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**Datasheet for the decision
of 1 October 2018**

Case Number: T 0595/15 - 3.2.04

Application Number: 10150058.5

Publication Number: 2223605

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:

Deskinner for poultry parts

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 - main request (yes)
Inventive step - main request (yes)

Decisions cited:

T 2106/10

Catchword:



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Case Number: T 0595/15 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 1 October 2018

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
3 March 2015 concerning maintenance of the
European Patent No. 2223605 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
C. Heath

Summary of Facts and Submissions

- I. The appellant-proprietor lodged an appeal, received 20 March 2015, against the interlocutory decision of the Opposition Division posted on 3 March 2015 concerning maintenance of the European Patent No. 2223605 in amended form, and paid the appeal fee at the same time. Their statement setting out the grounds of appeal was filed on 11 June 2015.
- II. The opposition was filed against the patent as a whole and based on Article 100(a) with Articles 52(1), 54 and 56 EPC for lack of novelty and inventive step.
- III. The Opposition Division held that the subject matter of claim 1 of the patent as granted lacked novelty, but that as amended according to an auxiliary request, the patent met all the requirements of the EPC. In their decision, the Opposition Division considered the following documents, amongst others:
- P1: US 5,273,485 A
P2: US 5,197,917 A
P3: US 5,833,527 A
P8: US 6,220,953 B1
P9: EP 1 430 780 A1
P10: EP 0 254 332 A1
- IV. Oral proceedings were duly held before the Board on 1 October 2018.
- V. The appellant-proprietor requests as main request that the decision be set aside and the patent be maintained as granted, in the alternative that the patent be maintained according to one of auxiliary requests 1 to 3, filed during oral proceedings before the Opposition

Division on 15 January 2015. They further request reimbursement of the appeal fee.

The opponent-respondent requests that the appeal be dismissed.

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

"Deskinner (1) for poultry-parts comprising an infeed (2) for the poultry parts, a processing device (4) for removing the skin from the poultry parts, and a discharge (5) for the processed poultry parts, having receptacles (6) for receiving the poultry parts from the infeed (2), which receptacles (6) are connected to a conveyor-line (7) for transporting the receptacles (6) with the poultry parts received therein to the processing device (4), characterized in that at least one of the receptacles (6) is rotatably connected to the conveyor-line (7) so as to be able to adjust the orientation of the poultry part that is received in said at least one receptacle (6)".

VII. The appellant-proprietor argued as follows:

The subject matter of claim 1 as granted is novel with respect to P3, P1, P8, P9 and P10. Furthermore, neither the combination of P1 with P3, P3 with P2 nor P1 with P2 take away inventive step of the claim. The appeal fee should be reimbursed because the division committed a substantial procedural violation when examining the first auxiliary request.

VIII. The respondent-opponent argued as follows:

P3, P1, P8, P9 and P10 take away novelty of claim 1. The subject matter of claim 1 lacks inventive step starting from P1 with P3, starting from P3 combined with P2 or P1 combined with P2.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The invention (see published patent specification, paragraphs [0001] and [0004]) relates to a deskiner for poultry parts. An object of the invention is to increase the reliability of the deskinning operation.

3. Interpretation of the claim

3.1 Before considering novelty and inventive step, the Board finds it expedient to focus on the interpretation of the claim term "receptacle".

3.2 The Board first notes that the skilled person reads the claim, giving the terms their usual meanings, with their mind willing to understand in order to try to arrive at a technically sensible interpretation that takes into account the whole disclosure of the patent, see Case Law of the Boards of Appeal, 8th edition, 2016 (CLBA), II.A.6.1, and the decisions cited therein.

- 3.3 The Oxford English Dictionary (OED) on-line (general uses II 4. a) defines the term "receptacle" as: "Something that receives and holds a thing or substance, or into which another thing may be put; a containing vessel, place, or space; a repository". Thus, here the OED assigns "receptacle" two meanings. The second meaning (containing vessel etc.), whether or not it is a species of the first meaning as the respondent-opponent has argued, constitutes a distinct specific meaning of the word "receptacle".
- 3.4 In the claim itself (emphasis in italics added by the Board), a conveyor-line [is] "for transporting the receptacles with the poultry parts received *therein*." The last line of the claim reiterates that the poultry part is received *in...* the receptacle. Thus, the claim defines receptacles of the kind *into* which poultry parts can be put and *in* which they are received, rather than of the kind that merely receives and holds them. In other words they constitute receptacles in the sense of a "containing vessel, place or space...". Thus, from the claim alone, the skilled person understands "receptacle" as claimed in the sense of the second of the above definitions (containing vessel, place, space etc.).
- 3.5 The skilled person derives the same understanding from the rest of the patent specification as published, as will now be explained (again, the Board has added emphasises to certain terms in italics). The description first uses the term "receptacle" in paragraph [0007], where it is said, inter alia, that the poultry part is "received *in* said at least one receptacle." Furthermore (see paragraphs [0015] and [0031]), a gripper can be used to "drop [a poultry part] *in* a receptacle. Similarly (see paragraphs [0017]

and [0025]), a handler "allows that the poultry parts *in* the ... receptacles can all be given the same orientation...". Likewise, where receptacles are shown in the figures (see figures 1, 2, 4, 5 and 6, feature reference 6), they are consistently shown with two side walls and a bottom wall in which the poultry part is contained, thus the figures also show receptacles 6 in the sense of a containing vessel.

3.6 From the above, the Board interprets the word "receptacle" in claim 1 to have the second of the two alternative meanings given above, namely as a containing vessel, place, or space; a repository.

3.7 In this respect, the Board is not convinced by the respondent opponent's argument that the skilled person, reading claim 1 in the light of claim 6, would interpret "receptacle" in a different way because claim 6 specifies side walls and a bottom whereas claim 1 does not.

Claim 6 does not merely define that the receptacle has walls, but also that the bottom wall is movable with respect to the side walls. Thus, the skilled person understands the receptacle of claim 6 to have particular walls (relatively movable). Therefore the skilled person does not read the receptacle of claim 6 as being distinct from the receptacle of claim 1 in having walls per se. Thus the skilled person would not conclude from claim 6 that the receptacle of claim 1 might have no walls and so not be a receptacle in the sense of one that contains, as the respondent-opponent has argued.

3.8 Nor is it appropriate to interpret the claim in the light of the prior art document P3 as the respondent-opponent has suggested, whether or not expressions similar to the terms of the claim are used there (cf. P3, column 7, lines 38 to 41 "...apparatus having a mandrel in which...carcasses are received). As explained above, the skilled person reads the claim taking into account the whole disclosure of the patent, but not what is disclosed in the prior art.

3.9 Finally, the broad general statement in the final paragraph [0035] concerning the scope of the invention, absent any specific detail, cannot be read as suggesting that the term "receptacle" should be interpreted any differently from what is consistently presented throughout the patent.

3.10 It is therefore with the above interpretation of the claim feature "receptacle" in mind (containing vessel, place or space etc.) that the Board must consider novelty and inventive step.

4. Novelty of claim 1 as granted vis-à-vis P3

4.1 P3 discloses (see title and abstract with figure 1) a poultry breast filleting apparatus in which eviscerated poultry carcasses are mounted on mandrels 33. The mandrel mounted carcasses are moved by a conveyor 27 along a processing path through a series of processing stations (one of which is a deskinner 175).

4.2 Turning now to the features of claim 1 of the granted patent, it is not in dispute that P3 discloses the following:

A de-skinner (see column 13, lines 49 to 60, with figures 1 and 4, deskinner 175) for poultry-parts. The deskinner has an infeed (column 8, lines 40 to 45 with figure 1) for the poultry parts (carcasses 11), a processing device (see column 4, lines 56 to 58, column 13, lines 49 to 60, column 14, lines 42 to 45 with figures 1 and 4, reference 175) for removing the skin from the poultry parts. The de-skinner has a discharge (exit and carcass remover blades 351, see column 20, lines 4 to 17) for the processed poultry parts.

- 4.3 In describing the apparatus of P3, the term "receptacle" is not used. Rather mandrels 33 receive the poultry parts (see column 20, lines 25 to 31). The mandrels 33 are connected to a conveyor-line (see figure 1 and abstract, reference 26) for transporting them, with the poultry parts received, to the processing device (deskinner 175).

At least one of the mandrels 33 (see column 2, line 65 to column 3, line 2) is rotatably connected to the conveyor-line so as to be able to adjust the orientation of the poultry part received.

- 4.4 Therefore the question of novelty hinges on whether or not in P3 the mandrels 33 are receptacles, in the sense of a "containing vessel, place, space etc.", as claimed. In contrast to the impugned decision (see reasons, points 2.1 to 2.3), the Board considers that they are not.

- 4.4.1 P3 (see column 2, lines 51 to 64) first describes the mandrels and how the poultry carcass interacts with them in the summary of the invention: "each of the mandrels is a substantially rectangular block...generally shaped to conform to the interior of

the skeletal structure of the poultry carcasses." Each mandrel has, *inter alia*, a body portion with a tapered top portion and a forwardly projecting nose portion. In use, "the poultry carcasses are mounted on the body portions ... with the breasts....engaging and being supported on the top portions of the mandrels, and with the nose portions of the mandrels projecting through the neck openings of the carcasses. Thus the carcass fits over the mandrel, the latter being shaped to fit the inner skeleton of the carcass and to project through the carcass at its nose end.

4.4.2 The detailed description (see P3, column 9, line 13 to column 10, line 18 with figures 2A to 2C) tells the same story, albeit in greater detail. There it is confirmed that the mandrel shape corresponds to the inner cavity of the skeletal carcass structure, enabling the carcasses "to be received and fitted thereover". As shown in figures 2A and 2B (see column 9, lines 28 to 34), the poultry carcasses 11 are received on the body portions of the mandrels, the mandrels being received within the visceral cavities of the carcasses with the nose portions 64 projecting through the neck openings 19 of the carcasses.

4.4.3 From the above, in the Board's view, the mandrel does not contain the carcass. At best, the mandrel itself may be said to receive and hold the carcasses. Thus, in the Board's view the mandrel could be said to be a receptacle within the first of the above given meanings (see above point 3.3), but not according to the second. In other words the mandrel 33 of P3 is not a containing vessel, place, space etc.

4.4.4 Nor does the Board come to a different conclusion when considering column 7, lines 38 to 44 of P3, which defines a particular object of P3's invention. The object defined is "to provide...an apparatus having a mandrel *in* which....carcasses are received and held in a clamped, secure arrangement..." [emphasis added by the Board].

Firstly, the Board notes that it is ambiguous whether the preposition *in* relates to the the apparatus or the mandrel. Indeed, although only a single mandrel is mentioned the carcasses are in the plural. This rather suggests that the *in* relates to the apparatus, with its plurality of mandrels for a plurality of carcasses, rather than the mandrel in the singular. In any case, the skilled person does not base their understanding of the nature of the mandrels of P3 on the single and isolated use of the preposition "in" defining an object of the invention of P3. Rather, they read the general description, the description of the embodiments and interpret the figures to obtain a complete teaching of how this object is achieved in order to understand the nature of the mandrels. As the Board has already explained, this leads the skilled person to conclude that the mandrels are not receptacles as claimed.

4.4.5 The respondent-opponent has also argued that the mandrel 33 of P3, considered with its clamping means constitutes a receptacle as claimed. The Board disagrees.

It is not in dispute that associated with each mandrel is a clamp 76, with clamp tool 77, see for example the abstract, column 9, lines 45 to 60 with figures 2A and 2B and column 10, lines 44 to 48 with figure 1). The respondent-opponent argues that, since a clamp holds

things "in" its jaws, the poultry is "in" the mandrel and thus mandrel and clamp tool 77 constitute a receptacle in the second sense of the word (containing vessel space or place).

According to the abstract, "carcasses are automatically engaged by a clamp tool 77 that clamps the poultry carcasses against their mandrels 33 in tight locking engagement to hold the poultry carcasses on their mandrels 33...". How this clamping works is explained in detail in column 9, lines 42 to column 10, line 18 with figures 2A and 2B. The non-engaged position is shown in figure 2A, where the clamp tool 77 lies flat. A clamp actuating mechanism 87 causes the clamp tool 77 to move in to its engaged position, as shown in figure 2B, where the carcass is clamped at its neck end (see also figures 2C and figure 7) between the mandrel 33 and clamp tool 77.

Thus, one jaw of the clamp is the clamp tool 77 and the other the mandrel 33 itself. The carcass is gripped *in* the clamp and locked securely in place on the mandrel (cf. column 20, lines 44 to 47), just as something might be gripped *in* the jaws of a pair of pliers.

In the Board's view, the mere use here of the preposition "in" does not mean that clamp tool 77 and mandrel 33 together form a receptacle in the sense of something into which the carcass (poultry part in the words of the claim) may be put as a containing vessel, place, or space.

In the Board's view, to grip is to hold tight but not necessarily to contain. A pair of pliers might grip the middle of a long rod, but the rod would extend either side of the pliers so would not be contained in the

pliers. By the same token, in P3 the carcass is gripped by the clamp 77 over a small area (figure 2C again), but the carcass is not contained in the clamp. Rather, the bulk of the carcass is freely exposed, surrounding and enveloping the body of the mandrel 33. Thus the mandrel and its clamp considered as an entity does not form a receptacle in the sense of a containing vessel, place, or space into which the carcass (poultry part in the words of claim 1) may be received.

4.5 The Board concludes that, whether considering the mandrels of P3 with or without their associated clamping means, P3 does not disclose receptacles as claimed. Therefore P3 does not take away the novelty of claim 1.

4.6 Novelty of claim 1 vis-à-vis P1, P8, P9 and P10

In a communication dated 25 May 2018 in preparation for the oral proceedings, the board gave its preliminary opinion to the parties that none of P1, P8, P9 and P10 seemed to take away novelty of claim 1 as granted (see section 4). In particular the communication stated the following:

"In the Board's view, the subject matter of claim 1 appears also to be new vis-à-vis P1, P8, P9 and P10.

P1 (see column 2, line 44 to column 3, line 8 with figure 1) discloses a deskinner (rollers 11). The deskinner comprises saddle-shaped receptacles 2 (column 2, lines 47 to 50). Poultry parts are however not received in the receptacles. Rather, they are saddled on the receptacles 2 (column 3, lines 13 to 17). Therefore, the Board provisionally agrees with the

finding of the impugned decision in this respect (see reasons, point 2.2).

By the same token, documents P8, P9 and P10 also disclose receptacles for receiving poultry parts thereon rather than therein. See P8 (for example abstract and column 2, lines 59 to 65 with figures 1a, 4a, 5a, 7, 9, 10, 11 etc.) - animal parts are conveyed on, not in a holding support 16. Poultry parts are placed on the holding support (column 7, lines 37 to 40 with figure 3).

P9, discloses a deskinner (see for example paragraphs [0119] and [0139]). The device has receptacles 2 for poultry parts 1 (see paragraph [0085] with figure 1). However, poultry parts 1 are not received in but on the receptacle 2 (see for example paragraph [0087] and [0088] with figure 2c).

P10 appears not to disclose a deskinner. Rather it discloses a support member 26 for a poultry part 42 (see title, claim 1 and figure 3a). The support member receives the poultry part 42 so it can be considered to be a receptacle. However, the support member 26 penetrates into the carcass (column 1, lines 14 to 26 and figures 3a, 4a to d and 7), thus poultry parts are not carried in the receptacle 26 but on it".

Neither the respondent-opponent, nor the appellant-proprietor have commented on the Board's provisional opinion in writing. Nor, in respect of novelty vis-à-vis P1, P8, P9 and P10, has either party made any comment at the oral proceedings before the Board. Absent any such comment, the Board has no reason to deviate from its earlier opinion. Therefore the Board

confirms its earlier opinion that the subject matter of claim 1 as granted is new vis-à-vis P1, P8, P9 and P10.

5. Inventive step of claim 1 as granted

5.1 The respondent-opponent has argued that the subject matter of claim 1 lacks inventive step starting from P1 in combination with P3. As explained above (see sections 4.5 and 4.6) neither P1 nor P3 disclose receptacles as claimed. In view of this, the Board holds that, irrespective of how obvious the proposed combination may be, it would not result in a deskinner having receptacles as claimed. Nor has the respondent-opponent provided any arguments as to why this might not be so.

Therefore, the Board concludes that the skilled person would not arrive at the subject matter of claim 1 in an obvious manner starting from P1 combined with P3.

5.2 The respondent-opponent has likewise argued that claim 1 lacks inventive step starting from P3 combined with P2.

Following on from the discussion of novelty (see above, section 4), the claimed subject matter differs from P3 only in the feature of "receptacles" (in the sense of something into which another thing may be put; a containing vessel, place, or space; a repository), wherein poultry parts are received.

5.2.1 The patent does not explicitly say what the technical effect of using such receptacles is. However, an object of the invention (see published patent specification, paragraph [0004]) is to increase reliability of the deskinning operation. The Board concurs with the

respondent-opponent that receiving poultry parts in containing receptacles for deskinning implicitly contributes to this object, since poultry parts can thus be correctly placed for deskinning. Therefore, the objective technical problem can be formulated as modifying the deskinner of P3 in order to increase the reliability of the deskinning operation.

- 5.2.2 Tasked with the objective technical problem, the skilled person might well take into consideration the document P2 as it relates to the technical field of deskinning poultry parts (see column 1, lines 6 to 10), and offers a solution to the problem of increased reliability (see for example abstract, column 1, lines 55 to 61 and column 2, lines 53 to 56).

The apparatus of P2 according to a first embodiment (see column 3, lines 30 to column 4, line 11 and column 4, lines 54 to column 5, line 2) can best be seen in figures 1 to 4. Apparatus 101 includes a turntable 102 that includes a platform portion 106 divided by ribs 114-119 into six poultry part receiving chambers 107-112. It is not in dispute that these are receptacles for receiving the poultry parts therein, as claimed.

Apertures 121-126 in the turntable bottom wall of these chambers permit ready access to the skin of a poultry part, so that rollers 134, 136 located below the chamber can remove the skin (figure 4).

As well as this rotary arrangement, P2 proposes (see column 5, lines 56 to 58) a linear arrangement, for example where the transport means is an overhead conveyor line.

5.2.3 However, in the Board's opinion, even if the skilled person were to recognise that the receptacles (chambers 107-112) in P2 (from either its rotary or linear arrangement) increased reliability of the deskinner, they would not, as a matter of obviousness, incorporate such receptacles into the apparatus of P3.

This is because, in the Board's view, the skilled person would recognise that transporting poultry parts in the receptacles as disclosed in P2 is incompatible with the apparatus of P3. They would therefore reject this solution to the objective technical problem.

In particular, the apparatus of P3 is not only a deskinner. First and foremost (see title, abstract and figure 1) it is a breast filleting apparatus in which poultry parts (eviscerated poultry) move on an endless loop conveyor 26 through a series of processing stations 42 to 50 that remove the wings, the skin and progressively separate the meat from the skeletal structures of the poultry carcasses.

On an upper run (figures 1 and 3 with column 11, lines 52 to column 12, line 45) the first station is a wing cutter 131. Cutting blades 136 of each successive cutting blade assembly 133 and 134 cut between the wings and shoulders. Then (column 4, lines 22 to 36) the carcass is inverted to traverse a lower run 29 of the processing path 27 and the wings are removed by a wing remover 151.

The third and fourth processing stations (column 13, line 49 to column 15, line 32) are the deskinner and membrane remover.

The carcasses then pass through a series of meat removing stations. Inter alia, a sixth processing assembly (column 18, lines 58 to column 19, line 22) has tunnel filleting assembly 316 with tunnel blades 317, 318. These cut into the carcasses adjacent the skeletal structures, scraping the breast meat and adjacent back portions of the poultry carcasses away from the skeletal structures.

The deskiner is thus only one of numerous processing stations that together form the breast and filleting apparatus of P3.

5.2.4 In the Board's view, at least the wing cutting and removing stations, with blades moving either side of the poultry and the meat removing stations, with *inter alia* the tunnel blades slicing along the skeleton of the carcass, require access to the poultry from all sides. Receiving the poultry carcasses of P3 in receptacles as disclosed in P2 (see figure 1 again) would not be compatible with providing such access.

Nor would simply providing such receptacles for receiving carcasses on P3's processing path 27 result in a working apparatus, since the carcasses would fall out as they entered the lower run 29. Thus replacing the mandrels 33 of P3 with receptacles as known from P2 would demand more than the routine skills of the skilled person.

5.2.5 In short, due to the disparate functional and structure concepts of the apparatuses of P3 and P2, the skilled person would not as a matter of obviousness consider adopting the receptacles of P2 for use in the deskinning station of P3.

5.2.6 Therefore, starting from P3 and knowing P2, the skilled person would not, as a matter of obviousness, combine the teachings of P3 and P2 and so they would not arrive at a deskinner as claimed.

5.3 In their reply to the appeal (see letter of 19 October 2015, section bridging pages 5 and 6), the respondent-opponent has also argued that claim 1 lacks inventive step starting from P1 with P2. In its communication dated 25 May 2018, the Board addressed this issue, stating in section 6.4, inter alia, *"it may also need to be discussed whether it would be obvious for the skilled person, faced with the objective technical problem, to provide a hybrid arrangement of P1 and P2 ... or whether this would require modifications to P1 ... exceeding the skilled person's routine skills"*.

5.3.1 Neither in written proceedings, nor at oral proceedings before the Board have the parties addressed this issue. It is therefore incumbent on the Board to do so. Following the discussion on novelty, claim 1 differs from P1 in that poultry parts are not received in receptacles, in the sense of a containing vessel, place, or space, as claimed. Rather, they are carried on saddle shaped receptacles 2. Therefore, the differing feature is as for P3 and the objective technical problem is comparable: how to modify the deskinner of P1 to improve reliability.

5.3.2 In P1 (see abstract and figure, column 2, line 67 to column 3, line 9), the top of the poultry must be exposed to the deskinner 10 arranged above the path of the receptacles 2. Similarly, filleting takes place with a double knife 13 for cutting into the sternum of the poultry from the top on the same run. Thus access

to the poultry, at least from the top is required. In the Board's view, replacing the saddle shaped receptacles 2 with receptacles into which the poultry was received (known from P2) would not be compatible with providing this access. Thus the skilled person would not, as a matter of obviousness, consider combining their teachings. If they were to do so, this would require considerable adaptation of the P1 processing arrangement which goes well beyond routine skills.

5.3.3 Therefore, in the Board's opinion, the subject matter of claim 1 involves an inventive step, starting from P1 combined with P2.

6. From the above, in summary, the Board finds that the subject matter of claim 1 of the main request (as granted) is both new and involves an inventive step in the light of the prior art cited. Therefore, there is no need for the Board to consider the appellant-proprietor's auxiliary requests.

7. Request for reimbursement of the appeal fee

7.1 The appellant-proprietor alleges that a substantial procedural violation occurred in that their right to be heard on aspects of inventive step regarding auxiliary request 1 in opposition proceedings was violated (cf. grounds of appeal, pages 8 and 9).

7.2 According to established jurisprudence (see CLBA, IV.E. 8.6, and 8.6.1 and the decisions cited therein, in particular T 2106/10, reasons, point 3), reimbursement of the appeal fees must be equitable. In particular there must be a causal link between the substantial procedural violation and the filing of the appeal.

7.3 In the present case, the appellant-proprietor has pursued not only the auxiliary request I (concerning which they argue their right to be heard has been violated) but also the main request, the patent as granted. In view of this, the appellant-proprietor would have had to file an appeal and pay the appeal fee, irrespective of any outcome of the discussion on the lower ranking first auxiliary request. Therefore, there is no causal link between the alleged substantial procedural violation and the filing of the appeal. It follows that reimbursement of the appeal fee is not equitable, so must be refused.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated