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D E C I S I O N
of 23 January 2002

Case Number: T 0124/00 - 3.2.4

Application Number: 90200381.3

Publication Number: 0389013

IPC: A01K 1/12

Language of the proceedings: EN

Title of invention:

An accommodation for a number of animals, dairy animals in particular

Patentee:

MAASLAND N.V.

Opponent:

Alfa Laval Agri AB

Headword:

-

Relevant legal provisions:

EPC Art. 56
EPC R. 71(2)

Keyword:

"Inventive step (yes)"

Decisions cited:

-

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0124/00 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 23 January 2002

Appellant: MAASLAND N.V.
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 13 December
1999 concerning maintenance of European patent
No. 0 389 013 in amended form.

Composition of the Board:

Chairman: C. A. J. Andries
Members: C. D. A. Scheibling
C. Holtz

Summary of Facts and Submissions

I. The opposition division's interlocutory decision to reject the main request and to maintain the patent on the basis of the claims filed during oral proceedings was posted on 13 December 1999.

On 27 January 2000 the appellant (patentee) filed an appeal and paid the appeal fee.

The statement of grounds was filed on 10 April 2000.

II. The following documents were cited during the appeal proceedings:

D1: EP-A-0 270 165

D2: DE-A-29 28 930

D3: US-A-3 246 631

III. Oral proceedings were held on 23 January 2002.

Although duly summoned the respondent (opponent) did not appear. He informed the Board by letter of 16 November 2001 that he would not be attending the proceedings. In accordance with the provisions of Rule 71(2) EPC the proceedings were continued without him.

IV. During the appeal proceedings the respondent maintained the arguments presented before the opposition division, i.e. that the claims 1 to 4 as granted did not involve an inventive step having regard to the above cited prior art.

The appellant countered the respondent's arguments. *Inter alia* the appellant contested the interpretation given by the opposition division to the cleaning system of D2, which was not using the same cleaning device for both cleaning the udder and the floor, as the patent in suit did.

V. Requests:

The appellant (patentee) requested that the decision under appeal be set aside and that the patent be maintained as granted.

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

VI. Claim 1 as granted reads:

"An accommodation (1) for dairy animals such as cows, comprising a closet type of device (9) with an automatic milking apparatus (26) and a feeding system (15), said closet type of device (9) being connected to a storage place (25) for storing droppings of animals, said storage place (25) being provided near the accommodation (1), the closet type of device (9) having a floor, the rear part of which being structured as a grid floor (19), the closet type of device (9) further being provided with an automatic cleaning device comprising a washing device (22) for cleaning the place (19) of the closet type of device where the droppings are deposited, characterized in that washing device (22) is designed in the form of sprinklers or showers which are electronically controlled and located at a side of the closet type of device (9) and at such a level that water sprinkled during operation of the

washing device (22) is directed obliquely rearwardly towards the udder and also towards the rear part of the floor of the closet type of device (9) where the droppings are deposited."

Reasons for the Decision

1. The appeal is admissible.

2. *Interpretation of claim 1 as granted:*

In the light of the description, the "storage place" in the passage "an accommodation (1) for dairy animals, such as cows, comprising a closet type of device (9) ... being connected to a storage place (25) for storing droppings of animals, said storage place (25) being provided near the accommodation (1)" is to be considered as being a part of the "accommodation".

The passage "... washing device (22) is designed in the form of sprinklers or showers which ..." should be interpreted as meaning "washing device (22) is designed in the form of sprinkler nozzles or shower nozzles which ...".

The passage "... at such a level that water sprinkled during operation of the washing device (22) is directed obliquely rearwardly towards the udder and also towards the rear part of the floor of the closet type of device (9)..." should be interpreted as meaning "at such a level that water sprinkled during operation of the washing device (22) is directed obliquely rearwardly and simultaneously towards both the udder and the rear part of the floor of the closet type of device

(9)..."(see application as filed, page 14, lines 27 to 33).

The Board finds that these interpretations are the sole possible ones which are unequivocally disclosed.

The appellant also agreed to this interpretation.

3. *Closest prior art:*

The Board considers D1 to be the closest prior art document. D1 refers to an accommodation for dairy animals such as cows, comprising a closet type of device (container 1 shown in Figure 1) with an automatic milking apparatus (19) and a feeding system (18, 20, 59), said closet type of device (1) being connected to a storage place (column 3, lines 25 to 28) for storing droppings of animals, said storage place being provided near the accommodation, the closet type of device (1) having a floor, the rear part of which being structured as a grid floor (10), the closet type of device (1) further being provided with an automatic cleaning device comprising a washing device for cleaning the place of the closet type of device where the droppings are deposited (see column 3, lines 13 to 15 where a sprinkler installation for cleaning the walls of the container is disclosed; column 4, lines 53 to 55 where it is said that the teat cups are cleaned and column 8, lines 40 to 43, where it is disclosed that "installations for automatically cleaning and rinsing the equipment, accommodation and/or cows can be incorporated into the shown embodiments").

However, D1 gives no other information as to which specific parts of the hardware and cows are cleaned and

by what means.

Thus, D1 discloses the features of the precharacterizing part of claim 1 as granted.

This point was not in dispute between the parties.

4. *Problem and solution:*

4.1 Thus, the accommodation according to claim 1 as granted differs from that disclosed in D1 in that:

the washing device is designed in the form of sprinklers or showers which are electronically controlled and located at a side of the closet type of device and at such a level that water sprinkled during operation of the washing device is directed obliquely rearwardly towards the udder and also towards the rear part of the floor of the closet type of device where the droppings are deposited.

4.2 Therefore, the problem to be solved by the invention is to provide an efficient way of cleaning the animal's udder as well as of the place of the closet type of device where the droppings are deposited.

4.3 This is achieved by the characterizing features of claim 1 and especially in that the washing device is so located that it delivers water obliquely rearwardly towards the udder and also towards the rear part of the floor of the closet type of device where the droppings are deposited, so that both the rear part of the floor and the animal's udder are cleaned simultaneously by the same single means.

5. *Inventive step*

5.1 As already put forward, D1 does not indicate a specific solution to the above problem.

5.2 D2 mainly teaches a skilled person to provide a film of water on the floor of the milking parlour during milking process in order to avoid droppings to adhere to the floor (page 10, ultimate paragraph), the removing of the droppings taking place once the cows have left the milking parlour (see page 11, lines 6 and 7, 27 to 30; page 12, paragraph 4, three first lines) by increasing the water pressure in the water pipe (page 11, lines 6 to 9). Alternatively thereto, D2 proposes to flood the floor so that droppings are washed away.

5.3 This can only be achieved, because in D2 the floor is a solid concrete floor, that is not structured as a grid floor (as it is in D1). This means that the teaching of D2 cannot be applied to a closet type of device where the floor or the rear part of the floor is structured as a grid floor, because it would neither be possible to flood this type of floor nor to provide it with a film of water.

Consequently, a person skilled in the art would not contemplate applying the teaching of D2 to a closet type of device according to D1.

5.4 Furthermore, even if it was possible to apply the teaching of D2 to an accommodation according to D1, the resulting accommodation would not disclose all features of claim 1 in suit. As a matter of fact, the first paragraph of page 12 of D2 solely discloses, that the

same liquid can be used to shower the udder and to clean the floor and that for this purpose, udder showers or manually controllable shower heads are provided.

D2 does not state that these showers are identical with the nozzles (Zerstäuberdüsen 14) which are meant to clean the floor (see page 10, ultimate paragraph; page 11, lines 8,9), said showers are solely said to cooperate with the cleaning system (page 12, lines 7, 8).

Therefore D2 does not disclose that the water is directed simultaneously towards both the udder and the rear part of the floor.

Additionally, it appears from D2, figures 1, 2, 3 and 4 that the sprinklers are positioned near the pit and behind the animal and although they even may be considered to be positioned, although near the pit, somewhat laterally of the animal (possibility which is never mentioned) and although it is said page 9, second paragraph that the piping 15, 16 supporting the sprinklers can be installed in any direction, this information is not sufficient to conclude that the sprinkled water will be directed obliquely rearwardly, and even less that it will be directed in the direction of both the udder and the rear part of the floor near the pit.

Therefore D2 does not disclose that water sprinkled during operation of the washing device is directed obliquely rearwardly.

Thus, even a hypothetical combination of D1 and D2

would not lead to the subject-matter of claim 1 in suit.

5.5 Document D3 is concerned with delivering confined streams of warm water upon the cow's udder. There is no reference of directing the water towards the floor. The problem of cleaning the floor is not addressed by said document. Therefore D3 is less relevant than D2 and cannot lead to the claimed features either.

5.6 Accordingly, neither a combination of the documents D1 and D2, nor a combination of documents D1 and D3 would lead to the subject-matter of claim 1 as granted, which consequently, involves an inventive step.

5.7 Claims 2 to 4 are dependent on claim 1. These claims are therefore patentable by virtue of claim 1.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:

G. Magouliotis

C. A. J. Andries