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Datasheet for the decision of 8 July 2022

Case Number: T 2314/19 - 3.2.04

Application Number: 13786551.5

Publication Number: 2911520

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:
METHOD OF MECHANICALLY REMOVING SKIN FROM ANIMAL PARTS

Patent Proprietor:
Foodmate B.V.

Opponent:
Meyn Food Processing Technology B.V.

Headword:

Relevant legal provisions:
EPC Art. 56, 83

Keyword:
Inventive step auxiliary request (yes)
Sufficiency of disclosure - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 2314/19 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 8 July 2022

Appellant: (Opponent)	Meyn Food Processing Technology B.V. Westeinde 6 1511 MA Oostzaan (NL)
Representative:	Van Breda, Jacobus Octrooibureau Los & Stigter B.V. Weteringschans 96 1017 XS Amsterdam (NL)
Respondent: (Patent Proprietor)	Foodmate B.V. Einsteinstraat 26 3281 NJ Numansdorp (NL)
Representative:	V.O. P.O. Box 87930 2508 DH Den Haag (NL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 21 June 2019 concerning maintenance of the European Patent No. 2911520 in amended form.**

Composition of the Board:

Chairman	A. de Vries
Members:	J. Wright
	K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. The appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 2 (now the main request), the patent in suit met the requirements of the EPC.

II. In particular, the opposition division decided that the subject-matter of this request involved an inventive step and that it was sufficiently disclosed.

III. In an annex to the summons to oral proceedings the Board set out its preliminary opinion on the relevant issues.

IV. Oral proceedings were duly held on 8 July 2022 in a mixed mode with the appellant attending via video link and the respondent proprietor attending in person.

V. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (maintenance of the patent as upheld) or that the patent be upheld in amended form according to auxiliary request 1, 2A, 2B, 3A, 3B, 4A, 4B, 5A or 5B filed with letter of 27 February 2020.

VI. The independent and other claims relevant for this decision read as follows:

Main request, auxiliary request 1

"1. Method of mechanically removing skin from animal parts that have a bone part extending therein, the method including:
providing at least one bone holder (16) associated with a conveyor for moving the at least one bone holder through a given path, wherein the conveyor is an overhead conveyor (4, 6, 8, 10), and wherein the at least one bone holder (16) depends from the overhead conveyor;
providing an animal part with the bone part therein;
holding the animal part from above with the at least one bone holder (16) by engagement of its bone part by the at least one bone holder;
moving the animal part through the given path;
engaging an outer surface of the animal part, when moving through the given path, with gripper means (38, 40);
maintaining a downward force on the animal part when it is in engagement with the gripper means (38, 40);
entrapping a portion of skin of the animal part between a gap of the gripper means; and
pulling the skin away from underlying meat of the animal part,
wherein the gripper means include a perimeter surface (44) of a rotating gripper (38) and a fixed knife blade (40), and wherein the gap of the gripper means is formed between the perimeter surface (44) of the rotating gripper (38) and the fixed knife blade (40), wherein the perimeter surface (44) of the rotating gripper (38) moves at a speed that exceeds a speed at which the conveyor moves, and further including cleaning the rotating gripper by a rotating cleaner member (42)".

"8. [claim 5 for auxiliary request 1] Apparatus for performing the method of any one of the preceding

claims 1-7 [1 to 4 for auxiliary request 1], including at least one processing station for carrying out the method steps;
wherein the at least one processing station is arranged along a path of conveyance defined by a conveyor moving through a predefined path;
wherein at least one bone holder (16) is associated with the conveyor, wherein the conveyor is an overhead conveyor (4, 6, 8, 10), and wherein the at least one bone holder (16) depends from the overhead conveyor; and wherein the at least one processing station comprises a skin remover unit (20) including the gripper means (38, 40) operatively arranged to, in use, entrap and pull a portion of skin of an animal part between a gap of the gripper means, wherein the gripper means include a rotating gripper (38) and a fixed knife blade (40), and wherein the gap is formed between a perimeter surface (44) of the rotating gripper (38) and the fixed knife blade (40), and further including a rotating cleaner member (42) for cleaning the rotating gripper, wherein the skin remover unit is arranged to rotate the perimeter surface (44) of the rotating gripper (38) at a speed that exceeds a speed at which the conveyor moves".

Auxiliary request 2A and 2B

Claim 1 reads as claim 1 of the main request except that after the wording "and wherein the gap of the gripper means is formed between the perimeter surface (44) of the rotating gripper (38) and the fixed knife blade (40)", the following wording is inserted:

"wherein a first edge (48) of the fixed knife blade (40) extends parallel to the rotating gripper (38) and substantially perpendicular to the direction of

conveyance (12) of the conveyor, and wherein a main body of the fixed knife blade (40) extends substantially 25 tangentially to the perimeter contour of the rotating gripper (38),"

Independent claim 8 [claim 5 of auxiliary request 2B] reads as claim 8 of the main request except that after the words "and wherein the gap is formed between a perimeter surface (44) of the rotating gripper (38) and the fixed knife blade (40), and further including a rotating cleaner member (42) for cleaning the rotating 15 gripper," the following wording is inserted:

"wherein a first edge (48) of the fixed knife blade (40) extends parallel to the rotating gripper (38) and substantially perpendicular to the direction of conveyance (12) of the conveyor, and wherein a main body of the fixed knife blade (40) extends substantially tangentially to the perimeter contour of the rotating gripper (38),"

Auxiliary request 3A

Independent claim 1 reads as for claim 1 of the main request except that after the words "maintaining a downward force on the animal part when it is in engagement with the gripper means (38, 40)", the following wording is inserted:

", and changing the downward force by varying a distance between the bone holder and the rotating gripper;"

Independent claim 7 reads as claim 8 of the main request except that at the end of the claim the following words are added: "wherein the skin remover

unit (20) is height adjustably mounted to a machine frame (2) via an arm (58)."

Dependent claims 2, 6 and 8 read as follows:

"2. Method according to claim 1, wherein the bone part is an elongate bone part extending through the animal part and has a bone knuckle protruding outwardly from the animal part".

"6. Method according to any one of the preceding claims 1-5, wherein the method is part of a meat processing operation for separating meat from thigh bones, wherein the animal part is a thigh and the bone part grasped by the at least one bone holder (16) is a hip knuckle, and wherein the meat processing operation further includes the automated individual processing steps of: cutting tissue near a hip knuckle; cutting tissue adjacent a knee knuckle; engaging the thigh bone adjacent the at least one bone holder (16) with a meat stripper (68); moving the bone holder and meat stripper away from one another in a direction substantially coextensive with the longitudinal extend of the thigh bone; allowing the meat stripper to pass over the knee knuckle; and collecting the meat separated from the bone."

"8. Apparatus according to claim 7, wherein a first edge (48) of the fixed knife blade (40) extends parallel to the rotating gripper (38) and substantially perpendicular to the direction of conveyance (12) of the conveyor, and wherein a main body of the fixed knife blade (40) extends substantially tangentially to the perimeter contour of the rotating gripper (38)."

VII. Reference is made to the following documents:

D1 WO 00/59311
D2 US 6086470
D3 EP 0033173

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

The inventive step arguments against the main request should be admitted into the proceedings. The subject matter of the independent claims of the main request (as maintained) lacks inventive step in the light of the combinations of D1 with D2 or D3 and the skilled person's general knowledge. The subject matter of the independent claims of auxiliary request 3A lacks inventive step for the same reasons as the main request because they add features that are known from D1. The dependent claims 2, 6 and 8 of auxiliary request 3A are insufficiently disclosed.

IX. The respondent-proprietor's arguments can be summarised as follows:

The appellant-opponent's inventive step objection against the independent claims of the main request should not be admitted into the proceedings. In any case, the subject matter of these claims, which are the same for the auxiliary request 1, involve an inventive step over the cited prior art. Auxiliary request 2A clarifies how the skinning unit components are arranged. The independent claims of auxiliary request 3A involve an inventive step over the combinations of D1/D2 and D1/D3 with the skilled person's general knowledge. The invention according to its dependent claims is sufficiently disclosed.

Reasons for the Decision

1. The appeal is admissible.

2. Introduction

The invention relates to a method and apparatus for mechanically removing skin from animal parts in an in-line processing step arranged along an overhead conveyor system, where animal parts are held from above by bone holders (see published patent specification, paragraphs [0001] and [0007]).

3. Admission of the appellant-opponent's inventive step objections

3.1 In its reply to the appeal, the respondent-proprietor challenged the admissibility of the appellant-opponent's inventive step objections against the patent as maintained. In the annex to the summons to oral proceedings the Board set out its preliminary opinion as to why it considered the appellant's objection to be admissible as follows:

"*3.1 Admissibility of the appellant-opponent's arguments against inventive step*

The respondent-proprietor argued (reply to appeal, section 3.1) that the opposition was not directed against the patent as a whole because no substantiated objection to the subject matter of original claim 6 (incorporated into present claim 1) was made in the opposition notice, so, according to the argument, the appellant-opponent's inventive step objections against

the patent as maintained are inadmissible. The Board disagrees.

In its notice of opposition (page 11) the opponent requested that the patent be revoked in its entirety, in agreement with section V of the opposition notice form. Moreover, the opponent substantiated its objection against granted claim 6 with an argument, what ever its merits (see page 8, points 20 and 24 - choice of claimed relative speed is common sense). Thus, the Board has no doubt that the opposition was directed against the patent in its entirety and that the objection against original claim 6 was substantiated. Indeed, these arguments were discussed in detail at the oral proceedings before the division without objection from the proprietor (minutes section 5), and form part of the decision that the appellant challenges (decision, reasons 5). This issue should have been raised then, before the division, and the Board shall disregard it in the further proceedings, Art 12(4) RPBA 2007".

3.2 Neither in writing nor at the oral proceedings before the Board did the respondent-proprietor comment on the Board's position on this matter. Therefore, in accordance with its preliminary opinion, the Board decided to disregard the respondent-proprietor's objection against the appellant-opponent's arguments against inventive step, Article 12(4) RPBA 2007.

4. Main request, inventive step

4.1 The appealed decision held that the subject-matter of granted claims 1 and 10 was not inventive over the combination of D1 with D2 or D3, but that the feature then added to the independent claims of the now main

request of *gripper perimeter speed exceeding the conveyor speed* did involve an inventive step over those combinations and common knowledge. The appellant-opponent challenges that later finding.

4.2 D1 discloses a method of removing skin from an animal part on a bone - a drumstick (see for example page 20, lines 3 to 30 with figures 1, 6, 7 and 8). As best seen in figure 1, each drumstick 8 is engaged from above in a bone holder (carrier 4) that depends from an overhead conveyor 2 so that the animal part is conveyed along a path. Along the path, a gripper means (toothed skinning rollers 120a, 120b) engages and traps the skin to pull it away from the meat (see page 20, lines 15 to 22). During this engagement a downward force is maintained on the animal part (see page 21, lines 1 to 21 with figure 7 -action of pressing rod 134).

4.3 The subject matter of claim 1 differs from D1 in that the claimed gripper means includes a fixed knife blade arranged to form a gap between the blade and a rotating gripper, that the rotating gripper is cleaned by a rotating cleaner member, and in that the perimeter surface of the rotating gripper moves at a speed exceeding that of the conveyor.

4.4 The parties do not dispute the decision's finding that the features of a fixed knife blade and a rotating cleaning member already present in granted claims 1 and 10 are obvious in the light of D2 and D3. The focus of dispute is the feature of the higher speed of the rotating gripper speed added to the independent claims in the version upheld.

4.5 According to the patent (see patent specification, paragraph [0012]) the higher speed of the gripper vis-

a-vis the conveyor results in more reliable engagement and detaching of the skin. None of D1, D2 and D3 provides any information regarding the relative speed of gripper and conveyor. However, in order to implement either of the obvious combinations D1/D2 or D1/D3, the skilled person must decide on the speeds of the conveyor and skinning roller. The objective technical problem associated with this further difference over the obvious combination of D1 with D2 or D3 can thus be formulated as how to realize the obvious combined teaching of D1 with D2 or D3 such that skinning is effected reliably.

4.6 The opposition division considered that the skinning gripper perimeter had to move either at the same or a faster speed as the conveyor (see impugned decision, section 5.1), but because the choice of same speed was the more straightforward over that of a higher speed as that required "further contemplations", that latter choice was not obvious.

The Board agrees that there are indeed only two options. Considering the combinations of D1/D2 and D1/D3, the Board first notes that the conveyor must convey the meat in the *same* direction as the rotating gripper towards the knife edge, see for example D2, figure 2, work flow arrow *a* and the arrow on the gripper 40. Indeed, if it rotated in opposite direction it would act to push meat away from the knife edge.

4.6.1 However, it can be inferred from the operation of the skinning mechanisms of D2 and D3 that, when applied to D1, gripper speed will have to be higher than conveying speed. This is so because, as is not disputed, the skinning arrangements of D2 and D3 *pull* skin onto the rotating gripper (see for example D2, column 9, lines 1

to 20 and column 15, lines 1 to 11 and D3 figure 1). In the Board's view, it is only possible to effect such a pulling action when the product is conveyed towards the knife, if the gripper speed is higher than the conveying speed. This is best understood in relation to D2, see for example figure 9.

In the Board's understanding separation takes place at the front edge of the knife 68, see figure 9, but see also col. 1, ln. 25 to 28 of D2. Thus, it is unconvinced by the respondent's argument that separation takes place later, after the meat product with skin still joined has moved beyond the knife edge until it suddenly separates. If that were so separation would be rather uncontrollable (at some undefined point), and at the risk of the knife slicing through the skin as it is stretched at a sharp angle over the knife edge. Rather, as the Board sees it, the knife edge is meant to insert itself between skin and meat as indeed shown in the figure 9, so defining a precise point of separation.

If product 84 were conveyed to the separation point at the knife edge 68 at a speed *faster* than the gripper 40 can transport separated skin away from it, skin would rapidly build up in the gap, as already noted by the division (who concluded this was therefore not an option). If it were conveyed to the knife edge at the *same* speed as the gripper transports the skin away, so that a point, where the skin was joined to the meat, will have travelled an equal distance in the gap and over the knife 56, the separated skin would be slack, and pushed by the gripper through the gap. In order for the skin to be pulled as indicated in D2 it must thus necessarily be transported away from knife edge 68 at a higher speed than product is conveyed toward it.

Naturally, the pull effected by the gripper should never be so much as to rupture the skin and the exact amount will need to be set to an appropriate value, fast enough to produce a pulling tension but not so fast as to tear the skin. However, the skilled person would determine such an optimal value as a matter of trial and error, using routine skills, which, contrary to what the decision at point 5.1 claimed, lie well within customary practice. However,it remains that pull can only be effected by a gripper speed that is higher than the speed at which product is conveyed.

This is all the more so, because, as the respondent-proprietor has explained, the skin covers the entire surface of the meat and, after making an initial cut, must be rapidly pulled off the meat. The skin, which the respondent has likened to the membrane of a burst balloon, is therefore likely be quite extensive and longer than the width of a suspended piece of meat passing over a skinning unit (cf. D1, figure 1). This belongs to the general knowledge of the skilled person, a mechanical engineer familiar with meat processing machines, including skinning machines.

4.6.2 The respondent-proprietor has also argued that whether or not the skin is *pulled*, that is placed under tension, is independent of the relative speed of the gripper and conveyor but rather solely depends on the pinching force between the gripper and the stationary knife. According to this argument, only the absolute speed of the gripper plays any role in generating a pulling tension on the skin. The Board disagrees. It may well be that the pinching action between the gripper and knife helps to squeeze the skin into tight contact with the gripping roller. However, this pinching squeezes the skin *across* the gap between knife

and gripper roller rather than pulling the skin about the gripper and *along* the gap.

4.6.3 The Board further agrees with the respondent-proprietor that in D2's arrangement the tractor conveyor unit 224 with its conveyor cogs 248 and 242 (see figure 2, .col. 15, ln. 1-10.) must play an important role in pulling (or pushing) the meat product with skin still joined onto the knife edge. This is so to ensure that it meets the knife edge with sufficient force to ensure separation (similar to the overhead conveyor of D1). However, this aspect of the operation of the D2 device by no means contradicts or excludes higher gripper speed. Indeed the Board sees no reason why the conveyor speed could not be set to produce sufficient cutting force while the gripper speed is then set to a higher level to ensure optimal pull.

4.6.4 Last but not least, the Board adds in reference to the decision's reasoning in point 5.1, that because one of the two options is less straightforward, this does not make choosing it inventive. In the Board's view, if the skilled person has only two options then *neither* will be obvious, if they would reasonably consider trying either. Only if the skilled person would exclude an option, could the subsequent choice of that option against prejudice possibly involve an inventive step. That is not what the division argued: in their view the skilled person might consider both but would go for the "most straightforward" and "less risky" option. The question is not whether an option is more obvious than the other, but whether an option is obvious or not.

4.7 The skilled person will have these considerations in mind when they put into practice the combined teachings of D1/D2 or D1/D3 by selecting appropriate speeds for

the conveyor and circumferential gripper surface. In the Board's view, in the expectation of achieving reliable skinning, rather than the skilled person setting the gripper surface speed to be exactly the same as the conveyor speed, their understanding of the teaching of D2 (or D3) would prompt them to set it higher to ensure that a pulling tension was maintained on the lengthy piece of skin. They would thus arrive at the subject-matter of claim 1 of the main request without an inventive step.

4.8 The same conclusion holds for the independent device claim 8, which has corresponding features to claim 1 in terms of a device for carrying out the method of claim 1.

5. Auxiliary request 1

Since the independent claims of this request are the same as those of the main request (except for amended numbering and back-references), this request fails for the same reasons as the main request (lack of inventive step).

6. Auxiliary requests 2A and 2B, inventive step starting from document D1 as the closest prior art

In its annexe to the summons to attend oral proceedings, the Board noted the following with regard to the independent claims of these requests:

"4. Auxiliary request 2A, claims 1 and 8 (and corresponding claims of auxiliary request 2B)

Claim 1 adds various features of the skinning arrangement (in summary: the blade is parallel to

rotating gripper and perpendicular to direction of conveyance, blade extends tangentially to perimeter contour of gripper). In the respondent-proprietor's reply to the appeal (see section 4.2), it has not set out why this request would succeed on inventive step should the main request fail. Thus, the request has not been sufficiently substantiated. Prima facie, moreover, these features appear to be already disclosed in D2 or D3, and as far as not, appear to represent an obvious design choice in applying the methods of D2 or D3 to D1. Therefore, the Board intends not to admit it into the proceedings, Articles 12(4) and 12(2) RPBA 2007."

6.1 Neither at the oral proceedings before the Board nor in written proceedings did the respondent-proprietor submit any arguments as to why the subject matter of these requests might involve an inventive step. Therefore, without prejudice to the question of admittance of these requests, the Board sees no reason to depart from its preliminary opinion that, on the face of it, their subject matter is obvious starting from D1 in combination with D2 or D3 and the skilled person's general knowledge. Therefore, these requests fail for lack of inventive step.

7. Auxiliary request 3A

7.1 Claims 1 and 7, inventive step starting from D1 with D2 or D3 and the skilled person's general knowledge

Claim 1 of this request adds to claim 1 of the main request that the downward force [exerted] on the animal part when it is in engagement with the gripper means is changed by varying a distance between the bone holder and the rotating gripper. The independent device claim, claim 7, defines an apparatus for carrying out claim

1's method and adds a corresponding device feature expressed in terms of the skin remover unit being *height adjustably* mounted.

7.1.1 In its annexe to the summons to attend oral proceedings, the Board commented on this request as follows:

"*The respondent-proprietor substantiates its request with arguments regarding basis and inventive step (see reply to appeal section 4.3), therefore, the request appears to be admissible. The appellant-opponent has chosen not to reply to these arguments in appeal. In the Board's view the request appears to be allowable. The Board sees no reason as to why the subject matter of the claim would not have a basis in the application as filed. Regarding inventive step, according to D1's method (see page 20, lines 10 to 17), the skinning rollers are arranged at a height allowing the end of the drumsticks 8 to strike the ends of the skinning rollers. Whether this height is adjustable is not said. Thus, there is no suggestion here to change the force by varying the distance between the bone holder and rotating gripper. Rather, as the respondent proprietor has pointed out (see D1, page 21, first paragraph with figure 7, rod 134) the rod 134 is used to adjust the downward force on the drumstick. Moreover, since neither D2 nor D3 disclose vertical conveyors with bone holders as claimed (cf. respective figure 1 of D2 and D3), this feature is likewise not disclosed in these documents. Similar considerations apply for independent claim 7, which has a corresponding distance adjusting feature and in addition that this is achieved by mounting the skin removing unit on an adjustable arm.*

From the above, the Board considers that the auxiliary request 3A is allowable".

7.1.2 At the oral proceedings before the Board, the appellant-opponent commented for the first time on this request, arguing that it lacked inventive step for the same reasons as for the main request since the added *varying distance/adjustable height* features of the independent claims were known from D1. In particular, it argued that, as explained in D1, page 21, lines 1 to 21 with figures 6 and 7, D1's bone holder 4 can pivot about a pin 130 under the action of a rod 134 and therefore, the distance between at least a part of the bone holder and the skinning rollers 120a and 120b is changed and it is this that varies the force on the drumsticks.

7.1.3 The Board agrees with the appellant-opponent that D1's pivoting mechanism adjusts the force on the drumstick (see page 21, lines 6-9); in D1's terms the mechanism develops a force that presses the drumsticks onto the skinning rollers, stopping them *dancing*. However, in the Board's view, the pivoting mechanism, applied to the combinations D1/D2 or D1/D3 would not vary the distance between the bone holder and the rotating gripper (cf. auxiliary request 3A, claim 1), nor does it constitute a height adjustable mounting (cf. auxiliary request 3A, claim 7).

7.1.4 As claim 1 defines, the *downward* force on the animal part is maintained when it is *in engagement with the gripper*, thus when the bone holder passes over the top of the gripper and the two are thus vertically aligned. In this context, the Board considers that the *distance* between the bone holder and the rotating gripper can only mean their vertical separation. In the D1

arrangement of figure 7, this corresponds to the plane passing through the pivot pin 130. Considered in that plane, the position of the holder 4 is unchanged, so that the distance to the gripper roller remains constant, so also in the obvious combinatinon of D1 with D2 or D3. Pivoting D1's bone holder about the pin 130 (see again figures 6 and 7) merely adjusts the angle of the bone holder relative to this plane. At most, individual points on the bone holder remote from the pivot point would rise or fall with respect to the pivot pin but without effecting the vertical separation of bone holder and gripper as explained above.

7.1.5 It follows that, contrary to how the appellant-opponent has argued, D1 does not disclose the features that auxiliary request 3A adds to the independent claims.

7.1.6 From the above, the Board concludes that the appellant-opponent's arguments have not convinced the Board that it should revise its preliminary opinion (auxiliary request 3A allowable) with respect to the *independent claims*.

7.2 Auxiliary request 3A, sufficiency of disclosure

Article 83 EPC requires that the European patent application [in this case the patent] shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

The Opposition Division found (see impugned decision, II, 2.1) that the invention was sufficiently disclosed. The appellant-opponent argued in its grounds of appeal that certain granted claims were insufficiently disclosed. Of these, claims 2, 7 and 11 have

corresponding claims in auxiliary request 3A, namely claims 2, 6 and 8 respectively. In its annexe to the summons to oral proceedings, the Board set out its reasons for considering these claims to be sufficiently disclosed as follows (claim numbers in square brackets being those of auxiliary request 3A):

"2.3 claim [2]

Claim 2 defines the animal part to be skinned (elongate bone part, knuckle etc.). Therefore, it defines no more than anatomical facts with which the skilled person will be perfectly familiar from their general knowledge. Therefore, there can be no question that the invention according to claim 2 cannot be carried out. Regarding the appellant-opponent's objection that the skilled person would not know how to make a suitable bone holder, this does not pertain to a feature of claim 2. A bone holder is defined in claim 1, which has not been objected to for lack of sufficiency. Therefore, this argument is moot.

[...]

2.5 Claim [6]

The appellant-opponent's arguments relate to [claim 6 of auxiliary request 3A]*. The Board has no doubt that the skilled person would be able to carry out the meat processing method steps defined in the claim. The appellant-opponent argues that the claim is not supported by the description (cf. paragraph [0018]) and that it is unclear how hip and knee knuckles appear to exchange places in the claim with respect to the description. Support in the description and clarity both relate to Article 84 EPC, and are not opposition*

grounds. The appellant-opponent also appears to argue that the claim makes a selection of one of two possibilities presented in the description (paragraph [0018]), whereby the particular selection is not mentioned in the description. At most this also appears to boil down to an argument of lack of support in the description (Article 84 EPC). Therefore, the arguments of the appellant-opponent are moot.

2.6 Claim [8]

The appellant-opponent's arguments relate to claim [8 of auxiliary request 3A]*. The Board sees no reasons as to why the skilled person would not be able to construct the device defined in claim* [8]*, with its fixed knife and rotating gripper defined relative to each other and the direction of conveyance, even without consulting the description or figures. Nor has the contrary been argued. Rather the appellant has argued a lack of clarity and inconsistency between the claim and the description and/or drawings. However, this would be a matter of clarity and support (Article 84 EPC), rather than insufficiency of disclosure. Therefore, the arguments are moot".*

7.2.1 In written proceedings, the appellant-opponent did not comment on these aspects of the Board's preliminary opinion. However, at the oral proceedings before the Board, the appellant-opponent argued that the Board's preliminary opinion was incorrect in saying the objection to claim 2 (insufficient disclosure of the step of providing a bone holder) was moot because, although claim 2 only added details of a bone, to carry out the invention of claim 2 the skilled person would still need to provide a bone holder due to the claim's back-reference to claim 1.

7.2.2 In the Board's view, the skilled person would know how to provide a bone holder. The figures of the patent specification, in particular figures 3 and 4 show a bone holder 16 in detail. Moreover, although no bone is shown, paragraph [0018] explains that the bone holder holds the bone by grasping a hip or knee knuckle. In the Board's view, from this information and general knowledge of animal anatomy, the skilled person would understand how to dimension the bone holders shown and explained in the patent specification. Thus they would be able to provide a bone holder as claimed. Moreover, however unfamiliar the appellant-opponent might be with the particular bone holders disclosed in the patent specification, the Board agrees with the respondent-proprietor that bone holders for holding meat on a bone suspended from a conveyor are generally known to the skilled person (cf. D1, figure 1). Therefore, the invention according to claim 2 is sufficiently disclosed.

7.2.3 For these reasons, the Board is of the opinion that the invention according to claim 2 can be carried out by the skilled person.

7.2.4 Neither in written proceedings nor at the oral proceedings before the Board did the appellant-opponent present further arguments with regard to sufficiency of disclosure of the invention according to claims 6 or 8. Nor does the Board see any reason to deviate from its preliminary opinion (invention is sufficiently disclosed).

8. The opponent's appeal succeeds to the extent that it has convinced the Board that the appealed decision wrongly found that claims 1 and 8 as upheld involved an

inventive step. However, it fails in its objections against the claims of auxiliary request 3A. Noting that the description has been brought into conformity with the amended claim set of auxiliary request 3A, the Board thus finds that the patent and the invention to which it relates now meet the requirements of the EPC. Therefore the Board concludes that the patent can be maintained in this amended form, in accordance with Article 101(3) a EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent as amended in the following version:

Claims:
Nos. 1-13 of auxiliary request 3A filed with the reply to the statement of grounds of 27 February 2020

Description:
Pages 2, 3 with annotations in the annotation sheet as filed on 8 July 2022 at the oral proceedings before the board
Pages 4-7 of the published patent specification

Figures:
Nos. 1-4 of the published patent specification.

The Registrar: The Chairman:

A. Voyé A. de Vries

Decision electronically authenticated