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Datasheet for the decision of 8 August 2018

Case Number: T 1186/14 - 3.2.04

Application Number: 10150056.9

Publication Number: 2218333

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:
Filleting device and method for harvesting fillets

Patent Proprietor:
Meyn Food Processing Technology B.V.

Opponent:
Marel Stork Poultry Processing B.V.

Headword:

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - (yes)
Inventive step - (yes)

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It can be changed at any time and without notice.

Decisions cited:

Catchword:

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Case Number: T 1186/14 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 8 August 2018

Appellant: (Opponent)	Marel Stork Poultry Processing B.V. Handelstraat 3 5831 AV Boxmeer (NL)
Representative:	Algemeen Octrooi- en Merkenbureau B.V. P.O. Box 645 5600 AP Eindhoven (NL)
Respondent: (Patent Proprietor)	Meyn Food Processing Technology B.V. Noordeinde 68 1511 AE Oostzaan (NL)
Representative:	Van Breda, Jacobus Octrooibureau Los & Stigter B.V. Weteringschans 96 1017 XS Amsterdam (NL)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 24 March 2014 rejecting the opposition filed against European patent No. 2218333 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	W. Van der Eijk
Members:	S. Oechsner de Coninck
	E. Frank

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal, received on 22 May 2014 against the decision of the Opposition Division dated 24 March 2014 to reject the opposition against the patent EP 2 218 333, and paid the appeal fee the same day. The statement setting out the grounds of appeal was filed on 21 July 2014.

II. Opposition had been filed to the patent as a whole and based on Article 100(a) in conjunction with Articles 52(1), 54(2) and 56 EPC. The Opposition Division had held that the grounds for opposition mentioned in Article 100(a) EPC did not prejudice the maintenance of the granted patent, having regard to the following documents in particular:

P1: US 5 372 539
P2: US 4 993 114
P3: US 4 557 015
P4: EP 756826 A2

III. Oral proceedings were held on 8 August 2018.

IV. The appellant requests that the decision under appeal be set aside and the patent revoked in its entirety.

V. The respondent requests that the appeal be dismissed and thus the patent maintained as granted (main request), or, alternatively, that the decision under appeal be set aside and the patent maintained in amended form according to one of auxiliary requests I-III filed by letter of 13 October 2014.

VI. The independent claims 1 and 13 as granted (main request) read as follows:

"1. A filleting device (10) for harvesting fillets from poultry carcasses (1) that are moved in a conveyer-line supported on carriers, comprising a first guide rail or rails (4) to guide at least a part of the fillets (2) so as to increase this part's distance from the carcass (1) and break the tissue connections that connect the fillet or fillets (2) in their natural position to the keel-bone (3) of the carcass (1), and comprising second means (6) that complete the harvesting of the filets (2) by peeling the fillets (2) entirely loose from the keel-bone (3, characterized in that the first guide rail or rails (4) is or are placed such that as seen from their entry section (C) and looked in the movement-direction (A) of the carriers for the poultry carcasses (1), said first guide rail or rails (4) first occupy an initial position at a distal side of the fillets (2) with respect to the carcass (1), and eventually occupy a final position at the proximal side of the fillets (2) with respect to the carcass (1), and that from the initial position to the final position the first guide rail or rails (4) occupy a decreasing distance to the keel-bone (3)."

"13. Method for harvesting fillets (2) from poultry carcasses (1) that are moved in a conveyer-line, wherein at least a part of the fillets (2) is pushed or pulled to increase this part's distance from the carcass (1) and to break tissue connections that connect the fillets (2) in their natural position to the keel-bone (3) of the carcass (1), and that thereafter harvesting of the fillets (2) is carried out by peeling the fillets (2) entirely loose from the keel-bone (3), characterized in that part of the

fillets (2) is pushed or pulled from the carcass (1) by moving the carcass with the fillets towards a rail or rails (4), which are placed such that as seen from their entry section (C) and looked in the movement-direction (A) of the carriers for the poultry carcasses (1), said first guide rail or rails (4) first occupy an initial position at a distal side of the fillets (2)on the carcass (1), and eventually occupy a final position at a proximal side of the fillets (2) on the carcass (1), and that from the initial position to the final position the first guide rail or rails (4) occupy a decreasing distance to the keel-bone (3)."

VII. The appellant argues as follows:

- Figures 1 and 2 of P1 depict guide rods 19 with a "V" shape that allows them to occupy first an initial, distal position and ultimately a final, proximal position with decreased distance from the keel bone, as required by claim 1.
P2 discloses rails 15 that make it possible to obtain the result visible in figure 6 that the fillets' tissue connections are broken. The wording of the claims is broad and does not exclude the presence of additional severing means such as the knives 22 shown in figure 1.
- As for inventive step the skilled person aiming at simplifying the system of P4 would obviously substitute the movable carrier 16 described therein with appropriate, stationary guides, especially as these are commonly known from any of the documents P1, P2 or P3.

VIII. The respondent argues as follows:

- P1 discloses two pairs of guide rods parallel to the track. Therefore these rods cannot increase the distance of the fillet from the carcass, and the tissues cannot be broken by this movement parallel to the carcass.
- In P2, the lifting of the fillet by the rail 15 does not necessarily break the tissue connections, and that feature is therefore not clearly and unambiguously disclosed.
- As for inventive step, P4 describes the swivelling device as an essential feature. The skilled person would not consider a modification that deprives the system of P4 of this essential feature.

Reasons for the Decision

1. The appeal is admissible.

2. Background to the invention and interpretation of claims 1 and 13

The patent is for a method and filleting device for harvesting fillets from poultry carcasses that are conveyed on carriers along a conveying path.
According to paragraphs 4 and 5, the patent seeks to provide a method and filleting device which can meet demands for higher operating rates and that can operate independently from the precise position of the carcass on the path.

The core of the solution relies on the provision of guide rails that increase the fillet's distance from the carcass and eventually break the fillets' tissue connections with the keel bone.
It is established case law regarding claim interpretation that the skilled person reads a claim contextually, with his normal reading skills, i.e. with synthetical propensity, building up rather than tearing down, so as to arrive at an interpretation which is technically sensible and takes into account the whole of the disclosure of the patent (Case Law of the Boards of Appeal, 8th edition, 2016, (CLBA) II.A.6.1).

Reading claim 1 in this manner, he will understand that the first guide rails, defined in its preamble by their functional limitation, operate to pull the fillets away from the carcass and expose them to such a tension that eventually the tissue connections are broken. With that understanding he will interpret the particular realisation of these first guide rails, also defined by their function, in the characterising portion. There he will read that, seen in the direction of movement, the guide rails are placed such that they first come into contact with the fillets at a distal side thereof with respect to the carcass, and progress towards the keel bone to eventually reach a final position at the proximal side of the fillets with respect to the carcass, in particular the keel bone portion. Bearing in mind the configuration of the fillets on the carcass, and considering the sequence of operation depicted in figures 1 to 5, the skilled person will confirm his understanding that the rails should be configured to first come into contact with an outer part of the fillet and progressively slide at the interface between the fillet and the carcass, progressing towards its keel bone. By way of this

operation, the result explained in the last sentence of paragraph 9 of the patent – "that the tissue connections with which the fillets are connected to the carcass can be effectively broken" – will be achieved. The skilled person will arrive at the same interpretation reading the corresponding steps defined in claim 13 for the method for harvesting fillets.

Given the above interpretation the Board is unconvinced by the appellant's contention that, within the context of a device claim, such a functional limitation would not be effective, and would, among other things allow for additional means of separating the fillet from the carcass. The functional limitation contained in claim 1 for the definition of the guide rails, and expressed as the effect to be achieved of increasing the distance of the fillet and breaking the tissue connections is a clear, actual limitation of the device defined in claim 1, and is not to be construed as purely optional because belonging to a device.

3. Novelty

3.1 Document P1 discloses a filleting device for harvesting fillets from poultry carcasses comprising a succession of processing tools shown in figures 1 a to h, that operate to detach the fillets from the carcass in sequential steps (column 2, lines 3-6) depicted at each processing stage in figures 2 a to h. The appellant argues that the pairs of guide rods 19 and 20 are equivalent to the guide rails defined in claim 1, whereby, more particularly, the "V"-shaped portion at the front of the guide rods 19 allows them to operate according to the characterising functional limitation that, from an initial and distal position to the final

and proximal position, the first guide rails get closer to the keel bone.

The Board disagrees. It is not possible to find all the functional limitations of the guide rails defined in claim 1 in the whole set of guide rods 19 and 20. This is particularly so because the guide rods 20, according to column 4, lines 8 to 15, lie in a plane which is spaced at a larger distance from the path of the supporting elements than the plane of the guide rods 19, and therefore increase rather than decrease the distance from the keel bone.

The appellant, by contrast, considers the guide rods 19 to be equivalent to the first guide rails defined in the characterising portion as allowing a first, distal position and final, proximal position with decreasing distance from the keel bone. The very small "V"-shaped section at the front is made to penetrate the slit (column 6, lines 8-12) and hold the coracoid down; therefore the "V" shape helps this penetration and the parallel guide rods have a positioning function.

However, even if that "V" shape makes it possible for the fillets to near the keel bone in a very limited way, the subsequent movement parallel to the carcass is unable to break the tissue connections, because it does not increase the tension of these fillets with respect to the carcass. Apart from the stop element 43 disclosed in column 6, lines 54 to 62, of P1, the description is silent on the result of the breaking of the tissue connections by guide rails.

3.2 P2 discloses a filleting device for harvesting fillets from poultry carcasses comprising a sequence of tools, depicted in figures 1 and 2, along a processing line that operate to detach the fillets from the carcass in several steps shown at each processing stage in figures 4 to 8. The appellant argues that the guide rails defined in claim 1 find an equivalence in the second tool 14 in the form of a pair of rails as depicted in figures 1 and 2. This second tool has guide elements 15 that also guide the outer fillets 66; see column 5, lines 42-46. From column 5, lines 47 to 53, the skilled person learns that, as a result of the inclination of the guide elements 15 and their oppositely effective elasticity, the outer fillets 66 are drawn upwards under a certain tension and that, in this tensioned state, the action field of the severing tool 21 in the form of paring knives is reached.

In the Board's view from this statement the skilled person indeed infers that the fillet's distance increases, but he also sees that another means, e.g. the severing tool, effectively provides the function of breaking the tissue connections as required by claims 1 and 13.

The appellant submits that the rails 15 effect the result visible in figure 6, that the fillets' tissue connections are broken, and that the claimed wording does not exclude the presence of additional severing means. The rails having the same configuration from an initial, distal location to a final, proximal one to the keel bone, the same result is obtained.

As already explained above the claim explicitly defines the guide rails by their functional limitation of breaking the tissue connections. By contrast lines 47

to 54 in column 5 of P2 only disclose a tensioning function, the severing action being obtained by the severing tool. Therefore the rails even if they increase the fillets' distance from the carcass, do not break the tissue connections, unlike in the claim wording.

3.3 Therefore, the subject-matter of claim 1 is considered novel with respect to the disclosures of both P1 or P2. This conclusion also holds for the subject-matter of the method claim 13, which recites method steps corresponding to the functional limitations of claim 1. The Board thus confirms the findings of the Opposition Division in respect of novelty.

4. Inventive step

4.1 The appellant substantiated its argument of lack of inventive step starting from document P4. P4 discloses a device for processing a slaughtered bird, comprising a carrier which is connected to an overhead conveyor. P4 seeks to reduce the complexity of the control system for the movement of the filleting tool (column 1, lines 25-27), and is based on the concept of adapting a swivelling device which can interact with a control device positioned along the track (column 1, lines 42-46). More precisely, the carrier comprises a holding support 16 that can tilt the carcass. The removal of the fillet is explained from column 10, line 56, to column 11, line 8: the holding support is tilted downwards to the position shown in Fig. 13 and guided along one or more scrapers 84 extending essentially parallel to the track of the overhead conveyor.

4.2 The appellant submitted in writing that the skilled person faced with the problem of simplifying the system of P4 would obviously substitute the movable carrier 16 with appropriate, stationary guides, especially as these are commonly known from any of the documents P1,P2 or P3.

4.3 In P4 in addition to being conveyed along the track, the carcass is also tilted by a swivelling device 14 of the carrier. Considering how the relevant step of the scraper blade removing the fillet works, the underlying concept of P4 relies on pulling the carcass away with the adjustable carrier with respect to fixed, parallel scraper blades. The Board concurs with the respondent that the skilled person would not deviate from this basic concept of an adjustable carrier in the process of modifying the arrangement of P4 to simplify it, especially as the adjustable carrier also serves to tilt the carcass in the other stages of the processing line.

4.4 Assuming nevertheless, as the appellant argued, that the skilled person would deviate from the basic concept of P4 and would be inclined to simplify the movable carrier by providing stationary guides, in the Board's view he would still fail to arrive at the device of claim 1 or the method of claim 13. P4 relies on scraping tools for detaching the fillet, which therefore work differently by tearing the fillet away with a blade-like tool brought into contact with the carcass, and therefore cannot suggest pulling the fillet to increase the fillet's distance from the carcass until the tissue connections are broken. Neither P1 nor P2 can suggest providing a guide rail having the function of breaking the tissue connections. As seen in points 3.1 and 3.2 above, P1 teaches

penetrating the flesh with points 21a and blocking the fillets with deflectors 21 (column 6, lines 8 to 22), and operating without decreasing the distance from the keel bone. P2 does not teach breaking the tissue connections when lifting the fillet from the carcass, but instead detaching them with knives (column 5, lines 47 to 54).

4.5 P3, also submitted as a possible combination document, describes a poultry halving machine comprising rods shaped to reach an inclined bird stretching position, and a severing blade to separate the entire breast, wing and neck portion of the bird from the lower back and legs (column 3, lines 41-48; figs 7 and 8). Therefore P3 does not provide any teaching applicable to filleting a carcass, and all the less so by pulling the fillets away from the carcass.

4.6 The Board concludes, therefore, that, considering the combination submitted by the appellant of P4 with any one of P1, P2 or P3, the subject-matter of claim 1 as granted involves an inventive step within the meaning of Article 56 EPC. This conclusion also holds for the subject-matter of the method claim 13.

5. In the light of the above, the Board confirms the Opposition Division's decision to reject the opposition under Article 101(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar: The Chairman:

G. Magouliotis W. Van der Eijk

Decision electronically authenticated