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**Datasheet for the decision  
of 6 August 2013**

**Case Number:** T 2223/11 - 3.3.09  
**Application Number:** 05727236.1  
**Publication Number:** 1729599  
**IPC:** A23L 1/314, A23L 1/317,  
A23B 4/023  
**Language of the proceedings:** EN

**Title of invention:**

Method of production of meat products from entire muscular tissue, with direct incorporation of olive oil

**Patent Proprietor:**

CRETA FARM SOCIETE ANONYME INDUSTRIAL AND  
COMMERCIAL trading as CRETA FARM S.A.

**Opponent:**

Barker Brettell LLP

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 100(c), 100(b), 54, 56

**Keyword:**

"Opposition grounds - extension of subject-matter (no)"  
"Opposition grounds - sufficiency of disclosure (yes)"  
"Novelty (yes)"  
"Inventive step (yes)"  
"Admittance of new documents (no)"

**Decisions cited:**

T 2020/09

**Catchword:**

-



Case Number: T 2223/11 - 3.3.09

**D E C I S I O N**  
**of the Technical Board of Appeal 3.3.09**  
**of 6 August 2013**

**Appellant:** Barker Brettell LLP  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted 5 July 2011  
rejecting the opposition filed against European  
patent No. 1729599 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman:** W. Sieber  
**Members:** M. O. Müller  
K. Garnett

## Summary of Facts and Submissions

- I. This decision concerns the appeal by the opponent against the opposition division's decision to reject the opposition against European patent No. 1 729 599.
- II. The opponent had requested revocation of the patent in its entirety on the grounds that the claimed subject-matter was neither novel nor inventive (Article 100(a) EPC), that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC) and that the patent contained subject-matter which extended beyond the content of the application as filed (Article 100(c) EPC).

The documents submitted during the opposition proceedings included:

D1: US 2003/0049364 A1;

D2: W.-D. Müller, "The technology of cooked cured products", *Fleischwirtsch.* 69(9), 1989, pages 1425 to 1428; and

D4: D. Scheid, "Manufacture of cook-in ham", *Fleischwirtsch* 64(9), 1984, pages 1077 to 1080.

- III. The opposition division's decision, announced orally on 18 May 2011 and issued in writing on 5 July 2011, was based on claim 1 (only claim) of the patent as granted, which reads as follows:

"1. A method of production of meat-based products from entire muscular tissue by cold incorporation of olive oil, characterised by the addition of the olive oil after the extraction of the proteins of the meat, which method comprises the following steps:

- (a) entire muscular tissue, at low temperature, injected with the appropriate brine comprising water, salt, and/or seasonings, is inserted in a machine and is subjected to tumbling according to the known techniques, maintaining the meat mass at a temperature inferior to 4°C and under vacuum conditions
- (b) at the end of the tumbling, the olive oil is added
- (c) the tumbling continues until the complete incorporation of the olive oil
- (d) the production procedure continues according to the known techniques such as stuffing in casings, and heat treatment, packing, taking special care so that the temperature of the mixture does not rise to 4°C prior to the heat treatment".

IV. The opposition division reasoned essentially as follows:

- Amendments - Article 100(c) EPC

The optionality of the seasonings in the formulation "with the appropriate brine comprising water, salt, and/or seasonings," was based on the application as filed. All that was required in the application as filed was a brine. In particular, the original disclosure according to claim 1 and page 4, line 40 was "brine", of any type and

composition, and whether the brine comprised seasonings was purely optional.

- Sufficiency of disclosure - Article 100(b) EPC

The invention underlying claim 1 was sufficiently disclosed. Even though it was true that low temperatures were not suitable for carrying out the claimed process, this was obvious, and therefore the skilled person would not consider working at low temperatures. Furthermore, tumbling could only be carried out under conditions where the meat was plastic (ie deformable) and hence the claimed process was inherently limited as regards the temperature conditions.

- Novelty

The subject-matter of claim 1 was novel in view of D1. This document "discloses a process for the incorporation of olive oil into meat, wherein the meat is finely divided before the brine is added, thus long before olive oil is added. This contrasts with the claimed process, where the tumbling of the meat pieces is carried out "until the complete incorporation of olive oil"". Further, the wording "entire muscle tissue" in granted claim 1 excluded the finely divided meat raw material of D1, and could only mean that entire muscles were present in the claimed process. Finally, since in D1 the brine was added to finely divided meat, the term "mixing" in this document could not mean "injecting", since there would be nothing to inject brine into.

- Inventive step

The subject-matter of claim 1 was also inventive. D1 could not lead to the present invention because it absolutely required the meat to be finely divided in the form of an emulsion paste or at least, of thin-chopped meat, before brine and olive oil were added. Further, since D2 did not relate to the incorporation of lipophilic additives into meat, it could not suggest incorporating olive oil into entire muscle tissue. Thus, when D1 was considered to be the closest prior art, there was no hint towards the claimed process.

Taking D2 as the closest prior art, the objective problem was the provision of a process for the incorporation of olive oil into meat so as to form a stable product. There again, D2 did not relate to the incorporation of lipophilic additives into meat. Thus, the skilled person would have to turn to D1, which however required that the meat be finely divided even before the addition of the brine, thus long before the olive oil was added. It followed that, when starting from D2, the cited prior art could not lead the skilled person to the present invention either.

- V. On 2 September 2011, the opponent (hereinafter: "the appellant") filed an appeal and, on the same day, paid the prescribed fee. The statement setting out the grounds of appeal was filed on 14 November 2011 together with:

D8: US 5,158,794; and

D9: MEAT SCIENCE, "List of Contents and Author Indices", Volume 60, 61 and 62, 2002, pages V-XX.

VI. A response was filed by the proprietor (hereinafter: "the respondent") with its letter of 26 March 2012.

VII. On 14 January 2013, the parties were summoned to oral proceedings. In its preliminary opinion annexed to the summons, the board made the following observations:

It was questionable whether D8 and D9 could be admitted into the proceedings.

The wording "the appropriate brine comprising water, salt, and/or seasonings" in claim 1 appeared to be based on the application as filed since the skilled person reading the application as filed would know that seasonings were an optional constituent of brine.

The invention underlying claim 1 appeared to be sufficiently disclosed since the skilled person would know on the basis of his common general knowledge as evidenced by:

D10: "CooksInfo.com - The Encyclopaedia for Cooks",  
"Tumbling", <http://www.cooksinfo.com/tumbling>,  
2012 (last updated 26 August 2005)

that the temperature range in the claimed process did not extend to temperatures at which the meat was frozen or the olive oil was solidified.

The claimed process also appeared to be novel in view of D1. This document did not disclose any tumbling process since the mixing in this document appeared to be a very general term which covered but was not the same as tumbling. Furthermore, the tumbling step in the claimed process implied a certain minimum size of the entire muscular tissue pieces, something that was not disclosed in D1. Additionally, the number of process steps and the point in time when the vacuum was applied appeared to be further distinguishing features. Finally, claim 1 required the olive oil to be added after the extraction of meat proteins and it was a further relevant point whether this was disclosed at least implicitly in D1.

As regards inventive step, D1 rather than D2 appeared to be the closest prior art. During the oral proceedings it would be a matter for discussion what problem was solved in view of D1 and whether the claimed solution was obvious in view of D1 in combination with D2.

- VIII. With letter of 4 July 2013, the respondent commented on the board's preliminary opinion.
- IX. With letter of 23 July 2013, the appellant informed the board that it would not attend the oral proceedings and that a decision was requested to be reached in its absence.
- X. On 6 August 2013, oral proceedings were held before the board. As announced, the appellant was not represented at the oral proceedings.



XI. So far as relevant to the present decision, the appellant's arguments made during the written proceedings can be summarized as follows:

- Amendments - Article 100(c) EPC

Claim 1 did not meet the requirements of Article 100(c) EPC. This claim required the use of the appropriate brine comprising water, salt and/or seasonings. However, the description and claims of the application as filed only disclosed options in which seasonings were present in addition to water and salt. Therefore the amendment of claim 1 to make seasonings optional extended the subject-matter of the patent beyond the content of the application as filed.

- Sufficiency of disclosure

The invention underlying the opposed patent was insufficiently disclosed. Claim 1 covered processes carried out at temperatures below 0°C and the specification did not teach the skilled person how to perform the method at such low temperatures. More specifically, at some point in the covered temperature range, the olive oil and the meat would be solids such that the olive oil could no longer be incorporated into the meat. In fact, at some temperature under 4°C, the claimed method would stop working and yet the claim covered this temperature.

- Novelty

The subject-matter of claim 1 lacked novelty over D8. This document disclosed all features of claim 1 including the cold incorporation of olive oil. More specifically, oil was disclosed as a standard ingredient in the marinating medium of D8.

The subject-matter of claim 1 furthermore lacked novelty over D1. Firstly, the mixing in D1 corresponded to the tumbling of claim 1. More specifically, column 4, line 17 of the opposed patent used the term "mixing phase" for the tumbling step. The opposed patent thus applied the words "mixing" and "tumbling" interchangeably implying that for the purposes of the patent there was no distinction between these two words. Secondly, the finely divided-meat starting material of D1 corresponded to the "entire muscular tissue" of claim 1. The skilled person would understand the term "entire muscular tissue" to actually require only that continuous or intact muscular tissue was present and the thin chopped non-fat meat of D1 manifestly comprised such muscular tissue.

- Inventive step

The claimed subject-matter furthermore lacked an inventive step. D9 showed that the fields of D1 and the patent were at least neighbouring fields such that D1 could be considered to represent the closest prior art. As was set out in the patent, oil separation could be avoided due to the

creation of an emulsion between the olive oil, water and extracted meat proteins. The same information was provided in paragraphs [0006], [0009] and [0010] of D1. The only difference was that as a consequence of previous processing of the meat, extracted meat proteins were already present in the meat of D1, whereas for large pieces of meat this would not be the case. The technical problem to be solved was therefore to find a way to extract meat proteins from large pieces of meat without cutting or mincing it. In attempting to solve this problem, D2 would be an obvious source of information and this document explained that tumbling loosened the structure of the musculature, broke up cells, made cell membranes more permeable and thus made brine absorption easier and finally mobilized muscle protein which was activated in the cell interstices and on the surface. The skilled person would therefore instantly appreciate, without any inventive effort, that tumbling could be employed with the process of D1 as a way of extracting the necessary meat proteins. Since D2 contrasted an injection method used for large pieces of meat with another method used for small pieces of meat, it would also be readily apparent for the skilled person to move between treating small and large pieces of meat.

Apart from not being inventive in view of D1 in combination with D2, inventive step had also to be denied since no technical solution was provided when the olive oil and meat product had solidified,

which was the case for much of the claimed temperature range.

Finally, if for any reason claim 1 was deemed novel over D8, this document would nonetheless render claim 1 obvious.

XII. So far as relevant to the present decision, the respondent's arguments made during the written and oral proceedings can be summarized as follows:

- Amendments - Article 100(c) EPC

For the skilled person, brine was a solution of salt in water plus optional additives. Therefore it was clear to the skilled person that seasonings were an optional ingredient of brine. Consequently no subject-matter was added to the disclosure as originally filed.

- Sufficiency of disclosure

Also the requirements of Article 100(b) EPC were fulfilled. For the skilled person it was obvious what temperatures were suitable to perform tumbling. The claim embraced process temperature values as low as could be obtained below the specific maximum temperature level of 4°C. The person skilled in the art would rule out any interpretation of the claim which was illogical and did not make sense.

- Novelty

The claimed process was novel over D1 since it differed from this document by the following features:

- the type of starting raw material, ie whole muscular tissue pieces, instead of comminuted meat,
- the manner of brine addition, ie injection instead of mixing,
- the manner of treating the meat, ie tumbling under vacuum instead of mixing,
- the timing of the olive oil addition, ie after the extraction of the meat proteins, at the end of tumbling,
- the manner of olive oil addition, ie the addition of the oil in the tumbler and the commencement of tumbling instead of simple mixing, and
- the carrying out of a second independent tumbling step.

- Inventive step

D1 represented the closest prior art. The problem to be solved was the stable incorporation of olive oil into whole muscular tissue pieces. This problem was solved by adding the olive oil a sufficient interval in time after the brine addition, specifically after meat proteins had been extracted to the surface of the meat pieces, such that a stable emulsion between olive oil,

water and extracted meat proteins was formed upon the addition of the olive oil. This point in time was not suggested in D1 or D2, nor was the criticality of selecting this point in time for the olive oil addition.

The appellant's argument that no problem was solved at low temperatures was not convincing since the process was inherently limited as regards the temperature conditions.

- Admittance of documents D8 and D9

D8 should not be admitted into the proceedings since firstly it did not mention olive oil and hence was not more relevant for novelty than the other documents already on file and since secondly no arguments regarding the relevance of D8 for inventive step had been provided by the appellant.

D9, which was filed in an attempt to show that D1 was the closest prior art, should not be admitted into the proceedings either. This document was not relevant in view of the fact that it was also now accepted by the respondent that D1 constituted the closest prior art.

XIII. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent requested that the appeal be dismissed.

## Reasons for the Decision

1. The appeal is admissible.
2. *Amendments - Article 100(c) EPC*
  - 2.1 Claim 1 (the only claim) of the granted patent differs from claim 1 as filed in that the expression "the appropriate brine (water, salt, seasonings, etc)" in step (a) has been replaced by the wording "the appropriate brine comprising water, salt, and/or seasonings".
    - 2.1.1 The expression "and/or seasonings" in this wording of granted claim 1, although linguistically inapt, appears to contemplate the seasonings as being optional. Granted claim 1 thus requires the appropriate brine to comprise water, salt and optionally seasonings.
    - 2.1.2 The appellant argued that this amendment in granted claim 1 extended the subject-matter of the patent beyond the content of the application as filed.
    - 2.1.3 The application as filed refers to seasonings on three occasions, namely:
      - (a) on page 1, lines 25 to 26: "... a quantity of brine (water, salt, seasonings, nitrates, etc) is injected into...";
      - (b) on page 4, line 40; and
      - (c) claim 1.

On both occasions (b) and (c) the wording is "the appropriate brine (water, salt, seasonings, etc) is inserted..."

2.1.4 As set out by the respondent on page 7 of its letter of 26 March 2012, the skilled person would consider "brine" to be essentially a solution of salt in water. This implies that the seasonings mentioned in the above passages of the application as filed as an additional component would be considered to be optional by the skilled person, to be included as appropriate.

2.1.5 The amendment in granted claim 1 and the resulting optionality of the seasonings is thus based on the above-cited passages of the application as filed.

2.2 No further objections were raised by the appellant under Article 100(c) EPC in the present appeal proceedings and the board is satisfied that the requirements of this article are met.

2.3 The ground under Article 100(c) EPC thus does not prejudice the maintenance of the patent as granted.

3. *Sufficiency of disclosure - Article 100(b) EPC*

3.1 The process of granted claim 1 is characterised by the feature that tumbling is carried out at a temperature below 4°C. The appellant argued that at temperatures far below 4°C the process cannot be carried out since at some point in this unbounded lower temperature range, the meat and the olive oil will become solid such that the incorporation of the olive oil into the meat by tumbling is no longer possible. Therefore, in the



appellant's view, granted process claim 1 covered non-workable embodiments.

- 3.2 As confirmed by D10, it is part of the common general knowledge that tumbling in food technology refers to a process in which meat is placed in a drum that is then rotated slowly such that the pieces of meat knock against each other and the sides of the tumbler. In this tumbling process, the protein strands in the meat are loosened and the absorption of liquids is facilitated. The same can be deduced from D2 (last paragraph of the second column from the left on page 1427), which states that during tumbling large and small pieces of meat are worked mechanically and that this mechanical working loosens the structure of the musculature, breaks up cells, makes cell membranes more permeable and thus makes brine absorption easier.

On the basis of his common general knowledge, the skilled person would thus know that the feature of tumbling and the resulting absorption of olive oil in granted claim 1 presuppose that the meat must not be frozen (as otherwise protein strands could not be loosened) and the olive oil must not be solid (as otherwise the olive oil could not be absorbed). Therefore, granted claim 1 implicitly requires the temperature during the process to be high enough to prevent the freezing of the meat and the solidification of the olive oil. By way of this implicit lower temperature limit, the non-workable embodiments referred to by the appellant are excluded from the claimed process. No insufficiency of disclosure thus arises.

3.3 The ground under Article 100(b) EPC therefore does not prejudice the maintenance of the patent as granted.

4. *Novelty*

4.1 Apart from a novelty attack on the basis of D8 (see point 6 below), the appellant attacked novelty solely on the basis of D1.

4.2 D1 (paragraph [0038]) discloses a process wherein:

- thin-chopped non-fat meat having a temperature of 0°C is mixed with water having a temperature of - 2°C in a mixing machine with simultaneous addition of salt and *inter alia* spices,
- olive oil is inserted when the temperature of the mixture is 2°C,
- the mixing is continued with simultaneous application of a vacuum for 3 minutes,
- the mixing is further continued until the temperature is 4°C,
- the mixture is then transferred to a filling machine where it is encased with simultaneous application of a vacuum and later on,
- the resulting product is pasteurized at 71°C.

4.2.1 The claimed process requires in steps (a) and (c) the tumbling of the meat component with brine and thereafter with olive oil. As set out above when discussing sufficiency of disclosure (point 3.2), tumbling in food technology refers to a process in which meat is placed in a drum which is then rotated slowly such that the pieces of meat knock against each other and the sides of the tumbler.

Contrary to the process of claim 1, in D1 the individual components are subjected to mixing rather than tumbling.

The appellant argued that the mixing in D1 corresponded to the tumbling of claim 1. In this respect, the appellant referred to column 4, line 17 of the opposed patent where the term "mixing phase" is used for the tumbling step. The appellant concluded that the opposed patent used the words "mixing" and "tumbling" interchangeably implying that for the purposes of the patent there was no distinction between these two words.

The board does however not find the appellant's argument convincing. In food technology, a distinction is made even between the very similar processes of steaking, tenderizing, squeezing, massaging and tumbling (second sentence of the chapter "Mechanical protein-activation" on page 1078 of D4). All these processes (and many more) may lead to some sort of mixing, which is why the opposed patent seems to refer to the "mixing phase" in the context of tumbling. However, only one of these mixing processes is the tumbling process required by granted claim 1. Therefore, mixing as disclosed in D1 is a rather general term which may cover but certainly is not the same as tumbling.

4.2.2 The tumbling process of granted claim 1 not only implies a certain process design but also requires the use of pieces of meat that are big enough such that they knock against each other and against the sides of the tumbler (see the explanation of the tumbling

process in point 3.2 above). This requirement is not fulfilled eg in the case of minced meat in which the individual meat pieces are so small and have a consistency such that they stick together with the result that when they are subjected to tumbling, they do not knock against each other and do not knock against but rather slide along the container wall. Therefore, when reading granted claim 1 in its entirety, the term "entire muscular tissue" must be read such that it implies a certain minimum size of the meat pieces.

D1 does not disclose the size of the thin-chopped meat pieces and in particular does not disclose that this size is above the minimum size of meat pieces implied by the process of claim 1.

- 4.2.3 Claim 1 requires that entire muscular tissue is injected with brine. Contrary thereto, in D1 the meat is simply mixed with the brine.
- 4.2.4 Moreover, while claim 1 requires a vacuum to be applied during the mixing of the meat and brine prior to the addition of the olive oil (step (b) of claim 1), a vacuum is applied in the process of D1 only when the olive oil is inserted.
- 4.2.5 The claimed process finally requires that meat proteins are extracted and that only thereafter is the olive oil added. From the wording in column 1, lines 41 to 42 of the opposed patent "At the end of the tumbling and after the extraction of the meat proteins has been achieved, ...", it can be assumed that the extraction of the meat proteins occurs due to the tumbling process.

This is confirmed by the second column from the right on page 1427 of D2 where it is disclosed that proteins are exuded during tumbling of meat pieces.

Since in D1, the meat is not tumbled in the presence of brine, it cannot be assumed that meat proteins are extracted, let alone that they have been extracted before the addition of the olive oil.

4.2.6 Consequently, the claimed process differs from that disclosed in D1 in that:

- meat pieces of a certain minimum size are used;
- brine is injected into the meat pieces rather than being simply mixed thereto;
- the meat is tumbled in the presence of rather than being mixed with the brine and olive oil;
- a vacuum is already applied while the meat is tumbled with the brine; and
- the olive oil is added only after meat proteins have been extracted.

4.2.7 The subject-matter of granted claim 1, ie the only claim, is thus novel in view of D1. The ground of opposition under Article 100(a) EPC (lack of novelty) therefore does not prejudice the maintenance of the opposed patent as granted.

5. *Inventive step*

5.1 Apart from an unsubstantiated attack on the basis of D8 (see point 6 below), the appellant's sole inventive step attack started from D1 as the closest prior art as then combined with D2.

5.2 The invention underlying the opposed patent concerns a process for the production of meat products from entire muscular tissue by cold incorporation of olive oil (column 1, lines 3 to 5 and claim 1). The invention *inter alia* addresses the problem of oil separation from the meat into which the oil has been incorporated (column 1, lines 52 to 58).

5.3 As accepted by both parties, D1 can be considered to form the closest prior art. In the same way as the present invention, D1 refers to a process in which olive oil is incorporated into meat (paragraph [0038]) and in the same way as the present invention, D1 addresses the problem of oil separation (paragraph [0012]).

5.4 According to the opposed patent, the incorporation of olive oil into meat products with conventional techniques is associated with "instability problems" or with a "destabilization tendency" because olive oil-containing meat products usually give rise to the phenomenon of oil separation (paragraph [0004]). So, the problem underlying the patent in suit in the light of D1 is to improve the stability of olive-oil-containing meat products in the sense that the phenomenon of oil separation is reduced. This is the

problem that has also been identified by the respondent in its letter of 4 July 2013 (point 2.2 on page 4).

5.5 As a solution to this problem the patent in suit proposes a process according to claim 1 which is characterised by first tumbling under vacuum entire muscular tissue to which the appropriate brine has been injected and by adding the olive oil subsequently thereto after proteins of the meat have been extracted.

5.6 As set out in column 4, lines 45 to 47 of the opposed patent, by adding the olive oil only after the extraction of the proteins of the meat, "[t]he extracted proteins on the surface of the meat pieces are capable of creating a stable emulsion with the olive oil". As explained by the respondent during the oral proceedings, these extracted meat proteins in fact function as an emulsifier for the olive oil droplets in the aqueous brine phase. It is due to the creation of this stable olive oil/water/meat protein emulsion that the resulting product has an excellent stability as regards oil separation (column 5, lines 52 to 56 of the opposed patent).

It is thus credible that the above problem of improving the stability in terms of oil separation has been solved by the claimed process.

5.7 D1 does not contain any hint to tumble the meat in the presence of brine instead of simple mixing with brine to thereby extract the meat proteins and to add the olive oil only after the meat proteins have been extracted. Still less does D1 suggest that by doing so, olive oil can be stably incorporated into larger meat

pieces. Therefore, the process of claim 1 is inventive in view of D1.

D2 does not disclose the incorporation of olive oil at all, let alone that the stability of the resulting product in terms of olive oil separation is improved if olive oil is added only after the extraction of meat proteins. The process of claim 1 is therefore also inventive in view of D1 in combination with D2.

5.8 The appellant made the following arguments as regards inventive step:

5.8.1 The appellant argued in the written proceedings that the technical problem to be solved was to find a way to extract meat proteins from a large piece of meat without cutting or mincing it. This formulation of the technical problem however includes part of the solution, namely the extraction of the meat proteins (third and fourth line of claim 1) and therefore is not appropriate.

5.8.2 The appellant further argued that the claimed solution was obvious in view of paragraphs [0006], [0009] and [0010] of D1. These paragraphs, including paragraph [0008], which is needed to understand the subsequent paragraphs [0009] and [0010], read as follows:

"obtainment of solid emulsion-meat-paste of firm structure, apt to undergo any suitable caloric process, with further target the embodiment and firm connection of olive oil and after the coagulation of the proteins in the main system of the emulsion that consists of proteins/water/olive oil." (paragraph [0006])



"The cooked pork meats of contracted meat constitute a structural <<emulsion>> with the participation of essential ingredients of the proteins of the meat, water (of the meat+additional water) and additional fat (pork fatty tissue)." (paragraph [0008])

"The stability of the <<emulsion>> depends mainly, among others, on the connective ability of used meat to retain water and to digest the additional fat." (paragraph [0009])

"Especially the muscular proteins and the salt-solvents (actinia, myosin and actomyosin) that represent the main part of (approximately 60%) of the muscular occiputs, contribute to the stability of the <<emulsion>>, as in their hydrated condition function as a protective frame of the embodied fat, which is the non-continuing phase of the emulsion and the main factor of their non-stabilisation." (paragraph [0010]).

Even though these paragraphs disclose a certain "<<emulsion>>", it is not at all clear whether this refers to an emulsion of olive oil, water and meat proteins. In fact, on the basis of paragraph [0008], it must be assumed to refer to an emulsion of pork fatty tissue, water and meat proteins. Furthermore, it cannot be deduced from these passages that in order to obtain a stable incorporation of olive oil into meat pieces, a stable olive oil/water/meat protein emulsion is needed and that this is achieved by tumbling in the presence of brine such that the meat proteins are extracted and by adding the olive oil only thereafter. Therefore, also when taking these passages of D1 into account, the

claimed solution is not obvious in view of this document.

5.8.3 The appellant finally argued that the claimed subject-matter was not inventive because no problem was solved by the claimed process at temperatures at which the olive oil and meat product have solidified. However, as set out above when discussing sufficiency of disclosure (point 3), such process embodiments are not covered by claim 1.

5.9 Consequently, the ground of opposition under Article 100(a) EPC (lack of inventive step) does not prejudice the maintenance of the patent as granted.

6. *Admittance of documents D8 and D9*

D8 and D9 were filed with the statement of grounds of appeal. The respondent requested that these documents be not admitted into the proceedings.

As set out in T 2020/09 of 5 March 2013 (not published in OJ EPC, point 6 of the Reasons), documents filed with the statement of grounds of appeal are still late-filed documents that may or may not be admitted into the proceedings depending on their relevance.

6.1 As regards D8, the appellant argued that the claimed subject-matter lacked novelty over this document and, if claim 1 was deemed novel over D8, that this document would nonetheless render claim 1 obvious.

6.1.1 D8 refers to a process for marinating or pickling a meat product. It was found in D8 that by adding a heat-

stable starch to the marinating or pickling medium, the loss of juices in the meat was significantly lower and the yields were correspondingly increased (column 1, lines 10 to 24). The marinating and pickling medium is a mixture of different ingredients. Oil may be one of these ingredients (column 1, lines 55 to 58) with pure corn oil or peanut oil being used in the examples. Olive oil is not mentioned in D8. In this respect, the appellant's argument that olive oil is disclosed in column 1, lines 55 to 58 of D8 is not correct. More specifically, what is disclosed in this passage is "oil" and this generic term cannot take away the novelty of a specific oil, such as olive oil. Therefore D8 is not relevant with regard to novelty.

6.1.2 As regards the appellant's inventive step attack on the basis of D8, this is entirely unsubstantiated and the board does not see any reason why D8 should be relevant to inventive step. In this respect, it is noted that D8 refers to an entirely different process, namely the addition of a heat-stable starch to a marinade or pickling medium and addresses a different problem, namely the reduction of the loss of juices in the meat (column 1, lines 21 to 24).

6.2 D9 was filed by the appellant in order to support its view that D1 is the closest prior art. As set out above (point 5.3), D1 is considered to represent the closest prior art without the need for any support for this to be found in D9. D9 thus is not relevant.

6.3 Therefore, the board decided not to admit D8 and D9 into the proceedings.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

M. Cañueto Carbajo

W. Sieber