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**D E C I S I O N**
**of 3 June 2005**


**Case Number:**        T 0961/03 - 3.2.4

**Application Number:**  96920821.4

**Publication Number:**  0903980

**IPC:**                 A01K 29/00

**Language of the proceedings**:   EN

**Title of invention:**
A system and method for monitoring the physical condition of a
herd of livestock

**Patentee:**
ALFA LAVAL AGRI AB

**Opponent:**
Maasland N.V.

**Headword:**
Confidence interval/ALFA LAVAL

**Relevant legal provisions:**
EPC Art. 100(c), 111(1)
EPC R. 29(1)

**Keyword:**
"Clarified content of the claim relevant for the issue of
added subject-matter"
"Added subject-matter (no)"
"Remittal to the first instance for consideration of the
undecided issues"

**Decisions cited:**
T 0190/99

**Catchword:**
-

**Case Number:** T 0961/03 - 3.2.4

# D E C I S I O N
## of the Technical Board of Appeal 3.2.4
## of 3 June 2005

| | |
|---|---|
| **Appellant:** (Proprietor of the patent) | ALFA LAVAL AGRI AB P.O. Box 39 S-147 21 Tumba   (SE) |
| **Representative:** | Prins, Adrianus Willem, Mr. Ir. Vereenigde Nieuwe Parklaan 97 NL-2587 BN Den Haag   (NL) |
| **Respondent:** (Opponent) | Maasland N.V. Weverskade 10 NL-3155 PD Maasland   (NL) |
| **Representative:** | Corten, Maurice Jean F.M. Octrooibureau Van der Lely N.V. Weverskade 110 NL-3147 PA Maassluis   (NL) |
| **Decision under appeal:** | **Decision of the Opposition Division of the European Patent Office posted 16 July 2003 revoking European patent No. 0903980 pursuant to Article 102(1) EPC.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman:** | M. Ceyte |
| **Members:** | P. Petti |
| | T. Bokor |

**Summary of Facts and Submissions**

I.      The European patent No. 903 980 was revoked by decision
        of the opposition division dispatched on 16 July 2003.

        The opposition division found that the ground for
        opposition mentioned in Article 100(c) EPC prejudiced
        the maintenance of the patent as granted.

        The independent claims 1 and 5 of the patent as granted
        read as follows:

        "1.  A system for monitoring the physical condition of
             a herd of livestock comprising:

             a measurement device (15, 16, 18, 19, 20) for
             measuring a value of at least one property
             associated with an individual, identified animal
             of the herd,
             an identification structure (20) for identifying
             individual animals of said herd,
             a data processing structure (21) operatively
             connected to said measurement device (15, 16, 18,
             19, 20) and to said identification structure (20),
             and
             a signalling device (22) for generating attention
             signals connected to said data processing
             structure (21),

             said data processing structure being programmed
             for:

             collecting measurement data in accordance with
             measured values of said at least one property

associated with each individual, identified
animal,
determining a prediction with a permissible
deviation for at least one subsequent measured
value of said at least one property for said
individual, identified animal from said stored
measurement data associated to said individual,
identified animal,
measuring a value of at least one property at
regular intervals from each individual, identified
animal,
comparing measured values with corresponding
predicted values and said permissible deviations,
and
activating the signalling device (22) to generate
an attention signal in response to an error
between the value of said at least one measured
property and the prediction for that value larger
than said permissible deviation,

characterized in that,
said data processing structure is further
programmed for:

collecting error data in accordance with
previously measured and predicted values of said
at least one property associated with each
individual, identified animal,
determining said permissible deviation in the form
of a confidence interval for said prediction for
each individual, identified animal from said error
data,

comparing said measured values with said
corresponding predicted values and said confidence
intervals (step 28), and
carrying out said generation of said attention
signal in response to an error between the
measured value of said at least one measured
property and said prediction for said value above
a level determined by said confidence interval."

"5.   A method for automatically monitoring the physical
condition of a herd of livestock including the
steps of:

collecting measurement data in accordance with
previously measured values of at least one
measured property for each individual, identified
animal (step 31),
measuring a value of said at least one property at
regular intervals from each individual, identified
animal (step 24),
determining at least one prediction and
permissible deviation for at least one measured
value of said at least one property for each
individual, identified animal from said collected
measurement data regarding that individual,
identified animal (step 26),
comparing said measured values with said
corresponding predicted values and said
permissible deviations (step 28), and
generating an attention signal each time in
response to an error between said measured value
of said at least one measured property and said
prediction for said measured value above a
predetermined permissible deviation (step 29),

characterized by

collecting error data in accordance with
previously measured and predicted values of at
least one measured property for each individual,
identified animal (step 31),
determining said permissible deviation in the form
of a confidence interval for said prediction for
each individual, identified animal from said error
data (step 27), and
comparing said measured values with said
corresponding predicted values and said confidence
intervals (step 28),
wherein said generation of said attention signal
is each time in response to an error between the
measured value of said at least one measured
property and said prediction for said value above
a level determined by said confidence interval."

II.   The patent proprietor (hereinafter appellant) lodged an
appeal against this decision on 11 September 2003 and
simultaneously paid the appeal fee.

III.  With the statement setting out the grounds of appeal
received on 26 November 2003, the appellant filed a set
of amended claims 1 to 8 upon which three subsidiary
requests were based.

IV.   Oral proceedings before the board were held on 3 June
2005.

The appellant requested that the decision under appeal
be set aside and the case be remitted to the first

instance for further prosecution on the basis of the
patent as granted (main request) or, auxiliarily, on
the basis of either claims 1 to 8 as filed with letter
of 26 November 2003 (first auxiliary request) or
claims 1 to 4 filed with the letter of 26 November 2003
(second auxiliary request) or claims 5 to 13 of the
patent as granted (third auxiliary request) or claims 5
to 8 filed with the letter of 26 November 2003 (fourth
auxiliary request).

The opponent (hereinafter respondent) requested that
the appeal be dismissed.

V.    The appellant essentially argued that the subject-
      matter of claims 1 and 5 as granted had a basis in the
      application as filed and did not contravene the
      requirements of Article 100(c) EPC.

VI.   The respondent contested the arguments of the appellant
      essentially by arguing as follows:

      (i)   The expression "permissible deviation" in the pre-
            characterising portions of claims 1 and 5 as
            granted has no basis in the application as filed.

      (ii)  The features in claims 1 and 5 as granted
            according to which a permissible deviation for a
            prediction is determined from the stored or
            collected measurement data are not disclosed in
            the application as filed.

      (iii) The data processing structure was not originally
            disclosed as being programmed for carrying out the

generation of the attention signal itself, as
defined in claim 1 as granted.

(iv) The feature "above a level determined by said
confidence interval" in claim 1 as granted is not
supported by the application as filed.


## Reasons for the Decision

1.      The appeal is admissible.


2.      *Article 100(c) EPC*


2.1     Claim 1 as granted contains the following features
        which are included in the preamble and in the
        characterising portion respectively:

        a)      "determining a prediction with a permissible
                deviation ... from said stored measurement data",
                and

        b)      "determining said permissible deviation in the
                form of a confidence interval ... from said error
                data".

        Claim 5 as granted contains the following method steps
        a') and b') in the preamble and in the characterising
        portion respectively:

        a')     "determining a prediction and a permissible
                deviation ... from said stored measurement
                data...", and

b')   "determining said permissible deviation in the
      form of a confidence interval ... from said error
      data".

2.1.1   The respondent essentially argued that the expression
        "permissible deviation" referred to in features a) and
        a') represents a generalisation of the expression
        "confidence interval" contained in claims 1 and 5 of
        the application as filed without there a basis for this
        generalisation.

2.1.2   Although the application as filed only refers to a
        "confidence interval" without referring to a
        "permissible deviation", the board cannot accept the
        respondent's argument for the following reasons:

        (i)   Features a) and a') have to be read in conjunction
              with features b) and b') respectively. Thus,
              although "a permissible deviation" represents a
              more general definition *(genus)* with respect to
              the specific definition *(species)* of "a confidence
              interval", there is no added matter since features
              b) and b') specify that the "permissible deviation
              is "in the form of a confidence interval".

        (ii)  The expression "permissible deviation" was
              introduced into the preamble of independent
              claims 1 and 5 of the patent during the
              examination proceedings because the examining
              division had requested that the independent claim
              be brought into the two-part form required by
              Rule 29(1) EPC. This expression defines a feature
              common to the prior art cited in the patent
              specification and to the claimed invention.

However, it does not contravene the requirements
of Article 123(2) or 100(c) EPC in so far as the
characterising portions of claims 1 and 5 make it
clear that the permissible deviation is in form of
a confidence interval.

2.2     The respondent interpreted the above mentioned features
        a) and a') as defining the possibility of determining
        the permissible deviation **from the measurement data** and
        argued that there is no basis for such a possibility in
        the application as filed, which discloses "the
        confidence interval for the prediction" (i.e. the
        permissible deviation) as being determined **from the
        error data** (claims 1 and 5).

2.2.1   The board cannot accept this respondent's argument for
        the following reasons:

        (i)   In order to establish the meaning of a claim any
              illogical interpretation should be ruled out and
              the whole disclosure of the patent has to be taken
              into account (see e.g. T 190/99 of 6 March 2001,
              not published).

        (ii)  In the present case, in the pre-characterising
              portions of claims 1 and 5 as granted the
              determination of the permissible deviation is
              linked to the stored or collected measurement
              data, while in the characterising portion the
              confidence interval (i.e. a more specific
              permissible deviation) is linked to the error
              data.

Furthermore, according to characterising portion of claims 1 and 5, the error data are collected "in accordance with previously **measured** and predicted **values** ..." (emphasis added). This is consistent with the description of the patent, according to which "the data processing structure is programmed for storing error data in accordance with errors between predicted values and **measured values** ..." (see paragraph [0028] of the patent specification; emphasis added).

Thus, on the basis of the whole disclosure of the patent, it has to be understood that the pre-characterising portions of claims 1 and 5 define at a general level the permissible deviation as being determined - <u>indirectly</u> - from the measurement data in so far as the measured values are used to determine the error data, while the characterising portions define in a more specific manner the permissible deviation (i.e. the confidence interval) as being determined from the error data.

2.2.2 The respondent based this argument upon an interpretation of claims 1 and 5 according to which feature a) in the preamble of claim 1 is inconsistent with feature b) in the characterising portion and feature a') in the preamble of claim 5 is inconsistent with feature b') in the characterising portion of claim 5.

If it is assumed that there is an inconsistency between features of a granted claim, the features which are inconsistent with each other are to be construed in the

context of the description and drawings of the patent
specification.

In the present case, it is clear from the patent
specification that "the error data are stored in
accordance with predicted values and corresponding
measured values ..., and a confidence interval for a
prediction is determined ... **from the error data**
characterizing the distribution of errors ... " (see
paragraph [0011] of the patent specification; emphasis
added). On the other hand, it also clear from the
patent specification that the prediction is determined
**from the stored measurement data** (see paragraph [0027]
of the patent specification). Therefore, the skilled
person when interpreting claims 1 and 5 as granted in
order to resolve any possible inconsistency between
features of these claims will immediately understand
that the prediction is determined from the stored or
collected measurement data and the permissible
deviation (in the form of a confidence interval) is
determined from the error data. Such an interpretation
leads to define a subject-matter which has a clear
basis in the application as filed, in so far as claim 5
as filed contains the features "determining at least
one prediction ... from said collected measurement
data ..." (see page 20, lines 4 to 7) and "determining
a confidence interval for said prediction ... from said
error data" (see page 20, lines 9 and 10).

2.3     The feature in claim 1 as granted according to which
        "[said data processing structure is programmed] for
        carrying out said generation of said attention signal
        in response to an error between the measured value of
        said at least one measured property and said prediction

for said value above a level determined by said
confidence interval" is directly and unambiguously
derivable from claim 5 of the application as filed in
so far as this claim contains the feature "generating
an attention signal in response to an error between the
value of said at least one measured property and the
prediction for that value above a **predetermined** level
determined by said confidence interval" (see page 20,
lines 14 to 17; emphasis added).

2.3.1    The respondent argued that the above quoted feature in
         claim 1 as granted has a wording which differs from
         that of the corresponding feature in claim 5 of the
         application as filed which contains the word
         "predetermined" (see the letter dated 29 April 2004
         (page 1, point 4).

         The board cannot accept this argument because the
         meaning of these features is the same.

2.3.2    The respondent also submitted that the above quoted
         feature in claim 1 as granted - in so far as it refers
         to a data processing structure programmed **"**for carrying
         out said generation of said attention signal" - is not
         disclosed in the application as filed since "the
         alleged description in the sub-claims and the
         disclosure is restricted to the respective embodiments,
         each having a number of further features which are not
         (but should be) part of the present claim 1" (see the
         letter dated 29 April 2004 (page 1, point 3).

         The board cannot accept this argument because claim 1
         of the application as filed contains the features "a
         signalling device (22) for generating attention signals

connected to said data processing structure" (see
page 18, lines 11 and 12) and "[said data processing
structure being programmed] for activating the
signalling device to generate an attention signal ..."
(see page 18, lines 13 and 29 to 32) which define a
data processing structure programmed for carrying out
said generation of an attention signal as specified in
claim 1 as granted.

2.4     Having regard to the above considerations, the
objections put forward by the respondent under
Article 100(c) EPC do not prejudice the maintenance of
the patent as granted.

3.      *Further proceedings*

In a previous communication, the board had informed the
parties of its intention to remit the case to the
opposition division for further prosecution, since the
issue of whether the claimed subject-matter involves an
inventive step had not been considered by the
opposition division.

Thus, the board, in exercising its discretion under
Article 111(1) EPC, considers it appropriate to remit
the case to the first instance for consideration of
*inter alia* the issue of inventive step having regard to
claims 1 and 5 as granted.

**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                              M. Ceyte


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