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D E C I S I O N
of 23 June 2004

Case Number: T 1137/02 - 3.2.4

Application Number: 94202259.1

Publication Number: 0638232

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:
A construction for automatically milking animals

Patentee:
MAASLAND N.V.

Opponent:
Prolion B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 100(a)
EPC R. 71(2)

Keyword:
"Novelty (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1137/02 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 23 June 2004

Appellant: (Proprietor of the patent)
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 11 October 2002 concerning maintenance of European patent No. 0638232 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
M. Aúz Castro

Summary of Facts and Submissions

I. In its interlocutory decision posted 11 October 2002, the Opposition Division found that, taking into consideration the amendments according to the first auxiliary request made by the patent proprietor during opposition proceedings, the European patent and the invention to which it relates meet the requirements of the EPC. The Opposition division was of the opinion that the subject-matter of claim 1 as granted (main request) lacked novelty with respect to D2: EP-A-0 300 115.

II. On 7 November 2002 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 30 January 2003.

III. Claim 1 as granted reads as follows:

"A construction or a similar arrangement for automatically milking animals, such as cows, having a milking box (2) comprising a milking robot (19) with a movable robot head (21), said robot head serving as a carrier for one or a number of teat cups (22), said milking box further comprising a detection member (24) for determining the position of the teats of the animals, characterized in that the detection member (24) and the robot head (21) are movable independently of each other."

IV. Oral proceedings took place on 23 June 2004. The Respondent although duly summoned did not attend the oral proceedings.

Pursuant to Rule 71 (2) EPC the oral proceedings were continued without the Respondent.

V. The Appellant (patentee) requested that the decision under appeal be set aside and that the patent be maintained as granted.
He mainly argued that in D2, the only sensors which are movable independently of the robot head, are the sensors 83 and 84 which are unable to determine the position of the teats of the animal to be milked and that additional sensors or the stored historical data are to be used for this purpose. He considered that in the meaning of the patent in suit "to determine the position of the teats" means to determine the co-ordinates of the teats by means of data acquisition.

VI. The Respondent (opponent) had argued in writing that the subject-matter of claim 1 as granted was not new with respect to D4: EP-A-0 209 202.

He had requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

2. *Novelty of the subject-matter of claim 1 as granted with respect to D2*

2.1 D2 (Figures 2, 5, 7) discloses, *inter alia*, a robot arm (16, 17, and 18) comprising at its end a gripping member (30) which is used to carry and to connect the

teat cups (59) one by one. Thus, D2 discloses a robot head serving as a carrier for one teat cup.

2.2 In order to control said robot arm, D2 discloses several embodiments.
In the second embodiment (column 8, lines 25 to 55; Figures 4 and 5) sensors 83 and 84 are used. These sensors can be mounted on a carriage 87 which is moved until the udder of the animal is detected (implicit). It is clear that said carriage can be moved independently of the robot head, since it is said that the robot arm is actuated as soon as (and thus, only after) the udder is detected by the sensors (column 8, lines 41 to 45). Furthermore, it is indicated (column 8, lines 39 to 47) that the sensors are positioned in such a way that they can be pointed in direction of the udder and that as soon as the udder is detected by the beam of the sensors, the robot arm is controlled so that a teat cup gripped by the robot head is connected to a teat of the animal, on the basis of the position of the udder detected by the sensors.
There is no indication that further sensors or historical data stored in the computer system are necessary to achieve connection of the teat cup and indeed in the corresponding Figure 5, solely the two sensors 83 and 84 are present.
Furthermore, in column 8, lines 27, 28, the detection made by the sensors 83, 84 is called "Feinsteuerung" which indicates that the sensors do not give a vague position, but provide a very precise control of position.
Therefore, a skilled person who reads this passage will consider that the teat cups are connected to the teats

on the basis of the data provided by the sole sensors 83 and 84.

2.3 Thus, in D2 (second embodiment) there is disclosed a construction for automatically milking animals, such as cows, having a milking box (1) comprising a milking robot (Figure 5) with a movable robot head (30), said robot head serving as a carrier for one teat cup (59), said milking box further comprising a detection member (83, 84) for determining the position of the teats of the animals, wherein the detection member (83, 84) and the robot head (30) are movable independently of each other.

2.4 Therefore, the subject-matter of claim 1 as granted is not new with respect to D2.

2.5 The Appellant argued that the sensors 83 and 84 are not able to determine the position of the teats in the meaning of the patent in suit.
However, he Board cannot agree to this reasoning. According to D2 the robot arm connects the teat cups to the teats on the basis of the information delivered by the sensors (column 8, lines 41 to 47). In order to perform this task, the robot arm has to bring the teat cup in position beneath the teat before connecting it to the teat. Thus, as soon as the robot arm has brought a teat cup in a position such that it is facing the teat, the position of the corresponding teat is determined. Claim 1 of the patent in suit does not require that said position is determined by forehand and stored in form of co-ordinates. Even if the passage of column 5, lines 31 to 35 of the patent specification, which reads: "When by means of the

detection member 24 the position of the individual teats has been stored, the teat cups 22 which have been moved in the meantime to under the animal's udder, can be connected" indicates that a storage of the co-ordinates of the individual teats takes place, this does not imply that in the meaning of the patent in suit "to determine the position" means "to store the co-ordinates". Such an interpretation would only be possible if there were a clear and unambiguous statement in the patent specification which would indicate that, for the purpose of the given specification, "to determine the position" has to be construed as meaning "to store the co-ordinates."

2.6 Furthermore, the Appellant argued that the sensors 83 and 84 alone are unable to determine the position of the teats. In the Appellant's view, data stored in the computer and concerning the anatomy of the animal is needed to determine the position of the teats.
The Board is unable to follow such reasoning:
On the one hand, it is indicated in D2, column 8, lines 41, 42: "Sobald das Euter (3) im Strahlengang (90) der Sensoren (83, 84) erscheint, werden …" Since it cannot be expected that the animal is moving through the milking box, this implies that the sensors and their carriage are moved until the udder is detected; as a result, a coarse detection of the position of the udder is performed, before the accurately controlled approach ("Feinsteuerung") of the robot arm takes place. Thus there is no indication that further sensors or data are involved in order to perform the connection of the teat cups. On the other hand, claim 1 of the patent in suit does not exclude that a coarse approach can be determined by the computer system on the basis

of the data stored in the file of the animal about the position of the teats and indeed such a coarse approach (based on the data stored in the file of the animal) is disclosed in the patent specification, column 5, lines 25 to 27 with respect to the claimed invention.

3. Consequently, the request of the Appellant is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte