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**D E C I S I O N**  
**of 20 February 2002**

**Case Number:** T 0716/99 - 3.2.4

**Application Number:** 91202804.0

**Publication Number:** 0480541

**IPC:** A01J 7/00

**Language of the proceedings:** EN

**Title of invention:**

A method of automatically milking animals and an implement for performing same

**Patentee:**

MAASLAND N.V.

**Opponent:**

DeLaval International AB

**Headword:**

Milking/MAASLAND

**Relevant legal provisions:**

EPC Art. 123(3)

**Keyword:**

"Violation of Article 123(3) EPC"

**Decisions cited:**

G 0001/93

**Catchword:**

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Case Number: T 0716/99 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 20 February 2002**

**Appellant:** MAASLAND N.V.  
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**Representative:** Corten, Maurice Jean F.M.  
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**Respondent:** DeLaval International AB  
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**Representative:** Harrison, Michael Charles  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 7 May 1999 revoking  
European patent No. 0 480 541 pursuant to  
Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** P. Petti  
H. Preglau

## Summary of Facts and Submissions

I. The European patent No. 480 541 results from the European patent application No. 91 202 804.0 filed as a divisional application of the earlier European patent application No. 201 585.2 filed on 21 July 1988 and published under the publication number EP-A-300 582 (parent application, hereinafter PA).

The independent Claims 1 and 4 of the patent as granted read as follows:

1. Method of automatically milking animals, e.g. cows, in a milking parlour, whereby teat cups (80) carried by a robot arm (7) are moved individually upwardly to respective teats, whereby a vacuum is produced in the teat cups (80) so that they can suck to said teats, characterized in that the method comprises for each teat cup (80) the step of releasing a teat cup (80) from the robot arm (7), whereby the teat cup (80) remains connected therewith via the same flexible connecting member (81), by means of which the teat cup (80) is pulled towards and against the robot arm (7) in a predetermined position when the milking flow through said teat cup (80) had ended.
  
4. Implement for performing the method as claimed in any one of the preceding claims, which implement comprises a milking parlour and a milking robot with a robot arm (7) carrying teat cups (80), which robot arm can be turned for outside the milking parlour to under the animal's udder and be positioned therebelow by means of a sensor for establishing the position of the teats and

means (87 - 97) for individually moving upwardly said teat cups (80) to respective teats, whereby a vacuum is produced in the teat cups (80), so that they can suck to said teats, characterized in that during milking the teat cups (80) are able to move freely relative to the robot arm (7), the implement further comprising a flexible connecting member (81), forming a flexible connection between the robot arm (7) and a teat cup (80) during milking and being capable of pulling said teat cup (80) towards and against the robot arm (7) when the milking flow through said teat cup (80) has ended.

II. An opposition based upon Articles 100(a) and (c) EPC was filed against this patent. The patent was revoked by the decision of the opposition division dispatched on 7 May 1999.

In the decision under appeal, the opposition division found that the grounds for opposition mentioned in Article 100(c) EPC prejudiced the maintenance of the patent.

III. On 5 July 1999 the proprietor of the patent (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 7 September 1999.

IV. With the letter dated 21 January 2002 the opponent (hereinafter respondent) objected to Claims 1 and 4 of the patent as granted under Article 100(c) EPC, *inter alia* by arguing that the inclusion of the expression "when the milking flow through said teat cup has ended"

in Claims 1 and 4 constituted added subject-matter over the content of the PA as filed.

V. Oral proceedings were held on 20 February 2002.

During the oral proceedings the appellant filed amended Claims 1 and 4 upon which a sole request was based.

The independent Claims 1 and 4 of the appellant's request (which hereinafter will be referred to as the present Claim 1 and the present Claim 4) read as follows:

1. Method of automatically milking animals, e.g. cows, in a milking parlour where the animal can be present in a substantially predetermined position, whereby teat cups (80) carried by a robot arm (7) are moved individually vertically upwardly relative to the robot arm (7) to respective teats, during which a vacuum is produced in the teat cups (80) so that they can suck to said teats, a teat cup prior to being moved upwardly being brought under a relevant teat by turning the robot arm (7) from outside the milking parlour to under the animal's udder and by positioning the robot arm (7) therebelow by means of a sensor for establishing the position of the teats **characterized in that** the method comprises for each teat cup (80) the step of thereafter releasing a teat cup (80) from the robot arm (7), whereby the teat cup (80) remains connected therewith via the same flexible connecting member (81), by means of which the teat cup (80) is pulled towards and against the robot arm (7) where it will be kept in a predetermined position

against a teat cup carrier (76) when the milking procedure with the relevant teat cup (80) has ended.

4. Implement for performing the method as claimed in any one of the preceding claims, which implement comprises a milking parlour where the animal can be present in a substantially predetermined position and a milking robot with a robot arm (7) carrying teat cups (80), which robot arm can be turned from outside the milking parlour to under the animal's udder and be positioned therebelow by means of a sensor provided near the end of the robot arm (7) for establishing the position of the teats and means (87 - 97) for individually moving upwardly said teat cups (80) relative to the robot arm (7) to respective teats, during which a vacuum is produced in the teat cups (80), so that they can suck to said teats, **characterized in that** during milking the teat cups (80) are able to move freely relative to the robot arm (7), the implement further comprising a flexible connecting member (81), forming a flexible connection between the robot arm (7) and a teat cup (80) during milking and being capable of pulling said teat cup (80) towards and against the robot arm (7) when the milking procedure with the relevant teat cup (80) has ended.

VI. The appellant essentially argued that the amended claims overcame the objections under Article 100(c) EPC and did not contravene Articles 123(2) and (3) EPC.

The respondent *inter alia* argued the present Claims 1 and 4 had been amended in such a way as to extend the

protection conferred to the patent as granted  
(Article 123(3) EPC).

VII. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the present Claims 1 and 4.

The respondent requested that the appeal be dismissed.

### Reasons for the Decision

1. The appeal is admissible.

2. *Admissibility of the amendments with respect to Article 123(3) EPC*

2.1 The present Claims 1 and 4 differ (respectively) from Claims 1 and 4 of the patent as granted *inter alia* in that the expression

(a) "when the milking **procedure with** the relevant teat cup (80) has ended " (in the present Claims 1 and 4; emphasis added)

has replaced the expression

(a') "when the milking **flow through** said teat cup (80) has ended " (in Claims 1 and 4 as granted; emphasis added).

These expressions relate to the disconnecting of the teat cup from the teat of the animal's udder.

2.2 According to Claim 1 as granted the teat cup is pulled by means of a flexible connecting member towards and against the robot arm "when the milk flow ... has ended" while, according to Claim 4 as granted, the flexible connecting member is capable of pulling the teat cup towards the and against the robot arm "when the milk flow ... has ended".

Expression (a') can be found in the introductory part of the description of the patent as granted which contains the statements corresponding to what is claimed in Claim 1 (column 1, lines 18 to 26; see particularly lines 25 and 26) and in Claim 4 (column 1, line 46 to column 2, line 4; see particularly column 2, lines 3 and 4).

According to a passage in the description of the patent (column 7, lines 5 to 9), which corresponds to a passage in the description of the PA as filed (column 15, lines 22 to 27), the teat cup can be pulled against the teat cup carrier "at any desired moment, e.g. when the milking procedure has ended or when for any desired reason the teat cup is not connected to the teat". Thus, this passage of the description of the patent refers to a general item of information ("at any desired moment") and to two specific conditions ("e.g. when the milking procedure has ended" and "[e.g.] ... when the teat cup is not connected"). Expression (a'), however, defines a further specific condition, which is different from these two last specific conditions.

There is no inconsistency between the terms of the claims and the description of the patent, in so far as the expression (a') is covered by the general information "at any desired moment" and in so far as



the two specific conditions, due to the term "e.g.", are indicated in the description of the patent as being optional possibilities. Therefore, in the present case, the claims have to be seen as being the most important source for interpretation of the expression (a'). In the context of Claim 1 as well as of Claim 4 of the patent as granted, this expression clearly defines a condition to be met in order to decide whether (or not) the teat cup has to be disconnected from the teat. This condition clearly relates to the **milk flow through the teat cup**. A skilled person reading Claim 1, which relates to a method for **automatically** milking animals, as well as Claim 4 which relates to an implement for performing the method (ie to an implement for **automatically** milking animals), would immediately realize that each of these claims defines a specific technical teaching according to which before the relevant teat cup is disconnected from the teat it has to be established whether there is no flow of milk through the teat cup.

However, it has to be noted that this specific technical teaching cannot be derived from the PA as filed, which neither refers *expressis verbis* to "the milk flow through said teat cup" nor implicitly suggests the detection of the end of milk flow in order to disconnect the teat cup from the teat. According to the description of the PA as filed, a teat cup which has previously been connected to a teat can be disconnected from the teat either "at any desired moment" (without specifying the condition to be met) or when the milking, ie the milking procedure, with the relevant teat cup has ended (see column 10, lines 2 to 9; column 15, lines 22 to 27). Therefore, the granted patent which results from a divisional

application would have contravened Article 100(c) EPC.

Having regard to the above comments, the expression (a') has to be considered as a limiting feature in the meaning of the decision G 1/93 (OJ EPO 1994, 541). Claims 1 and 4 of the patent as granted define, respectively, a method of milking and a milking implement in which the relevant teat cup can be disconnected from the teat **only after it has been established that there is no flow through the relevant teat cup.**

- 2.3 Present Claims 1 and 4 no longer refer to the end of the **milk flow through the** teat cup but to the end of the **milking procedure with the** relevant teat cup.

Thus, the expression (a) clearly defines a condition to be met which is different from that defined by expression (a').

It has to be noted that this amendment (see section 2.1 above) was made to overcome objections under Article 100(c) EPC.

- 2.3.1 The appellant asserted that the end of the milking procedure implies the end of the milk flow (in so far as when the vacuum pulsation of the teat cup is stopped the milk flow is also stopped) and argued that the expression (a) is at least equivalent in scope with expression (a').

This argument is irrelevant because it does not concern the issue which is decisive for the present case, namely "extension of scope". It is true that the end of the milking procedure concerning a particular quarter

of the udder implies the end of the milking flow through said quarter but only in so far as the end of the vacuum pulsation results in stopping the milking flow from said quarter. However, the decisive issue does not concern what happens when the milking procedure ends but relates to the condition to be met when it has to be decided to stop the vacuum pulsation and successively to disconnect the teat cup.

- 2.4 According to the present Claims 1 and 4, the teat cups are disconnected when the milking procedure with the relevant teat cup has ended without specifying the conditions under which the milking procedure is considered to have ended. In this respect, the respondent argued during the oral proceedings that the milking procedure with the relevant teat cup can be considered to have ended even if milk is still flowing through the teat cup, for instance when the milk flow through the relevant teat cup is under a limited value or when an expected yield of milk coming from the relevant quarter has been reached. The board finds these two possible conditions which may determine the end of the milking procedure as being realistic. These conditions have nothing in common with the specific condition "no flow through the teat cup".

Thus, the present Claims 1 and 4 also encompass cases in which the relevant teat cup can be disconnected from the teat of the animal when the milk is still flowing, while these cases were not covered by Claims 1 and 4 of the patent as granted. Thus, the expression (a) results in an extension of the scope of Claims 1 and 4 in comparison with the patent as granted (Article 123(3) EPC).

2.4.1 The appellant argued that if the expression (a) were to be considered as being broader than the expression (a') in the context of Claim 1, this would not apply to Claim 4, in so far as Claim 4 does not relate to a method implying the activity of disconnecting the teat cup but to an implement for milking animals.

The board cannot accept this argument for the following reasons:

The present Claim 4 refers to a flexible connecting member **which is capable of** pulling the teat cup towards and against the robot arm when the milking procedure with the relevant teat has ended. Thus, this claim defines, due to the term "capable of", the function of the flexible connecting member with respect to the teat cup and, due to expression (a), the condition to be met in order to decide whether (or not) the teat cup has to be disconnected, ie whether (or not) the function has to be performed. In this respect, the comments in sections 2.2 to 2.4 above also apply for Claim 4.

2.5 Therefore, the present Claims 1 and 4 contravene the requirements of Article 123(3) EPC.

## **Order**

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries