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D E C I S I O N
of 10 May 2005

Case Number: T 0420/03 - 3.2.4

Application Number: 94901058.1

Publication Number: 0619702

IPC: A01K 1/12

Language of the proceedings: EN

Title of invention:

A construction for automatically milking animals

Patentee:

MAASLAND N.V.

Opponents:

DeLaval International AB
Westfalia Landtechnik GmbH
Prolion B.V.

Headword:

Cubicles/MAASLAND

Relevant legal provisions:

EPC Art. 84, 106(4), 108, 111(1), 123
EPC R. 64(b), 65(1)

Keyword:

"Additional decision of the opposition division regarding apportionment of costs"

"Appellant's request for cancellation of the apportionment of costs neither filed within the two-month appeal period nor covered by the extent of the appeal specified in the notice of appeal (inadmissible)"

"Clarity of the amendments"

"Admissibility of the amendments under Article 123 EPC"

"Remittal to the department of the first instance for consideration of the undecided issues"

Decisions cited:

G 0001/99, G 0004/93

Catchword:

"The extent of the appeal within the meaning of Rule 64(b) EPC must be clear from the notice of appeal.

The statement setting out the grounds of appeal cannot in principle be used to complete, or amend, the extent of the appeal defined in the notice of appeal, if this statement is not filed within the two-month appeal period."



Case Number: T 0420/03 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 10 May 2005

Appellant: MAASLAND N.V.
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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 14 February 2003
revoking European patent No. 0619702 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. 0 619 702 (International Publication Number: WO 94/09616) which was based upon the European Patent Application No. 94 901 058.1, was revoked by decision of the opposition division dispatched on 14 February 2003.

This decision was notified to the parties by using the EPO Form 2331 containing *inter alia* the following statements:

- (i) "The Opposition Division - at the oral proceedings dated 03.02.2003 - has decided:
European Patent No. EP-B-0619702 is revoked."
- (ii) "Additional decision:
Apportionment of costs (Article 104 (1) EPC) as indicated in the Grounds for the decision."
- (iii) "**Possibility of appeal:** This decision is open to appeal. Attention is drawn to the attached text of Articles 106 to 108 EPC."

In the "Reasons for the decision", which are enclosed with the above mentioned EPO Form 2331, the opposition division held that the subject-matter of claim 1 according to the main request lacked novelty with respect to the previous European patent application EP-A-566 201 (D1), which is state of the art under Article 54(3) EPC. Moreover, the opposition division held that the amendments which had led to claim 1 of the auxiliary request as well as that of the main

request introduced subject-matter extending beyond the content of the application as filed.

II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 9 April 2003 and simultaneously paid the appeal fee.

III. The notice of appeal, which refers to the "European Patent Application No. 94 901 058.1", contains *inter alia* the following statements:

(i) "Referring to the Notification under Article 102 (1), (3) EPC of 14.02.2003 ..., Notice of Appeal against the decision of the Opposition Division is herewith filed by: Maasland ...".

(ii) "The maintaining in full of the patent in suit is requested for the reasons as will be set out in the Grounds of Appeal.".

(iii) "Appellant requests in advance for oral proceedings, should it appear impossible to follow the aforementioned request for maintaining.".

In the statement setting out the grounds of appeal, received on 19 June 2003, the appellant referred for the first time to the decision regarding apportionment of costs and requested that this additional decision be set aside.

IV. Oral proceedings before the board were held on 10 May 2005.

Opponent III (hereinafter respondent III) who had been duly summoned to oral proceedings did not appear. Pursuant to Rule 71(2) EPC, the proceedings continued without him.

- V. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of claims 1 to 3 filed with the letter dated 4 May 2005 (sole request).

The appellant also requested that the decision of the opposition division concerning the apportionment of costs be set aside.

- VI. Opponents I and II (hereinafter respondents I and II) requested that the appeal be dismissed and that the request concerning the apportionment of costs be rejected as inadmissible.

Respondent III did not reply to the statement setting out the grounds of appeal.

- VII. The independent claim 1 reads as follows:

"1. A construction for automatically milking animals, such as cows, comprising a milking box (14) with a milking robot (41) and a shed where the animals can freely move about, said shed, which is split into two parts by a feeding area (2) said feeding area (2) being provided in the longitudinal direction of the shed (1), being divided into four areas (4, 5, 6, 7), cubicles (3) being arranged on both sides of this feeding area (2) through substantially the overall length of said shed (1)

along the inner side of the outer wall, which construction includes a system of doors, gates or suchlike means (8-12) in the shed (1), which open in one direction for defining the path and the direction in which the animals can walk to and from the milking box (14), said areas (4, 5, 6, 7) being connected successively to each other while the milking box (14) is arranged between two successive areas, and the system of doors, gates or suchlike means (8-12) are arranged in such a way that an animal can walk from a first area of the successive areas to a second area of the successive areas via the milking box (14), characterized in that the animals can proceed from said second area (4) through doors (9) to a third area (5), from there through doors (10) to a fourth area (6), through doors (11) to said first area (7) and through doors (12) to area (13) where the milking box (14) is located and from the area (13) through doors (8) to said second area (4)."

VIII. The appellant essentially argued that his request for the cancellation of the decision on the apportionment of costs was admissible because the expression employed in the notice of appeal "Notice of Appeal against the decision of the Opposition Division is herewith filed" had to be considered as defining an appeal against the whole decision.

These arguments were rejected by respondents I and II.

With regard to the admissibility of the amendments and to the novelty of the claimed subject-matter, respondents I and II essentially argued that

- (i) the amendments to the claims did not meet the requirements of Articles 84 and 123 EPC and
- (ii) the subject-matter of claim 1 lacked novelty with respect to each of documents EP-A-566 201 (D1) and EP-A-582 350 (D4).

These arguments were rejected by the appellant.

Reasons for the Decision

1. *Admissibility of the appeal*

1.1 Rule 64, sub-paragraph (b) EPC requires that the notice of appeal contains a statement identifying the decision which is impugned and the extent to which amendment or cancellation of the decision is requested. Therefore, it is incumbent on the Board to establish whether the extent of the appeal was properly stated, and whether all requests of the appellant are within the extent of the appeal.

1.2 The decision under appeal relates to two different legal issues. The first issue concerns the revocation of the patent, while the second one concerns a different apportionment of costs. This second issue was referred to as an "additional decision" in the impugned decision. Thus the statement identifying the extent of the appeal as prescribed by Rule 64, sub-paragraph (b) EPC must make it clear which issues of the decision are also subjects of the appeal.

The notice of appeal contains the name and the address of the appellant and a statement which unambiguously identifies the decision which is impugned by its date.

Moreover, the statement (ii) referred to in section III above - in so far as it refers to "the maintaining in full of the patent in suit" - clearly relates to the first issue. Therefore, there is no doubt for the Board that the legal issue underlying the decision for revoking the patent is the subject of the appeal, i.e. falls within the extent of the appeal.

The question arises whether the appellant's further request for cancellation of the "additional decision" relating to the apportionment of costs is within the extent of the appeal as stated in the notice of the appeal.

This must be answered in the negative. The notice of appeal remains completely silent as regards the "additional decision" concerning the apportionment of costs. There is also nothing which indicates that the decision should be set aside in its entirety.

Thus, the statement (ii) referred to in section III above defines the extent to which cancellation of the decision is requested as being limited to the revocation of the patent.

Furthermore, the request for cancellation of the decision concerning apportionment of costs was contained in the statement setting out the grounds of appeal, which was filed within four months after the date of

notification of the impugned decision but after the expiry of the time limit of two months for the filing of the notice of appeal (Article 108 EPC, first sentence). This subject of the appeal is not included in the "extent" to which cancellation of the decision had been requested and, therefore, in accordance with Rule 65(1) EPC the appellant's request concerning the apportionment of costs has to be rejected as inadmissible.

1.2.1 The appellant argued as follows:

- (i) The EPO Form 2331, by means of which the decision of the opposition division was notified to the appellant, indicates the possibility of appeal by means of the statement (iii) referred to in the above section I. In this statement use is made of the word "decision" (singular form) and not "decisions".
- (ii) The notice of appeal also refers to "the decision of the Opposition Division", by making use of the "decision" in singular form. Therefore, the notice of appeal - in so far as it refers to the decision (in singular form) - has to be considered as requesting cancellation of the entire decision.

1.2.2 The board cannot accept these arguments for the following reasons:

- (i) The EPO Form 2331 indicates the possibility of appeal also by referring to Articles 106 to 108 EPC (see statement (iii) in section III

above). In particular, Article 106(4) EPC makes it clear that an appeal can have **more subjects** in so far as it indicates that "the apportionment of costs cannot be **the sole subject** of an appeal" (emphasis added).

Moreover, the above mentioned EPO Form refers not only to a decision of revoking the patent but also to an additional decision concerning apportionment of costs.

- (ii) The statement "Notice of appeal against the decision of the Opposition Division is hereby filed by: Maasland NV..." (see statement (i) in section III above) is clearly unambiguous and means what it says: a notice of appeal is filed by the appellant against the decision of the opposition division. The mere filing of a notice of appeal by no means determines "the **extent** to which amendment or cancellation of the decision is requested". Expressed differently, the filing of a notice of appeal identifying the impugned decision cannot be interpreted as being a statement setting out the extent of the appeal.

- (iii) It must be noted that on examining the provisions of Rule 64(b) EPC, the wording "identifying the decision which is impugned" cannot relate to the legal content of the decision, this issue being covered by the wording "extent". The "decision" to be identified relates to a decision as a **formal procedural act** of the relevant organ of the EPO. Therefore, a decision as a formal act is

identified by its date, file number and typically the issuing organ (Division) of the EPO. The notice concerning the possibility of appeal on EPO Form 2331 also relates to the whole of the decision as a formal procedural act, and not to its substantive content. Therefore, contrary to the submissions of the appellant, a simple identification of the decision can not lead to the conclusion that it is appealed in its entirety.

- (iv) On the other hand, a single decision, as a formal act may contain various findings with different substantive legal effects. Not all of these findings need to be contested by the appealing party. A decision may be appealed in its entirety or only in part, see G 1/99, point 6.2 of the reasons, and also G 4/93, point 1 of the reasons. This gives meaning to the wording "extent to which cancellation of the decision is requested" in Rule 64(b) EPC. In the present case, the "extent" appears to be identified in the notice of appeal by the statement (ii), in conjunction with the statement (iii) (see the above section III). As explained above, none of these statements concerns the apportionment of costs.

- (v) According to Article 108 EPC, first sentence, the notice of appeal - including a statement of the extent to which amendment or cancellation of the decision is requested - should be filed within a two-month time limit after the date of notification of the decision

appealed from. It would be inconsistent with this time limit to admit subsequent requests from the appellant which would complete, or, amend the extent of the appeal as defined in the notice of appeal, if such subsequent requests were not filed within this two-month time limit.

Furthermore, the Board has no discretionary powers to admit late requests which were filed after the applicable time limit (apart from requests pursuant to Article 122 EPC), if such a time limit is defined in the EPC and the EPC specifically provides a sanction in the event that such time limit is not complied with. According to Rule 65(1) EPC, if the notice of appeal fails to comply with Rule 64 subparagraph (b), the appeal is to be rejected as inadmissible unless this deficiency is remedied within the two-month time limit set in Article 108 EPC. The formulation of Rule 65(1) EPC "before the relevant time limit laid down in Article 108 has expired" makes it clear that any subsequent request by the appellant for completing, or amending, the extent of the appeal specified in the notice of appeal must be filed within this two-month time limit.

The extent of appeal must be clear from the content of the notice of appeal. Even if the Board may appear to have considerable freedom when interpreting a request of a party, this should not be exercised too liberally. This is

particularly the case in *inter partes* proceedings. Any undue concession towards one party would be a violation of the rights of the other party. In the present case, the Board finds that the notice of appeal does not contain any explicit statement concerning the apportionment of costs, and there is no other statement in the notice of appeal which could be interpreted - at least indirectly - that this subject is also appealed. On the contrary, the appellant's explicit request for maintaining the patent in full implies that this request is the subject of the appeal, and nothing else.

2. For the above reasons, the appellant's request for the cancellation of the decision on the apportionment of costs has to be rejected as inadmissible.

3. *The claimed subject-matter*

3.1 The present claim 1 is directed to a construction for automatically milking animals, such as cows, having the following features:

A) the construction comprises a milking box (14);

A1) the milking box is provided with a milking robot (41),

B) the construction comprises a shed where the animals can freely move about,

- B1) said shed is split into two parts by a feeding area (2),
- B11) said feeding area (2) is provided in the longitudinal direction of the shed (1),
- B2) said shed is divided into four areas (4, 5, 6, 7),
- B21) cubicles (3) are arranged on both sides of this feeding area (2) through substantially the overall length of said shed (1) along the inner side of the outer wall,
- C) the construction includes a system of doors, gates or suchlike means (8-12) in the shed (1) which open in one direction for defining the path and the direction in which the animals can walk to and from the milking box (14),
- B22) said areas (4, 5, 6, 7) are connected successively to each other while the milking box (14) is arranged between two successive areas,
- C1) the system of doors, gates or suchlike means (8-12) are arranged in such a way that an animal can walk from a first area of the successive areas to a second area of the successive areas via the milking box (14),
- C2) the animals can proceed from said second area (4) through doors (9) to a third area (5), from there through doors (10) to a fourth area

(6), through doors (11) to said first area (7) and through doors (12) to area (13) where the milking box (14) is located and from the area (13) through doors (8) to said second area (4).

3.2 According to features A and B, the construction comprises a shed and a milking box.

According to features B1, B2, B21 and B22, the shed comprises a feeding area and four areas (first, second, third and fourth) which are connected successively to each other (i.e. "successive areas").

According to feature B22, the milking box is arranged between two successive areas. Moreover, it can be understood from feature C2 that the milking box is located in a further area (i.e. in a "milking area") which is arranged between the first area and the second area of the successive areas.

Therefore, it has to be understood that the construction comprises not only a shed divided into four areas but also a further area in which the milking box is located.

4. *Admissibility of the amendments (Articles 84 and 123 EPC)*

4.1 The present claim 1 differs from claim 1 as granted in that

(i) features B, B1, B11, B2 and B21 have replaced the feature that "the construction comprises at least

two enclosed areas where the animals can freely move about",

- (ii) feature C2 has replaced the feature that "the animal can walk from said second area, via at least one other successively connected enclosed area, to said first area".

The present claim 2 differs from dependent claim 8 as granted in that

- (iii) the terms "as claimed in claim 1" have replaced the terms "as claimed in any one of the preceding claims 2 to 6".

The present claim 3 differs from dependent claim 9 as granted in that

- (iv) the terms "as claimed in claim 2" have replaced the terms "as claimed in any one of the preceding claims 9 or 10".

- 4.1.1 The amendment according to item 4.1.(1) above can be unambiguously derived from the application as filed (page 6, lines 15 to 23) which refers to Figure 1 as showing a shed "in which the animals can move freely" (feature B) and "in the longitudinal direction whereof a feeding area 2 is provided (feature B11), the shed being "split into two parts by the feeding area 2" (feature B1) and "divided in its totality into four areas" (feature B2), cubicles being "arranged on both sides of this feeding area through substantially the overall length of the shed 1 along the inner side of the outer wall" (feature B21).

- 4.1.2 The amendment according to item 4.1.(ii) above can be unambiguously derived from a passage in the application as filed (page 6, lines 33 to 38) according to which "... the animals can proceed from said second area 4 through the doors 9 to the area 5, from there through the doors 10 to the area 6, through the doors 11 to the area 7 and through the doors 12 to the area, respectively, where the milking box 14 is located, and from the area 13 through the doors 8 to the area 4 again".
- 4.1.3 The amendment according to item 4.1.(iii) above has a basis in dependent claim 9 of the application as filed in so far as this claim refers to "any one of the preceding claims".
- 4.1.4 The amendment according to item 4.1.(iii) above, which removes an evident error (the reference in claim 9 as granted to claims 9 or 10), has a basis in dependent claim 11 in so far as this claim refers to claim 9.
- 4.1.5 The amendments leading to the present claims do not result in an extension of the scope of protection.
- 4.2 Respondent I essentially argued as follows:
- (i) Claim 8 as granted, which concerns a radio system by which the animals are encouraged to move through the shed, was dependent on claim 2 as granted, while the present claim 2 is directly dependent on claim 1 which does not specify all the features of claim 2 as granted

("an area (1, 28) comprises a pasture ...").
Therefore, the amendment according to item 4.1.(iii) above contravenes the requirements of Article 123(2) and (3) EPC.

(ii) The expression "area (13) where the milking box is located" in feature C2 makes the present claim 1 unclear (article 84 EPC) in so far as it cannot be unambiguously determined whether the "area (13)" is one of the four areas referred to in feature B2 or a further area.

(iii) Moreover, the expression "area (13) where the milking box is located" represents a generalisation of specific features in the description of the patent (column 3, lines 23 to 29: "At one of the short sides of the shed there is an area 13, in which a dual milking box 14 ... is set-up") without there being a basis for this generalisation in the application as filed.

Respondent II essentially argued as follows:

(iv) According to Figure 1 of the patent and of the application as filed the construction has a well defined rectangular configuration, wherein the four areas into which the shed is divided by the feeding area are arranged symmetrically with respect to the feeding area. However, the present claim 1, due to the amendment according to item 4.1.(i) above, covers also other construction configurations which are not disclosed in the application as filed. The

passage on page 6, lines 15 to 23 of the application as filed, from which the wording of this amendment can be derived, relates to the embodiment shown in Figure 1 and cannot be isolated from the context of this embodiment.

4.2.1 The board cannot accept these arguments for the following reasons:

- (i) The amendment according to item 4.1.(iii) above can be derived not only from claim 9 of the application as filed but also from a passage in the description (page 2, lines 8 to 20) according to which the animals are encouraged by the radio system "to move in one direction through the area, particularly a shed **or** a pasture ..." (emphasis added). It has to be noted that this amendment removes an inconsistency, since claim 8 as granted referred to a radio system by which the animals are encouraged "to move in one direction through the shed and **optionally** a pasture ..." (emphasis added).

Moreover, this amendment cannot extend the protection over that of the patent as granted which was determined by the independent claim 1.

- (ii) Having regard to the considerations in section 3.2 above, it is clear that the area (13) referred to in feature C2 is a further area which is distinct from the four areas of the shed.
- (iii) The "area (13) where the milking box is arranged" is referred to in the present claim 1 (see

feature C2) in combination with other specific features. As indicated in section 4.1.3 above, the wording of feature C2, is practically identical with the wording of a passage of the application as filed, and therefore does not represent a generalisation of this passage. It has also to be noted that claim 1 as granted, even if it does not refer to "area (13)", refers to a milking box and thus implicitly defines an area in which the milking box is arranged.

- (iv) According to the application as filed, Figure 1 is a diagrammatic representation of "a lay-out of a shed with a milking box, it being possible to pass through the shed and the milking box in one direction only" (see page 5, lines 16 to 18). Although in the above mentioned passage (page 6, lines 15 to 23) begins with the words "Figure 1 shows a shed ..."), the sentence referring to the drawings in the application as filed (see page 5, lines 13 to 15) makes it clear that the drawings are referred to "by way of example" in order "to show how [the invention] may be carried into effect". It also has to be noted that the sentence on page 6, lines 23 to 25, which follows the above mentioned passage and also relates to Figure 1, refers to "animals present in the shed" without there being any animals represented in Figure 1. Thus, the skilled person reading the above mentioned passage will immediately understand that this passage defines a lay-out of a shed which is more general than the lay-out shown by Figure 1, i.e. that the information

content of this passage can be isolated from the context of Figure 1.

4.3 Therefore the amendments to the claims meet the requirements of Article 84 EPC and do not contravene those of Article 123(2) and (3) EPC.

5. *Novelty*

5.1 With respect to novelty, the respondents referred to documents D1 and EP-A-582 350 (D4).

5.2 Document D1 discloses a construction for automatically milking animals, comprising a milking box (26) with a milking robot (33), and a shed (1) where the animals can freely move about, said shed being split into two parts by a feeding passage which is provided in the longitudinal direction of the shed (1) and comprises a first section (6) and a second section (7), said shed comprising three sub-areas (9, 13 and 15) and a further sub-area (11) provided with sanitation areas (20), with an intermediate area (22) and with an area in which the milking box (26) is located. Moreover, the construction includes a system of doors (16) in the shed which open in one direction for defining the path and the direction in which the animals can walk to and from the milking box. The milking box is arranged between the intermediate area (22) and (via the first section (6) of the feeding passage) the sub-area (13). The sub-areas (13, 15 and 9) are successively connected to each other by the system of doors (16) in such a way that an animal can walk from the sub-area (9) - through one of the sanitation areas (20), the intermediate area (22), the milking box (14)

and the first section (6) of the feeding passage - to the sub-area 13 and then proceed from this sub-area (13) through doors (16) to the adjacent sub-area (15), from there through doors (16) to the sub-area (9), and from there again to the sub-area (9).

Furthermore, it is stated in document D1 that "in the third sub-area 13, the animal can optionally take some rest in (non-shown) rest boxes". Thus, document D1 also discloses the presence of cubicles in the sub-area 13. However, document D1 does not disclose **how** the cubicles are arranged. In other words, this document does not disclose feature B21.

- 5.3 Document D4 discloses a construction for automatically milking animals, comprising a milking box (17) with a milking robot (37), and a shed where the animals can freely move about (loose house 5), said shed being split into two parts by a feeding area comprising two feeding passages (16), the feeding area being provided in the longitudinal direction of the shed (5), said shed comprising four areas (6, 7, 8 and 9). The milking box (17) is arranged in a further area, which is located centrally with respect to the four areas (6, 7, 8 and 9) and is constituted by a corridor system with passageways and automatically controlled doors (38 to 50). The automatically controlled doors (38 to 50), which can open in both directions, are arranged and controlled in such a manner that it can define more paths along which the animals can walk from one of the areas (6, 7, 8 and 9) via the milking box to an other one of the areas (6, 7, 8 and 9).

Due to the fact that the automatically controlled doors (38 to 50) can open in both directions, they are suitable for connecting the areas (6, 7, 8 and 9) successively to each other in such a way that an animal can walk from the first area (6) - via the door 42, the milking box (17) and the doors (40, 44 and 38) to the second area (7, and then proceed from said second area (7) - through the doors (38, 44 and 41) to the third area (8), from there - through the doors (41, 46 and 45) to a fourth area (9), and from there - through the doors (45, 50, 48 and 42) to said first area (6).

Document D4 does not refer to the presence of cubicles in the shed.

5.3.1 With respect to documents D1 and D4 respondents I and II essentially argued as follows:

- (i) Document D1 explicitly refers to rest boxes arranged in sub-area 13 and makes it clear that the animals of a group may wait in each of the sub-areas for a time of at least some hours. Thus, the skilled person reading this document would immediately realize that rest boxes are arranged in each of the sub-areas of the shed.
- (ii) Document D4 explicitly refers to the advantageous possibility that the animals a first group can rest during the period of time in which animals of another group are milked (see column 8, lines 15 to 18). Thus, the skilled person reading this document would immediately realize that rest boxes or cubicles are arranged in each of the four areas of the shed.

- (iii) Moreover, having regard to the lay-out of the shed disclosed in each of these documents, the skilled person - on the basis of his general knowledge - would also realize that cubicles or rest boxes are necessarily arranged on both sides of the feeding area which splits the shed into two parts through substantially the overall length of said shed along the inner side of the outer wall of the shed.

- (iv) Therefore, feature B21 is implicitly disclosed in each of documents D1 and D4. Since each of these documents explicitly discloses the remaining features of claim 1, the subject-matter of this claim lacks novelty.

5.3.2 The board cannot accept these arguments for the following reasons:

- (i) Document D1 refers to "(non-shown) rest boxes" arranged in the sub-area 13. However, this document does not disclose rest boxes arranged in the sub-areas 9 and 15. The fact that animals may stay for a long time in sub-areas 9 and 15 does not necessarily imply the presence of rest boxes in each of these sub-areas.

- (ii) The fact that animals of a group can rest during the period of time in which animals of another group are milked does not necessarily imply that cubicles are provided in each of the four areas of the shed disclosed in document D4.

(iii) Even if it were to be assumed that each of documents D1 and D4 implicitly disclose the presence of cubicles, none of them would disclose **how** cubicles have to be arranged. It has to be noted that the arrangement of cubicles defined by feature B21 is not the sole possible arrangement of cubicles. Document EP-A-432 148 shows (see Figure 8) for instance a rectangular milking shed in which rest boxes for the animals are arranged not only at the inner side of the longitudinal outer walls along the overall length of the shed but also in the middle of the shed (and not along its overall length).

(iv) Therefore, none of documents D1 and D4 discloses feature B21. It also has to be noted document D4 does not disclose a system of doors which open in one direction for defining the path and the direction in which the animals can walk to and from the milking box, as defined by feature C.

5.4 Therefore, the subject-matter of claim 1 is novel over the prior art known from each of documents D1 and D4.

6. The opposition division revoked the European Patent on the grounds that the subject-matter of claim 1 according to the main request lacked novelty and that amended claim 1 of the auxiliary request did not comply with the requirements of Article 123(2) EPC. Thus the Opposition Division did not have any reason to address those facts, evidence and arguments of the opponents, which related to the lack of inventive step and insufficiency of disclosure. In such circumstances the case is normally remitted back to the first instance

for consideration of the undecided issues. Accordingly the Board, in exercising its discretion under Article 111(1) EPC, considers it appropriate to remit the case to the first instance, for a decision on the remaining issues concerning the sole request.

Order

For these reasons it is decided that:

1. The subject of appeal relating to the apportionment of costs is rejected as inadmissible.
2. The decision under appeal is set aside in so far as it relates to the revocation of the patent.
3. The case is remitted to the department of the first instance for further prosecution.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte