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**Datasheet for the decision
of 30 September 2010**

Case Number: T 1660/08 - 3.2.04

Application Number: 01201932.9

Publication Number: 1131995

IPC: A01J 5/017

Language of the proceedings: EN

Title of invention:

An implement for and a method of milking animals

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB

Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

EPC Art. 76(1), 100(a)(c)

Keyword:

"Subject-matter extending beyond the content of the earlier application (no)"

"Novelty (yes) - Inventive step - main and auxiliary requests (no)"

Decisions cited:

T 0190/99

Catchword:

-



Case Number: T 1660/08 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 30 September 2010

Appellant: DeLaval International AB
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Representative: Amery, Marcus James
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Respondent: MAASLAND N.V.
(Patent Proprietor) Weverskade 110
NL-3147 PA Maassluis (NL)

Representative: Corten, Maurice Jean F.M.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
30 June 2008 concerning maintenance of the
European patent No. 1131995 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

- I. In its interlocutory decision posted 30 June 2008, the Opposition Division found that, taking into consideration the amendments made by the patent proprietor, the European patent and the invention to which it relates met the requirements of the EPC. On 26 August 2008 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 30 October 2008.
- II. The patent was opposed on the grounds based on Article 100(a) (novelty and inventive step) and (c) EPC 1973 (Article 76(1) EPC 1973).
- III. The following documents played a role in the appeal proceedings
- D2: Hokkaido Konsen Agricultural Experimental Station, Dept. of Dairy Facilities (1988) Research Report on Dairy Facilities and Machines N° 4 (English translation)
- D3: US-A-4 867 103
- D4: Robotereinsatz in der Landwirtschaft am Beispiel des Melkens, Heft 9; VDI/MEG Kolloquium Landtechnik; Tagung Braunschweig-Völkenrode, 5/6 Dezember 1990
- D7: EP-A-0 091 892.
- IV. Oral proceedings took place on 30 September 2010 before the Board of Appeal.

The Appellant (Opponent) requested that the decision under appeal be set aside and that the patent be revoked.

He mainly argued as follows:

The features now claimed in the patent under appeal have been disclosed in the parent application only together with the features concerning the cables for maintaining the teat cups in an upright position. It amounts to an unallowable amendment to isolate the claimed features from their combination with the cables.

The claimed subject-matter lacks novelty with respect to D4 or D7. Even if novelty were given, it would not involve an inventive step starting from D4 or D7 as closest prior art and combining this closest prior art with D2 or D3.

The auxiliary request should be rejected as late filed, all the more because its claimed subject-matter does not involve an inventive step since the additional features result from the obvious combination of D7 with D2 or D3.

The Respondent (Patentee) contested the arguments of the Appellant and submitted that:

The wording used in the introductory part of the parent application relating to the features now claimed in the patent under appeal leaves no doubt that these features relate to an alternative independent invention.

Neither D4 nor D7 disclose a milking parlour provided with more than one robot arm.

D2 and D3 disclose a single parlour provided with more than one robot arm. The teat cups are not placed on a stand but held by the robot arm when not in use. A

skilled person is thus taught not to provide stands when using a plurality of robot arms. Therefore, the combination of D4 or D7 with D2 or D3 cannot lead to the claimed invention.

The auxiliary request has been filed to specify that a milking parlour is provided with only two robot arms in order to further distinguish the claimed invention from the prior art. Claim 1 of this auxiliary request is in essence a combination of the features of claims 1 and 2 and this combination has been considered in the notice of opposition. Therefore the auxiliary request cannot be rejected as late filed.

The Respondent (patentee) requested that the appeal be dismissed, i.e. that the patent be maintained in the amended form held allowable by the Opposition division, or in the alternative that the decision under appeal be set aside and that the patent be maintained on the basis of the claims of the auxiliary request filed during the oral proceedings.

V. Claim 1 held allowable by the Opposition division reads as follows:

"1. An implement for milking animals, such as cows, using one or more milking robots with teat cups (28) and using one or more milking parlours (1), the implement comprises stands where the teat cups (28) are placed upon completion of the milking and at least two robot arms (12) provided with a gripper, with the aid of which the teat cups (28) can be coupled to the teats."

Claim 1 according to the auxiliary request adds with respect to claim 1 of the main request the following features: "... on each longitudinal side of the milking parlour (1) there is provided a robot arm (12)."

Reasons for the Decision

1. The appeal is admissible.
2. *Compliance with Article 100 (c) respectively 76(1) EPC 1973*
- 2.1 Claim 1 finds support in the two sentences of page 3, lines 15 to 26 of the parent application (WO-A-96/07314). The second sentence starting with: "Accordingly, the invention further relates to an implement ..." is in essence a word-for-word recitation of claim 1. It is true that this second sentence begins with the word "Accordingly" which refers to the first sentence which begins with "According to a further feature of the invention ..." However this "further feature of the invention" is in essence a word-for-word recitation of the features preceded by the words "characterized in that" in the above first sentence. This "further feature of the invention" thus characterizes a completely separate embodiment of the implement defined in the above first sentence.

Accordingly, claim 1 as granted does not contravene the requirements of Articles 76(1) and 100c) EPC 1973.

3. *Novelty - main request*

3.1 During the oral proceedings novelty has been disputed with respect to D4 and D7.

3.2 The Respondent mainly considered that three features of the subject-matter of claim 1 are not disclosed by these citations:

- the supports of the teat cups disclosed in D4 or D7 are not stands in the meaning of the invention,
- there is no indication that the teat cups are placed on the stands "upon completion of the milking", and
- there is no disclosure of at least two robot arms with a gripper for coupling the teat cups to the teats.

3.3 The passages (paragraphs [0013] and [0019]) of the patent specification relating to the stands use the wording "teat cup carrier" or "holder" to define the stands. Accordingly, the term "stand" does not imply more than a support on which the teat cups can rest. This is also the case in the implements according to D4 or D7.

3.4 The Respondent argued that neither D4 nor D7 indicate how the system proceeds to remove the teat cups from the teats, especially how and when they are placed on the stands. Claim 1 of the patent under appeal requires the teat cups to be placed on the stands upon completion of the milking, but there is no requirement in claim 1 as to how and when this has to be carried out. It is not even required that this has to be carried out by the robot arm. There is no doubt that in

D4 as well as in D7 the teat cups must be placed on the stand upon completion of the milking, since they are located there at the beginning of the subsequent milking operation. That they have to be placed on the stands "immediately" after completion of the milking is not derivable from claim 1 and would be a requirement rather concerning the method than the apparatus.

- 3.5 The Appellant considered that the wording of claim 1 solely requires that the implement and not each parlour is provided with a least two robot arms. However, when interpreting the claims of a 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 of the disclosure of the patent (T 190/99). Having this in mind, the feature "at least two robot arms provided with a gripper, with the aid of which the teat cups can be coupled to the teats" can only mean that two robots arms are used to couple the teat cups to the teats of one cow and thus equip a single parlour.

Neither D4 nor D7 disclose a milking parlour provided with two robot arms. Accordingly, the subject-matter of claim 1 of the main request is novel over D4 or D7.

4. *Inventive step - main request*

- 4.1 D4 as well as D7 can be considered as an appropriate starting point for the contested invention.

4.2 The subject-matter of claim 1 differs from the embodiment of Figures 10 to 12 of D7 in that at least two robot arms are provided in association with a milking parlour, the robots arms being provided with a gripper to couple the teat cups to the teats of the cow to be milked.

4.3 In D7 the robot arm is provided with a gripper which is adapted to fetch the teat cups one by one, from a stand an to apply them to the teats of the cow to be milked. That means that for coupling all four teat cups to the udder of a cow, the coupling operation has to be repeated four times by the robot arm.

4.4 Thus starting from D7 as closest prior art, the technical problem to be solved may be seen in increasing the speed of attachment of the four teat cups and thus in establishing a more efficient milking parlour.

4.5 A skilled person following the teaching of D7, wherein the milking parlour is equipped with a robot arm and a teat cup stand and seeking to establish a more efficient milking parlour, would as a matter of obviousness consider equipping the milking parlour with at least two robot arms in order to increase the speed of attachment of the teat cups as taught by either D2 or D3: D2 (page 12, lines 15 to 17) teaches to use two manipulators or robot arms arranged on the left and right sides of the cow to be milked and in D3 (abstract) the milking parlour is equipped with four independent side arms each carrying on its end a teat cup.

4.6 The Respondent argued that in particular the implement of D3 does not need a teat cup stand since each of the four side arms carries on its end a teat cup. Accordingly, a skilled person wishing to increase the speed of attachment of the teat cups in D7 would have considered equipping the milking parlour with four robot arms each carrying a teat cup as taught by D3 without using a teat cup stand.

This point is however not relevant, since starting from the embodiment of figures 10 to 12 of D7 as closest prior art, the technical problem to be solved is to increase the speed of attachment of the teat cups, in an implement of the kind disclosed in the closest prior art, in which the robot arm is adapted to fetch the teat cups one by one, from a stand and to apply the teat cups to the teats of the cow to be milked. Evidently the use of two or more robot arms of this kind, as taught by D3 would increase the speed of cup attachment.

4.7 For all these reasons, the subject-matter of claim 1 of the main request does not involve an inventive step.

5. *Inventive step - auxiliary request*

5.1 Claim 1 according to the auxiliary request adds with respect to claim 1 of the main request the following feature "... on each longitudinal side of the milking parlour (1) there is provided a robot arm (12)."

5.2 D2 teaches to use two manipulators or robot arms arranged on the right and left sides of the cows to be milked.

Thus, a skilled person seeking to improve the milking parlour of D7, that is equipped with a robot arm and a teat cup stand, so as to render it more efficient would as a matter of obviousness consider equipping such milking parlour with two robot arms, one robot arm being disposed on each longitudinal side of the milking parlour as taught by D2.

- 5.3 Thus, for the same reasons as already mentioned with respect to the main request, the subject-matter of claim 1 of the auxiliary request does not involve an inventive step.
6. Under these circumstances, it was pointless to decide on whether or not the auxiliary request should be admitted into the proceedings.

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