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D E C I S I O N
of 22 July 2002

Case Number: T 0616/01 - 3.2.4

Application Number: 93200105.0

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Language of the proceedings: EN

Title of invention:
An implement for milking animals

Patentee:
MAASLAND N.V.

Opponent:
Alfa Laval Agri AB

Headword:
-

Relevant legal provisions:
EPC Art. 56, 100(a), 111(1), 114(2)

Keyword:
"Novelty (yes)"

Decisions cited:
T 0312/94

Catchword:
-



Case Number: T 0616/01 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 22 July 2002

Appellant: MAASLAND N.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 27 April 2001
revoking European patent No. 0 551 958 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: C. D. A. Scheibling
C. Holtz

Summary of Facts and Submissions

I. By its decision dated 27 April 2001 the Opposition Division revoked the patent in suit.

On 25 May 2001 the appellant (patentee) filed an appeal and paid the appeal fee.

The statement setting out the grounds of appeal was filed on 6 September 2001.

II. The Opposition Division based its decision on a lack of novelty of the subject-matter of claim 1 as granted with respect to D1: EP-A-0 300 582.

III. The following documents played a role in the appeal proceedings:

D1: EP-A-0 300 582

D1A: NL-A-87 01 735 (priority document of D1, filed by the respondent (opponent) with letter of 4 June 2002).

IV. The Board issued a provisional communication dated 25 March 2002, informing the parties that it intended to discuss solely novelty of the subject-matter of claim 1 and, should novelty be given, to remit the case to the first instance for further prosecution.

V. With letter of 4 June 2002 the respondent (opponent) filed document D1A in support of his arguments and withdrew its request for oral proceedings.

With letter of 28 June 2002 the appellant (patentee)

also withdrew its request for oral proceedings.

VI. Requests

The appellant (patentee) requests that the decision under appeal be set aside and that the patent be maintained as granted.

The respondent (opponent) requests that the appeal be rejected.

VII. Claim 1 as granted reads:

"An implement for automatically milking an animal, comprising a milking robot (5) with a carrier member (33) adapted to carry four teat cups (6) which are automatically connectable to the teats of an animal, characterized in that the carrier member (33) comprises a separate chamber (39) inside which substantially over the length of the carrier member (33) milk hoses (21) connected to said teat cups (6) are mounted".

Reasons for the Decision

1. The appeal is admissible
2. *Interpretation of claim 1*
 - 2.1 According to the description of the patent in suit (column 1, lines 16 to 20) the purpose of the feature of mounting the hoses in a separate chamber substantially over the length of the carrier member is to obviate or at least mitigate the disadvantage of the implement known from D1 where the milk hoses are moving

over the ground when the carrier member is in its lowermost position.

2.2 When interpreting the aims of the patent, a skilled person should rule out interpretations which are illogical or which do not make technical sense. He should try to arrive at an interpretation which is technically sensible and takes into account the whole disclosure of the patent. Therefore, when considering the teaching of the description, let alone of the patent as a whole, the expression "at least mitigating the disadvantages" cannot be considered as decreasing in a very small amount the disadvantage of D1, in order to meet the aims of the patent in suit. The aim of the patent in suit being clearly to avoid as far as possible that any part of the milking hose may be moved over the ground, particularly since the constructional features of the claim to reach those aims clearly indicate that the separate chamber has to be present or is located substantially over the length of the carrier member, i.e. not over a small part of that length, but over the major part or even the totality of that length.

2.3 Consequently, "substantially over the length of the carrier member" is to be interpreted as meaning "over such a major part of the length of the carrier member that the milk hose will not touch the ground, even when the carrier member is in its lowermost position".

2.4 "A separate chamber" is to be interpreted as that what it says, namely "another, different chamber", which implies the presence of two chambers that each delimit an enclosed space (see also section 3.4, below).

3. *Novelty with respect to D1*

3.1 The Board is of the opinion that from D1 there is known an implement for automatically milking an animal (column 1, lines 1, 2), comprising a milking robot (column 1, lines 40 to 43) with a carrier member (61 and 62) adapted to carry four teat cups (80) which are automatically connectable to the teats of an animal, the carrier member (61 and 62) comprising a chamber (61) inside which over a length of the carrier member (61 and 62) milk hoses (101) connected to said teat cups (80) are mounted.

3.2 Thus the implement for automatically milking an animal according to claim 1 as granted differs from that of D1 in that:

- the chamber is a separate chamber,
- the milk hoses are mounted in said chamber *substantially* over the length of the carrier member.

3.3 The appellant submits that the feature: "with a carrier member (33) adapted to carry four teat cups (6)" is not known from D1.

In D1, column 17, lines 52 to 57 it is stated "in the embodiment shown, the robot arm 7 supports two teat cups 80. However, it is alternatively possible, with the object of applying e.g. four teat cups on a cow, to provide the end of the robot arm 7 with four teat cup carriers which are otherwise operable in the above-described manner".

The appellant argues that details of Figure 7 cannot be used in combination with a non-specific reference to a different embodiment i.e. that the use of four teat cups would imply modifications which would not be compatible with the details concerning the mounting of the milk hoses as shown in Figure 7.

This does not appear to be correct, since on the one hand the description of D1 (column 1, lines 42, 43; column 2, lines 3, 4; column 4, lines 4, 5; column 8, line 44; column 14, lines 45, 46) refers to an indefinite number of teat cups and on the other hand, in column 17, lines 53 to 57 it is specifically stated that "it is possible ... to provide the end of the robot arm 7 with four teat cup carriers which are otherwise operable in the above-described manner" which means that an embodiment comprising four teat cups will be compatible with the robot arm as shown in the figures.

Therefore, the feature "with a carrier member adapted to carry four teat cups" is known from D1.

- 3.4 The Board does not share the opinion of the parties according to which in D1, the chamber in which the milk hoses are mounted over a given length is a separate chamber. As a matter of fact, it is not clear to the Board where "a separate chamber" can be found in D1. The expression "separate chamber" in the patent in suit is quite clear, not only from the wording itself, but also from the disclosure, it is another chamber which (may be apart from a connecting opening) has nothing in common with any other chamber or chambers present in the carrier member (see also section 2.4, above).

In D1 however, there is only one space inside the second portion (54) of the robot arm, even when the two portions (61 and 62) of portion (54) are moving relative to each other. Whereas the separate chamber (or space) of the patent in suit has a specific function, no such separate space with this specific function is to be found in D1.

The respondent refers to Figures 7 and 8 of D1 and argues that there is a lower chamber between the two guide means 68, under the guide means 69 and the U-shaped frame portion 70 and an upper chamber above said guide means 68, 69 and said U-shaped frame portion 70. However, as correctly indicated by the respondent, U-shaped frame portion 70 does not extend along the length of carrier 61. As a matter of fact, a claim should be read giving the words the meaning and scope which they normally have unless the description gives the words a specific meaning. Thus, to form a chamber, there has to be a compartment or cell comprising an enclosed space or cavity. When referring now to Figure 7, the U-shaped frame portion 70 is a part which is so short in length when compared to the length of carrier 61 that a skilled person would never consider it to form a boundary able to delimit two separate spaces over the length of said carrier. Therefore, the said carrier of D1 cannot be said to comprise "another (or distinct second) chamber" in the meaning of the patent in suit.

The respondent further states that the fact that the chamber is separate does not contribute to the solution of the problem of the patent in suit. However, this argument is not relevant for assessing novelty.

3.5 The respondent argues that "substantially" means "to a large degree" and that therefore the hoses do not need to be mounted in a separate chamber over the whole length of the carrier member. This is correct, however according to the interpretation given in section 2.3 above, the length over which the hoses are mounted in the separate chamber should be such as to avoid contact between the hoses and the ground. However, D1 does not give any indication in this respect, so that it is not possible to conclude that D1 discloses a separate chamber inside which substantially over the length of the carrier member milk hoses connected to said teat cups are mounted, as is the meaning of the claim of the patent in suit.

On the contrary, Figures 7 and 9 unequivocally disclose the possibility of occurrence of the problem of the milk hoses (101) contacting the floor due to the fact that these milk hoses are connected to the underside of the teat cups.

The respondent further argues that the statement at column 6, lines 45 to 47 of D1 that: "...it is possible for the milk hoses, too, to extend through the robot arm, at least partially", means that D1 discloses that the milk hoses in the robot arm can be mounted over the entire length. This interpretation is not in line with the description considered in its entirety. It is clear from the description that this statement simply means that the milk hoses can extend partly through the robot arm, instead of having to be mounted fully outside of said robot arm, and that, in spite of said statement, the hoses in the robot arm are not intended to be mounted over the entire length of it. This passage furthermore is clear insofar as it covers the

embodiments shown in Figures 6 to 9, where indeed the milk hoses 101 are located in portion 61 of the second portion 54 of the robot arm, but where the milk hoses risk to be flattened by a mechanism also present in portion 61.

The respondent also argues that "at least" would have been omitted from the wording of D1 if it had been intended to limit the possibility of mounting the milk hoses over a portion of the length of robot arm.

In this respect reference is made to decision T 312/94 (section 2.2, fourth paragraph) where it is indicated that it is a general rule for interpretation of any document, in order to determine its true meaning and thus its content and disclosure, that no part of such a document should be construed in isolation from the remainder of the document, on the contrary, each part of such a document has to be construed in the context of the contents of the document as a whole.

From the description and the drawings (see especially Figure 7) it is clear that a skilled person would not contemplate that the milk hoses may extend through the whole length of the robot arm.

- 3.6 Finally the respondent refers to the problem the patent seeks to solve and acknowledges that "the object of the patented implement is to obviate or at least mitigate this disadvantage of the implement known from D1" (see letter dated 4 June 2002; page 2, lines 3, 4). From this, the respondent concludes that to mitigate the disadvantage means that the hoses may still be moved over the ground, but less severely and that, since in D1 the milk hoses are mounted in the separate chamber

over the length of part 61, the moving of the milk hoses over the ground when the carrier member is in its lower position, is at least mitigated, which implies that the aims of the patent are met.

Firstly, as concluded in point 3.4 supra, D1 does not disclose a separate chamber. Secondly, the words "obviate" and "mitigate" refer to the **disadvantages** of the implement **known from D1**, which implies that the solution proposed is at least more effective than that of D1 and that, therefore, D1 cannot be considered to solve already said problem.

Additionally, the conclusion drawn by the respondent that the implement according to D1 does mitigate the possibility that any part of the milking hose may be moved over the ground can only be drawn with the knowledge of the solution proposed by the patent in suit, since D1 does not address the problem of avoiding contact between the milk hoses and the ground. Said conclusion appears thus rather to be the result of an *ex post facto* analysis.

3.7 Consequently, the subject-matter of claim 1 is novel with respect to D1.

4. *Document D1A*

This document, which is the priority document of D1, was filed by the respondent to more clearly indicate how the milk hoses extend.

However, since this document does not give any new technical information with respect to D1 and thus can have no material bearing on the decision, the Board

decides to disregard this document according to the provisions of Article 114(2) EPC.

5. *Remittal*

Thus, owing to the fact that novelty is given and that the Opposition Division did not comment on the ground of opposition based on Article 100(a) EPC with respect to inventive step, the case is remitted to the first instance, according to the provisions of Article 111(1) EPC, for further prosecution (i.e. to check if the claims as granted also meet the requirements of Article 56 EPC).

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 for further prosecution.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries