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**Datasheet for the decision
of 17 January 2012**

Case Number: T 1763/09 - 3.2.04

Application Number: 97914903.6

Publication Number: 884942

IPC: A01K 5/02

Language of the proceedings: EN

Title of invention:
Livestock identification apparatus

Patent Proprietor:
DeLaval Holding AB

Opponents:
Maasland N.V.
WestfaliaSurge GmbH

Headword:
Antennas/DELAVAL

Relevant legal provisions:
EPC Art. 100(a), 56

Relevant legal provisions (EPC 1973):

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Keyword:
"Inventive step (no)"

Decisions cited:
T 0536/88

Catchword:

-



Case Number: T 1763/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 17 January 2012

Appellant:
(Patent Proprietor 2)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 24 July 2009
rejecting the opposition filed against European
patent No. 884942 pursuant to Article 101(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: P. Petti
T. Bokor
A. de Vries
C. Heath

Summary of Facts and Submissions

I. The opposition division, by its decision posted on 24 July 2009, rejected the oppositions filed against the European patent No. 884 942.

In the decision under appeal the opposition division held inter alia that the subject-matter of granted claim 1 involved an inventive step over EP-A-499 428 (E1) in combination either with US-A-5 008 660 (E2) or with US-A-4 798 175 (E3) and E2.

II. Claim 1 as granted reads as follows:

"1. A livestock identification apparatus (10) for identifying and sorting animals wearing transponders, the identification apparatus comprising:

a plurality of rails forming an alley (12) presenting an entrance (20), a main exit (22) and a sort exit (24);

a gate (14) positioned in the alley (12) between the main exit (22) and the sort exit (24), the gate being shiftable between a sorting position in which the gate (14) blocks the main exit (22) and opens the sort exit (24), and a non-sorting position in which the gate (14) blocks the sort exit (24) and opens the main exit (22);

a shifting means (16) for shifting the gate (14) between the sorting and non-sorting positions;

and

a sensor means (18) for identifying livestock entering the alley, the sensor means including -

a pair of rigid antennas (48,50,70) secured to the rails of the alley (12) for forming a part of the alley, the antennas being positioned on opposite sides of the alley for generating a multi-directional electro-magnetic field in the vicinity of the alley for energizing the transponders and for receiving identification information from the transponders, and
a control means (51) responsive to the antennas (48,50,70) for actuating the shifting means (16) for shifting the gate (14) between the sorting and non-sorting positions upon receiving identification information indicating that livestock is to be sorted."

III. Opponent 02 (hereinafter appellant) lodged an appeal against this decision on 28 August 2009 and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 23 November 2009.

IV. In its communication annexed to the summons for oral proceedings, the board informed the parties that at the oral proceedings the discussion was to focus on whether the claimed subject-matter involved an inventive step, starting in particular from E1 as closest prior art and combining this closest prior art with E2.

V. Oral proceedings before the board were held on 17 January 2012. Neither the patent proprietor (hereinafter respondent) nor opponent 01 (party as of right) were present. These duly summoned parties had informed the board - by letters dated 7 December 2001 and 25 November 2011, respectively - that they would not attend the oral proceedings. In accordance with Rule 115(2) EPC, the proceedings were continued in their absence.

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

The appellant submitted inter alia that the subject-matter of claim 1 as granted did not involve an inventive step over E1 in combination with either E2 or E2 and E3.

VII. No request was filed by the patent proprietor, who informed the board - by letter dated 25 March 2010 - that he did not intend to file any reply to the grounds of appeal.

Reasons for the Decision

1. The appeal is admissible.

2. *Inventive step (claim 1)*

2.1 E1 (see in particular Figures 1 to 3) discloses a livestock identification apparatus for identifying and sorting animals wearing transponders, the identification apparatus comprising:

- a plurality of rails forming an alley presenting an entrance, a main exit (18) and a sort exit (20);
- a gate (52) positioned in the alley between the main exit (18) and the sort exit (20), the gate being shiftable between a sorting position in which the gate blocks the main exit and opens the sort exit, and a non-sorting position in which the gate blocks the sort exit and opens the main exit;
- a shifting means (84) for shifting the gate between the sorting and non-sorting positions; and
- a sensor means for identifying livestock entering the alley, the sensor means including
 - a transmitter antenna (13) and a receiver antenna (14), mounted on a portal frame (12) so as to form a part of the alley for generating a electromagnetic field in the vicinity of the alley for energizing the transponders and for receiving identification information from the transponders,
 - a control means responsive to the antennas for actuating the shifting means for shifting the gate between the sorting and non-sorting positions upon receiving identification information indicating that livestock is to be sorted.

2.1.1 In E1 the antennas (13 and 14) are represented in Figure 1 only by a schematic symbol arranged on the top cross-piece of the portal frame (12). There is no disclosure that these antennas are rigid and secured to the rails of the alley and that the generated electromagnetic field is multi-directional or unidirectional.

2.1.2 The subject-matter of claim 1 thus differs from E1 in that

- a) the antennas are rigid and are secured to the rails of the alley,
- b) the antennas are positioned on opposite sides of the alley for generating a multi-directional electromagnetic field in the vicinity of the alley for energizing the transponders and receiving identification information from the transponders.

2.1.3 According to the patent specification (column 7, lines 40 to 45), distinguishing feature a) provides the advantage that the antennas, being secured to a rigid structure and being rigid themselves, cannot be pushed aside by the animals, while distinguishing feature b) provides the advantage that the transponder worn by an animal is energized no matter which direction the animal head is facing as it passes the antennas.

Starting from E1 as closest prior art, the technical problem to be solved can then be seen as the provision of an improved livestock identification apparatus which more effectively identifies animals passing through an alley and prevents the animals from pushing aside the antennas and escaping from being identified.

This problem essentially corresponds to the problem stated in the patent specification (see paragraphs [0002], [0010] and [0011]) in relation to the prior art known from E3.

2.1.4 The skilled person confronted with this problem would consider E2 since this document explicitly refers to

the problems of generating the correct electromagnetic field strength for identifying the animals passing through the alley, as well as being concerned with the resistance of the antennas to biting (see particularly column 1, lines 62 to 66).

2.1.5 E2, which relates to an electromagnetic detection system comprising a transmitter-receiver apparatus and an antenna, describes an automatic feeding station for animals including an automatic feeding station (4), structural confining means comprising two side railings (5, 6) with two bows (7, 8) extending transversely over said side railings, and a sensor for identifying the animal entering the feeding station, said sensor comprising a transmitter-receiver apparatus coupled to the antenna.

In a first embodiment, the antenna is a single-turn antenna coil formed by one (8) of the bows and can be supplemented by a further antenna formed by the second bow (7) (see column 2, lines 64 to 67; column 3, lines 11 to 14 and 30 to 33).

In a second embodiment, the single-coil antenna is formed by the outer tubular frame (10) of one of the side railings (5, 6), so that it detects a responder "just in front of the plane of the antenna animal, if the responder is within the detection range of the antenna" (see column 3, lines 34 to 40 in conjunction with lines 18 to 23).

As noted above E2 foresees the use of two antennas. This is also clearly considered in claim 1 of E2 where "at least one antenna element [forms] an

electromagnetic interrogation field" and "said at least one antenna [is] formed as an integral part of said structural confining means" (emphasis added). This consideration of using more than one antenna applies generally, so that the skilled person in carrying out the second embodiment of E2 would as a matter of obviousness also consider the use of a second antenna provided in similar manner as in the first embodiment, namely by using the other available tubular frame on the opposite railing. Both railings would then be provided with an antenna.

The board notes in this context that single-loop antenna coils - although they radiate more power in a selected single direction than in other directions - are also capable of generating a multi-directional electromagnetic field. In this respect, it is observed that in the patent specification the antennas (48, 50) that are intended to generate a multi-directional electromagnetic field, are formed by the tubular pipes (52 and 54) of a side rail and effectively also constitute a single-loop that faces the alley (see paragraph [0031]; Figure 1). An arrangement according to the second embodiment of E2, but with two antennas arranged in the frames on opposite sides of the passageway will then necessarily also generate a multi-directional field.

The skilled person starting from E1 and confronted with the above mentioned technical problem would arrive with the aid of E2 at a livestock identifying apparatus according to claim 1 without exercising any inventive skill.

Consequently, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC) over E1 in combination with E2.

- 2.2 It is incidentally observed that the subject-matter of claim 1 lacks an inventive step (Article 56 EPC) over E1 also in combination with E2 and E3.

Document E3 is cited and acknowledged in the patent specification. This prior art citation cannot be disregarded when assessing inventive step in so far as its content is necessary for the understanding of the invention described in the patent specification (see T 536/88, OJ 1992, 638).

With respect to the combination of E1 with E2 and E3, it has to be observed that the technical problem referred in section 2.1.3 (second paragraph) above can also be considered as having two different aspects, namely a first aspect of preventing the animals from pushing aside the antenna and escaping from being identified and a second aspect of improving the efficiency of the animal identification system so that animals passing through the alley are more effectively identified.

These two aspects correspond to two distinct partial problems solved by distinguishing features (a) and (b), respectively (see section 1.3, first paragraph). These two distinct partial problems are not linked to each other, in so far as they may arise in the apparatus according to E1 independently of each other. Therefore, the respective solutions of these two partial problems

may be considered separately when assessing inventive step.

As explained in section 2.1.4 above, E2 suggests the solution of the first partial problem. Thus, starting from E1 the skilled person confronted with the first technical problem would arrive with the aid of E2 at an apparatus provided with feature (a), that is rigid antennas secured to the rails of the alley, without exercising any inventive skill.

The skilled person confronted with the second partial problem would consider E3. This prior art document (see particularly column 3, lines 10 to 14; column 4, lines 34 to 65; Figure 1 and 5) discloses an identification system for identifying an animal wearing a transponder (200) and moving through a portal structure (10) to which a flexible curtain (320) is secured. A double loop antenna (300) is contained within the flexible curtain (320). The double loop antenna (300) has a left-hand loop portion (300') and a right-hand loop portion (300"), positioned on opposite sides of the portal structure and which generate a multidirectional electromagnetic field so that the transponder worn by an animal is sufficiently energized even if the animal does not enter exactly through the middle of the portal structure. The skilled person starting from the apparatus of E1, which is provided with two antennas, and confronted with the problem of improving the efficiency of the animal identification system so that animals passing through the alley are more effectively identified would consider the teaching of D3 and thus position the pair of antennas on opposite sides of the alley so that the pair of

antennas generate a multi-directional electromagnetic field in the vicinity of the alley for energizing the transponders and receiving identification information from the transponders. The skilled person would therefore arrive, with the aid of this teaching, at an apparatus provided with feature b) without exercising any inventive skill.

- 2.3 For the foregoing reasons, the opposition ground of lack of inventive step prejudices maintenance of the patent as granted.

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