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D E C I S I O N
of 29 January 1999

Case Number: T 0122/97 - 3.2.4

Application Number: 87201609.2

Publication Number: 0258938

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:

An implement for milking animals

Patentee:

Maasland N.V.

Opponent:

Prolion Development B.V.

Headword:

Flexible connection/MAASLAND

Relevant legal provisions:

EPC Art. 123, 56

Keyword:

"Amendments extending beyond the content of the application as
filed (no)"

"Inventive step (yes)"

Decisions cited:

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Catchword:

-



Case Number: T 0122/97 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 29 January 1999

Appellant: Prolion Development B.V.
(Opponent) Kromme Spieringweg 289B
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Representative: van Westenbrugge, Andries
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Respondent: Maasland N.V.
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3155 PD Maasland (NL)

Representative: Corten, Maurice Jean F.M.
Octrooibureau Van der Lely N.V.
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 29 November
1996 concerning maintenance of European patent
No. 0 258 938 in amended form.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
J. P. B. Seitz

Summary of Facts and Submissions

- I. An opposition based upon Article 100(a) EPC (with respect to Article 56 EPC) was filed against the European patent No. 258 938 which resulted from the European patent application No. 87 201 609.2 filed on 26 August 1987 and claiming the Dutch priorities NL/8602171 and NL/8602172 of 27 August 1986. By the decision of the opposition division dispatched on 29 November 1996 the patent was maintained in an amended version based upon the independent Claim 1 filed with the proprietor's letter of 29 August 1995.
- II. On 23 January 1997 the appellant (opponent) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 9 April 1997.
- III. During the written phase of the appeal proceedings the appellant raised objections concerning insufficiency of the disclosure and the claimed priority date of the patent.
- IV. Oral proceedings were held on 29 January 1999. During the oral proceedings the respondent (proprietor) filed two amended versions of the independent Claim 1 upon which a main and an auxiliary request were based.

The independent Claim 1 according to the main request of the respondent reads as follows:

"1. An implement for milking an animal (1), such as a

cow, provided with teat cups (21) and with a positioning and attachment means for individually bringing and subsequently attaching the teat cups to the respective teats of the animal's udder, the positioning and attachment means comprising for each teat cup a carrying means (14, 17, 20) for carrying one teat cup and a moving means (16, 19, 28) for moving the teat cup automatically to the respective teat, each carrying means comprising an attachment member (20) carrying the respective teat cup, a flexible connection member (38 or 47) being provided for each teat cup, each teat cup being connected to the positioning and attachment means by the respective flexible connection member to form a flexible connection during milking, a drive means (37) being provided for each teat cup which drive means is connected to the respective teat cup by means of the flexible connection member (38), each drive means (37), after attachment of the teat cup to the respective teat, being energized to relax the flexible connection member so as to form said flexible connection, so that each teat cup, during milking, is spaced apart from the attachment member, while after milking each drive means (37) being energized to pull by means of the flexible connection member the respective teat cup towards and against the attachment member in a predetermined position.

- V. The appellant argued that Claim 1 according to the main request of the respondent had been amended in such way that it contained subject-matter extending beyond the content of the application as filed in so far as this Claim 1 did not make it clear that the attachment member carries the teat cup at its top.

As to inventive step the appellant essentially argued that the subject-matter of Claim 1 of both the main and the auxiliary request of the respondent did not involve an inventive step having regard to the content of documents US-A-3 726 252 (D4) and EP-A-91 892 (D3). In this context the appellant also referred to the article "*Mécanisation, informatisation et robotisation de la traite des vaches laitières*", by J. B. MONTALESCOT, in "*Recueil de Médecine Vétérinaire*", June-July 1986, pages 725 to 741 (document D7).

- VI. The respondent contested the arguments of the appellant.
- VII. The appellant requested that the impugned decision be set aside and that the patent be revoked.
- VIII. The respondent requested that the impugned decision be set aside and that the patent be maintained on the basis of the following documents (main request):

Claims: 1 to 27 of the main request as filed during the oral proceedings.

Description: Insertion for page 2, as well as columns 1 and 2 as filed during the oral proceedings,
Columns 3 to 11 as granted

Drawings: Figures 1 to 6 as granted.

Auxiliarily, the respondent requested that the patent

be maintained on the basis of Claim 1 filed during the oral proceedings and defined as the auxiliary request.

Reasons for the Decision

1. The appeal is admissible.
2. *The amendments - main request of the respondent*
 - 2.1 Claim 1 combines the features specified in Claims 1 and 3 of the patent as granted with further features which can be derived from the description and the drawing of the application as filed.

In particular, the amendments make it clear that the implement is provided with a plurality of teat cups (21) and that for each teat cup there is a carrying means (12, 17, 20) comprising an attachment member (20) carrying the respective teat cup, a moving means (16, 19, 28), a drive means (37) and a flexible connection member (38, 47). It is to be noted that all these elements (namely teat cups, carrying means, attachment members, moving means and flexible members) form part of a common physical structure, called in Claim 1 'positioning and carrying means' and corresponding to the 'attachment means' specified in Claim 1 of the application as originally filed.

The board finds that Claim 1 as amended does not contravene Article 123 EPC.

2.1.1 With respect to the amendments to Claim 1, the appellant only objected to the feature that "[each] attachment member (20) carries the respective teat cup". The appellant argued that this feature represented an unjustified generalisation of the features specifically disclosed on page 9 (lines 24 to 26) of the description of the application as originally filed according to which the attachment member carries "**at its top end** a teat cup 21" (emphasis added). Therefore, according to the appellant, the presence of this feature in Claim 1 would result in the subject-matter of Claim 1 extending beyond the content of the original application as filed, because the original application describes attachment members carrying the respective teat cups at their top ends.

The board cannot accept this argument because the introductory part of the description of the application as filed clearly defines the relationship of the teat cup to the attachment member at the same generalisation level as in the amended Claim 1. Indeed, the opening paragraph of page 1 of the application as filed (see lines 1 to 4) refers to "an implement ..., wherein a teat cup is attached to a teat ... by means of an attachment member carrying said teat cup ..." without further specifying the spatial relationship between teat cup and attachment member.

Therefore, the feature that "[each] attachment member carries the respective teat cup" as specified in Claim 1 of the main request has a clear basis in the application as filed.

2.2 The dependent claims and the description were amended only in order to adapt them to the amended Claim 1.

2.3 The amendments do not contravene the requirements of Article 123 EPC and do not give rise to objections under Article 84 EPC.

3. The objections raised by the appellant during the written phase of the appeal proceedings concerning insufficiency of the disclosure and the claimed priority date of the patent (see the above section III) were linked to Claim 1 as maintained by the decision under appeal and do not apply to the Claim 1 according to the main request of the respondent.

4. *The prior art*

4.1 Document US-A-3 726 252 (D4) discloses an implement for milking an animal, such as a cow, provided with teat cups (16a, 16b) and with a positioning means (10, 12, 14) for bringing the teat cups under the respective teats of the animal's udder, each teat cup being connected to the positioning means by a milk conduit comprising an upper stem portion (16c) and a lower flexible portion, each teat cup being connected to the position means by the respective flexible portion to form a flexible connection during milking, a piston and cylinder unit 34 and a cable 38 being provided for each teat cup, each piston and cylinder unit 34, after milking, being energized to pull the respective teat cup individually towards the positioning means.

4.2 Document EP-A-91 892 (D3) discloses at least two

different embodiments of a robot arm device for applying teat cups (which are separated from the robot arm device when they are in their rest position) to the teats of the udder of an animal.

The first embodiment (see particularly Figures 5 and 6), concerns a robot arm device with a positioning and attachment means (e.g. the arm 15 and the support 16) for bringing and subsequently attaching the teat cups simultaneously to the teats of the animal's udder, the positioning and attachment means comprising for each teat cup a carrying means (e.g. the L-shaped extension of the support 16, 19) for carrying one teat cup, a moving means being provided for moving the positioning and attachment means and for automatically applying the teat cups simultaneously to the teats of the udder.

The second embodiment (see particularly Figures 10 to 12) concerns a robot arm device provided with a positioning and attachment means (comprising e.g. the operating arm 15 and the grasping means 20) suitable for individually bringing and subsequently attaching the teat cups to the teats of the animal's udder, the positioning and attachment means comprises a single carrying means (e.g. the grasping means 20) suitable for carrying only one teat cup, the positioning and attachment means being associated with a moving means, the moving means is suitable for moving the positioning and attachment means for automatically applying the teat cup to the respective teat.

According to both embodiments, the teat cups are free to move during milking, because there is no connection

between the robot arm and the teat cups.

4.3 Document D7 on page 739 refers to an automatic milking system developed by CEMAGREF. According to the appellant this document relates to a milking implement provided with four robot arms each carrying a teat cup.

5. *Novelty - main request of the respondent*

The subject-matter of Claim 1 is novel. Novelty was not disputed.

6. *Inventive step - main request of the respondent*

6.1 The parties consider that the closest prior art results from document D4.

It is clear from the disclosure of this document that the teat cups are connected to the teats of the animal's udder by hand and, after milking, are pulled off the teats with the aid of the drive means, so that they fall downwardly and hang in an undefined position.

The subject-matter of Claim 1 differs from the content of document D4 (see the above section 4.1) at least in that

(i) the positioning means comprises **moving means** for moving the teat cups **automatically** to the respective teats;

(ii) there is a moving means **for each teat cup**;

- (iii) for each teat cup there is **an attachment member** carrying the respective teat cup;
- (iv) each drive means, after attachment of the teat cup to the respective teat, **is energized to relax the flexible connection member** so as to form the flexible connection, so that each teat, during the milking, is spaced apart from the attachment member;
- (v) each drive means, after milking, is energized to pull the teat cup **by means of the flexible member against the attachment member in a predetermined position.**

6.2 The distinguishing features (i) to (v) result in the provision of a milking implement which not only permits automatic application of the teat cups but also allows the animal to move during milking without the need to move the whole mass of the implement.

The problem to be solved is to provide a milking implement having a favourable construction with respect to the freedom of movement of the animal and capable of automatically applying the teat cups.

6.3 With respect to the problem of automatically applying the teat cups, the appellant referred to document D3. The appellant asserted that this document teaches how to apply the teats cups automatically to the teats of the animal with the aid of a robot arm and argued that the skilled person by combining the disclosure of this document with that of document D4 would arrive at the

claimed subject-matter.

The board cannot accept this argument for the following reasons.

Document D3 (see the above section 4.2) concerns a milking implement comprising a single robot arm which either applies all the teat cups simultaneously to the teats of the udder (see the embodiment according to Figures 5 and 6) or applies the teat cups one by one (see the embodiment according to Figures 10 to 12). In other words, document D3 does not suggest the idea of associating to each teat cup an attachment member, a moving means and a flexible member as defined in the distinguishing features (i) to (v).

Moreover, neither document D3 nor document D4 suggests the idea of using the flexible member which connects the respective teat cup to the attachment means as a means for pulling the respective teat cup towards and against the attachment member directly in a predetermined position (as indicated by feature (v) above).

6.4 The appellant also referred to document D7, asserting that this document teaches that a robot arm is associated to each teat cup. In this respect the appellant asserted that the distinguishing features allowing the automatic application of the teat cups are known from document D3 and the features according to which each teat cup is associated to a moving means are known from document D7. The appellant argued that these distinguishing features do not relate to each other and that, therefore, the skilled person would combine the disclosures of documents D3 and D7 with the disclosure of document D4 and arrive at the claimed subject-matter.

The board cannot accept this argument because the combination of the disclosures of documents D4, D3 and D7 - even if this combination would be considered as possible by the skilled person - would not bring the skilled person to the claimed subject-matter *inter alia* since document D7 does not suggest feature (v) above.

6.5 Having regard to the above comments, the board finds that the subject-matter of the independent Claim 1 is not obvious to a person skilled in the art.

6.6 Therefore, the subject-matter of the independent Claim 1 is considered as involving an inventive step as required by Article 56 EPC.

7. The patent can therefore be maintained on the basis of the independent Claim 1 and dependent Claims 2 to 27 according to the main request of the respondent.

8. Therefore, there is no need to examine the auxiliary request of the respondent.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent in the following version:

Claims: 1 to 27 of the main request as filed during the oral proceedings.

Description: Insertion for page 2, as well as columns 1 and 2 as filed during the oral proceedings,
Columns 3 to 11 as granted

Drawings: Figures 1 to 6 as granted.

The Registrar: The Chairman:

N. Maslin C. Andries