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**Datasheet for the decision
of 19 March 2018**

Case Number: T 0979/13 - 3.2.04

Application Number: 06732951.6

Publication Number: 1868443

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:

PROCESSING OF CARCASS PARTS OF SLAUGHTERED POULTRY

Patent Proprietor:

Marel Stork Poultry Processing B.V.

Opponent:

Meyn Food Processing Technology B.V.

Headword:

Claim interpretation/tulip

Relevant legal provisions:

EPC Art. 54(2), 56

Keyword:

Novelty - main request (yes)

Inventive step - main request (yes)

Decisions cited:

Catchword:



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Case Number: T 0979/13 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 19 March 2018

Appellant: Meyn Food Processing Technology B.V.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 March 2013
rejecting the opposition filed against European
patent No. 1868443 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
T. Bokor

Summary of Facts and Submissions

- I. The appellant-opponent lodged an appeal, received on 16 April 2013, against the decision of the Opposition Division of the European Patent Office posted on 19 March 2013 rejecting the opposition filed against European patent No. 1 868 443 pursuant to Article 101(2) EPC and, at the same time, paid the prescribed fee. The statement setting out the grounds of appeal was received on 15 May 2013.
- II. The patent was opposed under Article 100(a) EPC for lack of novelty and inventive step. The Opposition Division found that independent claims 1 and 31 are new and inventive having regard to *inter alia* the following documents
- (D1) US 3,412,425
(D2) US 3,629,903
(D4) US 5,176,564
- III. In the appeal proceedings the Board considered the following further document filed with the statement of grounds
- (D5) US 5,618,230
- IV. The Board duly summoned the parties to oral proceedings, to take place on 7 March 2018.

With letter received on 19 February 2018 the appellant-opponent communicated that they will not attend the oral proceedings.

The Board issued an order and corresponding communication dated 2 March 2018 cancelling the oral proceedings.

- V. The appellant-opponent requests that the decision of the Opposition Division be set aside and the patent be revoked in its entirety.

The respondent-proprietor requests that the appeal be dismissed. They further submit three auxiliary requests.

- VI. The wording of independent claims 1 and 31 as granted (main request) reads as follows:

1. "Method for processing carcass parts of slaughtered poultry, in which a carcass part (2) comprises at least part of a body (2a) and at least part of a wing (2b), comprising bone, capsule in the vicinity of the elbow joint and meat that is naturally present,
- in which method use is made of a conveyor device with at least one carrier (31) and a conveyor path, the at least one carrier being displaceable in a conveying direction along the conveyor path and being designed to carry a carcass part,
- and in which method use is also made of a wing processing station (1) disposed along the conveyor path,
- in which method a carcass part is fed to the wing processing station with the aid of the conveyor device and is processed in the wing processing station while the carcass part is being carried by the carrier,
characterized in that
in the wing processing station, at least one bone belonging to the upper (2c) or lower member (2d) of the

wing (2b) is exposed over part of its length in the vicinity of the elbow (2n), resulting in the preparation of a tulip, while the upper member (2c) of the wing is still attached to the body (2a)."

31. "Device for processing carcass parts of slaughtered poultry, in which a carcass part (2) comprises at least part of a body (2a) and at least part of a wing (2b), comprising bone, capsule in the vicinity of the elbow joint and meat that is naturally present, which device comprises:

- a conveyor device comprising a conveyor path (37) and at least one carrier (31;33) which is designed to carry a carcass part,
- along which conveyor path the at least one carrier can be displaced in a conveying direction (32;34),
- a wing processing station (1) which is disposed along the conveyor path and to which a carcass part can be fed by the conveyor device, in which wing processing station the carcass part is processed while the carcass part is being carried by the carrier,

characterized in that

the wing processing station is designed in such a manner that at least one bone belonging to the upper (2c) or lower (2d) member of the wing (2b) is exposed over part of its length in the vicinity of the elbow (2n), resulting in the preparation of a tulip, while the upper member (2c) is still attached to the body (2a)."

VII. The appellant-opponent argues as follows:

The subject-matter of claims 1 and 31 lack novelty in view of D1 or D5. Having regard to documents D1, D2, D4 and to common general knowledge of the skilled person

claims 1 and 31 do not involve an inventive step in the sense of Article 56 EPC.

VIII. The respondent-proprietor argues as follows:

Late filed document D5 should not be admitted due to lack of *prima facie* relevance. The subject-matter of claims 1 and 31 is new and inventive in the light of D1, D2, D4, D5 and common general knowledge.

Reasons for the Decision

1. The appeal is admissible.
2. *Background*

The claimed method and device are aimed at producing "tulips", see paragraph [0003] of the patent specification. Tulip is described as a chicken meat cut that is made from the upper or lower member of the wing in which a projecting part of the wing bone is exposed such that it can be used as a handle to eat the meat of the tulip. According to the claimed device and method tulips are prepared at a wing processing station disposed along the conveyor path of a conveyor machine by exposing at least one bone of the upper or lower member of the wing over part of its length in the vicinity of the elbow, while the upper member of the wing is still attached to the body, see paragraph [0007] of the specification. Preparation of tulips can thus be automated and incorporated in mass or series processing of chicken meat on a conveyor machine, see paragraph [0009]. As the wing is attached to the body while tulips are prepared, the body can be used for support and positioning, which represents a further

advantage of the claimed method and device, see patent specification paragraph [0010].

3. *Claim interpretation*

It is a point of dispute what the term "tulip" in claims 1 and 31 imply for the interpretation of those claim features which relate to the bone exposure. In the Board's view it is directly and unambiguously derivable from the explicit wording of the claims that the bone must at least be exposed over part of its length to produce a tulip in the sense of claims 1 and 31, where the "part" must be more than a merely theoretically small or negligible amount.

The Board can thus but conclude, contrary to the appellant-opponent submissions, that a mere exposure of one end of the bone without further limitations is not enough to qualify a carcass part or a chicken meat product as a "tulip" in the sense of the contested claims.

4. *Novelty*

Novelty of claims 1 and 31 is challenged in view of documents D4 and D5.

According to established case law, it is a prerequisite for the finding of lack of novelty that the claimed subject-matter is directly and unambiguously disclosed in a prior patent document, and that this is so beyond doubt - i.e. not merely probably -, see Case Law of the Boards of Appeal, Eighth Edition, July 2016 (CLBA), I.C.4.1.

4.1 In this regard, the Board considers that document D4 does not directly and unambiguously describe that the bone is exposed over part of its length. Indeed, the result in terms of final or achieved bone exposure is not addressed in the document. The document only describes that the separation process reduces the potential for bone fragments, see D4, column 8, line 5, which does not provide the required information about bone exposure over part of its length. As regards figure 5, in the cutting process depicted there meat still covers the bone ends while the elbow joint is already separated.

The Board also notes that D4 is directed at obtaining accurately severed mid-wing segments from wings of poultry carcasses, see D4, column 1, lines 43-47, using rotary disc cutters 34 to "make clean cuts through the connecting tissue" at the elbow joint, see column 5, lines 63-65, and guiding thereafter the elbow joint "through the rotary disc cutters 34", see column 8, lines 53-55. In the Board's view it is unlikely that the described clean cuts result in partial exposure of the bone length. The further passage cited by the appellant-opponent, column 7, lines 33-39, also describes details of the accurate cut-off process without any indication or suggestion of a possible eventual bone exposure, leading accordingly to the same conclusion.

The Board thus holds that the skilled person does not directly and unambiguously derive from the disclosure in D4 that as a result of the accurate cutting through the elbow joint a part of the bone length is exposed.

4.2 Regardless of whether or not document D5 is formally admissible or not, the Board finds that this document

does also not mention the issue of resulting bone exposure. Similarly to D4, this document is also aimed at an apparatus for reliably and accurately cutting up wing joints, see D5, column 1, lines 38-46. In particular column 4, lines 32-54, cited by the appellant-opponent, describes anatomically severing the lower wing 5.3 from the poultry body with a knife blade 4.6. Nor is there any suggestion elsewhere in D5, description, figures or claims, that the cutting process produces anything other than a clean cut, without exposed bone. Thus, as explained for document D4, D5 does not directly and unambiguously describe that the bone is exposed over part of its length and does not anticipate this feature of granted claims 1 and 31.

4.3 The Board thus concludes that the method of claim 1 and the device of claim 31 are novel over the prior art as required by Article 54(2) EPC, irrespective of formal admissibility of document D5.

5. *Inventive step*

5.1 The appellant-opponent challenges the decision's positive finding for inventive step in the light of D4 and D1, D2. The appellant-opponent considers D4 as closest prior art. Indeed the known device and method of D4, comprising a wing processing station disposed along the path of a conveyor device, can be regarded as a good starting point for an assessment of inventive step. In said known wing processing stations, wings are still attached to the body during their processing. The subject-matter of claims 1 and 31 thus differs from D4 in that at least one bone is exposed over part of its length in the vicinity of the elbow, resulting in the preparation of a tulip in the wing processing station,

while maintaining the upper member of the wing attached to the body.

- 5.2 These differences have the effect of allowing tulip preparation in a conveyor mass or series processing method or device of the type described in D4, see specification paragraph [0009]. The associated technical problem could thus be formulated as the provision of a method which allows mass production of tulips in a conveyor type device and the provision of such a conveyor device, see paragraph [0006] of the contested patent.
- 5.3 Manual preparation of tulips is known, for example from D1, D2 or from common general knowledge. Accordingly, starting from the automated method or device of D4 and confronted with the previously formulated technical problem, the questions to be addressed for deciding inventive step are whether the skilled person involved in the design and manufacture of systems for processing slaughtered poultry would consider the known teachings which concern manual preparation of tulips. In particular, would the skilled person consider the preparation of tulips on a wing that is still attached to the carcass? If so, would he then as a matter of obviousness automate the known manual operations taught by either D1 or D2 to incorporate them in the known automatic wing processing station of the system described in D4?
- 5.4 The Opposition Division found in this respect that even if the skilled person would consider automating the preparation of tulips, the known manual methods of D1 and D2 require that the wing is severed from the carcass prior to processing, see page 7 of the written decision. The skilled person would thus, at most,

implement the automated version of those steps in the device of D4 after separating the wing part from the carcass.

Indeed, in other words, the skilled person would not consider as a matter of obviousness the preparation of tulips on a wing that is still attached to the carcass, in the absence of any teaching or indication in that direction. It follows immediately that a combination of D4 and either D1 or D2 would not lead to the subject-matter of claims 1 and 31.

5.4.1 The appellant-opponent counters that the trend in poultry processing to automate as much as possible, drives the skilled person to abolish manual labor and automate the processing of poultry parts, see statement of grounds, page 8. The skilled person would thus endeavour at his own initiative to implement such production in a known automated system. They add that it comes within the general expertise of the skilled person to make the appropriate amendments to the device known from document D4.

5.4.2 The Board in this respect acknowledges that the skilled person is generally intent on automating known manual tasks in order to e.g. increase productivity. However, the Board notes that the appellant-opponent does not submit any argument or evidence of a known manual tulip preparation process which is performed while the wing is still attached to the body. It also notes that manual tulip preparation appears to be customarily carried out by handling the separated wing and not the whole carcass. The appellant-opponent also does not submit any detail on the stated "appropriate amendments" to the device known from document D4 which should be carried out by the skilled person. The Board

thus finds, as the Opposition Division, that no teaching or evidence is apparent, either from D1, D2 or from common knowledge, of a known manual task that after automation would lead the skilled person to consider the preparation of tulips on a wing that is still attached to the carcass as a matter of obviousness.

5.5 In view of this lack of evidence or teaching before the Board, it can but confirm the positive finding of the Opposition Division in respect of inventive step.

6. As all the objections raised by the appellant-opponent fail, the Board confirms, contrary to the appellant's main request, the findings of the Opposition Division.

6.1 The appellant-opponent auxiliarily requested oral proceedings with the statement of grounds. They later informed the Board with letter received on 19 February 2018 that they will not attend the oral proceedings scheduled for 7 March 2018. According to generally established practice, the Board considers such statement as an equivalent to a withdrawal of the request for oral proceedings, see CLBA, III.C.2.3.1.

The Board is further satisfied that by its communication dated 15 January 2018 the appellant-opponent was made aware of the central points underlying this decision and that they have therefore had sufficient opportunity to take a position thereon. It is thus satisfied that the requirements of Article 113(1) EPC have been met.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated