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Datasheet for the decision
of 29 November 2010

Case Number: T 0526/08 - 3.2.04

Application Number: 95937223.6

Publication Number: 0741513

IPC: A01J 7/02

Language of the proceedings: EN

Title of invention:
An implement for milking animals

Patentee:
MAASLAND N.V.

Opponent:
DeLaval International AB

Headword:
Contamination/MAASLAND

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

Case Number: T 0526/08 **-** 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 29 November 2010

Appellant: (Opponent)	DeLaval International AB P O Box 39 S-147 21 Tumba (SE)
Representative:	Amery, Marcus James M James & Co 12 Deer Park Road London SW19 3FB (GB)
Respondent: (Patent Proprietor)	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:	**Interlocutory decision of the Opposition Division of the European Patent Office posted 15 January 2008 concerning maintenance of the European patent No. 0741513 in amended form.**

Composition of the Board:

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

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Summary of Facts and Submissions

I.   In its interlocutory decision dated 15 January 2008,
        the opposition division found that, having regard to
        the amendments submitted by the patent proprietor, the
        European patent No. 0 741 513 met the requirements of
        the European Patent Convention.

        Claim 1 held allowable by the opposition division reads
        as follows:

        "1. An implement for milking animals, such as cows,
        comprising at least one milking machine (1) for milking
        the animals, the implement being provided with sensors
        (23 - 26) for the detection of contaminations in the
        milking system of the milking machine (1) characterized
        in that the milking machine (1) is suitable for
        automatically milking the animals, the implement
        comprises at least one milking robot (8) for
        automatically connecting teat cups (4) to the teats of
        an animal, there is provided a computer (9) for the
        recording of contaminations in the milking system that
        have been ascertained by the sensors (23 - 26), on the
        basis of the information supplied by the sensors
        (23 - 26) there is defined a degree of contamination in
        the computer (9), there are provided cleaning means for
        the milking system, and the cleaning of the milking
        system is effected on the basis of the degree of
        contamination."

II.   On 12 March 2008 the opponent (hereinafter appellant)
        lodged an appeal against this decision and
        simultaneously paid the appeal fee. The grounds of
        appeal were received on 29 April 2008.

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III.   Oral proceedings before the board were held on
        29 November 2008.

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

V.   The patent proprietor (hereinafter respondent)
        requested that the appeal be dismissed.

VI.   The appellant inter alia submitted that the claimed
        subject-matter lacked an inventive step having regard
        to WO-A-94/08450 (D1) in combination with WO-A-94/16553
        (D5) and common general knowledge as illustrated by
        either D5 or EP-A-476 771 (D2).

        In this respect, the respondent essentially submitted
        that in document D1 there is no definition of a
        contamination degree in the computer and that the
        skilled person would not have considered combining D1
        with the teaching of D5.

Reasons for the Decision

1.   The appeal is admissible.

2.   *Inventive step*

2.1   D1 discloses (see Figures 1, 2, 7 and 8) **an implement
        for milking animals, such as cows, comprising at least
        one milking machine** (milking claw), **which is suitable
        for automatically milking the animals**, the milking
        machine being provided with a plurality of inlet paths

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(110, 111, 112, 113; 18) and an outlet path (122; 54) leading to a milk tank.

This implement **is provided with sensors** ("transducers" 114; 115; 116, 117; 21), each sensor being arranged in the respective inlet path of the milking machine **for detecting contaminations in the milking system of the milking machine** which are caused by the occurrence of mastitis in the milked animal. Moreover, **there is provided a computer** in which the signals of the sensors are processed, wherein the computer may be either incorporated in the housing (118) of the milking machine or arranged at a central station remote from the housing (118). Each sensor provides a quantitative signal representing the detected contamination of the milk in the respective inlet path. Each quantitative signal is compared with a reference value in a comparator (OA8). If the detected contamination differs by more than a pre-determined amount from the reference value, the comparator (OA8) provides an output signal which actuates a control valve (128) to divert milk flow away from the milk tank (see claims 1 to 3; page 15, 4th paragraph to page 16, 2nd paragraph). Thus, **on the basis of the information supplied by the sensors** (114; 115; 116, 117; 21) **there is defined a degree of contamination in the computer** and an operation concerning the milking system (i.e. the diversion of the milk) is effected on the basis of the degree of contamination.

Furthermore, in the implement of D1 **there are provided cleaning means for the cleaning system**, wherein the cleaning is carried out at the end of a milking operation (see particularly page 18, lines 3 and 4).

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According to page 8, lines 9 to 21, the computer
arranged at the central station includes means for
recording information from the milking machine.
Therefore, the computer is suitable **for recording the
contaminations in the milking system that have been
ascertained by the sensors**.

2.2   The claimed subject-matter thus differs from D1 in that

    (a) the cleaning of the milking system is effected on
        the basis of the degree of contamination,

    (b) the implement comprises at least one milking robot
        for automatically connecting teat cups to the
        teats of an animal.

2.3   Feature (a) has the effect of insuring that the milking
system is only cleaned when a certain degree of
contamination has occurred (see patent specification,
column 1, lines 43 to 45). Feature (b) has the effect
of increasing the automation level of the milking
machine.

These two distinguishing features a) and b) have
unrelated effects and thus address separate partial
problems. The partial problem underlying feature (a) is
to improve the efficiency of the implement with respect
to the cleaning process of the milking system, while
the partial problem underlying feature (b) is to
improve the automation level of the implement with
respect to connecting the teat cups to the teats of an
animal to be milked. For the evaluation of inventive

step, each distinguishing feature can therefore be discussed independently.

2.4   Document D5 discloses (see page 32, line 4 to page 33, line 8; Figure 6) an implement for milking animals comprising at least one milking machine for automatically milking the animals including a milking robot (3) for automatically connecting the teat cups to the teats of an animals. The implement also comprises a cleaning implement (52) for the milking system, a process computer (9) and two sensors (101, 102) for ascertaining contaminations in the milking system, the two sensors being arranged in the milk line before and behind a filter (85). This citation also teaches that the signals of the sensors (101, 102) are supplied to the process computer and recorded in the computer, and the difference between the signals of the sensors (101, 102), which is indicative of the degree of contamination is calculated, i.e. defined in the computer, wherein if the defined degree of contamination exceeds a threshold value, the cleaning process is automatically performed, i.e. the cleaning of the milking system is effected on the basis of the degree of contamination.

The skilled person would immediately realize that the implement of D5 permits the milking system to be cleaned only when a certain degree of contamination has occurred. Therefore, the skilled person seeking for a solution to the problem of improving the efficiency of the implement with respect to the cleaning process would apply the teaching of D5 to the implement of D1 and arrive at an implement in which the contaminations ascertained by the sensors are recorded in the computer

and the cleaning of the milking system is effected on
the basis of the degree of contamination.

Milking implements provided with a milking robot for
automatically connecting teat cups to the teats of an
animal are well known, for instance from D5 or from D2
(see column 5, lines 16 to 19; Figure 1). It would be
obvious for a skilled person seeking for a solution to
the problem of increasing the automation level of the
implement of D1 to provide this implement with a
milking robot.

Therefore, the skilled person would arrive at the
claimed subject-matter without exercising any inventive
skill.

2.5   In this respect, the respondent submitted that D1
        neither relates to the possibility of storing in the
        computer the contaminations ascertained by the sensors,
        nor discloses the definition of a contamination degree
        in the computer, which is determined on the basis of
        the information supplied by the sensors. According to
        the Collins Dictionary of English language a degree is
        "a stage in a scale of relative amount or intensity".
        Therefore, claim 1 requires the contamination to be
        quantified. In D1 there is no definition of a
        contamination degree because the comparator provides a
        signal only if the magnitude of a certain property of
        the milk differs by more than a pre-determined amount
        from a reference magnitude and thus D1 does not suggest
        distinguishing feature (a).

The board does not find these arguments convincing for the following reasons:

–   Claim 1 only requires the computer to be suitable "for recording the contaminations in the milking system which have been ascertained by the sensors (23-26)" and "on the basis of the **information supplied by the sensors** (23-26), there is defined a degree of contamination in the computer" (emphasis added). The implement of D1 is provided with a computer which is also suitable for recording the information supplied by the sensors.

–   As has been explained, the output signal of each sensor of D1 is compared with a reference value and it is established whether the output signal differs by more than a pre-determined amount from the reference value. In this way it is established whether the contamination detected by each sensor reaches a certain degree and, if this certain degree has been reached, the cleaning is performed.

–   In any case, even if D1 were to be considered as not defining a degree of contamination in the computer, the respondent's arguments would not be relevant for the finding of the present decision in so far as the definition of a degree of contamination is taught from D5. In this citation, the sensors (101, 102) arranged in the milk line before and behind the filter (85) are referred to as "pressure sensors (101, 102) which are connected to the computer (9)" (see claim 50), wherein the pressure difference in the milk flow before and behind the filter device is recorded

(see page 32, line 36 to page 33, line 1). This means that in D5 a degree of contamination (represented by said pressure difference) is calculated, i.e. quantitatively defined, and recorded in a computer and on the basis of this quantified degree a cleaning cycle is initiated. It is also observed that in the patent specification itself the contamination can be detected by means of "a combination of a filter and pressure measuring means incorporated in a milk line ..." (see column 4, line 58 to column 5, line 3 and granted claim 10).

2.6   The respondent's further argument that the skilled person would have not considered combining D1 with D5 is also not convincing since both citations relate to an implement for milking animals comprising sensors for the detection of contaminations in the milk and thus in the milking system of the milking machine. D5 teaches to measure a degree of contamination in the system and to carry out cleaning on that basis. Thus, the skilled person seeking to improve the efficiency of the milking system regarding its cleaning would have seen the advantages of this teaching and thus would have applied it to the implement of D1.

2.7   Therefore, the claimed subject-matter does not involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

1.   The decision under appeal is set aside.

2.   The patent is revoked.

The Registrar: The Chairman:

G. Magouliotis   M. Ceyte