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D E C I S I O N
of 14 November 1994

Case Number: T 0768/90 - 3.2.4

Application Number: 84200733.8

Publication Number: 0141432

IPC: A22C 21/06

Language of the proceedings: EN

Title of invention:

Device for separating the gizzard from the connected entrails
of slaughtered poultry

Patentee:

STORK PMT B.V.

Opponent:

Meyn Machinefabriek B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

-

Decisions cited:

T 0002/83, T 0056/87, T 0219/83

Headnote/Catchword:

-



Case Number: T 0768/90 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 14 November 1994

Appellant: STORK PMT B.V.
(Proprietor of the patent) 43a Wim de Körverstraat
NL-5831 AN Boxmeer (NL)

Representative: Timmers, Cornelis Herman Johannes
EXTERPATENT B.V.
P.O. Box 3241
NL-2280 GE Rijswijk (NL)

Respondent: Meyn Machinefabriek B.V.
(Opponent) Postbus 16
NL-1510 AA Oostzaan (NL)

Representative: de Vries, Johannes Hendrik Fokke
Octrooibureau Los en Stigter B.V.
P.O. Box 20052
NL-1000 HB Amsterdam (NL)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office of 21 June 1990 dispatched
on 16 July 1990 revoking European patent
No. 0 141 432 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: R. E. Gryc
J. C. M. de Preter

Summary of Facts and Submissions

I. The Appellant (Proprietor of the patent) lodged an appeal, received on 14 September 1990, against the decision of the Opposition Division, dispatched on 16 July 1990, on the revocation of the European patent No. 141 432.

The fee for appeal was paid simultaneously.

The statement setting out the grounds of appeal was received on 23 November 1990 together with an amended version of the revoked patent.

II. Opposition was filed against the patent as a whole and based on Article 100(a) EPC.

The Opposition Division held that the grounds for opposition mentioned in Article 100(a) EPC prejudiced the maintenance of the patent having regard to the following documents:

- (D1) US-A-3 990 128
- (D2) US-A-3 480 991
- (D3) US-A-3 172 148 and
- (D4) US-A-4 073 040.

III. In his statement setting out the grounds of appeal, the Appellant drew attention to the fact that the device according to D1 is intended to be used to separate the gizzard from the complete entrails, since the hanging of the entrails under the gizzard is necessary for positioning the same correctly with respect to a cutting knife.

He pointed also out that D4 discloses a device for separating the gizzard from the connected entrails in two successive stages and that merely replacing the cutting disk of D1 by a pair of pinching gears according to D4 having no helical teeth would not permit control of the severing of the entrails from the gizzard.

- IV. In his comments in response to the Statement of Grounds of Appeal the Respondent (Opponent) pointed out that detaching the gut and the stomach from the gizzard by using intermeshing gears was already known from D4 whereas the gizzard was supported by the gears.

He further took the view that intermeshing gears were also capable of detaching both entrails and stomach simultaneously, provided that the stomach be presented in a correct way, since the connection between stomach and gizzard was only a small constriction.

He was also of the opinion that the skilled person would learn from D1 the correct way for positioning the entrails packet with respect to the separating device, i.e. the gut and the stomach being forced under the transport elements whereas the gizzard is supported thereon.

- V. In reply to a communication to the parties giving a provisional opinion of the Board favourable to the invention the respondent requested oral proceedings.

He argued that D4 related to the same technical field as the invention and would thus be taken into consideration by the skilled person.

In his opinion the skilled person would experiment with a device according to D4, modified so that the entrails packet would be presented to the separating device in

the same way as in D1, with the result that the second pair of gears would appear useless.

With a letter dated 17 October 1994 the Appellant filed a new Claim 1 amended in order to comply with the objections stated in the communication of the Board.

This new Claim 1 reads as follows:

"1. Device for separating the gizzard from the complete entrails of slaughtered poultry, comprising an inlet (8) for the complete entrails packet, arranged adjacent one of a first and a second elongate and interacting, cylindrical, mutually parallel driven transport element (2, 3) for transporting the complete entrails packet and being spaced from one another, which transport elements synchronously rotate in opposite directions and are provided with a helical rib (9) and with longitudinal interengaging ribs (11, 29) for transporting the complete entrails packet and forcing the entrails packet with the exception of the gizzard under the transport elements and presenting them in this condition to a gizzard separating device, characterized in that the gizzard separating device consists of two cylindrical gizzard separating elements (2b, 3b) coaxially connected with the transport elements (2, 3) and similarly synchronously driven rotatingly, which gizzard separating elements are provided on the circumference with intermeshing helical teeth (33, 34) sized in such a way that the gizzard is supported by these teeth."

VI. Oral proceedings took place on 14 November 1994.

Starting from the prior art disclosed in D1 which he considered as the closest, the Respondent took the view that the invention could only be found in the

substitution of the cutting disk of D1 by a pair of pinching gears known from D4.

He alleged that in D4 the reason for a separation in two steps of the gizzard from the rest of the entrails packet is not for improving the severing, but to isolate first the intestine from the rest of the entrails packet to avoid contamination.

He considered that in any case it was irrelevant whether a single pair or two pairs of gears were used since, in his opinion, when confronted with such a different approach compared to the known method of using a cutting disc, the skilled person could not help experimenting with the entrails packet presented according to the teaching of D1 (i.e. in such a way that only the gizzard is supported by the transport elements). The result would be that a second pair of gears would appear useless because the first pair encountered by the entrails packet would have already performed the severing step looked for.

The Respondent concluded that, since D1 and D4 led the person skilled in the art to carry out experiments which would inevitably lead to the solution recited in Claim 1, an inventive step should be denied.

VII. At the end of the oral proceedings the Appellant requested that the decision under appeal be set aside and the patent be maintained in the following version:

- Claim 1 filed with letter of 17 October 1994,
- Claims 2 to 5 as granted,
- Description: columns 1 and 2 with inserts A and B filed with letter of 23 November 1990 and columns 3 to 5 as granted,
- Drawings: sheets 1 to 5 as granted.

The Respondent requested that the appeal be dismissed.

Reasons for the Decision

1. *Admissibility of the appeal*

After examination, the appeal has been found to be admissible.

2. *Admissibility of the amendments with regard to Article 123(2) and (3) EPC*

2.1 Claim 1

2.1.1 With respect to Claim 1 as granted, new Claim 1 filed by the letter dated 17 October 1994 differs in particular as follows with reference to column 5 of the specification:

- line 29: the term "connected" of the previous Claim 1 has been replaced by the word "complete";
- lines 33 and 34: between the term "element (2,3)" at the end of line 33 and the term "spaced" at the beginning of line 34, the sentence: "...for transporting the complete entrails packet and being..." has been added.
- line 34: between the term "which" and the term "synchronously" the words "transport elements" have been added;
- lines 35 and 36: the phrase "...provided with interengaging ribs (11, 29) or the like for..." has been replaced by "... provided with a helical rib (9) and with longitudinal interengaging ribs (11, 29) for transporting the complete entrails packet and..."

- lines 38 and 39: the phrase "...under the transport means and presenting the entrails packet to..." has been changed into "... under the transport elements and presenting them in this condition to...".

2.1.2 These amendments of the precharacterising part contribute to defining more precisely the structure of the transport elements and to clarifying that the complete entrails packet is transported as a whole and presented to the gizzard separating device in a specific position, i.e. the gizzard being supported on the transport elements and the rest of the entrails packet hanging under said elements.

A support can be found in the description of the application as originally filed on, respectively, page 5, lines 14 to 21, with respect to the features of the transport elements and either on page 2, lines 16 to 18, or on page 5, from line 22 to the end of the page as far as the presentation of the entrails packet is concerned.

2.1.3 The amendments in the characterising part of Claim 1 only relate to clarity.

2.2 The amendments in the introductory part of the description were made essentially to adapt the same to Claim 1 and to define more precisely the state of the art cited in application of Rule 27(1)(b) and (c) EPC and they do not add any new matter to the content of the application as filed.

2.3 Therefore the above-mentioned amendments are not objectionable under Article 123(2) EPC. Since, moreover, the addition of all these new features to Claim 1 restricts its scope of protection, no objection can be raised under Article 123(3) EPC either.

3. *Novelty*

3.1 Having examined all the available prior-art documents, the Board is satisfied that none of them discloses a device for separating the gizzard from the rest of the entrails of a poultry comprising in combination all the features described in Claim 1.

Since this has never been disputed during the proceedings, there is no need for further detailed substantiation of this matter.

3.2 The subject-matter as set forth in Claim 1 is thus to be considered as novel within the meaning of Article 54 EPC with respect to the prior art brought to the consideration of the Board.

4. *The closest state of the art*

4.1 In agreement with the parties, the Board considers that among all the citations opposed to the patent in suit, D1 is the disclosure that describes in combination most of the characteristics cited in Claim 1.

In particular D1 describes a device comprising all the features present in the pre-characterising portion of Claim 1.

4.2 The subject-matter of Claim 1 differs from this closest state of the art by the combination of features described in the characterising part of Claim 1.

5. *The problem and its solution*

5.1 When starting from said closest prior art and taking into account the above-mentioned differences, the problem to be solved could be objectively determined as

being to find another separating device in replacement to that of D1 in order to improve the severing operation at high speed so that ultimately solely the gizzard with a small part of the entrails, correctly cut off therefrom, remains behind (see the impugned patent: column 1, lines 36 to 51, and column 4, lines 50 to 52).

5.2 The Board has no reason to doubt that the implementing on a device according to D1 of all the measures cited above under section 4.2 would solve the above-mentioned problem.

6. *Inventive step (Article 56 EPC)*

6.1 The questions to be answered as regards the inventive step are not only whether the skilled person examining the prior art in the light of his general common knowledge would be provided with enough indications so that he could arrive at the solution claimed in Claim 1, but moreover whether, starting from the device of D1, he would follow the teachings of the prior art to modify said device in the direction of the invention in expectation of the improvement he was searching for (see decision T 2/83, OJ EPO 1984, 265).

It should also be recalled that the technical teaching in a prior art document should be considered in its entirety and that it is not justified arbitrarily to isolate parts of such document from their context in order to derive therefrom a technical information which would be distinct from or even in contradiction with the integral teaching of that document (see decision T 56/87, OJ EPO 1990, 188).

6.2 D2 is concerned with a device for removing the skin from gizzards in a gizzard splitting and skinning machine. The function of the spiral gears of said known device is

comparable to the one of the peeling rollers of the device according to D1 and has nothing to do with the severing of a gizzard from the entrails of a poultry. Therefore, when searching for an alternative to the means for cutting the gizzard from the entrails packet according to D1, the skilled person would normally not consult a disclosure such as D2 and even if he did so, he would not get any indication about the use and capability of intermeshing helical teeth for separating a gizzard from a complete packet of attached entrails.

- 6.3 D3 is concerned with an apparatus which processes only the gizzard and the stomach connected together by a small tube while the rest of the entrails of the poultry has already been cut during a previous eviscerating process of the carcass.

Here again the skilled person would learn nothing about the use and the efficiency of intermeshing teeth in relation with the operation of severing a complete packet of entrails (intestines and stomach) from the gizzard.

- 6.4 The apparatus known from D4 appears to be more relevant than the aforementioned prior art of D3 since it is designed for processing the complete entrails packet and not only the entity stomach-gizzard.

It seems thus reasonable to assume that the skilled person searching for an alternative to the severing system of D1 would effectively consult this document which would teach him that pairs of engaging gears could be used to tear the pieces of entrails away from each other.

However, the skilled person would also learn from D4 that, although efficiency and greater compactness was aimed at (see column 1, lines 6 to 10), the complete entrails packet should be presented successively to remote separating stations so that the connections between the entrails be torn off one at a time and that the processing machines should be provided with as many pairs of pinching gears as connections of the entrails to be broken.

- 6.5 . Consequently not only would the skilled person be provided with indications concerning an entirely different separating process (pinching and tearing) compared to that (cutting) performed in D1, but the tearing device of D4 considered as a whole would appear to him much more complicated and cumbersome (although presented as compact) in comparison with the simple cutting disk of D1. He would thus have no a priori reason to adopt such an alternative quite apart from the fact that it carries out the separating process in two severing steps instead of only one with the cutting disk.

Moreover, in the absence of a particular hint from the prior-art documents, particularly from D4, the skilled person would also have no particular reason to take from the device of D4 the teaching that only one pair of pinching gears would solve the indicated problem, because he could not expect a priori that when a complete entrails packet is presented to a single pair of gears in the same condition as it is presented to the cutting disk of D1 (i.e. in a different position compared to that in D4 and without any centering means to position the gizzard as required therein) said single pair of gears would be capable of reliably tearing off simultaneously and accurately the two links between the gizzard to the rest of the entrails packet.

6.6 On the contrary, it appears much more reasonable to assume that a single pair of gears would work more accurately if it had only one connection to break away at a time, be it the link between the stomach and the gizzard or between the intestines and the gizzard or between the gizzard and its liner. Such a teaching is also disclosed unequivocally in the cited prior art, so that the approach indicated by the respondent involving experimenting can only be considered as the result of an ex-post-facto analysis.

In addition, with the pinching-tearing process, the skilled person could fear that by using a single pair of gears for tearing off simultaneously the connection between the gizzard and the gut and that between the gizzard and the rest of the entrails a risk of contamination of the complete packet by the dirt squeezed out of the gut might occur, whereas such a risk does not seem to be present using a cutting disc.

6.7 The aforementioned reasons lead the Board to the conclusion that the skilled person would not be incited to search for the solution in D4 and would not arbitrarily take therefrom only some means (i.e. one pair of gears) and neglect some other means (i.e. the introducing means 135, the second pair of gears and the transport elements between the two pairs of gears) in order to improve the device of D1 designed to process the separation according to an entirely different way.

Therefore the Board is of the opinion that the invention does not follow plainly or logically from the teachings of the prior art documents taken alone or in combination but involves an inventive step within the meaning of Article 56 EPC.

7. The subject-matter of Claim 1 is thus patentable within the meaning of Article 52 EPC and the patent in suit may be maintained as requested by the Appellant.
8. Since the parties had ample opportunities to comment on the current set of amended documents of the patent in suit, the issue of a communication under Rule 58(4) EPC is not necessary in the present case (see decision T 219/83, OJ EPO 1986, 211).

Order

For these reasons it is decided that:

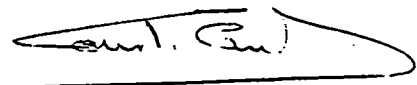
1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent in the following version:
Claims: Claim 1 filed with letter of 17 October 1994, Claims 2 to 5 as granted,
Description: Columns 1 and 2 with inserts A and B filed with letter of 23 November 1990 and columns 3 to 5 of the patent as granted,
Drawings: Sheets 1 to 5 of the patent as granted.

The Registrar:



N. Maslin

The Chairman:



C. Andries