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D E C I S I O N
of 3 July 2003

Case Number: T 0069/01 - 3.2.4

Application Number: 93200521.8

Publication Number: 0548058

IPC: A01K 1/12

Language of the proceedings: EN

Title of invention:

An arrangement for positioning animals in a box

Patentee:

MAASLAND N.V.

Opponent:

Alfa Laval Agri AB

Headword:

Blocking means/MAASLAND

Relevant legal provisions:

EPC Art. 100(a)

EPC R. 71(2)

Keyword:

"Inventive step (yes)"

Decisions cited:

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Catchword:

-



Case Number: T 0069/01 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 3 July 2003

Appellant: MAASLAND N.V.
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Representative: Smulders, Theodorus A. H. J., Ir.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 27 December 2000
revoking European patent No. 0548058 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
M. B. Tardo-Dino

Summary of Facts and Submissions

- I. The European patent No. 548 058, against which an opposition (based upon Article 100(a) EPC) was filed, was revoked by the decision of the opposition division dispatched on 27 December 2000.

The opposition division held that the subject-matter of the independent claim 1 of the patent as granted did not involve an inventive step having regard to documents DE-A-2 340 421 (D1) and US-A-2 995 111 (D7).

Claim 1 of the patent as granted reads as follows:

1. An arrangement for positioning animals, such as cows, in a box (2), which arrangement comprises movable means (6, 28) for letting an animal (1) in and out of the box (2) as well as control means therefore and positioning means for adjusting the animal (1) to a position defined relative to a vertical plane arranged in the longitudinal direction of the box (2), as well as for maintaining it in that position for at least part of its time of stay therein, said positioning means including two guide members (6, 7) being arranged near opposite longitudinal sides of the box (2), which guide members are furthermore operated by means of a cylinder (39) and constitute part of the movable means (6), characterized in that there are provided separate blocking means (20) which, when the animal (1) enters the box (2) or has already entered it and when a guide member (6) is moved into the direction of a relevant side of the animal (1) or is in contact therewith, block movement of the guide member in a direction opposite to the said direction of the relevant side.

II. On 11 January 2001 the proprietor of the patent (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 2 May 2001.

III. Oral proceedings were held on 3 July 2003.

The opponent (hereinafter respondent), who had been duly summoned to oral proceedings, did not appear. According to Rule 71(2) EPC the proceedings continued without this party.

IV. The appellant requested that the decision under appeal be set aside and the patent be maintained as granted.

The respondent requested in its written submissions that the appeal be dismissed.

V. With respect to inventive step the appellant asserted that document D7 discloses a locking means for the exit gate of a box, which locking means is active (ie it performs its locking function) only when the gate is closed. The appellant essentially argued that the subject-matter of claim 1 involves an inventive step because the claim defines a blocking means which is active not only when the box is closed and the animal is positioned in the box but also when the guide member moves to close the box.

VI. The arguments put forward by the respondent in the letter dated 19 September 2001 were essentially based on an interpretation of claim 1 according to which

claim 1 defines different embodiments, wherein one of the embodiments relates to a blocking means which is active only when the cow has already entered the box and the box is closed. With regard to inventive step, the respondent argued that the combination of documents D1 and D7 rendered obvious the subject-matter of claim 1 in so far as claim 1 defined a construction in which the blocking means is active only when the box is closed.

Reasons for the Decision

1. The appeal is admissible.
2. *The claimed subject-matter*
 - 2.1 Claim 1 as granted is directed to an arrangement for positioning animals, such as cows, in a box (2), having the following features:
 - (A) the arrangement comprises movable means (6, 28) for letting an animal in and out of the box (2);
 - (B) the arrangement comprises control means for the movable means (6, 28);
 - (C) the arrangement comprises positioning means;
 - (C1) the positioning means are suitable for adjusting the animal to a position defined relative to a vertical plane arranged in the longitudinal direction of the box;

- (C2) the positioning means are suitable for maintaining the animal in that position for at least part of its time of stay therein;
- (C3) the positioning means include two guide members (6, 7);
- (C31) the guide members (6, 7) are arranged near opposite longitudinal sides of the box (2);
- (C32) the guide members are operated by means of a cylinder (39);
- (C33) the guide members constitute part of the movable means (6);
- (E) there are provided separate blocking means (20);
- (E1) the blocking means, when the animal (1) enters the box (2) or has already entered it and when a guide member (6) is moved into the direction of a relevant side of the animal (1) or is in contact therewith, block movement of the guide member in a direction opposite to the said direction of the relevant side.

2.2 In order to define the matter for which protection is sought, the following features of claim 1 have to be interpreted having regard to the description and the drawings of the patent. The following interpretation was agreed by the appellant.

- (i) Feature A refers to "movable means (6, 28) for letting an animal in and out of the box (2)". It is understood that there are two movable means, namely a first movable means for letting an animal into the box and a second movable means for letting an animal out of the box.

- (ii) Feature C3 refers to "two guide members (6, 7)", while feature E1 refers to "a guide member (6)". It is understood that the guide member referred to in feature E1 is one of the two guide members referred to in feature C3.

- (iii) The term "separate blocking means" in feature E has to be interpreted having regard to the problem to be solved as indicated in the description of the patent (column 1, lines 16 to 25) in so far as the problem relates to a prior art construction (see document D1) in which when the animal moves sideward the cylinder operating the entrance door can be loaded.

In this respect it has to be noted that in the construction according to claim 1 the cylinder which operates the guide members (as defined by feature C32) represents itself (due to the pressure of the fluid operating the cylinder) already an obstacle to the movement of the guide members in the other direction. Therefore, the expression "separate blocking means" defines a blocking means which is "separate" from the cylinder.

- (iv) According to feature E1, the blocking means is suitable for blocking the movement of the guide member (6) in a direction opposite to the direction in which the guide member (6) is moved towards a relevant side of the animal.

Moreover, this feature defines the phases during which (or the circumstances under which) the blocking means is active by indicating the following conditions:

(a) when the animal enters the box,

or

(b) when the animal has already entered the box,

and

(c) when the guide member is moved towards the relevant side of the animal (in order to close the box),

or

(d) when the guide member is in contact with the relevant side of the animal.

Due to the terms "and" and "or" - feature E1 defines four phases corresponding to the following four combinations of conditions:

"a and c", "a and d", "b and c", "b and d".

Having regard to the description and the drawings (see particularly Figure 2) of the patent, it is understood that the blocking means is active not only when the box is closed and the animal is in contact with the guide member but also during the remaining phases (e.g. when the guide member is moved to close the box). In other words, claim 1 does not define four different constructions, each corresponding to one of the above mentioned phases, but **one** construction in which the blocking means is active during all these phases.

- (v) Feature C32 indicates that the guide members (6, 7) are located on the longitudinal sides of the arrangement, near the box.

3. *Inventive step*

- 3.1 The parties considered document D1 as disclosing the closest prior art. This document discloses an arrangement for positioning cows in a box, the arrangement comprising first movable means (34) for letting a cow in the box and second movable means (32, 42) for letting the cow out of the box as well as control means (88, 98, 100) for said means (32, 34, 42) and positioning means (20, 22, 28, 34, 42) for positioning the cow in a position defined relative to a vertical plane arranged in the longitudinal direction of the box, wherein the positioning means include three movable guide members (32, 34, 42), two guide members (34, 42) being arranged along a longitudinal side of the box, the third guide member (32) being arranged along the opposite longitudinal side of the box, wherein the first guide member (34) is operated by

means of a first cylinder (88) and constitutes the first movable means for letting the cow in the box and wherein the second guide member (42) is operated by means of a second cylinder (98) and constitutes the second movable means for letting the cow out of the box.

This arrangement has the disadvantage that the first cylinder (88) can be "loaded", if an animal moves sideward and comes into contact with the first movable means (34), ie with the entrance door, either when it enters the box or when it is in the box.

- 3.2 The subject-matter of claim 1 of the patent as granted differs from the closest prior art at least by features E and E1.

These features result in providing a construction in which the "loading" of the cylinder is prevented when the animal comes into contact with the guide member which during its closing movement is operated by the cylinder.

Thus, the problem to be solved consists in preventing the disadvantage of the arrangement according to the closest prior art.

- 3.3 Document D7 discloses a cattle squeeze having a frame (31) provided with a front gate (43) mounted for swinging movement about a vertical axis, the front gate being operated (ie closed and opened) by means of a cylinder (62), wherein there is a locking means (latch mechanism 68) which serves to maintain the front gate (43) in its closed position.

The front gate (43) constitutes the exit door of the cattle squeeze, there being a rear gate (86) constituting the entrance door. It is understood that the front door (43) is closed by means of the cylinder (62) and locked in its closed position by means of the latch mechanism (68) before the animal enters the cattle squeeze. Thus, the latch mechanism (68) is only active when the front gate (43) is already closed. In other words the latch mechanism (68) can be considered as being a separate blocking means as defined by feature E but cannot be considered as performing the functions defined by feature E1.

Document D7 does not contain any indication to the problem to be solved, ie to the "loading" of the cylinder (62) which operates the front gate. Thus, the skilled person when confronted with the problem to be solved would have no reason to consult document D7.

In any case, even if the skilled person were to consult document D7 and apply the teaching of this document - in so far as it concerns a separate locking means (68) associated with the front gate (43) - to the arrangement according to the prior art, he would not arrive at the subject-matter of claim 1 because document D7 does not suggest feature E1.

3.4 Having regard to the available state of the art, the subject-matter of claim 1 of the patent as granted is not obvious to a person skilled in the art.

Therefore, the ground for opposition mentioned in Article 100(a) EPC does not prejudice the maintenance of the patent as granted.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to first instance with the order to maintain the patent as granted.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries