DECISION
of 3 June 2005

Case Number: T 0961/03 - 3.2.4
Application Number: 96920821.4
Publication Number: 0903980
IPC: A01K 29/00
Language of the proceedings: EN

Title of invention:
A system and method for monitoring the physical condition of a herd of livestock

Patentee:
ALFA LAVAL AGRI AB

Opponent:
Maasland N.V.

Headword:
Confidence interval/ALFA LAVAL

Relevant legal provisions:
EPC Art. 100(c), 111(1)
EPC R. 29(1)

Keyword:
"Clarified content of the claim relevant for the issue of added subject-matter"
"Added subject-matter (no)"
"Remittal to the first instance for consideration of the undecided issues"

Decisions cited:
T 0190/99

Catchword:

EPA Form 3030 06.03
Case Number: T 0961/03 - 3.2.4

DECISION
of the Technical Board of Appeal 3.2.4
of 3 June 2005

Appellant: ALFA LAVAL AGRI AB
(Proprietor of the patent) P.O. Box 39
S-147 21 Tumba (SE)

Representative: Prins, Adrianus Willem, Mr. Ir.
Vereenigde
Nieuwe Parklaan 97
NL-2587 BN Den Haag (NL)

Respondent: Maasland N.V.
(Opponent) Weverskade 10
NL-3155 PD Maasland (NL)

Representative: Corten, Maurice Jean F.M.
Octrooibureau Van der Lely N.V.
Weverskade 110
NL-3147 PA Maassluis (NL)

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 16 July 2003 revoking European patent No. 0903980 pursuant to Article 102(1) EPC.

Composition of the Board:
Chairman: M. Ceyte
Members: P. Petti
T. Bokor
Summary of Facts and Submissions

I. The European patent No. 903 980 was revoked by decision of the opposition division dispatched on 16 July 2003.

The opposition division found that the ground for opposition mentioned in Article 100(c) EPC prejudiced the maintenance of the patent as granted.

The independent claims 1 and 5 of the patent as granted read as follows:

"1. A system for monitoring the physical condition of a herd of livestock comprising:

a measurement device (15, 16, 18, 19, 20) for measuring a value of at least one property associated with an individual, identified animal of the herd,

an identification structure (20) for identifying individual animals of said herd,

a data processing structure (21) operatively connected to said measurement device (15, 16, 18, 19, 20) and to said identification structure (20), and

a signalling device (22) for generating attention signals connected to said data processing structure (21),

said data processing structure being programmed for:

collecting measurement data in accordance with measured values of said at least one property
associated with each individual, identified animal,
determining a prediction with a permissible deviation for at least one subsequent measured value of said at least one property for said individual, identified animal from said stored measurement data associated to said individual, identified animal,
measuring a value of at least one property at regular intervals from each individual, identified animal,
comparing measured values with corresponding predicted values and said permissible deviations, and
activating the signalling device (22) to generate an attention signal in response to an error between the value of said at least one measured property and the prediction for that value larger than said permissible deviation,

characterized in that,
said data processing structure is further programmed for:

collecting error data in accordance with previously measured and predicted values of said at least one property associated with each individual, identified animal,
determining said permissible deviation in the form of a confidence interval for said prediction for each individual, identified animal from said error data,
comparing said measured values with said corresponding predicted values and said confidence intervals (step 28), and carrying out said generation of said attention signal in response to an error between the measured value of said at least one measured property and said prediction for said value above a level determined by said confidence interval."

"5. A method for automatically monitoring the physical condition of a herd of livestock including the steps of:

collecting measurement data in accordance with previously measured values of at least one measured property for each individual, identified animal (step 31), measuring a value of said at least one property at regular intervals from each individual, identified animal (step 24), determining at least one prediction and permissible deviation for at least one measured value of said at least one property for each individual, identified animal from said collected measurement data regarding that individual, identified animal (step 26), comparing said measured values with said corresponding predicted values and said permissible deviations (step 28), and generating an attention signal each time in response to an error between said measured value of said at least one measured property and said prediction for said measured value above a predetermined permissible deviation (step 29),
characterized by

collecting error data in accordance with previously measured and predicted values of at least one measured property for each individual, identified animal (step 31), determining said permissible deviation in the form of a confidence interval for said prediction for each individual, identified animal from said error data (step 27), and comparing said measured values with said corresponding predicted values and said confidence intervals (step 28), wherein said generation of said attention signal is each time in response to an error between the measured value of said at least one measured property and said prediction for said value above a level determined by said confidence interval."

II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 11 September 2003 and simultaneously paid the appeal fee.

III. With the statement setting out the grounds of appeal received on 26 November 2003, the appellant filed a set of amended claims 1 to 8 upon which three subsidiary requests were based.

IV. Oral proceedings before the board were held on 3 June 2005.

The appellant requested that the decision under appeal be set aside and the case be remitted to the first
instance for further prosecution on the basis of the patent as granted (main request) or, auxiliarily, on the basis of either claims 1 to 8 as filed with letter of 26 November 2003 (first auxiliary request) or claims 1 to 4 filed with the letter of 26 November 2003 (second auxiliary request) or claims 5 to 13 of the patent as granted (third auxiliary request) or claims 5 to 8 filed with the letter of 26 November 2003 (fourth auxiliary request).

The opponent (hereinafter respondent) requested that the appeal be dismissed.

V. The appellant essentially argued that the subject-matter of claims 1 and 5 as granted had a basis in the application as filed and did not contravene the requirements of Article 100(c) EPC.

VI. The respondent contested the arguments of the appellant essentially by arguing as follows:

(i) The expression "permissible deviation" in the pre-characterising portions of claims 1 and 5 as granted has no basis in the application as filed.

(ii) The features in claims 1 and 5 as granted according to which a permissible deviation for a prediction is determined from the stored or collected measurement data are not disclosed in the application as filed.

(iii) The data processing structure was not originally disclosed as being programmed for carrying out the
generation of the attention signal itself, as defined in claim 1 as granted.

(iv) The feature "above a level determined by said confidence interval" in claim 1 as granted is not supported by the application as filed.

Reasons for the Decision

1. The appeal is admissible.

2. Article 100(c) EPC

2.1 Claim 1 as granted contains the following features which are included in the preamble and in the characterising portion respectively:

a) "determining a prediction with a permissible deviation ... from said stored measurement data", and

b) "determining said permissible deviation in the form of a confidence interval ... from said error data".

Claim 5 as granted contains the following method steps a') and b') in the preamble and in the characterising portion respectively:

a') "determining a prediction and a permissible deviation ... from said stored measurement data...", and
b') "determining said permissible deviation in the form of a confidence interval ... from said error data".

2.1.1 The respondent essentially argued that the expression "permissible deviation" referred to in features a) and a') represents a generalisation of the expression "confidence interval" contained in claims 1 and 5 of the application as filed without there a basis for this generalisation.

2.1.2 Although the application as filed only refers to a "confidence interval" without referring to a "permissible deviation", the board cannot accept the respondent's argument for the following reasons:

(i) Features a) and a') have to be read in conjunction with features b) and b') respectively. Thus, although "a permissible deviation" represents a more general definition (genus) with respect to the specific definition (species) of "a confidence interval", there is no added matter since features b) and b') specify that the "permissible deviation is "in the form of a confidence interval".

(ii) The expression "permissible deviation" was introduced into the preamble of independent claims 1 and 5 of the patent during the examination proceedings because the examining division had requested that the independent claim be brought into the two-part form required by Rule 29(1) EPC. This expression defines a feature common to the prior art cited in the patent specification and to the claimed invention.
However, it does not contravene the requirements of Article 123(2) or 100(c) EPC in so far as the characterising portions of claims 1 and 5 make it clear that the permissible deviation is in form of a confidence interval.

2.2 The respondent interpreted the above mentioned features a) and a') as defining the possibility of determining the permissible deviation from the measurement data and argued that there is no basis for such a possibility in the application as filed, which discloses "the confidence interval for the prediction" (i.e. the permissible deviation) as being determined from the error data (claims 1 and 5).

2.2.1 The board cannot accept this respondent's argument for the following reasons:

(i) In order to establish the meaning of a claim any illogical interpretation should be ruled out and the whole disclosure of the patent has to be taken into account (see e.g. T 190/99 of 6 March 2001, not published).

(ii) In the present case, in the pre-characterising portions of claims 1 and 5 as granted the determination of the permissible deviation is linked to the stored or collected measurement data, while in the characterising portion the confidence interval (i.e. a more specific permissible deviation) is linked to the error data.
Furthermore, according to characterising portion of claims 1 and 5, the error data are collected "in accordance with previously measured and predicted values ..." (emphasis added). This is consistent with the description of the patent, according to which "the data processing structure is programmed for storing error data in accordance with errors between predicted values and measured values ..." (see paragraph [0028] of the patent specification; emphasis added).

Thus, on the basis of the whole disclosure of the patent, it has to be understood that the pre-characterising portions of claims 1 and 5 define at a general level the permissible deviation as being determined - indirectly - from the measurement data in so far as the measured values are used to determine the error data, while the characterising portions define in a more specific manner the permissible deviation (i.e. the confidence interval) as being determined from the error data.

2.2.2 The respondent based this argument upon an interpretation of claims 1 and 5 according to which feature a) in the preamble of claim 1 is inconsistent with feature b) in the characterising portion and feature a') in the preamble of claim 5 is inconsistent with feature b') in the characterising portion of claim 5.

If it is assumed that there is an inconsistency between features of a granted claim, the features which are inconsistent with each other are to be construed in the
context of the description and drawings of the patent specification.

In the present case, it is clear from the patent specification that "the error data are stored in accordance with predicted values and corresponding measured values ...., and a confidence interval for a prediction is determined ... from the error data characterizing the distribution of errors ... " (see paragraph [0011] of the patent specification; emphasis added). On the other hand, it also clear from the patent specification that the prediction is determined from the stored measurement data (see paragraph [0027] of the patent specification). Therefore, the skilled person when interpreting claims 1 and 5 as granted in order to resolve any possible inconsistency between features of these claims will immediately understand that the prediction is determined from the stored or collected measurement data and the permissible deviation (in the form of a confidence interval) is determined from the error data. Such an interpretation leads to define a subject-matter which has a clear basis in the application as filed, in so far as claim 5 as filed contains the features "determining at least one prediction ... from said collected measurement data ..." (see page 20, lines 4 to 7) and "determining a confidence interval for said prediction ... from said error data" (see page 20, lines 9 and 10).

2.3 The feature in claim 1 as granted according to which "[said data processing structure is programmed] for carrying out said generation of said attention signal in response to an error between the measured value of said at least one measured property and said prediction
for said value above a level determined by said confidence interval" is directly and unambiguously derivable from claim 5 of the application as filed in so far as this claim contains the feature "generating an attention signal in response to an error between the value of said at least one measured property and the prediction for that value above a predetermined level determined by said confidence interval" (see page 20, lines 14 to 17; emphasis added).

2.3.1 The respondent argued that the above quoted feature in claim 1 as granted has a wording which differs from that of the corresponding feature in claim 5 of the application as filed which contains the word "predetermined" (see the letter dated 29 April 2004 (page 1, point 4).

The board cannot accept this argument because the meaning of these features is the same.

2.3.2 The respondent also submitted that the above quoted feature in claim 1 as granted - in so far as it refers to a data processing structure programmed "for carrying out said generation of said attention signal" - is not disclosed in the application as filed since "the alleged description in the sub-claims and the disclosure is restricted to the respective embodiments, each having a number of further features which are not (but should be) part of the present claim 1" (see the letter dated 29 April 2004 (page 1, point 3).

The board cannot accept this argument because claim 1 of the application as filed contains the features "a signalling device (22) for generating attention signals
connected to said data processing structure" (see page 18, lines 11 and 12) and "[said data processing structure being programmed] for activating the signalling device to generate an attention signal ..." (see page 18, lines 13 and 29 to 32) which define a data processing structure programmed for carrying out said generation of an attention signal as specified in claim 1 as granted.

2.4 Having regard to the above considerations, the objections put forward by the respondent under Article 100(c) EPC do not prejudice the maintenance of the patent as granted.

3. Further proceedings

In a previous communication, the board had informed the parties of its intention to remit the case to the opposition division for further prosecution, since the issue of whether the claimed subject-matter involves an inventive step had not been considered by the opposition division.

Thus, the board, in exercising its discretion under Article 111(1) EPC, considers it appropriate to remit the case to the first instance for consideration of inter alia the issue of inventive step having regard to claims 1 and 5 as granted.
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 for further prosecution.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte