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**Datasheet for the decision
of 11 September 2020**

Case Number: T 1638/17 - 3.2.04

Application Number: 08723862.2

Publication Number: 2134184

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR PROCESSING A CARCASS PART OF SLAUGHTERED
POULTRY

Patent Proprietor:

Marel Stork Poultry Processing B.V.

Opponents:

Meyn Food Processing Technology B.V.
Nordischer Maschinenbau
Rud. Baader GmbH + Co. KG

Headword:

Relevant legal provisions:

EPC Art. 56
RPBA Art. 12(2)

Keyword:

Inventive step - main request (no) - Auxiliary request (yes)

Decisions cited:

T 0074/12

Catchword:



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Case Number: T 1638/17 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 11 September 2020

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 May 2017 concerning maintenance of the
European Patent No. 2134184 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeals were filed by the proprietor and opponent 2 against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 4, the patent met the requirements of the EPC.
- II. The opposition division decided that the subject matter of claim 1 as granted lacked novelty and that the claims as amended during the opposition proceedings according to auxiliary request 4 involved an inventive step.
- III. Oral proceedings before the Board were held on 11 September 2020.
- IV. The appellant opponent 2 requested that the decision under appeal be set aside and the patent revoked.

The appellant patent proprietor requested that the decision under appeal be set aside and the patent be maintained as granted, in the alternative that the patent be maintained in amended form according to one of auxiliary requests 1 to 6 and 8 to 10 all filed with the grounds of appeal, or according to auxiliary request 7 (the version held allowable by the opposition division in its impugned decision).

The opponent 1, party as of right, requested that the appeal of the proprietor be held to be inadmissible.

- V. The independent claim 1 of the main request (as granted) reads as follows:

"System for processing a carcass part (1) of slaughtered poultry, which carcass part comprises at least a part of the breast, the breast comprising at least a part of the breastbone (2) and a part of the breast fillet (5), which system comprises:

- a fillet harvesting device (10) for harvesting the breast fillet (5) present on the carcass part (1), characterized in that the system further comprises:
 - a detaching device (20) for harvesting residual meat still present on the breastbone (2) after the harvesting of the breast fillet (5), and
 - a conveyor with product carriers (50) for conveying the carcass parts (1) along a path, the fillet harvesting device (10) and the detaching device (20) being disposed along the path of the conveyor, and the detaching device (20) being placed downstream of the fillet harvesting device (10), and
 - a collection means (60) for collecting harvested residual meat".

The independent claims of the patent according to the 7th auxiliary request (as maintained) read as follows:

- "1. System for processing a carcass part (1) of slaughtered poultry, which carcass part comprises at least a part of the breast, the breast comprising at least a part of the breastbone (2) and a part of the breast fillet (5), which system comprises:
- a fillet harvesting device (10) for harvesting the breast fillet (5) present on the carcass part (1), characterized in that the system further comprises:
 - a detaching device (20) for harvesting residual meat still present on the breastbone (2) after the harvesting of the breast fillet (5), and
 - a conveyor with product carriers (50) for conveying the carcass parts (1) along a path, the fillet

harvesting device (10) and the detaching device (20) being disposed along the path of the conveyor, and the detaching device (20) being placed downstream of the fillet harvesting device (10), and

- a collection means (60) for collecting harvested residual meat,
- a cartilage harvesting station for harvesting at least the part of the breastbone which comprises cartilage,

and in which the detaching device (20) comprises at least one roller (30), the roller being provided with a profile for gripping tissue still present on the breastbone after the harvesting of the breast fillet, preferably the detaching device comprises at least two rollers, at least one roller being provided with a profile for gripping tissue still present on the breastbone after the harvesting of the breast fillet, and in which the rollers are disposed substantially parallel to each other".

"6. Method for processing a carcass part (1) of slaughtered poultry, which carcass part comprises at least a part of the breast, the breast comprising at least a part of the breastbone (2) and a part of the breast fillet (5), which method comprises the following steps: harvesting the breast fillet present on the carcass part, by means of a fillet harvesting device, characterized in that the method further comprises the steps: harvesting residual meat which is still present on the breastbone after the harvesting of the breast fillet, by means of a detaching device (20), and

- conveying the carcass part to be processed along a path from the fillet harvesting device to the detaching device by means of a conveyor with product carriers (50), the fillet harvesting device and the detaching device being disposed along the path of the conveyor,

and the detaching device being placed downstream of the fillet harvesting device, and

- collecting harvested residual meat.

- harvesting at least the part of the breastbone which comprises cartilage,

in which at least a part of the residual tissue, for example at least a part of the residual meat, is detached from the breastbone by means of two or more rollers, preferably at least one of the rollers is provided with a substantially helical profile".

VI. In the present decision, reference is made to the following documents:

B1: DE 93 00 745 U

B4: US 6 283 847 B1

B7: US 4 723 339

B8: DE 199 36 974 A1

B9: DE 600 13 263 T2

M4: US 3 154 804

E3: Richard Nickel, "Lehrbuch der Anatomie der Haustiere", volume 5, "Anatomie der Vögel", 3rd edition 2004, Enke, page 73, figure 69.

VII. The appellant-proprietor's arguments can be summarised as follows:

The appeal is admissible.

Inventive step of the main request should be dealt with by the Board. The subject matter of claim 1 of the main request involves an inventive step starting from B1.

All the auxiliary requests should be admitted into the proceedings. The subject matter of claim 1 of auxiliary request 7 involves an inventive step starting from B4.

The appellant-opponent 2's arguments can be summarised as follows:

The case should be remitted to the opposition division if inventive step of the main request is to be discussed. The subject matter of claim 1 of the main request lacks inventive step starting from B1. None of the auxiliary requests should be admitted into the proceedings. The subject matter of claim 1 of auxiliary request 7 lacks an inventive step starting from B4.

The respondent opponent 1's arguments can be summarised as follows:

The appeal of the proprietor is not admissible as a firm not party to the proceedings filed the statement of grounds. .

Reasons for the Decision

1. Introduction

The invention relates to a system for processing slaughtered poultry (see published patent specification, paragraphs [0001], [0006] and [0009] and all versions of claim 1). According to the patent, known systems for harvesting breast fillets leaves residual meat on the breastbone. The invention aims to increase yield by harvesting this meat.

2. Admissibility of the appeal of the proprietor under Rule 101(1) EPC

2.1 Opponent 1 argues that the statement of grounds was filed by a firm of a different name and address than

that of the proprietor. Consequently, the proprietor's appeal should be rejected as inadmissible under Rule 101 EPC.

2.2 The impugned decision is appealable, Article 106 EPC. As required by Article 107 EPC, the appellant-proprietor is adversely affected by the impugned decision. Furthermore, the appellant-proprietor filed a notice of appeal, Article 108 EPC, within the prescribed time limits that met all formal requirements of Rule 99 (1) EPC and paid the fee on time. Amongst other things, the notice of appeal correctly carried the name and address of the proprietor.

2.3 In accordance with established jurisprudence of the Boards of appeal (see Case Law of the Boards of Appeal, 9th edition, 2019 (CLBA), V.A.2.6.2), whether a document complies with Article 108 EPC, third sentence (concerning the filing of a statement setting out the grounds of appeal), is considered to depend on its substance and not upon its heading or form. In particular (see **T 74/12**, reasons 1.1 to 1.3), only the EPC and its implementing regulations can define the conditions for taking certain procedural steps and the consequences to be expected if those steps are not taken. Moreover, a procedural principle states that rights or means of address could be lost only if such a consequence was clearly and precisely defined.

2.4 Rule 101 EPC provides for rejection of an appeal as inadmissible if the requirements of Rule 99 EPC are not met within certain time limits. Whereas Rule 99(1) EPC relates to the contents of the notice of appeal, Rule 99(2) EPC sets out what shall be indicated in the grounds of appeal. It does *not* require that the name and address of the appellant be indicated (cf. Rule

99(1) EPC). This implies that the appeal cannot be found inadmissible simply because this information is missing, let alone merely contains errors. Thus, in this case the fact that the statement of grounds bears a name and address differing (slightly) from that of the proprietor, cannot by itself lead to the appeal being held inadmissible.

2.5 Moreover, with letter of 27 November 2017 the name and address appearing on the statement of grounds were corrected and it was made clear to all that the statement of grounds had been filed by the proprietor. Under Rule 101(2) EPC a deficiency in the name and address in the *notice* of appeal as required by Rule 99(1)(a) EPC is correctable within a time period specified by the office. It is unclear to the Board why a similar error made in the statement of grounds, and which was corrected before the EPO or any party noticed it, should meet with a more severe sanction than the same correctable mistake in the notice of appeal.

2.6 From the above, the Board sees neither a legal basis nor any other cogent reasons that would warrant rejection of the proprietor's appeal as inadmissible under Rule 101 EPC. Therefore, the Board finds it to be admissible.

3. Admissibility of the appellant-opponent 2's appeal has not been contested, nor indeed is any formal deficiency apparent to the Board. Therefore it is also admissible.

4. Main request, remittal

4.1 The appellant-opponent 2 requested the case be remitted to the opposition division to consider the question of

inventive step should the Board find the subject matter of the granted claims to be new.

- 4.2 In accordance with Article 111(1) EPC, second sentence, it lies within the Board's discretion to either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

The Board exercises its discretion taking into account, amongst other things, the need for procedural economy and considering whether the legal and factual framework has changed significantly.

- 4.3 In the present case, the issue of inventive step, although not dealt with by the opposition division for the main request, had been considered for the request upheld (then auxiliary request 4 corresponding to current auxiliary request 7). Moreover, the issue is dealt with by the parties in their appeal proceeding submissions and concerns only documents (in particular B1) extensively discussed by the parties in their written submissions and by the Board in its preliminary opinion in connection with novelty.

Therefore, the issue of inventive step falls within the factual framework of the discussion hitherto, and corresponds to that in which inventive step was considered by the opposition division for the auxiliary request (see grounds of the impugned decision, point 6.1). The Board therefore saw no compelling reason to delay a final outcome, which would have been contrary to overall procedural efficiency.

4.4 In view of these considerations, the Board decided to exercise its discretion under Article 111(1) EPC by dealing with the issue of inventive step itself.

5. Inventive step starting from B1

5.1 The appellant-proprietor argued in its grounds of appeal (see pages 3 and 4) that document B1 was not an enabling disclosure, since it described harvesting of residual meat from the "Rabenschnabelbein" or coracoid bone, a bone that is not present in poultry, which B1 was meant to process, but in mammals. As B1 thus related to a bone not present in poultry it could not possibly disclose processing of poultry.

5.1.1 In the Board's communication of 23 March 2020 in preparation for the oral proceedings (see section, 2.1 and its sub-sections, 2.1.1 to 2.1.3), the Board gave its preliminary opinion that B1 did indeed relate to poultry processing. The reasons presented were as follows:

"2.1 The appellant-proprietor argues, amongst other things, that it is impossible to carry out the teaching of B1 because B1 discusses (see page 8, middle paragraph) a skeletal structure with a coracoid process bone (Rabenschnabelfortsatz).

2.1.1 It is true that birds have a coracoid bone (Rabenschnabelbein), but no coracoid process bone (Rabenschnabelfortsatz), which mammals do. However, the entire document B1 relates to poultry (see for example its title and page 1, first three lines and claim 1: Geflügel).

2.1.2 Therefore, the skilled person knows that all anatomical references in B1 relate to poultry and not, for example mammals. With this in mind, when the skilled person reads "Rabenschnabelfortsatz" in B1 they will immediately realise that the bone referred to can only be the similarly named corresponding bone in bird anatomy: the coracoid (Rabenschnabelbein). In other words, the skilled person will not reject the reference as impossible to understand in the context of poultry. All the more so since in figure 5 the skilled person will recognise a typical poultry sternum or breast bone 21 and coracoid 42.

2.1.3 Whatever the logic behind the appellant-proprietor's conclusion (grounds of appeal, page 4) that B1 is not prior art under Article 54(1) EPC, the Board rejects this conclusion since it is based on the (in the Board's view) false premise that the skilled person is unable to understand B1's teaching, with its reference to poultry having a coracoid process bone (cf. B1, page 8, middle paragraph)".

5.1.2 Neither in written proceedings nor at oral proceedings before the Board did the appellant-proprietor comment on this part of the Board's opinion or present any arguments as to why the Board's preliminary opinion should be wrong in this regard. In the light of this, the Board sees no reason to deviate from this aspect of its preliminary opinion. Therefore, the Board confirms that B1 discloses processing of poultry.

5.2 B1 discloses a system for processing carcass parts of slaughtered poultry that comprise at least part of the breast with breastbone and breast fillet (with all page number references being those at the top of the page, see first page, second paragraph and paragraph bridging

first page and page 2). In the Board's view, it is implicit that the system includes a fillet harvesting device, since the mechanical arrangement disclosed is of the type described in the second paragraph of page 1, see final paragraph ("Vorrichtung der vorgenannten Gattung") and used to remove the breast fillet ("Fleisch an Brustbeinen ... bei Geflügel ... abzutrennen"), and is indeed intended to remove any meat *remaining* ("Restfleischanteil"), i.e. after an initial removal.

The arrangement includes (see page 2, first two paragraphs, last paragraph of page 4 and first paragraph of page 5, paragraph bridging pages 7 and 8 with figures 1 and 3) a detaching device, namely brush rollers ("Walzenbürsten") 14 of the station 13 for harvesting residual meat. B1 also discloses (see claim 13, cf. the main request, claim 1, last feature) a collection means for the residual meat.

- 5.2.1 Contrary to how the appellant-proprietor has argued, the Board considers that B1's detaching device (brushes) harvests residual meat from the breastbone.

The term "breastbone" as used in claim 1 (cf. published patent specification, paragraph [0035] with figure 1) is read by the skilled person giving it its usual meaning, and is therefore synonymous with the term sternum. In poultry, this is a single bone with a roughly triangular crest that tapers in a slender extension to a joint (see the anatomical figure of E3, breastbone g and the left side of figure 1 of the published patent specification). Poultry anatomy dictates that at this joint the breastbone joins the coracoid bone (see E3, coracoid k, in German

"Rabenschnabelbein", wrongly referred to as the Rabenschnabelfortsatz in B1).

5.2.2 B1 also uses the term "Brustbein" or breastbone. B1 states throughout (see for example the title, claim 1, line 1, first page, paragraph bridging first page and page 2) that it is concerned with harvesting residual meat ("Restfleisch") left on the breastbone. The skilled person reads the term breastbone in B1 with its usual meaning (just as they read a claim). Therefore, they understand that B1 discloses to harvest residual meat left on the breastbone after the fillets have been harvested. In the Board's view, a closer reading of B1 confirms this.

5.2.3 In this respect, the appellant-proprietor has argued that B1 teaches (see page 9 first paragraph and the embodiments shown in figures 3 and 5) that the brush rollers 14 that remove residual meat (cf. figure 3) only do so from that part of the carcass which extends beyond the edge of the table and that this is not the breastbone (sternum) but, at most, the coracoid bone 42. Therefore, so the argument goes, B1 offers no enabling disclosure as to how to harvest residual meat from the breastbone as claimed. The Board disagrees.

5.2.4 B1 explains (see for example page 6, first paragraph and second paragraph, first three lines with figures 1 and 3) that the breastbone 21 is clamped on the work-table by a U shaped holding clamp 22, 24 positioned in the outer edge area of the work table (page 6, line 4).

5.2.5 As best seen in figures 3 and 5, the breastbone referenced 21 is indeed the sternum, with its distinctive triangular crest. Whatever the reason for B1 assigning the breastbone an additional reference

"sternum 41" (see for example page 8, middle paragraph and figure 3), the Board does not consider that references to the breastbone in B1 are to anything more than the sternum, let alone that they might include the coracoid bone as the appellant-proprietor has argued. The skilled person knows the breastbone and sternum to be synonyms, and indeed references 41 and 21 point to the same bone. Moreover, nothing in B1 states that the breastbone includes the coracoid bone and the latter is assigned a separate reference 42.

- 5.2.6 It is with this in mind that the skilled person reads (see page 9, sentence beginning on the second line) that a part of the breastbone 21, to which most of the residual meat is attached, extends beyond the work table. This is consistent with how the breastbone 21 is depicted in figure 3, with the part extending to the right beyond the triangular crest shown to continue beyond the edge of the table. Therefore, with whatever anatomical inaccuracies B1's figure 3 may render the breastbone/sternum 21/41 (cf. E3, bone g), B1 consistently teaches that it, like the coracoid bone 42, should extend beyond the edge of the work table.
- 5.2.7 Therefore, as shown in figure 3, the brushes 14 (which operate very close to the edge of the table (cf. page 5, first paragraph, penultimate sentence) are indeed arranged for removing residual meat from the breastbone as claimed.
- 5.2.8 The last embodiment of B1 (see page 13, second and third paragraphs with figure 5) confirms this interpretation. There, the breastbone/sternum 21/41 is shown as in figure 3. However, the coracoid bone is folded away from the breastbone 21, the tapered part of the latter (with whatever anatomical inaccuracies it

may be drawn) extending well beyond the edge of the table. According to B1 (see page 13, 3rd paragraph) this folding away enables the brushes to better access the residual meat left on the breastbone 21 and is carried out before entry between the rollers, penultimate paragraph ("In dieser so vor dem Einlauf in die Walzenbürstenstation vorbereiteten Lage des Brustbeins...").

5.2.9 Thus, this confirms that B1 discloses to harvest residual meat, not from the coracoid bone as the appellant-proprietor has argued, but from the breastbone (sternum) as claimed.

5.2.10 Moving now to claim 1's conveyor feature, B1 discloses that the work-table 18 to which carcasses are clamped by the hoops 22a is motor driven (see for example page 2, last complete paragraph and page 5, last paragraph with figure 1). Therefore it is a conveyor. As shown in figures 1 and 3, the residual meat harvester is disposed on the path of this conveyor and it can but be downstream of the fillet harvesting device.

However, in the Board's view, the conveying path defined in claim 1 (common conveyor path for the fillet detaching device and residual meat detaching device) is not disclosed in B1. In B1, the filleting device is only briefly mentioned in conjunction with the prior art (see page 2, second paragraph) and it is simply not said where or how the filleting device might be arranged in relation to the work-table conveyor 18. Therefore, the subject matter of claim 1 differs from B1 by this single feature (common conveyor path).

5.2.11 The patent does not disclose any technical effect of such an arrangement. It merely states (see published

patent specification, paragraph [0010]) that the residual meat harvester is disposed along the path of the conveyor of the fillet harvester.

In the Board's view, the objective technical problem associated with this feature can therefore be expressed as providing a suitable arrangement for conveying poultry through and between a filleting and a residual meat harvesting unit.

5.2.12 Faced with this problem the skilled person has only two alternatives, either of which the Board considers trivially obvious. Either the filleter and residual meat harvester are on the same conveyor path or they are on different conveyor paths. The Board considers that, starting from B1, the skilled person would choose either one of these (including the first) as a matter of obviousness, and thereby arrive at the subject matter of claim 1 without making an inventive step.

5.2.13 Whether the conveyor path is comprised of a single section or different sections is of no relevance as the claim itself contains no such limitation. In any case, that B1 discloses a "stand alone" machine for carcass parts clamped in a row on a beam or on a rotating table (see page 2, last complete paragraph), is no impediment for straightforward integration as a section of a conveyor on a common path with the filleting machine.

Nor is the Board convinced that the particular arrangement of B1's clamps 22, 24 to secure carcasses to the underlying work table 18 (see for example figure 1) necessitate a manual loading of carcasses that would prevent such an integration. The thrust of B1's teaching (see paragraph bridging the first page and

page 2) is to provide an automated arrangement. Indeed, all the conveying and processing steps B1 describes are automatic, such as (see paragraph bridging pages 2 and 3), the removal of carcass parts from the residual meat harvester, or the engagement of the clamps to the carcasses on the work table (see paragraph bridging paragraphs 7 and 8 with figure 1, in particular as clamps are guided by rails 37 and 38).

Finally, although B1 is silent as to how the poultry arrive on the work-table 18, the Board has no doubt that the skilled person, a mechanical engineer with experience in processing slaughtered poultry, would know from their general knowledge how to automate transfer between filleter and residual meat harvester.

5.3 From all of the above, the Board concludes that the subject matter of claim 1 lacks inventive step starting from B1 and the skilled person's general knowledge. Therefore the main request must fail.

6. Admission of auxiliary requests

6.1 Auxiliary requests 1 to 6 and 8 to 10

6.1.1 According to Article 12(2) RPBA 2007, the statement of grounds of appeal and the reply must contain a party's complete case. They must set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld and should specify expressly all the facts, arguments and evidence. The intended overall effect of this article is to require the parties to present a complete case at the outset of the proceedings in order to provide the Board and the other parties with an appeal file

containing comprehensive submissions from each party so that proceedings are, amongst other things, fair.

According to Article 12(4) EPC, the Board shall take into account everything presented by the parties if and to the extent it (amongst other things) meets the requirements of Article 12(2) EPC.

6.1.2 In the present case, the opposition division found the main request to lack novelty (see decision grounds point 3.1.4). In its grounds of appeal and reply to the appeal of the opponent II, the appellant-proprietor did not explain why auxiliary requests 1 to 6 and 8 to 10 overcame the novelty issue which lead to the main request failing, or why the auxiliary requests should involve an inventive step. Rather, at most the appellant-proprietor explained (see the proprietor's grounds of appeal, section 6 and its reply to the opponent 2's appeal, sections 5 and 6) why these auxiliary requests did not contain added subject matter.

6.1.3 In the Board's view, the fact that certain features overlap with features of the claims in the version as upheld and in respect of which the appellant-proprietor formulated novelty and inventive step arguments (cf. appellant-proprietor's reply to the opponent 2's appeal, sections 1 to 4) does not relieve the appellant-proprietor of its obligation under Article 12(2) RPBA to file arguments in respect of all requests, since claims are the combination of all their features.

6.1.4 Nor does the fact that certain requests were already on file in the opposition proceedings change the way in which the Board should exercise its discretion in

admitting requests in appeal proceedings. In accordance with established jurisprudence, the appeal procedure is not a continuation of the opposition procedure, but a distinct procedure in which all relevant facts, evidence or arguments must be resubmitted. Were this not the case, Rule 12(2) RPBA would serve no purpose.

- 6.1.5 For these reasons, the Board decided to exercise its discretion under Articles 12(2) and 12(4) RPBA with Article 114(2) EPC by not admitting auxiliary requests 1 to 6 and 8 to 10 into the proceedings.
- 6.1.6 In this respect, the Board notes that appellant-proprietor has had the right to be heard on the issue of admittance of these requests. In its grounds of appeal (see section 3), the appellant-opponent 2 argued that the auxiliary requests should not be admitted since they were not substantiated. The appellant-proprietor could have replied to this but chose not to. The Board drew the parties' attention to this argument in its preliminary opinion (see point 7.1). At oral proceedings (see minutes, page 3), before the Board decided not to admit these requests, the parties were heard on the issue.
- 6.1.7 An inevitable consequence of the Board's deciding to exercise its discretion in this way is that these auxiliary requests played no further role in the proceedings. Consequently, this decision renders a discussion of these requests in substance redundant. Therefore, the appellant-proprietor's argument that by not having had such a discussion their right to be heard was compromised, is moot.
- 6.2 Admittance of Auxiliary request 7 (patent as upheld)

Auxiliary request 7 is identical to the version of the patent the division upheld in the part of the decision challenged by the appellant opponent 2 with their appeal. The appellant opponent 2 has not presented any cogent reason why the Board should not admit this request, other than that it was filed late. In particular it has not argued that the division exercised its discretion improperly when it admitted this request, and that is also not apparent from the facts of the case. Nor is it apparent to the Board on what legal basis it could unadmit a request that forms the basis of a decision.

Therefore, the Board decided to admit auxiliary request 7 into the proceedings.

7. Auxiliary request 7, claim 1, inventive step starting from B4
- 7.1 Claim feature "detaching device for harvesting residual meat still present on the breastbone [...that...] comprises at least one roller [...] provided with a profile"
- 7.1.1 The appellant-opponent 2 argues that this feature cannot contribute to inventive step, since residual meat remaining on the breastbone can only be harvested by two rollers and not a single roller. The Board disagrees.
- 7.1.2 It is true that the detailed embodiments of the patent have pairs of profiled rollers (see the published patent specification, for example paragraph [0076] with figure 9). However, the patent also discloses (see paragraph [0016]) that one profiled roller can be used. Whether with one or two rollers, the paragraph goes on

to explain the mechanism by which meat is removed from the breastbone. In summary, the roller's profile engages and grips anchorage tissue (attached to the breastbone) and as the roller rotates, this tissue is pulled away from the breastbone.

The skilled person, as stated a mechanical engineer with experience in processing slaughtered poultry, would know that, to achieve such an engagement, the roller must engage the tissue against a counter acting force, either within a nip created by a counter roller, or by means such as a surface holding the poultry in position against the roller.

7.1.3 Therefore, the appellant-opponent 2's argument that the detaching device of claim 1, with its "at least one roller", cannot contribute to inventive step, is moot.

7.2 Disclosure of B4

7.2.1 B4 discloses (see title, abstract and claim 1) a system for processing a carcass part of a slaughtered poultry comprising a cartilage harvesting station for harvesting the part of the breastbone which comprises cartilage after most of the meat has been removed by deboning, thus after harvesting the breast fillet.

7.2.2 It is common ground that B4 does not disclose a profiled roller. However, it is disputed whether B4 discloses a detaching device for harvesting residual meat present on the breastbone after harvesting the breast fillet and a collection means for collecting such harvested residual meat. In the Board's view B4 discloses neither feature.

7.2.3 After deboning (removing the breast fillets) the only harvesting B4 discloses is that of cartilage (see title and for example column 1, lines 38 to 48). It is true that B4 discloses (see column 1, lines 48 to 52, column 3, lines 3 to 12, column 5, lines 10 to 16, column 9, line 65 to column 10, line 18) that residual meat fragments and membranes left on the cartilage and connecting it to the rest of the carcass should be stripped (in other words detached) from the cartilage as part of the harvesting operation. However, the harvesting operation referred to is still that of cartilage.

B4 does not explicitly say what happens to these meat fragments. However (see column 9, line 65 to column 10, line 18 with figure 6), since they start off being attached to cartilage and breastbone but are then severed from the cartilage by a sharpened blade 81 as the carcass moves away from the cartilage harvesting station, the Board considers it implicit that they remain attached to the carcass, with its breastbone. Therefore, they are not harvested from the breastbone.

Without harvesting of residual meat there is also no collection means to collect it.

7.2.4 Thus, the subject matter of claim 1 differs from B4 in that it has a detaching device comprising at least one profiled roller for harvesting residual meat present on the breastbone after having removed the breast fillet and means for collecting the residual meat.

7.2.5 The technical effect of these features (harvesting and collecting) is to increase yield (see published patent specification, paragraph [0009]). Therefore, the problem associated with these differences can be

expressed as how to modify the processing system of B4 to increase yield.

7.3 Inventive step starting from B4 in combination with B7, B8 or B9

7.3.1 The appellant-opponent 2 has argued that, starting from B4 and presented with the objective technical problem (increasing yield), the skilled person would realise that the meat fragments remaining on the cartilage are usable and therefore they would want to harvest them. With this understanding, the skilled person would look towards the deskinning arrangements of B7, B8 and B9 as suitable for harvesting residual breastbone meat. The Board disagrees.

7.3.2 It may be that the skilled person realises that the meat fragments remaining on the breastbone could be harvested to increase yield. That said, the Board considers that B7 to B9 (see B7 and B8, respective abstracts and B9, paragraph [0024]) offer no solution to this problem. Rather they are concerned with skinning, which is the removal of unwanted skin to expose meat for harvesting. There is no suggestion skinning might increase yield, let alone that it could be used to harvest residual meat to increase yield.

In the absence of any hint to this effect, the Board holds that the skilled person would not combine B4 with any of B7, B8 or B9, even if the processes of pulling external skin from a carcass and pulling tissue off a bone might be similar as argued.

7.4 Nor, again starting from B4, does the skilled person find a solution in M4. This document discloses an apparatus for removing residual meat from bones (see

title and claim 1). M4 teaches (see for example column 2, lines 4 to 8, and column 4, lines 18 to 27 with figure 2) to harvest this residual meat using knives and rotating pairs of brushes 81.

- 7.4.1 Combining B4 with M4, the skilled person would, at most, arrive at the idea of harvesting residual meat with a brush. In the Board's view, it would however not then be obvious for the skilled person to make the further step of replacing the brush with a profiled roller as the appellant-opponent 2 has argued. M4 itself does not mention using a profiled roller to remove meat, let alone disclose that brushes and rollers are equivalent when it comes to harvesting residual meat. Nor is there any evidence to show that such an equivalence would be common general knowledge.

Moreover, the Board is unconvinced that the skilled person would understand from general principles and unprompted by any prior art, that a profiled roller would have the very same action in removing meat as a rotating brush such as brush 81 of M4 and could therefore replace such a brush.

- 7.5 It follows from the above that the Board is not convinced that the impugned decision was wrong to find that the subject matter of claim 1 of the 7th auxiliary request (as upheld) to involved an inventive step.
8. The above conclusion (subject matter involves an inventive step) likewise applies to the independent method claim, claim 6, of the 7th auxiliary request, which has all the features of claim 1 albeit formulated in terms of method steps.

9. The Board concludes that the appeal of the appellant-proprietor must fail because the subject matter of claim 1 of the main request lacks inventive step and auxiliary requests 2 to 6 have not been admitted into the proceedings. Moreover, the appeal of the appellant-opponent 2 must fail because the patent in the version according to auxiliary request 7 (as maintained) has been found to involve an inventive step.

Therefore, both appeals must be dismissed.

Order

For these reasons it is decided that:

Both appeals are dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated