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Datasheet for the decision of 5 March 2025

Case Number: T 0723/23 - 3.2.04

Application Number: 14808680.4

Publication Number: 3079461

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Language of the proceedings: EN

Title of invention:
AUTOMATED MILKING STALL

Patent Proprietor:
Fullwood JOZ B.V.

Opponent:
DeLaval International AB

Headword:

Relevant legal provisions:
EPC Art. 54(3), 56, 100(a)
RPBA 2020 Art. 12(4), 13(2)

Keyword:
Grounds for opposition - lack of patentability (no)
Amendment to case - evidence - reasons for submitting amendment in appeal proceedings (yes) - admitted (yes)
Amendment after summons - taken into account (no) - cogent reasons (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 0723/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 March 2025

Appellant: (Opponent)	DeLaval International AB P O Box 39 147 21 TUMBA (SE)
Representative:	Zacco GmbH Bayerstrasse 83 80335 München (DE)
Respondent: (Patent Proprietor)	Fullwood JOZ B.V. Industrieweg 5 1617 KK Westwoud (NL)
Representative:	Bartle Read Liverpool Science Park 131 Mount Pleasant Liverpool L3 5TF (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 28 February 2023 rejecting the opposition filed against European patent No. 3079461 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	T. Bokor
Members:	G. Martin Gonzalez
	J. Wright

Summary of Facts and Submissions

I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject their opposition.

II. The opposition division found that the granted claim 1 was new over D1, cited under Article 54(3) EPC, and involved an inventive step over combinations of D4 with D5, D6, or D7.

III. In preparation for oral proceedings the Board issued a communication setting out its provisional opinion on the relevant issues. Oral proceedings before the Board were held by videoconference on 5 March 2025.

IV. The appellant requests that the decision under appeal be set aside and the patent revoked in its entirety.

The respondent proprietor requests the dismissal of the appeal, i.e. to confirm the decision of the opposition division, as main request, or alternatively, to set aside the decision under appeal and to maintain the patent on the basis of one of the 1st to 3rd auxiliary requests, filed on 10 November 2023 with the reply to opponent’s appeal.

V. Claim 1 of the main request (patent as granted) reads as follows:

"A milking stall comprising
a base structure (10) supporting a pen (12) said pen defining a substantially rectangular enclosure comprising two opposing longer sides and two opposing

shorter sides within which enclosure an animal undergoing milking may be enclosed,
the pen comprising first and second entrance gates (16A, 16B) and first and second exit gates (16C, 16D), each gate being movable between an open position in which an animal may pass through the gate and a closed position in which an animal is unable to do so,
wherein one of said longer sides is provided with one entrance gate (16B) and one exit gate (16C), and
wherein one of said shorter sides is provided with one entrance gate (16A) and the other one of said shorter sides is provided with one exit gate (16D),
the milking stall further comprising a control system (10) for operating the exit gates in dependence upon one or more predetermined signals, and
wherein the milking stall comprises at least one analysis device (110) for analysing the condition of the animal during milking and generating a signal accordingly."

VI. Reference is made to the following documents:

(D1) WO 2014/189449 A1
(D4) US 5,784,994
(D5) WO 2011/102717 A1
(D6) US 2012/0272906 A1
(D7) WO 2006/133717 A2
(D8) International Standard ISO 20966, Automatic milking installations – Requirements and testing, first edition, 15 February 2007.
(D9) Lely, 25 Years diary automation, Our milestones in milking, accessible at: https://www.lely.com/gb/25-years-dairy-automation/

VII. The parties' arguments relevant to the decision are discussed in detail in the Reasons for the Decision.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The invention relates to an automated milking stall designed for animals like cattle and goats, see specification para 0001.

The milking stall comprises a control system that operates exit gates based on signals. The stall also incorporates a robotic arm for milking and various sensors, such as an infrared camera, to monitor the animal's condition during milking. If, for example, an animal is detected to be unwell, it can be automatically segregated from the herd for treatment, see paras 0002, 0008 and 0009 of the specification.

3. Main request - Novelty

3.1 The appellant opponent challenges the division's decision that granted claim 1 is novel over D1, a document cited under Article 54(3) EPC.

3.2 Document D1 describes a milking stall arrangement providing a pen of substantially rectangular shape with two longer and two shorter sides (see Figures 1 and 2, and the abstract). It includes first and second entrance and exit gates respectively, arranged as in the claimed stall, namely, an entry and an exit gate on one longer side, and the other entry and exit gates each respectively on one opposite shorter side (see the abstract). In the stall of D1, a control unit determines the exit area for the cow before milking is

finished and operates the corresponding exit gate (see page 13, line 30 to page 14, line 6), where one of the exit areas can be designated for treating unhealthy animals (p. 11, ln. 14-16). The control unit may operate the gates based on the animal's identity, detected by sensors and stored data (see p. 7, lines 4-19, and p. 10, last two lines). Amongst other things, unhealthy cows may be directed to a particular area, i.e. the control system operates the exit gates in dependence upon the condition of the animal being milked.

3.3 It is in dispute whether D1 also discloses the feature requiring the milking stall to include an analysis device for analysing the condition of the animal during milking.

3.4 In the Board's view, it does not. The scope of the feature is under dispute. In the Board's view, the normal understanding of "analysis" is that it involves the active processing and interpreting of data to draw conclusions. In other words, the claim entails evaluating data to establish the animal's condition. It was undisputed between the parties that a physical condition of the animal is meant here. This interpretation is supported by the description, with examples as disclosed in paras 0008 and 0011 of analyses performed during milking. These include analyses such as the physical and/or chemical examination of milk for one or more 'marker' measurements indicating animal illness, the use of an IR scan analyser to determine whether an animal's temperature is within an ill-health range; sensors measuring animal contours for body condition scoring, and the analysis of the milk temperature and/or composition.

The appellant opponent's arguments for a broader interpretation of the feature are unconvincing. They refer to paragraphs 0012 and 0010 of the patent specification, which discuss sorting the animals by RFID identifiers and for routine attention, respectively, seemingly neither involving the defined "analysis during milking". The appellant submitted that the contested feature of claim 1 should be broadly interpreted as also encompassing these embodiments of the description. However, these passages do not suggest that these options are embodiments of the claimed feature of claim 1. Instead, these uses, which do not appear to be covered by the clear meaning of the terms in the granted claim, would rather be read by the skilled person as mere optional additions, that do not satisfy the claimed feature requiring analysis of the condition of the animal during milking.

3.5 Turning to the disclosure of document D1, the Board holds that this document does not unambiguously disclose the previously discussed feature. The indication in D1 that one of the exit areas may be designated for treating unhealthy animals or animals requiring supplements (p. 11, ln. 14-16) does not in itself imply that the animal's condition is determined by an analysis device at the stall and during milking. Instead, the condition of the animal may have been previously analysed by an analysis device remote from the stall and the animal flagged up in the database for later identification at the stall, as also acknowledged by the appellant opponent during the oral proceedings. In this scenario, the system is not analysing the animal condition during milking as required by claim 1, but rather relying on previously performed analyses stored in the database. The focus is on automation and efficient recognition to take further action based on

the flagged condition. It may be a crucial step in managing animal health, but it is separate from the actual analytical process.

The appellant opponent also argued in their written submissions that D1 implicitly discloses a milk meter, as a milk meter is mandatory in modern dairy farms, which, in the appellant's view, serves as an analysis device for determining the animal's condition, given that milk yield reflects the health status of the lactating animal. The Board disagrees. Even if a milk meter were implicit in D1, this alone would not imply an analysis of the animals condition. In its broadest form, a milk meter may do no more than measure milk yield, without performing any processing or analysis, which might indicate the animal's condition.

3.6 The Board therefore confirms the conclusions of the opposition division that granted claim 1 is new over the disclosure of D1, Article 100(a) EPC in combination with Article 54(3) EPC.

4. Main request - Inventive step, admittance of a document first filed in appeal and admittance of a new inventive step attack first submitted in the oral proceedings.

4.1 The opponent also challenges the division's decision that having regard to the cited prior art, granted claim 1 involves an inventive step.

4.2 Both parties agree that D4 is a suitable starting point for assessing inventive step. The Board agrees.

4.3 D4 discloses an essentially rectangular milking stall comprising one entrance gate 3 at one shorter side of the pen and two exit gates 4 and 5, each at the

opposite longer sides of the pen, see Fig. 4. The Board agrees with the opposition division that D4 discloses sorting or separation of animals when mastitis is detected during milking (see col. 2, ln. 61 - col. 3, ln. 7). Consequently, the features that the known stall includes an analysis device for assessing the animal's condition during milking and that its control system operates the exit gates accordingly - are considered to be anticipated by D4 (see the appealed decision, section 14.1).

4.4 It is undisputed that D4's pen has only one entrance gate at one shorter side and two exit gates at opposite longer sides, whereas the pen according to claim 1 has two entrance and two exit gates, with one longer side having an entrance and exit gate, the shorter sides having the other entrance and exit gates (see Figs. 4-7 of the contested patent).

The claimed arrangement allows entry from two different locations (see patent specification, para 0009).

4.5 In their written submissions, the appellant opponent formulated the problem solved by the invention as how to provide a milking stall permitting entry from different locations (see grounds, p. 9).

During the oral proceedings, the opponent reformulated the objective technical problem and sought to split it into two independent and allegedly unrelated technical problems. They argued that the issue of a second entrance gate was a separate issue from the issue of where to place the gates, the addition of a second entry gate providing flexibility in herding. Where the gates may be placed is determined by where the milking robot is located, thus solving the independent problem

of how to adapt the gates to different types of milking robots and to corresponding stall-robot arrangements.

4.6 The contention that these are two independent problems is not accepted by the Board in the present case. The available options for entry and exit gates in a known pen are restricted, not only by the pen's form in isolation, but also by other constraints such as the direction in which the animal can move through the pen as well as the location of existing gates and existing milking robots. Therefore, the problem of allowing entry from a different location (for example via a new gate) cannot be separated from deciding where to place such a new gate.

Taking D4 as starting point, the appellant's abstract solution of simply adding a second gate without specifying its placement is thus incomplete. This is all the more so in the present case as the appellant-opponent conceded that there is no apparent free position in D4's pen for a second entrance gate, the only viable locations (the rear parts of the long side) being obstructed by robot arms. Therefore, the appellant opponent's argument that the subject matter of claim 1 lacks inventive step starting from D4 and considering the two independent problems they formulated is moot.

4.7 Therefore, a proper formulation of the objective technical problem in the present case must comprise the combined technical effect achieved by the differentiating features and thus formulated as a single problem. Whether it is formulated as increasing herding flexibility - as formulated during the oral proceedings - or as how to provide a milking stall that permits entry from different locations - as formulated

in the written submissions, the Board does not find the appellant opponent's inventive step arguments convincing.

4.8 The appellant opponent cites documents D5, D6 and D7 in this respect.

However, neither D5, D6 nor D7 teach two entrance gates and two exit gates arranged as claimed in the contested patent. Therefore the combination of D4 with D5, D6 or D7, whether obvious or not, would not lead the skilled person to the claimed combination of features.

Documents D5 and D6, which relate to milking stalls, suggest that a pen can be equipped with two entrance gates and two exit gates (see D5, Fig. 1, and D6, Fig. 1A). However, all four gates are positioned along the two opposite longer sides. There is no suggestion in either D5 or D6 to utilise the shorter sides for entrances or exits or to modify D4 by relocating one of its exits to a shorter side. D7 (see for example Fig. 1) relates to a unit for sorting animals, particularly pigs, rather than a milking stall, so that whether the skilled person would consider D7 when solving a problem related to a milking stall as a matter of obviousness is questionable for the Board. More importantly, D7 has only one entrance gate 10 and therefore does not teach or suggest the provision of a second entrance as required by granted claim 1.

4.9 The appellant opponent filed a new document D9 with their grounds of appeal to support their arguments concerning inventive step. D9 is an internet publication of the company Lely, showing the Lely Astronaut milking robot. This robot is designed to be located on one longer side of the pen (see pages 1-9 of

D9). It also teaches entrance and exit gates at respective short sides of a milking pen (see Fig. on p. 3 of D9). The opponent argues that it evidences common general knowledge that milking robots are typically installed at one longer side, and substituting the milking robot of D4 for a design akin to the Lely Astronaut milking robot with one entrance and one exit at the short sides is a matter of design choice.

4.10 The respondent proprietor objected to the admittance of D9, arguing that it could have been filed earlier. The appellant opponent justified the filing of D9 by the unexpected argument of the opposition division that positioning the robot on the longer side would require heavy re-designing of the milking stall of D4, or may not even be technically feasible ("possible at all", point 14.2 of the impugned decision), as all handlers would have to be moved to the same side. They further submitted that the field of robotic milking was dominated by only a few market participants, and all of them would be known to the skilled person, including the Lely Astronaut, Lely being a pioneer in the field. In fact, the proprietor was a licensee of Lely, so they must have known the Lely Astronaut.

4.11 The Board considers that evidence for supporting the knowledge of the skilled person can normally be filed also after the expiration of the time limit for opposition or even during appeal proceedings. The respondent proprietor did not contest that the Lely Astronaut had been known to the skilled persons in the relevant field. In the present case, the milking robot and its location relative to the milking stall is not a feature of the claim. Dependent claim 5 mentions an articulating robot arm supported by a wall of the pen, but without restricting it to any particular side of

the milking stall. In summary, the Board considers that in the circumstances of the present case the filing of any evidence in relation to this detail could not have been expected from the opponent earlier. For these reasons, the Board has decided to admit D9 into the proceedings under Article 12(4) RPBA.

4.12 However, even if the Lely Astronaut milking robot is recognised as a commonly known design, and also that the use of the short sides for entrance and exit is known, this knowledge in itself - i.e. to have the milking robot installed at one longer side of the pen - does not teach or suggest the claimed gate arrangement. It does not address the problem of allowing entry from different locations. The appellant's argument that accommodating the milking robot at one longer side is a routine design choice, does not overcome the incompatibility of this configuration with the gate configurations of D5 and D6, where the gates are positioned on both longer sides. The Board finds it unconvincing that the skilled person seeking to solve the problem of adding one entrance to the known pen of D4, would, as a matter of obviousness, modify D4's milking robot design to one that is not compatible with the available solutions to that problem, namely those of D5 and D6 with the entry and exit gates on the longer sides of the pen. The common general knowledge of the skilled person, allegedly reflected by D9, does not suggest any compatible solution to the problem of providing two entrance gates.

4.13 Therefore, the Board confirms the conclusions of the opposition division that the subject-matter of granted claim 1 involves an inventive step in the light of the inventive step objections before it, Article 100(a) EPC in combination with Article 56 EPC.

4.14 The appellant opponent also requested during the oral proceedings before the Board to present a new objection of lack of inventive step starting from D6 as closest prior art. The opponent also conceded that this inventive step attack represented an amendment to their case. Its admission is at the discretion of the Board, Article 13(2) RPBA. According to this rule, the Board should in principle not take such an amendment into account unless there are exceptional circumstances which have been justified with cogent reasons. The respondent proprietor requested the Board not to admit the new line of attack, being very late and putting the respondent in an unfair situation.

4.15 The appellant opponent argues that it is an exceptional circumstance within the meaning of Article 13(2) RPBA that D6 is highly relevant as closest prior art, in fact more relevant than D4, given that there are fewer distinguishing features over the claimed subject-matter. D6 was on file from the beginning so requires no additional effort to understand it. Its teaching had not been properly assessed so that it had not been appreciated before that it was highly relevant. The appellant opponent explained that it had not been realised previously that D6 disclosed separating animals according to health condition during milking. However, this feature was clearly disclosed in paragraph 0055. Given that D6 disclosed two entry and two exit gates, it had become clear that it had more common features with the granted claim than D4 so was a more relevant starting point, requiring only the rearrangement of gates in the milking pen. In addition, this was an argument that was easy to understand, in particular in light of the discussion already having taken place. Also, D6 had been in the proceedings from

the start and therefore well known to all parties and the Board.

4.16 However, according to established case law, the "exceptional circumstances" required by Article 13(2) RPBA refer to new or unforeseen developments in the appeal proceedings itself, such as e.g. new requests filed by the proprietor or objections raised by the Board or another party, whereas the normal course of events normally does not justify late submissions, see Case Law of the Boards of Appeal, 10th edition 2022 (CLBA), section V.A.4.5.4.a). This is not the case here. As also observed by the Board during the oral proceedings, the claims under consideration were as granted, D6 was already on file and the opinion of the Board had not changed from its communication. That the inventive step objections on file would be unsuccessful is a normal possible outcome and thus belongs to the normal course of events of the proceedings. The submitted issues that D6 was on file from the beginning and so requires no additional effort to understand it, that its contents have been reassessed by the opponent and that it is highly relevant do not qualify as exceptional circumstances of the proceedings itself. In fact, part of the arguments that the opponent submits in support of the admittance can equally be raised as an argument for non-admittance, all demonstrating that there had been ample opportunity to discover the relevance of D6. Moreover, as stated in case law, prima facie relevance is not a consideration *per se*, see CLBA, V.A.4.5.8.i). Only for these reasons, the Board did not admit the new objection under Article 13(2) RPBA.

4.17 Notwithstanding the above conclusion of the Board that prima facie relevance of a new objection does not qualify as an exceptional circumstance, the Board is also not convinced that the new objection is indeed prima facie highly relevant. According to this criterion, essentially developed for the application of the previous version of the Rules of Procedure of the Boards of Appeal (RPBA 2007, see CLBA, section V.A. 5.13.2), - the new material should be prima facie highly relevant in the sense that it can reasonably be expected to change the eventual result and is thus highly likely to prejudice the maintenance of the European patent.

4.18 In the present case, it is not immediately apparent that D6 might be a more promising starting point for having more features in common with the granted claims than D4. While on the one hand it has one feature in common with the claim which is not found in D4 (a second entrance gate), on the other hand it lacks another claim feature compared to D4, namely it has no entrance gate positioned at the short side of the pen. Furthermore, D6 still does not suggest the claimed gates arrangement, namely one longer side having an entrance and exit gate, one shorter side having an entrance gate, and the other shorter side having an exit gate. Neither is this arrangement taught by the alleged common general knowledge as reflected by D9 (which only teaches one entrance and one exit) or any other prior art document discussed during those inventive step objections that were not held inadmissible. Thus it remains that the claimed gate arrangement is not taught or suggested in the prior art documents or in the presented common general knowledge. The Board cannot therefore *prima facie* conclude (i.e.

without a more thorough and in-depth discussion), that the combinations starting from D6 would be highly likely to prejudice the maintenance of the European patent.

4.19 In view of the above, the Board decided not to admit the new objections of lack of inventive step starting from D6 under Article 13(2) RPBA.

5. As all the objections raised by the appellant opponent are either not admitted or fail to convince the Board, it confirms the findings of the opposition division.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis T. Bokor

Decision electronically authenticated