver and crop lie on top of a carrier surface as in the contested claims.

Furthermore, figure 34 shows the transfer of the entrails package from the eviscerator to the conveyor, see page 8, lines 15, 16, the description not providing further details than the figure itself. It is not apparent to the skilled person from figure 34 how the transfer is actually performed. In particular whether

the viscera fall or whether they are passed over between grippers. Thus, D7 does not disclose either that the eviscerator releases the viscera set, which falls downwards and is received on the viscera holder or gripped by it in the required position for veterinary inspection.

- 6.2 As a result of these differences the heart, liver and crop are directly available for visual inspection without the intestines barring the inspector's view. This result is further directly achieved during the transfer operation between eviscerator and viscera holder in a simple process. Thus the technical problem to be solved may be seen as the improvement of the transfer of viscera sets from the eviscerator to the viscera conveyor in a manner so that the viscera can be inspected at a higher speed, see specification paragraph [0008].
- 6.3 In respect of improving the transfer process at the evisceration station in preparation for veterinary inspection, document D2 teaches that the entrails packages lying on trays 4 are optimally visible during inspection, see D2, column 2, lines 3-6. However, as discussed above in relation to novelty, D2 does not reasonably teach or otherwise suggest that the holder receives the falling viscera in a manner that heart, liver and crop are on top and the intestines suspended below the carrier surface of the holder. As noted in D2 they are laid out in the tray for inspection. As this central feature of granted claims 1 and 7, which allows for easy inspection without manipulation, is missing from both D2 and D7 it follows immediately that a combination of D2 and D7 (whether obvious or not) will not lead to the subject-matter of claims 1 and 7.

6.4 The Board can but confirm the decision's finding that the subject-matter of claims 1 and 7 involves an inventive step in the light of documents D7 and D2, Article 56 EPC.

7. *Granted independent claim 11*

Generally, the initial request of the party initiating the proceedings determines the extent of these proceedings, see **G 9/92**, published in OJ EPO 1994, 875, reasons section 1. During the current appeal, the appellant-opponent has not challenged the part of the appealed decision concerning validity of claim 11. Therefore, that question lies outside of the extent of the present appeal.

8. As otherwise all the objections raised by the appellant-opponent fail the Board confirms the findings of the Opposition Division.

**Order**

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

**The appeal is dismissed.**

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated