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**Datasheet for the decision
of 9 October 2007**

Case Number: T 1478/05 - 3.2.04

Application Number: 95928039.7

Publication Number: 0724382

IPC: A01J 5/017

Language of the proceedings: EN

Title of invention:

A construction including an implement for milking animals

Patentee:

MAASLAND N.V.

Opponent:

WestfaliaSurge GmbH

Headword:

Fodder/MAASLAND

Relevant legal provisions:

EPC Art. 54(3), 111(1)

Keyword:

"Novelty (main request): no"

"Novelty (second auxiliary request): yes"

"Remittal for further prosecution"

Decisions cited:

T 0167/84, T 0572/88, T 0763/89

Catchword:

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Case Number: T 1478/05 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 9 October 2007

Appellant: MAASLAND N.V.
(Patent Proprietor) Weverskade 10
NL-3155 PD Maasland (NL)

Representative: Corten, Maurice Jean F.M.
Octrooibureau Van der Lely N.V.
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NL-3147 PA Maassluis (NL)

Respondent: WestfaliaSurge GmbH
(Opponent) Siemensstraße 25-27
D-59199 Bönen (DE)

Representative: Schütte, Hartmut
Patentanwalt
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D-59302 Oelde (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 24 October 2005
revoking European Patent No. 0724382 pursuant
to Article 102(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. European patent No. 724 382 was revoked by decision of the opposition division dated 24 October 2005 which found that the subject-matter of claim 1 as granted lacked novelty over document WO-A-96/00003 (D2), which belongs to the prior art according to Article 54(3) EPC.

Claim 1 as granted reads as follows:

"A construction including an implement for milking animals, such as cows, equipped with a milking robot(6), characterized in that the construction comprises a metering device (21) for dispensing fodder, such as concentrate, as well as a computer, with the aid of which a feeding period can be determined, on the basis of the feeding period, the computer applies a signal to the metering device (21), with the aid of which the metering device (21), is automatically adjusted, such that a quantity of fodder still to be dispensed to the animal is distributed uniformly or at least substantially uniformly over the feeding period."

- II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 29 November 2005. The appeal fee was paid on 28 November 2005 and the statement setting out the grounds of appeal was filed on 4 March 2006.
- III. Oral proceedings before the board were held on 9 October 2007.
- IV. The appellant requested that the decision under appeal be set aside and the patent be maintained as granted

(main request) or, alternatively, on the basis of the second or third auxiliary request filed with letter dated 5 September 2007.

The first auxiliary request filed with the grounds of appeal was withdrawn during the oral proceedings.

Claim 1 of the second auxiliary request reads as follows:

"A construction including an implement for milking animals, such as cows, equipped with a milking robot (6), characterized in that the construction comprises a metering device (21) for dispensing fodder, such as concentrate, as well as a computer, with the aid of which a feeding period can be determined, on the basis of the feeding period, the computer applies a signal to the metering device (21), with the aid of which the metering device (21) is automatically adjusted, such that a quantity of fodder still to be dispensed to the animal is distributed uniformly or at least substantially uniformly over the feeding period and in that using the measuring device (18), it is measured how much fodder the relevant animal has consumed over a predetermined feeding period."

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

- VI. The appellant essentially argued that the subject-matter of claim 1 of the main request as well as that of amended claim 1 of the second auxiliary request are novel over D2.

The respondent essentially argued that the subject-matter of claim 1 of the main request lacks novelty over D2.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request*
 - 2.1 According to claim 1 as granted, "the metering device (21) is automatically adjusted such that a quantity of fodder ... is distributed **uniformly** or **at least substantially uniformly** over the feeding period" (emphasis added).
 - 2.1.1 The meaning of this feature has to be determined having regard to the whole context of the patent specification. In this respect, the following has to be noted:
 - i) Paragraph 0008 (column 1) of the description of the patent refers to the terms "distributed uniformly or at least substantially uniformly over the feeding period" without giving a more precise definition of these terms.
 - ii) Paragraph 0021 (column 6), which refers to the same terms, makes it clear that the fodder doses deposited in the feed trough by means of the metering device are measured such that the animal can always eat fodder during the feeding period.

- iii) According to claim 9 which depends on claim 1 and thus includes all the features of claim 1, the feeding period is adapted so as to provide that the animal receives the remaining quantity of fodder more rapidly. Thus, dependent claim 9 defines a specific embodiment in which the fodder is distributed in a variable manner over the feeding period.

- iv) Figure 2 shows a metering device comprising a metering mechanism 27 comprising a blade wheel 29 which is accommodated in a housing 28 so as to define a plurality of volumes, each volume being adapted to contain a portion of fodder. By means of this metering mechanism portions of fodder can be intermittently dispensed at regular time intervals. This means that fodder can be distributed over the feeding period in a variable manner. Claims 11 and 12 of the patent as granted also make it clear that "small portions of fodder" are dispensed by means of blades (29) which are driven by a motor having a controllable number of revolutions.

2.1.2 Thus, on the basis of the whole content of the patent specification, the feature mentioned in section 2.1 has to be construed as meaning that the portion of fodder supplied to the animal is uniform in time but not necessarily in quantity, i.e. that with the metering device fodder can always be dispensed to the animal over the whole feeding period.

2.1.3 Consequently, the board is unable to accept the appellant's arguments that the above mentioned feature

defines a metering device which only dispenses a constant flow of fodder during the whole feeding period.

- 2.2 Document D2 discloses a construction including an implement for milking animals equipped with a milking robot (6), the construction comprising a metering device for dispensing fodder (see page 4, lines 37 and 38: "The supply of fodder to the feeding trough 7 is controlled in the fodder hopper 9") as well as a computer (4). The computer, on the basis of the previous milking periods recorded in the data file of the relevant animal, determines an expected milking period and controls the metering device in such a manner that the quantity of fodder still to be dispensed to the animal is automatically distributed over the expected milking period. More particularly, this control renders it possible not only to adjust the quantity of fodder to the individual animals but also to distribute over the expected milking period "the supply of fodder versus the time" such that "the cow will be quiet during the full stay in the milking box" (page 2, lines 10 to 23).

Thus, having regard to the above considerations, the metering device of document D2 is also automatically adjusted such that a quantity of fodder still to be dispensed to the animal is distributed at least substantially uniformly over the feeding period.

It is true that, as submitted by the appellant, a strict approach to novelty has to be adopted in accordance with T 0167/84, T 0572/88 and T 0763/89, because document D2 belongs to the prior art according to Article 54(3) EPC. However, this citation - without

referring to the notion of uniform distribution - explicitly discloses a metering device distributing the fodder over the entire feeding period, in the sense that the animal can always eat fodder during this period. As already explained above, claim 1 also covers this possibility. Thus, document D2 discloses all the features of claim 1.

2.3 Therefore, the subject-matter of claim 1 of the main request lacks novelty over document D2.

3. *Auxiliary requests*

3.1 Novelty of the subject-matter of claim 1 of the second auxiliary request was not disputed. The board agrees with the parties that the feature according to which "it is measured how much fodder the relevant animal has consumed over a predetermined feeding period" is not disclosed in document D2.

Therefore, the subject-matter of claim 1 of the second auxiliary request is novel over this prior art.

3.2 By communication dated 9 July 2007, the board informed the parties of the possibility of remitting the case to the opposition division for further prosecution. During oral proceedings both parties stated that they consent to the remittal of the case.

3.3 Accordingly the board, in exercising its discretion under Article 111(1) EPC, decided to remit the case to the first instance for further prosecution on the basis of claim 1 of the second auxiliary request.

In this respect, it will be necessary to examine inter alia whether the amendments, in so far as they also refer to the feature "using the metering device (18)", meet the requirements of Articles 84 and 123 EPC.

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 for further prosecution.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte