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**Datasheet for the decision  
of 13 October 2021**

**Case Number:** T 2518/17 - 3.2.04

**Application Number:** 12164268.0

**Publication Number:** 2572586

**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. 76

**Keyword:**

Amendments - added subject-matter (yes)  
Principle of no reformatio in peius

**Decisions cited:**

G 0004/93, G 0002/92

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 2518/17 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 13 October 2021**

**Appellant:** Marel Stork Poultry Processing B.V.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
3 November 2017 concerning maintenance of the  
European Patent No. 2572586 in amended form.**

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. Appeals were filed by appellants (opponents 1 and 2) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request II, the patent in suit met the requirements of the EPC. The proprietor also lodged an appeal against the decision, but then withdrew its appeal with letter of 9 September 2021.
- II. The opposition division decided, amongst other things, that amendments made to the claims of the auxiliary request II did not add subject matter.
- III. In a communication, the Board set out its preliminary opinion on the relevant issues.
- IV. Oral proceedings before the Board were duly held in the absence of the respondent-proprietor who had been duly summoned and who had informed the Board in a letter received 1 October 2020 that it would not attend the oral proceedings as originally scheduled.
- V. The appellant-opponents 1 and 2 requested that the decision under appeal be set aside and that the patent be revoked.

The appellant-proprietor requested in writing that the decision under appeal be set aside and that the patent be maintained as granted (main request), or pursuant to one of auxiliary requests I to VII, all filed or re-filed with its grounds of appeal dated 28 February 2018, whereby auxiliary request II corresponds to the version as upheld by the opposition division.

VI. The independent claim 1 of the proprietor's requests read as follows:

Main request (as granted):

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

Claim 1 of auxiliary request I reads as for the main request except that it adds the following wording to the end of the claim: "and upstream of the cartilage harvesting station".

Auxiliary request II: Claim 1 reads as for the main request, except that the wording "- a detaching device

(20) for removing residual tissue still present on the breast bone", is replaced by the wording:

"a detaching device (20) for removing residual tissue still present on the free edge of the crest of the breastbone (2)" (with the added feature emphasised by the Board in underline).

Claim 1 of auxiliary request III reads as for auxiliary request 2 except that it adds the following wording to the end of the claim: "and upstream of the cartilage harvesting station".

Claim 1 of auxiliary requests IV to VII reads as for the main request except that they respectively add the following wording to the end of the claim:

Auxiliary request IV: "wherein the the detaching device (20) comprises a scraper (40; 140) for scraping the residual tissue off the breastbone (2), in which the scraper (40; 140) comprises one or more scraping elements (41, 42; 141, 142), at least one scraping element being spring-loaded".

Auxiliary request V: "wherein the the detaching device (20) comprises a scraper (40; 140) for scraping the residual tissue off the breastbone (2), in which the scraper (40; 140) comprises one or more scraping elements (41, 42; 141, 142), at least one scraping element being spring-loaded, and wherein the detaching device further comprises at least one roller (30; 130), the roller (30; 130) being provided with a profile (31; 131) for gripping tissue still present on the breastbone (2) 20 after the harvesting of the breast fillet (5)".

Auxiliary request VI: "wherein the detaching device (20) comprises a scraper (40; 140) for scraping the residual tissue off the breastbone (2), in which the scraper (40; 140) comprises a left-hand scraping (42; 142) element and a right-hand scraping element (41; 141 ), which are disposed in such a way that they can spring in a direction which is substantially perpendicular to the direction of the path of the product carriers at the position of the scraping elements (41, 42; 141, 42)".

Auxiliary request VII: "wherein the the detaching device (20) comprises a scraper (40; 140) for scraping the residual tissue off the breastbone (2), in which the scraper (40; 140) comprises a left-hand scraping (42; 142) element and a right-hand scraping element (41; 141 ), which are disposed in such a way that they can spring in a direction which is substantially perpendicular to the direction of the path of the product carriers at the position of the scraping elements (41, 42; 141, 42), and wherein the detaching device (20) comprises at least one roller (30; 130), the roller (30; 130) being provided with a profile (31; 131) for gripping tissue still present on the breastbone (2) after the harvesting of the breast fillet (5)".

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

Claim 1 of auxiliary requests II and III add subject matter extending beyond the parent application as filed. Due to the prohibition of reformation in peius, auxiliary requests IV to VII are inadmissible.



VIII. The respondent-proprietor's arguments can be summarised as follows: The decision correctly found that the amendment to auxiliary request II does not inadmissibly add subject matter. Auxiliary request III has the same amendment.

### **Reasons for the Decision**

1. The appeals of the opponents are admissible.

2. Background

The patent (see published patent specification, paragraphs [0001] to [0003], [0007] and [0009]) relates to processing poultry. Known processing systems for harvesting breast fillets leave valuable residual tissue on the breastbone. Another valuable part of the breastbone is cartilage. The invention (see all versions of claim 1) aims to provide a system that harvests this cartilage and a detaching device that removes residual tissue after the fillets have been harvested.

3. Main request and auxiliary request 1

Because the proprietor has withdrawn its appeal, it is now the respondent. As respondent, the proprietor is primarily restricted during appeal proceedings to defending the patent in the form in which it was maintained by the opposition division in its interlocutory decision (see **G2/92** and **G4/93**, order) and the principle of prohibition of reformatio in peius applies to the benefit of the sole appealing opponents. Consequently, the proprietor as respondent is barred from returning to the patent as granted or to higher

ranking unsuccessful requests. Therefore, the Board finds the main request directed at the patent as granted and auxiliary request I corresponding to the auxiliary request I held unallowable in the decision under appeal to be inadmissible.

4. Auxiliary requests II and III, claim 1, Article 76(1) EPC

4.1 In its communication in preparation for the oral proceedings, the Board gave the following preliminary opinion on auxiliary request II:

*7. Second auxiliary request (as maintained) added subject matter, Article 76 EPC*

*7.1 In this section, unless stated otherwise, references are to the published parent application, WO2008/118008, A1 publication.*

*7.2 Claim 1 of this request adds the feature that the detaching device is for removing residual tissue on the free edge of the crest of the breastbone.*

*7.3 The opposition division (see impugned decision, reasons, point 5.1) found that there was a basis for this feature because the parent (paragraph bridging pages 1 and 2) states that "the cartilage must have all residual tissue [...] which provide the anchorage of muscle tissue to the cartilage, removed from it" and, so it reasoned, this anchorage is connected to the free edge of the crest of the breast bone (see page 2, lines 19 to 21). Therefore, the detaching device (cf. page 1, lines 34 to 36) must be [suitable] for removing residual tissue from the free edge of the crest of the breast bone as claimed. The Board disagrees.*

7.4 In accordance with a generally established principle in the jurisprudence (see Case Law of the Boards of Appeal, 9th edition, 2019 (CLBA) II.E. 1.10.1), the disclosure of the generic is not a disclosure of the specific unless the application teaches otherwise.

In the present case, removing residual tissue from the cartilage, whether or not all tissue is removed and whether or not the tissue functions as an anchor before removal, is not a disclosure of removing tissue from a specific place, namely the free edge of the crest of the breast bone.

7.5 Nor, in the Board's view, is such a disclosure implicit. The anchorage cited by the opposition division (page 2, lines 19 to 21) is between the crest of the breastbone (cf. figure 1, reference 3) and fillet meat. Whether or not the cartilage forms part of this crest and whether, if this should be the case, anchorage would be located on this part of the crest is not disclosed. At most (see page 5, lines 29 to 33 with figure 1), the dashed line 4\* indicates the area over which anchorage tissue extends, and this ends short of the extremity of the breastbone.

7.6 Therefore, the Board sees no direct and unambiguous disclosure of a detaching device removing tissue from the free edge of the crest of the breastbone in this general part of the description.

7.7 The specific references in the parent A publication (page 2, lines 19 to 32, page 3, lines 26 to 30, paragraph bridging pages 7 and 8, page 8, lines 18 to 24) to removing tissue from the free edge of the crest

*of the breastbone, all disclose a specific residual tissue detaching device, namely a pair of profiled rollers. In the Board's view, the removal of tissue from the crest as claimed is only originally disclosed in a tight functionally and structural relationship with these rollers. Their profiles engage with the tissue and, by rotating the rollers in opposite directions, pull it from the free edge of the breastbone crest (see parent, A publication, page 2, lines 26 to 32). However, these features (specific rollers) have not been claimed.*

*7.8 Rather, a generic detaching device is claimed. Therefore, the claim represents an intermediate generalisation which has no basis in the parent application.*

*7.9 Therefore, the Board is of the provisional opinion that the appellant-proprietor's second auxiliary request (as maintained) must fail on added subject matter.*

4.2 In the absence of any written or oral arguments from the parties disagreeing with this aspect of the communication, the Board sees no reason to deviate from its preliminary opinion. Therefore, the Board confirms that the subject matter of claim 1 of auxiliary request II adds subject matter extending beyond the parent application as filed.

4.3 Regarding auxiliary request III, the Board gave the following preliminary opinion in its communication:

*9. Auxiliary request 3*

*9.1 Admission*

*The appellant-proprietor states in its appeal grounds (page 12, point 7.3) that this request combines auxiliary requests I and II. However, it has not said why this request should succeed should either of both of the latter requests fail. Prima facie, the Board notes that should auxiliary request 2 fail for added subject matter then auxiliary request 3 would fail for the same reasons. This may need to be discussed.*

4.4 Without prejudice to the question of admission of auxiliary request III, and in the absence of any further comments from the parties, since the Board finds that auxiliary request II fails on added subject matter, the Board adopts the opinion regarding auxiliary request III it presented in its communication (added subject matter for the same reason as auxiliary request II). Consequently, auxiliary request III fails.

5. Auxiliary requests IV, V, VI and VII

With its decision, the opposition division upheld the patent in the version according to auxiliary request II. Claim 1 of that request was restricted to a *detaching device for removing residual tissue still present on the free edge of the crest of the breastbone*. Auxiliary requests IV, V, VI and VII delete this restriction, defining instead the broader idea of a *detaching device for removing residual tissue still present on the breastbone*. The deletion thus broadens the scope of claim 1 beyond that which was maintained. Allowing this request of the non-appealing respondent-proprietor would, at least in this respect, put the appealing parties (the opponents) in a worse position than they would have been in had they not appealed. Therefore, these requests fail under the prohibition of

reformatio in peius (see **G2/92** and **G4/93**, headnote).  
For these reasons the Board decided not to admit these requests into the proceedings.

6. Since all the respondent-proprietor's requests fail or are not admitted into the proceedings, the Board must revoke the patent.

**Order**

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

1. The decision under appeal is set aside.
2. The European patent is revoked.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated