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**Datasheet for the decision
of 19 December 2006**

Case Number: T 1019/04 - 3.2.04

Application Number: 93202279.1

Publication Number: 0582350

IPC: A01K 1/12

Language of the proceedings: EN

Title of invention:

A construction for milking animals

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB
Prolion B.V.

Headword:

Sub-areas/MAASLAND

Relevant legal provisions:

EPC Art. 123, 56, 100(b)
EPC R. 57a, 71(2)
RPBA R. 10b

Keyword:

"Amendment which can be dealt with without adjournment of the oral proceedings"
"Inventive step (after amendments) - yes"

Decisions cited:

T 0821/01

Catchword:

-



Case Number: T 1019/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 19 December 2006

Appellant: DeLaval International AB
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Party to the proceedings: Prolion B.V.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
20 July 2004 concerning maintenance of European
patent No. 0582350 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: P. Petti
T. Bokor

Summary of Facts and Submissions

I. The European patent No. 582 350 against which two oppositions were filed was revoked by a first decision dated 1 June 2001. The board 3.2.04 in its decision T 821/01 of 15 November 2002 set aside this first decision and remitted the case to the opposition division for further prosecution.

In its further interlocutory decision dated 20 July 2004 (hereinafter decision under appeal), the opposition division found that the patent as amended met the requirements of the Convention.

II. Opponent I (hereinafter appellant) lodged an appeal against this decision on 13 August 2004 and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 29 November 2004.

The following prior art played a role during the appeal proceedings:

D1: SU-A-904 608 and English translation thereof;

D3: EP-A-91 892;

D4: *System Solutions for dairy cows*, Alfa-Laval AB Farm Equipment Division, September 1976 (pages 153 and 154).

III. Oral proceedings before the board were held on 19 December 2006. Opponent II, although duly summoned, did not appear at the oral proceedings which were continued without him (Rule 71(2) EPC).

During the oral proceedings the patent proprietor (hereinafter respondent) filed a main request and an auxiliary request.

Claim 1 of the main request reads as follows:

"1. A construction for milking cows, comprising a cowshed designed as a loose house (5), the cow shed being provided with partitioning means dividing the cow shed area into sub-areas (6 to 9), the cow shed further comprising a single milk box (17) having a milking robot (37) for automatically milking cows, which milk box (17) is accommodated in the cow shed and can be reached by the cows in consecutive groups either from the cow shed directly or from a pasture via the cow shed, characterized in that the cow shed includes at least three sub-areas (6 to 9), while connection means are provided to connect directly each of the sub-areas (6 to 9) with the milk box (17) in such a way that each of these sub-areas (6, 7, 8, 9) can be connected with one other sub-area (7, 8, 9, 6) via the milk box (17), so that cows which belong to one group and are still to be milked can consecutively enter the milk box (17) from any of the sub-areas and can leave the milking box (17) after having been milked and be guided to a different sub-area."

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

The respondent requested that the decision under appeal be set aside and the patent be maintained on the basis of claim 1 filed as main request during oral proceedings before the present board and claims 2 to 14 as maintained by the opposition division or, alternatively, on the basis of claim 1 filed as auxiliary request during oral proceedings before the present board and claims 2 to 14 as maintained by the opposition division.

- V. The appellant essentially argued that the requests submitted by the respondent during oral proceedings on 19 December 2006 were inadmissible because they were late filed and that the claimed subject-matter did not involve an inventive step with respect to documents D4 and D3.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request: Admissibility*
 - 2.1 Claim 1 of the main request differs from claim 1 as maintained by the opposition division only in that the feature
 - a) "the cow shed further comprising a milk box having a milking robot"has been amended to read

a') "the cow shed further comprising a **single** milk box having a milking robot" (emphasis added).

2.2 This amendment makes it clear that the cow shed of the claimed construction comprises only one milk box and thus limits the scope of the claim with respect to that of claim 1 upon which the decision under appeal is based.

This amendment represents a reaction to the appellant's submission as to lack of inventive step that the closest prior art document D1 also described a cowshed comprising "a" milk box.

Moreover, the board finds that this amendment does not raise issues which the board or the appellant could not be expected to deal with without adjournment of the oral proceedings (Rule 10b of the Rules of Procedure of the Boards of Appeal (RPBA)).

Under these circumstances, the board decided to consider the amended main request submitted during oral proceedings.

3. *Main request: Article 123 EPC*

3.1 Claim 1 as granted also refers to a cow shed "comprising a milk box". The amendment "a single milk box" instead of "a milk box" does not extend the protection conferred with respect to granted claim 1 (Article 123(3) EPC) and has a basis in the application as filed (Article 123(2) EPC) which clearly and unambiguously discloses a cow shed comprising only one milk box (17).

3.2 This amendment is the only amendment made in the present appeal proceedings with respect to the version upon which the decision under appeal is based (see section II above). The further amendments which distinguish the main request from the patent as granted were found as complying with Article 123 in the previous decision T 821/01 (see section 6) by which the board in the present appeal proceedings is bound in virtue of Article 111(2) EPC (see *Case Law of the Boards of Appeal of the European Patent Office*, 4th Edition 2001, VII.D.10.1).

3.3 Therefore, the amendments of the main request do not contravene the requirements of Article 123 EPC.

4. *The prior art*

4.1 Document D1 discloses a construction for milking cows, comprising a cow shed designed as a loose house, the cow shed being provided with partitioning means dividing the cow shed area into four sub-areas (5, 6; 8, 9), the cow shed further comprising an annular conveyor provided with a plurality of milk boxes (2), the annular conveyor being accommodated in the cow shed, the construction being such that the cows can reach the milk boxes in consecutive groups from the cow shed. Moreover, connection means are provided to connect each of the sub-areas (5, 6; 8, 9) with the annular conveyor in such a way that each of these sub-areas (5 or 8,) can be connected with one other sub-area (6 or 9) via the annular conveyor such that a cow can go from each of the sub-areas to one of the milk boxes of the annular conveyor without having to enter another sub-

area, the arrangement being such that the cows which belong to one group and are still to be milked can consecutively enter the milk boxes of the annular conveyor from any of the sub-areas and can leave the milk boxes (2) after having been milked and be guided to a different sub-area.

Namely, the annular conveyor, which is arranged in the centre of the cow shed, can rotate about a vertical axis so that a connection between each of the sub-areas and each of the milk boxes can be formed. When the first cow of a first group has entered the milk box which is connected to the sub-area in which the cow of the first group are present, the conveyor rotates so that a second milk box can be connected with that sub-area and a second cow can enter a second milk box.

It has to be assumed that, when a cow has entered a milk box of the annular conveyor, the teat cups of a milking machine are connected to the teats of the udder of the cow by an operator, who in turn can perform this manual operation for each cow which has entered the corresponding milk box of the conveyor, so that the milking operation can start for each cow present in the annular conveyor.

- 4.2 Document D4 discloses (see the figure on the right-side of page 153 or the figure on the left-side of page 154) a construction for milking cows, comprising a cow shed designed as a loose house ("loose housing barn"), the cow shed being provided with partitioning means dividing the cow shed area into four sub-areas (1 to 4), the cow shed further comprising a stationary milking parlour provided with a plurality of milking boxes, the

milking parlour being accommodated in the cow shed, the construction being such that the cows can reach the milking parlour in consecutive groups from the cow shed. Moreover, connection means are provided to connect each of the sub-areas with the milking parlour via driving alleys and a collecting yard.

In use, the herd is divided into four groups of cows, each groups being in the respective sub-area, wherein the cows which belong to one group and are still to be milked enter the milking parlour from the respective sub-area, leave the milking parlour after having been milked and are guided to the same sub-area from which they came.

The driving alleys represent an intermediate zone arranged between the milking parlour and the four sub-areas.

- 4.3 Document D3 relates to the use of a milking robot for automatically connecting teat cups to the teats of an animal's udder.

A first embodiment (Figure 1) describes a robot arm (robot 8) which is common to two milk boxes (1), each provided with a set of milking cups, the robot arm being suitable for applying the teat cups of each milk box to the teats of the cow.

A second embodiment (Figure 2) describes an rotary annular parlour comprising a plurality of milk boxes, each provided with its own set of milking cups, and a stationary robot arm suitable for automatically

applying the teat cups to the teats of animal present in the milk box which is in front of the robot arm.

A third embodiment (Figure 4) describes an stationary annular parlour comprising a plurality of milk boxes, each provided with its own set of milking cups, and a robot arm capable of moving so as to automatically apply the teat cups to the teats of animal present in each of milk boxes.

A fourth embodiment (Figure 11) describes a milk box which is provided with its own set of teat cups and associated with a robot arm (15) for automatically applying the teat cups to the teats of animal.

5. *Main request: Novelty*

The novelty of the claimed subject-matter was not disputed. As is apparent from the reasons set out below, the subject-matter of amended claim 1 is novel (Article 54(2) EPC).

6. *Main request: Inventive step*

6.1 Having regard to the considerations in section 4.1 above, the claimed subject-matter differs from the construction known from document D1 at least by the provision of a single milk box having a milking robot, each sub-area being directly connected to the single milk box.

6.1.1 Thus, starting from document D1, the problem to solved by the present invention may be seen in reducing the need for personnel and providing a construction for

milking which is easy to automate, in particular with respect to the connection of the teat cups.

- 6.1.2 Document D1 is concerned with the problem of increasing the productivity of the construction and solves this problem by providing additional sub-areas for un milked and milked animals adjacent to the milking parlour constituted by the annular conveyor, such that "animals from various pens [i.e. sub-areas] can be placed (milked) simultaneously on the annular conveyor" (see page 2 of the English translation). Thus, this citation teaches how to increase productivity by providing the rotating parlour with a plurality of milk boxes.

Therefore, starting from document D1, the skilled person would refrain from replacing a milking parlour provided with a plurality of milk boxes by a single milk box in which the animals can be milked only consecutively.

Furthermore, the other cited documents neither disclose nor suggest replacing a milking parlour with a plurality of milk boxes by a **single** milk box having a milking robot.

- 6.1.3 In this respect, the appellant referred to document D3 disclosing a milking robot for automatically milking cows and argued that it would be obvious for a skilled person to arrange a milking robot as represented either in Figure 4 or in Figure 11 so as to arrive either at a construction provided with a revolving milking robot serving all the milking stalls of the annular conveyor according to document D1 or at a construction in which each milk box is provided with a milking robot.

These arguments are not relevant because, even if the skilled person were to combine document D1 with the teaching of document D3, he would not arrive at the claimed construction provided with a **single** milk box having a milking robot, each sub-area being directly connected to the single milk box.

6.1.4 Moreover, since the further embodiments shown in document D3 (see above section 4.3) also teach the use of a milking parlour having more milk boxes with a common milking robot, the combination of documents D1 and D3 would not lead to the claimed subject-matter.

6.2 The claimed subject-matter differs from the construction disclosed in document D4 also by the provision of a single milk box having a milking robot, each sub-area being directly connected to the single milk box.

6.2.1 Document D4 also concerns a large milking construction having a "layout suitable for barns with up to 240 cows" (see page 153) which is provided with a stationary milking parlour with a plurality of milk boxes (or locations) in which a plurality of cows can simultaneously be milked.

Thus, the above considerations concerning the combination of documents D1 and D3 also apply to the combination of documents D4 and D3.

6.2.2 In this respect, the appellant also referred to column 6, lines 27 to 30 of D3 and argued that it would be obvious for the skilled person to replace a milking parlour by a single milk box having a milking robot.

The board cannot accept this argument because the cited passage, according to which that "... it is also possible to have one robot serve one stall and take care of both the application and the removal of the milking means", only discloses the idea of installing a milking robot in a milk box, without suggesting that a milking parlour with many milking locations could be replaced by a single milk location in the form of only one milk box having a milking robot.

6.2.3 Furthermore, the amended claim 1 requires that a sub-area should be connected to an other sub-area via the milk box, so that cows of a group present in a sub-area can not go to an other sub-area without having to enter the milk box.

Contrary to the appellant's submissions, there is no disclosure or suggestion of this feature in document D4.

The driving alleys shown in the figure on the right-hand side of page 153 of document D4 form a connecting area which is in permanent connection with the milking parlour, this connecting area being the same for all sub-areas. This means that the cows of a group can go from one sub-area to another sub-area without having to enter the milking boxes.

It is true that the intermediate zone shown in Figures 13 to 16 of the patent specification allows different passageways to be formed, each passageway representing a connecting area between a sub-area and the milk box which differs from the other connecting areas. However, it remains that the cows of a group cannot go from a sub-area to another one without having to enter the milk box.

- 6.3 Thus, the skilled person would not find in the cited prior art any suggestion leading him in an obvious way to the claimed subject-matter.

Therefore, the subject-matter of claim 1 involves the inventive step required by Article 56 EPC.

7. *Article 100(b) EPC*

- 7.1 During oral proceedings the appellant withdrew the objections under Article 100(b) raised during the written phase of the proceeding.

- 7.2 As already stated in the board's communication dated 6 October 2006, Article 100(b) EPC does not prejudice the maintenance of the patent on the basis of the main request.

8. Since the main request is to be allowed, there is no need to consider the auxiliary request.

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 on the basis of the following documents:

Claims: Claim 1 of the Main request as filed during oral proceedings before the Board.
Claims 2-14 as maintained by the opposition division in its interlocutory decision of 20 July 2004

Description: as maintained by the opposition division in its interlocutory decision of 20 July 2004.

Figures: 1-16 of the patent specification.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte