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D E C I S I O N
of 14 October 2002

Case Number: T 0355/00 - 3.2.4

Application Number: 93201063.0

Publication Number: 0566201

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:
A construction for automatically milking animals, such as cows

Patentee:
MAASLAND N.V.

Opponent:
DeLaval International AB

Headword:
Sub-areas/MAASLAND

Relevant legal provisions:
EPC Art. 100(c), 54, 56

Keyword:
"Extension of subject-matter (main request): yes"
"Novelty and inventive step (subsidiary request): yes"

Decisions cited:
-

Catchword:
-

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Case Number: T 0355/00 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 14 October 2002

Appellant: (Opponent)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 3 February 2000 rejecting the opposition filed against European patent No. 0 566 201 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
H. Preglau

Summary of Facts and Submissions

I. An opposition filed against the European patent No. 566 201 was rejected by the decision of the opposition division dispatched on 3 February 2000.

The patent as granted contains an independent Claim 1 directed to a construction for milking animals and an independent Claim 19 directed to a method of milking animals.

Claim 1 of the patent as granted reads as follows:

"1. A construction for automatically milking animals, such as cows, comprising a milking parlour with a milking robot, the milking parlour being accommodated in an enclosed area, which area comprises N sub-areas, N being at least three, which sub-areas are arranged to accommodate N-1 groups and wherein the animals are to move to the milking robot from a given sub-area, characterized in that the said N sub-areas are in connection with each other in such a way, that the animals can pass through all of the N sub-areas in a cyclical manner, while the groups of animals remain separated from each other."

II. On 31 March 2000 the opponent (hereinafter appellant) filed an appeal against this decision and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 9 June 2000.

III. In the statement setting out the grounds of appeal the appellant referred *inter alia* to the following

documents:

D1: Article of R. Artmann and D. Schillingmann, "*Entwicklungsstand von Melkrobotern*", in "*Landtechnik*", No. 12, December 1990, pages 437 to 440;

D4: NL-A-8 602 505;

D'4: English translation of document D4;

D6: GB-A-1 372 355.

IV. Oral proceedings were held on 14 October 2002.

During the oral proceedings the main request of the proprietor (hereinafter respondent) was based upon Claim 1 of the patent as granted without relying any longer upon any independent method claim. The respondent also filed an amended Claim 1 (directed to a construction for milking animals) upon which a subsidiary request was based (without filing any independent method claim). This amended Claim 1 reads as follows:

"1. A construction for automatically milking animals, such as cows, comprising a milking parlour with a milking robot, the milking parlour being accommodated in an enclosed area, which area comprises N sub-areas, N being at least three, which sub-areas are arranged to accommodate N-1 groups and wherein the animals are to move to the milking robot from a given sub-area, characterized in that said given sub-area communicates via the milking parlour in one direction with another sub-

area, the said N sub-areas are in connection with each other in such a way, that each of the N-1 groups of animals can circulate in a one way rotational movement through all of the N sub-areas and the milking parlour, while the groups of animals remain separated from each other."

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

VI. As a main request, the respondent requested that the decision under appeal be set aside and the patent be maintained in an amended version based upon Claims 1 to 18 of the patent as granted.

As a subsidiary request, the respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of the following documents:

Claims: No. 1 to 18 as filed during the oral proceedings (first auxiliary request);

Description: columns 1 to 6 as filed during the oral proceedings (first auxiliary request);

Drawings: Figure 1 as granted.

VII. The appellant argued that the ground for opposition mentioned in Article 100(c) EPC prejudiced the maintenance of the patent on the basis of Claim 1 as granted (respondent's main request). The appellant also argued that the subject-matter of the amended Claim 1 filed during the oral proceedings (respondent's subsidiary request) was not novel having regard to

either document D1 or document D4 and lacked inventive step having regard to documents D1, D6 and D4.

VIII. The appellant further requested that the following statement of the respondent be recorded in the minutes of the oral proceedings:

"The wording 'can circulate in a one-way rotational movement ... while the groups of animals remain separated' implies that a control mechanism is present which is able to ensure that animals of one group cannot mix with animals of another group".

The respondent fully agreed that the above statement was correct in so far as it clarified Claim 1.

The above statement was annexed to the minutes of the oral proceedings.

Reasons for the Decision

1. The appeal is admissible.

2. *The claimed subject-matter*

2.1 Claim 1 of the patent as granted (which forms part of the respondent's main request) is directed to a construction for automatically milking animals, such as cows, comprising the following features:

(A) the construction comprises a milking parlour,

(A1) the milking parlour is provided with a milking robot,

(A2) the milking parlour is accommodated in an enclosed area,

(A21) the enclosed area comprises N sub-areas,

(A211) N is at least 3,

(A212) the sub-areas are arranged to accommodate N-1 groups of animals,

(A213) the animals are to move to the milking robot from a given sub-area,

(A214) the N sub-areas are in connection with each other in such a way that the animals can pass through all of the N sub-areas **in a cyclical manner**, while the groups of animals remain separated from each other.

2.2 Claim 1 filed during the oral proceedings (respondent's subsidiary request) differs from Claim 1 of the patent as granted in that feature A214 has been replaced by the feature

(A'214) the N sub-areas are in connection with each other in such a way that **each of the N-1 groups of animals** can **circulate in a one way rotational movement** through all of the N sub-areas **and the milking parlour**, while the groups of animals remain separated from each other;

and in that the following feature has been added:

(A'215) **said given sub-area communicates via the milking parlour in one direction with another**

sub-area.

2.3 The expression "for automatically milking" has to be read in conjunction with feature A1 which refers to a "milking robot", ie to a device for milking animals without the supervision of a person (see description of the patent, column 1, lines 45 to 48 and column 3, lines 55 to 57).

2.4 Features A, A1, A2, A21 and A211 are structural features defining a construction which is suitable for milking animals.

Features A213 and A'215 contribute to structurally define the construction in so far as they imply a connection between a given (ie a defined) sub-area and the milking parlour which is provided with the milking robot.

Each of features A214, A'214 and A'215 also contributes to structurally define the construction in so far as a connection between the sub-areas or between specific sub-areas and the milking parlour is defined by these features.

2.5 Feature A212 has to be read in conjunction with the statement in feature A214 (or A'214) according to which the groups of animals remain separated from each other.

Features A212 and A214, on the one hand, and features A212, A'214 and A'215, on the other hand, define the possibilities that each group of animals can be accommodated in each of the sub-areas and moved from a sub-area to another sub-area while the groups remain separated from each other. These possibilities not only

require that the sub-areas are connected with each other as defined in feature A214 (or A'214) but also imply that the connections between sub-areas are controlled (e.g. by a door or gate which can be opened or closed by means of a controlling mechanism) so that a sub-area can also be kept separated from the sub-area with which it is connected to keep the groups of animals separated from each other.

This interpretation is consistent with the description of the patent which refers to doors 16 between the third and the second sub-areas and between the second and the first sub-areas.

This interpretation was agreed by the respondent (see section VIII above).

2.6 The expression "sub-area" obviously defines a space which is large enough to be suitable for accommodating each of the groups of animals (separately), is separated from the other sub-areas and is not further sub-divided.

This interpretation, which was put forward by the respondent during the oral proceedings, is consistent with the description of the patent which refers to sub-areas bounded by walls and partitions (see column 3, lines 10 to 33).

Furthermore, it is unequivocally clear from Claim 1 of the subsidiary request that a "sub-area" is different from the "milking parlour" (see features A'214 and A'215).

3. *Article 100(c) EPC (Claim 1 of the main request)*

3.1 Claim 1 of the patent as granted differs from Claim 1 of the application as filed *inter alia* in that feature A214 has been added. This feature is neither referred to in the remaining Claims 2 to 36 nor in the description of the application as filed.

3.2 In the description of the application as filed an embodiment concerning a construction with three sub-areas is described by referring to Figure 1. The first sub-area 9 communicates via sanitation areas 20, intermediate area 22, waiting boxes 24 and milking boxes 26 with the third sub-area 13. The third sub-area 13 communicates directly with the second sub-area 15 through doors 16 provided in a partition 14 forming a division between the third sub-area 13 and the second sub-area 15. The second sub-area 15 communicates directly with the first sub-area 9 through doors 16. This construction is suitable for accommodating two groups of animals which remain separated from each other. When the first group has to be milked, the animals of this group move from the first sub-area 9 through the milking parlour to the third sub-area 13, whilst the second group of animals rests in the second sub-area 15. When all the animals of the first group have been milked, the second group move from the second sub-area to the first one. When the entire second group has moved to the first sub-area 9, the first group moves from the third sub-area 13 to the second one 15. In other words, a rotation (in one direction) of the two groups through the three sub-areas takes place (see page 8, lines 32 to 34).

The passage on page 2, lines 14 to 33, in the introductory part of the description of the application as filed refers in general to N+1 sub-areas and makes

it clear that the sub-area in which the group of animals to be milked is located (in other words, the "premilking sub-area) "communicates via the milking parlour in one direction with another sub-area", ie with the sub-area which houses this group of animals after the animals of the group have been milked (in other words the "post-milking" sub-area). Moreover, it can be derived from this passage that after all the animals of the group which has been milked have reached the "post-milking" sub-area, the "pre-milking" sub-area is filled again with a second group of animals coming from another sub-area which is in connection with the "pre-milking" sub-area and that the first group of animals move to another sub-area, so that a rotational movement (in one direction) of all groups through all sub-areas takes place.

3.3 According to feature A214, the animals can pass through all the sub-areas "in a cyclical manner". This expression defines a movement of the animals through the N sub-areas which is more general than the one-way rotational movement disclosed in the above mentioned passage in the introductory part of the description. In particular, this feature defines a connection between the sub-areas which allows any sequence of movement of the groups of animals and not only the rotational movement referred to in the description of the application as filed.

Thus, the subject-matter of Claim 1 of the patent as granted extends beyond the content of the application as filed.

3.4 Therefore, since the ground for opposition mentioned in Article 100(c) EPC prejudices the maintenance of the

patent on the basis of Claim 1 as granted, the main request of the respondent has to be rejected.

4. *Amendments (subsidiary request)*

4.1 Since the one-way rotational movement referred to in features A'214 and A'215 is a specific cyclical movement, the amendments to Claim 1 (see section 2.2 above) do not extend the scope of the patent.

Features A'214 and A'215 can be derived from passages on page 2, lines 14 to 33 and page 8, lines 32 to 34 of the description of the application as filed.

4.2 Claims 2 to 18 are identical with Claims 2 to 18 of the patent as granted.

4.3 The amendments of the description concern its adaptation to the amended Claim 1 as well as the correction of some errors.

4.4 These amendments, which were not objected to under Article 123 EPC by the appellant, do not contravene the requirements of Article 123 EPC.

5. *The prior art*

5.1 Document D1 is an article summarizing the development of milking robots and relating in the section headed "Einordung in Stallanlagen" (page 439) to some arrangements of milking robots in stables.

The diagram "Rundlauf" at the upper right-hand side of Figure 5 on page 439 refers to an arrangement whose aim is to allow the rotation of the cows through the stall

so as to ensure that all cows receive concentrate fodder several times during the day (see the passage bridging pages 439 and 440).

This diagram shows a construction for automatically milking cows, comprising a milking parlour provided with two milking boxes and with a milking robot (see features A and A1 in Claim 1), the milking parlour being accommodated in an enclosed area (see feature A2 in Claim 1).

This construction can be considered as being sub-divided into at least three sub-areas (see features A21 and A211 in Claim 1), namely into a first sub-area which is indicated with the word "Trog" (hereinafter "feeding sub-area"), a second sub-area which is indicated with the word "Erkennung" (hereinafter "recognising sub-area") and a third sub-area which is indicated with the word "Problemkühe" (hereinafter "problem cows sub-area"). It can be assumed that each of these three sub-areas is suitable for accommodating a group of cows and that therefore these three sub-areas are suitable for accommodating two groups of cows (see feature A212 in Claim 1).

Between the feeding sub-area and the recognizing sub-area there is a first swing gate allowing the passage of the cows from the feeding sub-area to the recognizing sub-area.

At the exit of the recognizing sub-area there is a two-position diverter. When the diverter is in its first position the cows can go from the recognizing sub-area through a first passageway and a second swing gate back to the feeding sub-area. It can be understood from the

word "Erkennung" that there is an identification system for the cows and that those cows which have already been milked shortly before are diverted from the recognizing sub-area back to the feeding sub-area. When the diverter is in its second position, the recognizing sub-area communicates with a second passageway leading either to the milking parlour or to the problem cow sub-area through a separating gate. Thus, it can be assumed that the cows can move from the recognizing sub-area to the milking parlour (see feature A213 in Claim 1). Furthermore, the milking parlour communicates with a third passageway leading through a third swing gate to the feeding sub-area.

It can also be understood that problem cows are led from the second passageway to the problem cows sub-area so that they can be kept isolated.

The chevrons on the diagram of document D1 clearly indicate that the cows can circulate, in a first one-way rotational movement, from the feeding sub-area via the first swing gate to the recognizing sub-area and then via the diverter, the first passageway and the second swing gate back to the feeding sub-area. Moreover, the chevrons also indicate that the cows can circulate, in a second one-way rotational movement, from the feeding sub-area via the first swing gate to the recognizing sub-area and then via the diverter, the second passageway, the milking parlour, the third passageway and the third swing gate back to the feeding sub-area.

However, document D1 does not contain any information concerning the structure or the function of the swing gates represented in the diagram. Therefore, it cannot

be derived from document D1 that the first and second swing gates are controlled so that the cows which are in the recognizing sub-area can be kept separated from the those which are in the feeding sub-area. On the contrary, it is clear that intermingling cannot be prevented when a first group of cows is in the feeding sub-area and another second group of cows is in the recognising sub-area. Indeed, those cows of the second group which are identified by the identification system as being cows which have already been milked shortly before are directly led to the feeding sub-area, thereby intermingling with the cows of the first group.

Moreover, document D1 does not contain any information concerning the separating gate between the second passageway and the problem cows sub-area. Thus, it cannot be derived from this document that the cows which are in the problem cows sub-area can pass from this sub-area to the milking parlour.

5.2 Document D4 discloses (see particularly Figure 1) an apparatus for automatically milking animals comprising a cleaning station 1, a station 3 for taking milk samples and a milking parlour comprising three milking stations 2. Each of these stations is provided with an entrance door 4 and an exit door 5 which doors can be opened and closed automatically (see document D'4: page 4, lines 13 to 17 and 25 to 27). An animal may enter the station 1 only if it has not already been milked shortly before (see document D'4, page 4, lines 31 to 34). After cleaning, the animal can enter via an intermediate box the station 3 in which samples of milk are taken, whereafter the animal is guided between guide rods 11 and 12 to one of the three milking stations 2 in order to be milked. After milking

the animal l leaves the milking station. If the examination of the milk sample reveals that the milk of an animal should not be mixed with that of other animals, the animal is not guided to a milking station but can leave the apparatus without passing to the milking station. This animal can optionally be accommodated in a separate section so that it remains isolated from the other animals (see document D'4: page 5, lines 24 to 36).

Document D4 does not disclose the structure of the separate section and does not explicitly refer to a specific stable in which the apparatus is arranged. However, it can be assumed that the apparatus is arranged in a stable comprising not only the separate section for the animal to be isolated but also a main section in which the other animals are housed. Thus, document D4 can be considered as disclosing a stable which is sub-divided in two sub-areas, namely a first sub-area in which the group of animals can be accommodated and from which the animals can be moved through the cleaning station and the sample station to the milking stations and a second sub-area, ie the separate section, in which an animal removed from the apparatus can be accommodated.

5.3 Document D6 relates to a control equipment for a milking parlour of the herringbone type having two separate rows of stalls. The milking parlour is associated with a collecting yard 8 suitable for accommodating a group of animals, whereby the animals are moved to the milking parlour from the collecting yard 8.

This document does not refer to the stable in which the

milking parlour is arranged. However, it can be assumed that the surface area surrounding the milking parlour and the collecting yard as represented in Figure 1 represents an area from which the animals are moved to the collecting yard. Thus, it can be assumed that the animals in a one-way rotational movement can circulate from the area surrounding the milking parlour to the collecting yard and then via the milking parlour back to the area surrounding the milking parlour.

It is clear from document D6 that, after milking, the electrically or pneumatically operated exit gates of the milking parlour are opened by an operator so that the milked animals can leave the parlour.

Document D6 also refers to "other pneumatically or electrically operated gates .... for inlet to and outlet from a holding pen for diverting particular batches of cows leaving the parlour" (see page 3, lines 29 to 34).

Thus, a connection between the milking parlour and the holding pen is implicitly disclosed. Therefore, it can also be assumed that the animal can move from the milking parlour to a holding pen.

However, document D6 does not contain any information concerning the connection of the holding pen with the area surrounding the milking parlour. Therefore, it cannot be assumed that the animals which are in the holding pen can move therefrom to the area surrounding the milking parlour, then from this area to the collecting yard, then from the collecting yard to the parlour and therefrom back into the holding pen.

6. *Novelty*

6.1 With regard to document D1, the appellant, referring to the diagram "Rundlauf" at the upper right-hand side of Figure 5 on page 439, essentially asserted that this diagram discloses not only features A1 to A213 but also features A'215 and A'214, so that document D1 deprives Claim 1 of novelty.

6.1.1 In this respect, the appellant essentially argued as follows:

When a group of cows is present in the problem cows sub-area, the construction houses two groups of cows which are kept separated from each other. When the "problem cows" have to be milked, the separating door between the problem cows sub-area and the milking parlour opens and the cows can pass from the problem cows sub-area into the milking parlour, out of the milking parlour and into the feeding sub-area and then later from the feeding sub-area into the recognizing sub-area back into the problem cows sub-area, while remaining separated from the other group of cows. Therefore, the three sub-areas of the construction shown in the diagram, which are suitable for accommodating two groups of animals, are not only arranged so that the given sub-area (ie the problem cows sub-area) communicates via the milking parlour in one direction with another sub-area (ie the feeding sub-area) but are also in connection with each other in such a way that each of the groups of animals can circulate through all the three sub-areas and the milking parlour while remaining separated from the other group of cows.

This argument is based upon the assumption that the cows can pass from the problem cows sub-area into the milking parlour. Having regard to the comments in section 5.1 above (see particularly the last paragraph), it cannot be derived from document D1 that the separating gate between the problem cows sub-area and the second passageway permits the passage of the animals from the problem cows sub-area into the milking parlour. Therefore, the board cannot accept this argument of the appellant.

Furthermore, it has to be noted that the "problem cows" sub-area has to be considered as an area suitable for temporarily housing some cows which after having been treated (in order to solve their "problem") may join the other cows. In other words, the problem cows do not constitute a group of animals in the meaning of the patent in suit. Therefore, it cannot be assumed that the problem cows sub-area and the further sub-areas of the construction according to document D1 are in connection with each other in such a way that the problem cows as a group can circulate through all the sub-areas and the milking parlour.

6.1.2 Referring to the above mentioned diagram, the appellant also argued as follows:

The third passageway leading from the milking parlour through the third swing gate to the feeding sub-area can be considered as a sub-area suitable for accommodating a group of at least two cows. Thus, the recognizing sub-area communicates via the milking parlour in one direction with the third passageway (feature A'215). Moreover, this third passageway, the feeding sub-area and the recognizing sub-area form

three sub-areas which are in connection with each other in such a way that each of the two groups of animals can circulate through all these three sub-areas and the milking parlour while remaining separated from the other group of cows (feature A'214).

This argument is based on the assumption that the third swing door and the first swing door are controlled so that the two groups of animals can be kept separated from each other (see section 2.5 above).

Having regard to the comments in section 5.1 above (see particularly the second last paragraph), it cannot be derived from document D1 that the first swing door is provided with a control mechanism. Thus, the board cannot accept this argument of the appellant.

6.1.3 Therefore, document D1 does not disclose features A'214 and A'215.

6.2. The appellant also asserted that document D4 discloses all the features of Claim 1 and, referring to Figure 1, essentially argued as follows:

The cleaning station 1 and the intermediate box before the sampling station 3 as shown in Figure 1 can be considered as a first sub-area which is clearly suitable for accommodating a first group of animals consisting either of two cows or of two smaller animals such as goats. The milk sampling station 3 together with the space defined by guides 11 and 12 (as shown in Figure 1) can be considered as a second sub-area which is large enough to be able to accommodate a second group of two animals. From this second sub-area the animals move to the milking section which communicates

with a further sub-area from which the animal can move back to the cleaning station, the third sub-area being able to accommodate each of the two groups of animals. Therefore, document D4 discloses a construction comprising a milking parlour and three sub-areas which are in connection with each other by means of automatically controlled doors such that each of the two groups of animals can circulate in a one-way rotational movement while the two groups of animals remain separated from each other.

This argument is based upon an *ex post facto* analysis of document D4 for the following reasons and therefore cannot be accepted by the board:

(i) The cleaning station 1 alone (ie without the intermediate box located before the sampling station) cannot be considered as being a sub-area suitable for accommodating two animals because this station is represented in Figure 1 as having the same dimensions as each of the milking stations 2, so that it has to be understood that this zone is suitable for accommodating only one animal.

The cleaning station and the intermediate box (located between the cleaning station and the sampling station) cannot be considered as forming a sub-area because of the presence of a controlled exit door 5 between the cleaning station and the intermediate box (see in this respect the above section 2.6).

(ii) The milk sampling station 3, which has an entry door 4 and an exit door 5, is provided with an elevation 8 located under the udder of the

animal in which a milk sampling device is arranged. It has to be understood that the milk sampling station 3 is suitable for accommodating only one animal in order to take a sample. In other words, the sampling station has to provide information concerning a specific (single) animal, so that the presence of a group of animals within the sampling station is neither wanted nor technically useful.

Moreover, the space defined by the guides 11 and 12 cannot be considered as defining together with the sampling station a sub-area, since there is an automatically controlled exit door between these two spaces (see above section 2.6).

(iii) In document D'4 the doors 4 provided at the entry of each station 1, 3 or 2 are disclosed as being pivotable about a horizontal axis and provided with a positioning element 6 which can rest against the rear of the animal when the door is closed (see page 4, lines 13 to 24). This implicitly indicates that each of the stations 1, 3 and 2 (ie each of the five boxes which are represented in Figure 1 as provided with an entrance door 4 and an exit door 5) has to be dimensionally adapted to the size of the animals and, thus, is suitable for accommodating only one animal.

6.3 Therefore, the subject-matter of Claim 1 is novel with respect to the cited prior art.

7. Inventive step (Claim 1 of the subsidiary request)

7.1 The board considers document D1 as defining the closest prior art. Having regard to the comments in section 6.1 above, the claimed subject-matter differs from the construction according to this prior art at least by feature A'214.

Having regard to the above mentioned comments, it is clear that both the feeding sub-area and the recognizing sub-area of the construction disclosed in document D1 can house animals and that the animals can move from the feeding sub-area to the recognizing sub-area via the first swing-gate as well as from the recognizing sub-area to the feeding sub-area either via the milking parlour or directly via the second swing gate.

As explained before, the construction known from document D1 has the disadvantage that it is not possible to milk two groups of animals without mixing the two groups of animals with each other. Thus, it is possible that some animals after having been milked pass from the milking parlour to the feeding area and from there to the recognizing sub-area and then to the milking parlour while other animals are still waiting for being milked.

The connection of the sub-areas as defined in feature A'214 results not only in preventing the animals of a group from being mixed with those of another group but also in ensuring that the last animal which was milked in a group has a rest period (corresponding to the time it takes to milk the other groups) in which it cannot have access to the milking parlour. This ensures that

all animals are milked by the milking robot in time.

Since the available prior art neither indicate feature A'214 nor the advantages which can be obtained on account of this feature, it would not be obvious for a skilled person to arrive at the claimed subject-matter.

7.1.1 The appellant argued that the combination of documents D1 and D6 renders the claimed subject-matter obvious. In this respect the appellant asserted that feature A'214 is known from document D6 in so far as this document discloses a construction in which the sub-areas are separated by controlled doors (ie by doors which can be opened and closed electrically or pneumatically) and permits circulation of animals as defined by feature A'214.

Having regard to the comment in section 5.3 above (see the last paragraph), the board cannot accept this argument.

7.1.2 The appellant also argued that the combination of documents D1 and D4 renders the claimed subject-matter obvious.

The board cannot accept this argument because also document D4 does not disclose feature A'214 (see comments in sections 5.2 and 6.2 above), so that even a combination would not suggest feature A'214.

7.2 The appellant asserted that the claimed subject-matter lacks inventive step over document D6 by arguing essentially as follows:

(i) The claimed subject-matter differs from the

content of document D6 only in that the milking parlour is provided with a milking robot.

(ii) It is well known either from document D1 or from document D4 that milking robots can be used in order to fully automate the milking system.

(iii) The skilled person confronted with the problem of increasing the automation level of the milking system disclosed in D6 would replace the semi-automatic herringbone milking parlour of document D6 with a parlour comprising one or more milking robots as discloses in D4 or D1 and thus arrive at the claimed subject-matter without exercising any inventive skill.

7.2.1 This argument of the appellant is based upon the assumption that document D6 discloses all the features of Claim 1 except feature A1. In other words, the appellant analysed this document as clearly disclosing a stable structure comprising a first sub-area (constituted by the collecting yard 8 as represented in Figure 1), a second sub-area (constituted by a non-represented area surrounding the milking parlour and the associated collecting yard 8) and a third sub-area (constituted by the holding pen referred on page 3, lines 29 to 34), these three sub-areas being suitable for accommodating two groups of cows and being in connection with each other so that each of the two groups of cows move from the milking parlour to the holding pen, then from the third sub-area (ie the holding pen) to the second sub-area and then from the second sub-area to the first sub-area (ie the collecting yard 8) and from there back into the milking parlour.

Having regard to the comments in section 5.3 above, this argument is clearly based upon an *ex post facto* analysis of document D6. Therefore, the board cannot accept this appellant's arguments.

7.3 Therefore, having regard to the prior art referred to by the appellant, the subject-matter of Claim 1 would not be obvious to a person skilled in the art and, thus, has to be considered as involving an inventive step (Article 56 EPC).

8. Thus, the patent can be maintained on the basis of Claim 1 of the subsidiary request of the respondent.

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 on the basis of the following documents:

Claims: No. 1 to 18 as filed during the oral proceedings (first auxiliary request);

Description: columns 1 to 6 as filed during the oral proceedings (first auxiliary request);

Drawings: Figure 1 as granted.

The Registrar: The Chairman:

G. Magouliotis C. Andries