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**Datasheet for the decision  
of 20 March 2013**

**Case Number:** T 1081/10 - 3.2.04

**Application Number:** 01914301.5

**Publication Number:** 1263283

**IPC:** A01K 1/12, A01K 1/00

**Language of the proceedings:** EN

**Title of invention:**

A device for at least one milking stall and a parlour comprising a plurality of milking stalls

**Patent Proprietor:**

DeLaval Holding AB

**Opponent:**

GEA WestfaliaSurge GmbH

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 84, 100(a), 54, 56

**Keyword:**

"Clarity -main request - yes"

"Admissibility of late filed evidence - no"

"Novelty - main request - yes"

"Remittal to the first instance for further prosecution - no"

"Inventive step - main request - yes"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1081/10 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 20 March 2013

**Appellant:** DeLaval Holding AB  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted 8 April 2010  
revoking European patent No. 1263283 pursuant  
to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman:** A. de Vries  
**Members:** E. Frank  
T. Bokor

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the opposition division dated 10 February 2010 and posted on 8 April 2010 to revoke the European patent No. 1 263 283 pursuant to Article 101(3)(b) EPC.
- II. The appellant (proprietor) filed a notice of appeal on 4 May 2010, paying the appeal fee on the same day. The statement of grounds of appeal was submitted on 11 August 2010.
- III. A communication pursuant to Article 15(1) RPBA was issued after a summons to attend oral proceedings, and the respondent (opponent) subsequently filed new documents A2, D13, D14, D15, and D16 1-17, together with an alleged prior use and the offer of a witness, on 30 January 2013 (see paragraph VI.2, below). The oral proceedings were duly held on 20 March 2013.
- IV. The appellant requests that the decision under appeal be set aside and the patent be maintained in an amended form on the basis of claims 1 to 24 of the main request, alternatively on the basis of claims 1 to 23 of the first, or second auxiliary requests (all filed with the grounds of appeal). Should the respondent's newly filed matters and evidence not be admitted into the oral proceedings, the appellant further requests that the issue of inventive step be decided by the Board.

The respondent requests that the appeal be dismissed, and the case be remitted to the opposition division for a decision on inventive step.

V. The wording of claim 1 of the main request reads as follows:

"1. A rotary parlour (2) comprising a plurality of milking stalls (3) each of which is provided with a milking position (4) for an animal and with at least one milking equipment comprising a milking member arranged to be attached to the animal being present in the milking stall in question for milking thereof, wherein each of said milking stalls (3) is defined by at least one wall arrangement (5) and a floor (6) and extends between a first end (7) and a second end (8) in such a way that when an animal is present in one of said milking stalls (3) in said milking position (4), the front portion of said animal is adjacent said first end (7) and the back portion of said animal is adjacent said second end (8), wherein each milking stall (3) comprises a cabinet-like structure (1) provided at said second end (8), which forms a building element of said parlour (2) and which has a longitudinal axis (x) extending in a substantially vertical direction and which defines an inner space (9), wherein said wall arrangement (5) adjoins two milking stalls (3) and said cabinet-like structure (1) carries said wall arrangement (5) and is mounted to the floor (6) of said milking stalls (3), wherein said cabinet-like structure (1) comprises wall members (10,11,12,13) of a material with thin wall thickness and wherein said wall members (10,11,12,13) extend in said substantially vertical direction and are attached to each other and form a hollow tube-like structure which surrounds said inner space (9), wherein different components of said milking equipment are housed inside said cabinet-like structure (1), and wherein said wall members protect said

different components which are housed inside said cabinet-like structure (1)."

VI. The following evidence has been considered for purposes of the present decision:

VI.1 Documents as filed with notice of opposition:

D1 = WO 98/31212 A1;

D4 = DE 43 39 131 A1;

D9 = Internet printout of webpage on website <http://www.germaniadairy.com/>, showing a photograph (not dated) entitled "Maple Row Dairy - Saranac, Michigan", which according to the text was awarded a Parlour-of-the-Year Award in 1998;

VI.2 Further documents in the context of prior use "*milking parlour of Mr.Hummel*", as filed on 30 January 2013:

A2 = "Reflections, A history of DeLaval", said to have been printed out on the Internet, not dated;

D13 = Copy of brochure "Introducing - Profoundly Productive PRO-TIME Parlors From GERMANIA", Germania Dairy Automation, Inc., 606 Cooper Road, Waunakee, WI 53597, USA; 1996 (cf. last page, bottom lines);

D14 = Copy of video "1996 PRO-TIME parlor of the year", 1996 Germania Dairy Automation, Inc.;

D15 = Leaflet "Vele Nederlandse melkveehouders gingen u voor !", Germania Melksystemen, 7137 MA Lievelede, Netherlands, not dated;

D16 = Alleged delivery and installation of a milking parlour at the "Milchviehanlage Hummel GmbH": bundle of papers D16 1-17, comprising

D16-1 = Offer of Germania Melksystemen vof, 7137 MA lievelde, Netherlands, addressed to Mr. Hummel, Am Milchweg 01, Ivenack, Germany, and dated 12 August 1997;

D16-2 = Fax cover sheet of Germania Melksystemen vof, 7137 MA lievelde, Netherlands, of a fax sent to the "Milchviehanlage Hummel GmbH" of Mr. Hummel on 10 July 1997, which apparently refers to an offer of 20 June 1997;

D16-3 = Final quality control/Inspection Certificate of Germania's parlour at the "Milchviehanlage Hummel GmbH", dated 10 September 1999;

D16-4 = Drawing of PROTIME I STALL; dated 5 October 1997;

D16-5 to D16-17 = Photographs, not dated, allegedly taken of the milking parlour installed at the "Milchviehanlage Hummel GmbH" in the year 1999;

VI.3 Offer of Mr. Hummel as a witness.

VII. The parties submitted the following arguments:

VII.1 Amendments and clarity of claim 1

- (a) The appellant argued that a "cabinet" at the very least was an element where components were stored, ie housed. However, although not particularly narrow, it was now specified by amended claim 1 that different components of the milking equipment, at least some, were housed in the cabinet-like structure. This limitation could be readily understood by the skilled person, and was also supported by usual examples: cf. patent, par. [0002] and [0015]. As to the respondent's clarity objections in the written procedure, allegedly present in claims of the granted patent, these amendment terms did not fall to be examined under Article 84 EPC, cf. current jurisprudence of the Boards of Appeal.
  
- (b) The respondent had no Article 123(2), (3) objections. However, the present wording of claim 1 addressed "different components of a milking equipment" housed inside the cabinet-like structure. Although the skilled person would understand what a "milking equipment" comprised, the patent considered too many different components, and also unusual parts to some extent: cf. patent, par.[0002]. Thus, based on such a large variety of described components it was impossible to know for the skilled person, which particular parts were actually addressed by claim 1 and, therefore, the limitation as to what was housed, was rendered unclear. This lead to legal uncertainty of the claim's scope of protection. Moreover, the respondent said in the written appeal procedure that several vague features of

granted claim 3 had been added to present claim 1 and hence the requirements of clarity were also not met.

VII.1 Admissibility of late-filed evidence

- (a) The appellant reiterated that a cabinet fulfilled its function that it contained, ie "housed", things. Hence, a cabinet which housed components according to present claim 1 of the main request had always been in the procedure, and thus the case had not been changed with its grounds of appeal. Moreover, respondent's D9 was filed in 2005. Although the respondent thus had already been aware of this piece of material of Germania Inc. eight years ago, it did not file D13 earlier, which appeared to be broadly similar to D9. As a consequence, the brochure D13 could have been submitted in time, and certainly well before the summons to the oral proceedings in the appeal procedure, if proper investigation had been done. Moreover, adjournment of the oral proceedings was necessary to deal with the change of the respondent's case.

As for the alleged prior use at Mr. Hummel's farm, each of items D13 to D16 concerned different prior use allegations, eg, D14 was not a video shot where the alleged prior use took place. Moreover, Mr. Hummel had been offered as a witness to be heard in respect of the unclear relevance of D16 with all its photographs. No statements of Mr. Hummel had been received so far in writing. Therefore, taking of evidence was impossible without adjournment of the oral proceedings. Hence, the late-filed matter D13 to D16 together with the allegation of prior use should not be admitted into the proceedings.



- (b) The respondent argued that, since claim 1 had been amended by the appellant in that now different components were housed in the cabinet-like structure, further search on this matter had to be carried out at the beginning of the appeal proceedings. D13, published in 1996 and much more relevant to the new main request than D9, was submitted only now, because it was received from Mr. Hummel only after investigations concerning a possible prior use on his farm had been pursued. Germania Inc. was now owned by the proprietor (appellant), see document A2, and the respondent had not previously had an opportunity to access its own brochure D13 on the internet. However, since D13 was not complex and known to the appellant anyway, no adjournment of the oral proceedings should be necessary to deal with it.

Moreover, although admittedly more complex and difficult to examine than D13, the public prior use at Mr. Hummel's dairy farm, which was shown by photographs of the milking parlour's installation D16, should also be considered by the Board. When purchasing Germania Inc.'s milking parlour, D14 and D15 had also been handed out to Mr. Hummel in 1999.

## VII.2 Novelty

- (a) The appellant argued that D4 nowhere hinted at an internal space in the context of walls of a cabinet, that housed, ie stored and protected different components. D4 (see figures 2 and 3) only presented a channel shaped pillar "12", which was not a cabinet or cabinet-like structure as in claim 1 enclosing an

interior space on all sides. Moreover, the wall arrangement of D4's milking stalls, although illustrated to some degree in figure 2, neither disclosed nor suggested that the weight of a wall was carried by the pillar. The horizontal crossbars at the end of each stall, solely mounted on the pillars but nowhere discussed in D4, are not adjoining wall elements as defined in claim 1. Finally, the pillar's open channel shape did not form a tube-like structure surrounding the inner space of the cabinet-like structure, which was also required by claim 1. Therefore D4 did not deprive claim 1 of novelty.

- (b) The respondent submitted that a "cabinet-like" structure of claim 1 had to be broadly interpreted, as opposed to the general meaning of cabinet known to the skilled person. According to the patent (see par. [0006]) the invention provided an improved cabinet-like structure, which housed and protected, ie withstood forces. Thus, since the pillar "12" of D4's figure 3 also housed conduits of the milking equipment, a cabinet-like structure of claim 1 was derivable from D4. Furthermore, the small uppermost portion of the hoop bar shown in figure 2 of D4 was carried by the pillar, ie by a cabinet-like structure as described by claim 1. Moreover, in any event the crossbar shown on the pillar's right hand side, which also formed part of a wall arrangement of the milking stall, was thus carried by the cabinet-like structure. It was known in the art to produce tubes having an open perimeter. In any case a "tube-like" structure did not necessarily fully enclose the inner space. Consequently, the u-shaped pillar in D4's figure 2 could be understood as a cabinet-like structure in the form of hollow tube-like

structure as required by claim 1. Therefore, claim 1 was not novel over D4.

VII.3 Remittal to the opposition division

- (a) The appellant requested the Board decide on the issue of inventive step for the sake of legal certainty, because the proceedings had been running since 2005. The original legal and factual framework remained within the respondent's reply to the grounds of appeal, insofar its late filed evidence was not admitted into the oral proceedings.
  
- (b) The respondent argued that the appellant itself had delayed the proceedings by not filing auxiliary requests before the first instance that might address lack of novelty and allow for discussion of the question of inventive step. Moreover, the case had fundamentally changed with respect to the granted patent, since features of the description had been added to claim 1, which required additional search as regards the "cabinet-like" structure. The case should therefore be remitted to the opposition division.

VII.4 Inventive step

- (a) The appellant considered D4 as closest prior art. The subject-matter of claim 1 in any case differed from D4's disclosure in that the cabinet-like structure carried wall members adjoining two milking stalls. The problem to be solved in the light of D4 thus was to simplify the construction of the milking platform, and to save space. Although D1 showed a cabinet, it was not designed to work on the structural arrangement of a

rotary platform. Moreover, D1 did not teach support provided by the cabinet, much less disclose or hint at a cabinet carrying a wall element. The skilled person thus would not modify D4 to arrive at the subject-matter of claim 1 without hindsight. At best, D1 taught to hang its cabinet to the wall arrangement of D4.

- (b) The respondent argued that the skilled person would contemplate using a cabinet for different types of milking parlours. Nor did the patent differentiate between rotary and stationary parlours in this respect. Furthermore, the carrying function of a cabinet-like structure was already suggested by D4, because the crossbars shown in figure 2 of D4 were solely carried on the right hand side of the u-shaped pillars. Thus, since the connection between a wall element and a cabinet was already hinted at in D1, it would be trivial for the skilled person to transfer the support function of D4's u-shaped pillar to the hoop bar which adjoined two stalls in figure 2 of D4, and to replace D4's pillars by the tube-like cabinets of D1, if the function of D4's cabinet-like structure had to be improved. Therefore the subject-matter of claim 1 did not involve an inventive step.

## **Reasons for the Decision**

1. The appeal is admissible.
2. *Amendments*  
(Article 123(2) and (3) EPC)

Claim 1 of the main request is in the first place based on independent claim 24 ("parlour") as granted which is

identical to claim 24 as filed, the latter also including the features of previous independent claim 1 ("device") as granted and filed. Moreover, the subject-matter of granted and filed claims 3, 11 (which both refer to granted and filed device claim 1), 25, and 26 has been added to present claim 1. The new wording "... wherein different components of said milking equipment are housed inside said cabinet-like structure, and wherein said wall members protect said different components which are housed inside said cabinet-like structure" at the end of claim 1, is derivable from paragraphs [0007], lines 46 to 48, and [0009], lines 57 and 58, of the patent (as published) (page 3, lines 19 to 21 and page 4, lines 3 to 5, of the published application).

Furthermore, granted dependent claims 4 to 10 and 12 to 23 ("device"), and 28 to 31 ("arrangement"), were made consistent with the new wording of claim 1 of the main request ("rotary parlour"), and were renumbered 2 to 20, and 21 to 24, respectively. The description of the main request has been adapted accordingly.

No Article 123(2) and (3) objections have been raised by the respondent, and also the Board has no reason to doubt that the main request meets the requirements of the EPC in this respect.

3. *Clarity of claim 1*  
(Article 84 EPC)

3.1 As argued by the appellant, in the opinion of the Board, it is immediately clear for the person skilled in the art from the wording of the last four lines of claim 1

alone that different components of the milking equipment, ie at least two, are housed in the cabinet-like structure, thus further underlining the protective function of the "cabinet-like" element of claim 1. Moreover, although any distinct components of a milking equipment may be housed therein, the mere fact that the limitation to arbitrary components of a milking equipment has been broadly formulated, does not render the scope of claim 1 unclear to the skilled person. Contrary to the respondent's view, solely based on the wording of claim 1, producers of milking parlours would readily recognize which different components may form part of, eg, a milking member to be attached to a dairy animal. This is also supported by the description, where a plurality of components of a milking equipment usually known (and not uncommon) to the skilled person are addressed by way of example. See patent, eg, paragraphs [0002] and [0015] (as published).

3.2 Apart from the amended last four lines of claim 1, claim 1 of the main request results in substance from a combination of claims of the patent as granted. Hence, following well established case law, those clarity objections brought forward by the respondent in the written appeal procedure, which do not arise out of amendments made to the granted claims, are not admissible. See Case Law of the Boards of Appeal, 6th edition, VII.D.4.2.

3.3 Therefore claim 1 of the main request complies with Article 84 EPC.

4. *Admissibility of late filed evidence*

4.1 The Board shares the appellant's view that the skilled person would understand from claim 1 as granted that a cabinet-like structure *per se*, in its broadest sense, has to be adapted to house things, ie components. This is also supported by the description of the granted patent, cf. paragraphs [0003] and [0007] (as published). Therefore, the wording of amended claim 1, where a cabinet-like structure "houses components of the milking equipment", is consistent with the function of the cabinet-like structure of granted claim 1. The appellant's case has thus in fact not changed as a result of the amendments to claim 1 of the main request with the grounds of appeal.

*Document D13*

4.2 Document D13 concerns a sales brochure of "*Germania Dairy Automation, inc.*", published in 1996: see last page of D13, bottom lines. In view of such an early publication date, 17 years in the past, it seems unlikely to the Board that this handout previously had not been available to the public. Nor has any evidence been provided that, due to acquirement of Germania Inc. by the proprietor DeLaval (appellant) in 1997 (cf. document A2), investigations on D13 had been hindered in any way.

Secondly, on the face of it, Germania Inc.'s herringbone milking parlour shown on the internet in document D9, which was filed in time with the respondent's notice of opposition, is very similar to that of D13: cf. photographs. Thus, in spite of the fact that the respondent had the burden of proof to further

substantiate its case on D9's disclosure and the alleged prior use associated therewith, D13 which seems to concern the very same prior use was not submitted until after issue of the summons to oral proceedings before the Board: cf. respondent's notice of opposition of 30 July 2005, page 11, point 13, and its letter of 28 January 2013, page 10, fourth and fifth paragraphs. Given that also the appellant's case has not changed with its grounds of appeal, at the very latest, in the Board's view, D13 should have been filed with the respondent's reply as required by Article 12(2) RPBA.

Finally, the respondent resiled from its submissions as regards D9 together with other evidence of alleged prior use during the oral proceedings before the opposition division. Either the citation of D13 represents a fresh attempt to substantiate a previously abandoned position or it is a new line of argument against inventive step based on new evidence that constitutes a "fresh case". See also respondent's notice of opposition, page 14, fourth paragraph, and minutes of the oral proceedings before the opposition division, point 2, first two paragraphs. In the former case it could and should have been filed earlier, in the latter the parties (and also the Board) cannot be expected to reasonably deal with such a fresh case at that late stage of the proceedings, possibly resulting in an adjournment of the oral proceedings: Article 13(3) RPBA.

Therefore the Board exercised its discretion under Articles 12(4) and 13(1), (3) RPBA not to admit the late-filed document D13 into the proceedings.



*Prior use: "milking parlour of Mr. Hummel"*

4.3 Strict standards apply in the case of the admissibility of the late-filed evidence of public prior use in the appeal proceedings, due to its complexity and required high standard of proof beyond doubt. In the present case, the respondent did not give any clear explanation or sound reasons as to why the allegation of public prior use could not have been made any earlier. This is so in particular for the offer of witness testimony of Mr. Hummel.

4.4 Moreover, as argued by the appellant, the documents D13 and D15, said to have been handed to Mr. Hummel around 1999, apparently concern sales brochures of Germania Inc.. *Prima facie* these brochures however do not seem to corroborate the alleged prior use at Mr. Hummel's dairy farm such as substantiated by the bundle of papers D16 1-17. Also, the late-filed video copy D14 is presumably not video evidence of the alleged prior use at the Hummel farm, but rather, shows several farms in the USA in 1996: cf. respondent's letter of 28 January 2013, page 9, third last paragraph. The Board also notes that the publication date of D14 or D15 (and also A2) has yet to be established.

4.5 In the Board's view, therefore, the late-filed piecemeal approach of the respondent to assert an alleged prior use at the farm of Mr. Hummel, together with evidence D14, D15, D16 1-17 and A2, and in particular the offer of Mr. Hummel as a witness, clearly could not have been dealt with by the appellant or the Board without an adjournment of the oral proceedings. Therefore, regardless of its relevance, the Board exercised its discretion not to admit this allegation of prior use

into the proceedings and not to hear the evidence of Mr. Hummel as to such use: Article 13(3) RPBA.

For the sake of completeness, the purported installation of Germania's milking parlour at Mr. Hummel's farm *prima facie* does not appear to be more relevant than the disclosure of document D13: see the herringbone parlour depicted in photographs D16-5 and D16-15 of D16.

5. *Novelty*

*(Article 100(a) EPC, see Article 54 EPC)*

5.1 Document D4 (cf. abstract and figures) relates to a rotary parlour comprising a plurality of milking stalls ("*Stellplätze 2*") for cows. As illustrated in figures 1 and 2 of D4, a wall arrangement, which separates two adjacent milking stalls and comprises a vertically extending u-shaped post ("*Pfosten 12*") near the end of a cow's back portion during milking, is provided.

5.2 The Board agrees with the respondent's view that, based on the feature "cabinet-like structure" alone, its design can hardly be limited to the skilled person's general understanding of a cabinet that encloses an interior space on all sides, in the case at issue to house parts of a milking equipment. Rather, "cabinet-like" has to be broadly interpreted as specified by the wording of claim 1, which *inter alia* requires a structure to be formed by relatively thin vertical wall members in order to house and protect different components of the milking equipment inside. This is also in accordance with the description, which appears to differentiate between the terms "cabinet-like

structure" and "cabinet": cf. patent, paragraphs [0003] and [0006] (as published).

Since the vertical flanges of the u-shaped profile of D4's post shown in figure 2 serve to house and protect different components of the milking equipment, such as control and vacuum lines ("*Steuerleitung 18*" and "*Vakuumleitung 25*") indicated in figure 3 of D4 (cf. column 3, lines 30 to 53), this post can also be considered a "cabinet-like structure" in the wider understanding of that term.

5.3 However, if the vertical u-shaped post of D4 made up a cabinet-like structure, in the Board's view, the load-bearing element of the hoop bar shown in figure 2 of D4, which actually adjoins two milking stalls, cannot be considered as part of that structure. Rather it is an additional tubular upright positioned next to the u-shaped post. This upright carries the hoop bar and is supported by the floor of the milking stall ("*Stellplatz 2*"). In the absence of any information from D4's description, no teaching moreover can be gleaned from the schematic drawing of D4's figure 2 by the skilled person that the hoop bar's weight is possibly carried by the uppermost portion of the tubular upright, which seems to be somehow attached to the u-shaped post, ie to the cabinet-like structure of D4.

As argued by the appellant, the tubular crossbars, which are shown in figure 2 to protrude horizontally from the u-shaped posts' right hand side, cannot form a wall arrangement as defined by claim 1, since these crossbars limit each stall at its end, but do not,

however, adjoin two respective milking stalls: see also top view in figure 1 of D4.

5.4 The Board acknowledges that it is known in tube production to sometimes provide a longitudinally extending slit. The broadly formulated "hollow tube-like structure" in claim 1 also need not have an ideal circular cross section. In the view of the Board, however, a structure in the form of an elongated u-profile with a fully open channel does not fall within the meaning of "hollow tube-like", since its u-section does not, in fact, surround the inner space of such structure as required by claim 1. This is also supported by the description, see patent, paragraph [0009], and embodiments in the figures (as published).

Thus, the argument advanced by the respondent that the wall members of D4's cabinet-like structure, ie the flanges of the u-shaped posts shown in figure 2 of D4, form a hollow tube-like structure cannot be accepted by the Board, and is not considered to be directly and unambiguously derivable for the skilled person from D4.

5.5 The Board concludes that, contrary to the respondent's view, and also in contrast to the finding of the decision of the opposition division in this point (cf. points 2.5 IV a) and point 3.1 II), the subject-matter of claim 1 differs from D4's disclosure at least in the feature of a cabinet-like structure, which carries a wall arrangement adjoining two milking stalls, and comprises wall members of a hollow tube-like structure surrounding their inner space.

5.6 Novelty of claim 1 over the remaining known prior art was not disputed by the respondent, and is also acknowledged by the Board. Therefore the subject-matter of claim 1 of the main request meets the requirements of novelty.

6. *Remittal to the opposition division*

The patent in suit was revoked solely on the ground of lack of novelty. The opposition was, however, also based on the ground that the subject-matter of the patent did not involve an inventive step. Normally, given the review character of appeal proceedings before the EPO, such a case would be remitted for first instance consideration of the remaining issue. In the present case various factors speak in favour of the Board itself deciding on inventive step, as requested by the appellant. Firstly, that it is the request of the proprietor as appellant who will have reached the end of the road should the patent be revoked, where the respondent opponent will still have the option of national proceedings if the case is decided against him, should weigh in favour of the appellant proprietor's request, though it is by no means decisive. Other factors are that the subject of the proceedings has not significantly changed with the appellant's new main request, which merely clarifies the basic function of the "cabinet-like structure", see point 4.1 above. Furthermore, apart from the late filed evidence which has been disregarded, the case against inventive step rests on the same document D4 cited against novelty, and considered in combination with D1. Both parties have submitted detailed submissions regarding the combination of D4 with D1 both in the

preceding opposition and present appeal proceedings, and the Board concludes that they can reasonably be expected to deal with the question of inventive step at this stage. Finally, the Board notes that the patent is in the eleventh year of its term so that remittal would lead to an unduly prolonged period of legal uncertainty. The Board finds that these factors outweigh the respondent's interest in a two instance consideration of inventive step.

The Board thus exercised its discretion under Article 111(1) EPC to decide the issue of inventive step itself in accordance with the further request of the appellant. It thus refused the respondent's request for remittal.

7. *Inventive step*

*(Article 100(a) EPC, see Article 56 EPC)*

- 7.1 The Board agrees with the parties that the rotary parlour of document D4 forms the closest prior art, see point 5 of this decision. The subject-matter of claim 1 thus differs from the disclosure of D4 in that, amongst other things, a cabinet-like structure carries a wall arrangement adjoining two milking stalls.

The problem underlying this feature can be seen in providing an improved cabinet-like structure, see specification paragraph [0006], to thus simplify the construction of the milking platform as argued by the parties.

- 7.2 Document D1 concerns a stationary, eg, herringbone, parlour: cf. D1, abstract, figures 1,4, and 7. It describes a cabinet "9", which houses and protects

different components of the milking equipment: see figures 1 and 2. However, D1 does not teach or hint at the cabinet's suitability as a load bearing support for D1's wall arrangement "10". It is, on the contrary, invariably attached thereto by means of attachment members "33" (cf. D1; page 6, lines 14 to 17; page 8, lines 10 to 12; and figures 4 and 7).

Therefore the Board concludes that, starting from D4, and irrespective of whether a cabinet of a stationary parlour can be readily adapted to the platform of a rotary parlour or not, the skilled person, faced with the above problem is not given any suggestion by D1 to replace its self-supporting u-shaped post with a suspended cabinet, which is not designed to sustain load. Nor would the skilled person have any motivation to modify D1's teaching in this regard.

- 7.3 Hence, even if an adaptation of D1's cabinet were considered by the skilled person for a rotary parlour of D4, it would not lead him to the claimed invention.

The subject-matter of claim 1 of the main request therefore involves an inventive step.

As the cabinet-like structure of claim 1 carries a wall arrangement which adjoins two milking stalls, it forms a simplified building element of the milking stall or parlour. Hereby the cabinet-like structure is also robust against forces from animals in the stall: cf. patent, paragraphs [0006],[0007] and [0022].

8. Since the main request is allowable, there is no need for the Board to consider the auxiliary requests.

