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D E C I S I O N
of 2 July 2003

Case Number: T 0828/00 - 3.2.4

Application Number: 93202948.1

Publication Number: 0595409

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:
A construction for milking cows

Patentee:
MAASLAND N.V.

Opponent:
Alfa Laval Agri AB

Headword:
Blood parameters/MAASLAND

Relevant legal provisions:
EPC Art. 100(c) EPC

Keyword:
"Extension of subject-matter (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0828/00 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal
of 2 July 2003

Appellant: Alfa Laval Agri AB
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Representative: Harrison, Michael Charles
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Respondent: MAASLAND N.V.
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Representative: Corten, Maurice Jean F. M.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
21 June 2000 concerning maintenance of European
patent No. 0595409 in amended form.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. The European patent No. 595 409, against which an opposition (based upon Articles 100(a), (b) and (c) EPC) was filed, was maintained in an amended version by the decision of the opposition division dispatched on 21 June 2000.
- II. On 10 August 2000 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 1 November 2000.
- III. Oral proceedings were held on 2 July 2003.
- IV. The appellant requested that the decision under appeal be set aside and a patent be maintained on the basis of either a main request or one of two auxiliary requests.

These requests are based upon the following claims:

Main request:

Claims 1 and 3 to 9 as granted;

Claim 2 as filed with the letter dated 1 November 2000.

First auxiliary request:

Claims 1 to 8 according to the main request.

Second auxiliary request:

Claims 1 to 5 according to the main request.

Claim 1 of the patent as granted, upon which all requests of the appellant were based, reads as follows:

"1. A construction for milking cows, characterized in that the construction includes measuring equipment (22-26) comprising a sensor (22), by means of which the flow rate of the flood and/or the blood pressure of a cow can be measured"

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

VI. The appellant essentially argued that the grounds for opposition according to Article 100(a) and (c) EPC did not prejudice the maintenance of the patent on the basis of claim 1 of the patent as granted.

VII. With respect to Article 100(c) EPC, the respondent *inter alia* objected to the feature according to which "by means of [the sensor] the flow rate of the blood and/or the blood pressure of a cow can be measured" and, in this respect, argued as follows:

(i) According to this feature, as an alternative to the flow rate of the blood, **either** the blood pressure **or** the flow rate of the blood and the blood pressure can be measured by means of a sensor which is not further specified.

(ii) The application as filed discloses either a spring-loaded sensor or an ultrasonic sensor. In particular, the possibility of measuring the blood pressure is disclosed only in conjunction with a spring-loaded sensor.

- (iii) Therefore, this feature represents a generalisation of specific features disclosed in the description of the Application as filed without there being a basis in the Application as filed for this generalisation.

Reasons for the Decision

1. The appeal is admissible.

2. *The application as filed*

2.1 Claim 1 of the patent as granted can be considered as being derived from the independent claim 1 of the application as filed which is directed to

"a construction for milking cows, characterized in that the construction includes a measuring equipment (22-26), by means of which the flow rate of the blood of a cow can be measured".

Furthermore, the independent claim 5 of the application as filed is directed to

"a construction for milking cows, such as cows [*sic*], characterized in that a spring-loaded sensor (22, 25) is present for measuring the blood of the cow, such as the flow rate of the blood, the heart beat, the blood pressure, etc.".

2.2 The introductory portion of the Application as filed contains on page 1, lines 10 to 13 a sentence reciting the wording of the independent claim 1. In the following sentence (page 1, lines 13 and 14) it is referred for the first time to a sensor as being "an ultrasonic sensor".

Moreover, the introductory portion of the Application as filed contains on page 1, lines 20 to 24 the following sentence referring to "a spring-loaded sensor" which clearly corresponds to the independent claim 5:

"In accordance with a further feature of the invention, the construction is provided with **a spring-loaded sensor** for measuring the blood of the cow; it is of advantage if the flow rate of the blood, and further relevant values, such as the heart beat, the blood pressure, etc will be tested" (emphasis added).

Furthermore, the introductory portion of the Application as filed also contains on page 2, lines 7 to 13 the following sentence referring to "the sensor":

"When the robot head has then been moved to under the cow's udder and the teat cups have been connected to the teats of the cow's udder, the robot head can be kept under the cow in such a manner that the sensor, **in particular when it is spring-loaded**, can be moved against the underside, more specifically the abdomen, of the cow" (emphasis added).

2.3 The portion of the description of the Application as filed which relates to the embodiment described by referring to the drawings refers to a sensor for the first time in the following sentence on page 3, lines 30 to 36:

"In a position which relative to the teat cups 16 - 19 is behind the laser unit 21 there is arranged **a sensor 22**, more specifically on a holder 24 which is pivotal about a horizontal pin 23, while furthermore **a spring 25** is present **for keeping the sensor 22 without counter-pressure in an upwardly pushed position**" (emphasis added).

Later on, this portion of the description of the Application as filed makes it clear that the sensor provided with the spring 25 "is designed as an ultrasonic sensor" (page 4, lines 1 to 7).

3. *Article 100(c) EPC*

3.1 Claim 1 of the patent as granted differs from claim 1 of the application as filed *inter alia* in that the following features have been added:

- (i) the measuring equipment comprises a sensor,
- (ii) as an alternative to the flow rate of the blood, **either** the blood pressure **or** the flow of blood and the blood pressure can be measured by means of the sensor.

Therefore, according to claim 1 of the patent as granted the blood pressure can be measured by means of "any" sensor, ie by means of a sensor which is not further specified either with respect to the type of the sensor or with respect to how the sensor is actuated.

- 3.2 According to claim 5 of the Application as filed not only the flow rate of the blood but also the blood pressure can be measured by means of "a spring-loaded sensor". Thus, claim 5 - taken alone - does not disclose a construction in which the blood pressure can be measured by means of "any" sensor as defined by feature 3.1.(ii).

The remaining claims of the Application as filed do not provide a basis for feature 3.1.(ii).

- 3.3 The introductory portion of the description (see section 2.2 above) refers to the measurement of the blood pressure of the cow either in relation to a spring-loaded sensor (page 1, lines 20 to 24) or to a sensor which can be moved against the underside of the cow (page 2, lines 7 to 13). Thus, this portion of the description of the Application as filed cannot provide a basis for a sensor as defined by feature 3.1.(ii).

- 3.4 The portion of the description of the Application as filed which relates to the embodiment described by referring to the drawings discloses a sensor which is of the ultrasonic type **and** is provided with a spring (ie it is spring-loaded) by means of which sensor the flow rate of the blood and/or the blood pressure can be measured (see section 2.3 above). Thus, this portion of

the description of the Application as filed cannot provide a basis for feature 3.1.(ii).

3.5 With regard to feature 3.1.(ii), the appellant argued as follows:

(i) Claim 5 of the Application as filed discloses the possibility of measuring not only the flow rate of the blood but also the blood pressure by means of a spring-loaded sensor.

(ii) The passage on page 2, lines 7 to 13 of the description of the Application as filed - due to the words "... the sensor, **in particular when it is spring-loaded**" - makes it clear that it is not essential that the sensor is spring-loaded.

(iii) Therefore, claim 5 of the Application as filed read in combination with this passage in the description constitutes a basis for feature 3.1.(ii).

3.5.1 The board cannot accept this argument of the appellant for the following reasons:

(i) Claim 5 of the Application as filed, which refers to a **spring-loaded** sensor for measuring blood parameters of the cow, such as the flow rate of the blood and the blood pressure, is consistent with the passage on page 1, lines 20 to 24 of the introductory portion of the description (see section 2.2 above).

(ii) The passage on page 2, lines 7 to 13 of the description of the Application as filed - due to the words "in particular when it is spring-loaded" - indeed provides the information that the spring-loading of the sensor is not essential. However, this passage clearly refers to a sensor which "in particular when it is spring-loaded, can be moved against the underside ... of the cow". Thus, this passage represents an intermediate generalisation with respect to the spring-loaded sensor referred to in the claims of the Application as filed. In other words, this passage indicates that the sensor does not necessarily have to be "spring-loaded" but must be capable of being moved against the underside of the cow.

(iii) Claim 5 of the Application as filed in conjunction with the above mentioned passage could at the most represent a basis for a construction in which the blood pressure of the cow is measured by means of a sensor which is capable of being moved against the underside of the cow but does not disclose the possibility of measuring the blood pressure by means of "any" sensor as defined by claim 1.

3.6 Having regard to the above comments, feature 3.1.(ii) defines a sensor for measuring the blood pressure of a cow at a high level of generalisation without there being a basis in the application as filed for this high level of generalisation.

Therefore, the ground for opposition mentioned in Article 100(c) EPC prejudices the maintenance of the patent on the basis of claim 1 of the patent as granted.

Thus, the requests of the appellant, all being based upon claim 1 of the patent as granted, are rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries