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D E C I S I O N
of 21 October 2005

Case Number: T 0086/04 - 3.2.04

Application Number: 94203287.1

Publication Number: 0643907

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:
A method of milking an animal

Patentee:
MAASLAND N.V.

Opponent:
DeLaval International AB

Headword:
Searching and tracking/MAASLAND

Relevant legal provisions:
EPC Art. 100(c), 123

Keyword:
"Subject-matter extending beyond the content of the application, the parent application and the grandparent application as filed"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0086/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 21 October 2005

Appellant: (Opponent)
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 5 November 2003 concerning maintenance of European patent No. 0643907 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: P. Petti
T. Bokor

Summary of Facts and Submissions

I. An opposition based upon Article 100, paragraphs (a) and (c) EPC was filed against the European patent No. 643 907. This European patent was based upon the European patent application No. 94 203 287.1 (hereinafter called application as filed) filed as a divisional application of the previous application No. 91 202 449.1 (EP-A-467 489), hereinafter called parent application, which in turn was filed as a divisional application of the earlier application No. 89 202 372.2 (EP-A-360 354), hereinafter called grandparent application.

In its interlocutory decision dispatched on 5 November 2003, the opposition division held that an amended version of the patent based upon claims 1 to 3 and 8 to 10 as granted met the requirements of the European Patent Convention.

II. The opponent (hereinafter appellant) lodged an appeal against this decision on 19 December 2003 and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 11 March 2004.

III. Oral proceedings before the board were held on 21 October 2005.

During the oral proceedings the patent proprietor (hereinafter respondent) submitted three independent claims upon which a main request and two auxiliary requests were based.

Claim 1 of the main request reads as follows:

"1. A method of milking an animal, such as a cow, in a milking parlour with a robot arm arrangement (5, 6) having a single robot arm (6) able to carry teat cups (45 to 48) and being provided with sensor means (51) comprising a laser, by means of which the position of the teats of the animal relative to the robot arm (6) are determined, and with control means (18, 22, 26, 36, 40, 80 to 83) for conveying the robot arm (6), under the animal's udder and connecting the teat cups (45 to 48) to the teats of the animal, characterized in that the method comprises searching for teats, starting from an initial position based on stored teat position data from an animal recognition data source, and determination of the position of the teats in pairs, namely front teats and rear teats, involving comparison with the stored teat position data from the animal recognition data source, whereafter for a teat a tracking procedure is started, wherein the determined teat position data are registered and updated with information from said sensor means (51) and the respective teat cup, based on the updated teat position information, is moved below said teat by means of said control means (18, 22, 26, 36, 40, 80 to 83), whereupon said teat cup is moved upwardly and is connected to said teat."

Claim 1 of the first auxiliary request reads as follows:

"1. A method of milking an animal, such as a cow in a milking parlour with a robot arm arrangement (5, 6) having a single robot arm (6) able to carry near its

end one or more teat cups (45 to 48) and being provided with sensor means (51) comprising a laser, by means of which the position of the teats of the animal relative to the robot arm (6) are determined, and with control means (18, 22, 26, 36, 40, 80 to 83) for conveying the robot arm (6) under the animal's udder and connecting the teat cups (45 to 48) to the teats of the animal characterized in that the method comprises searching for teats, starting from an initial position based on stored teat position data from an animal recognition data source, and determination of the position of the teats in pairs, namely front teats and rear teats, involving comparison with the stored teat position data from the animal recognition data source, whereafter for a teat a tracking procedure is started, wherein the determined teat position data are registered and updated with information from said sensor means (51) and the respective teat cup, based on the updated teat position information, is moved below said teat by means of said control means (18, 22, 26, 36, 40, 80 to 83), whereupon said teat cup is moved upwardly and is connected to said teat."

Claim 1 of the second auxiliary request reads as follows:

"1. A method of milking an animal, such as a cow in a milking parlour with a robot arm arrangement (5, 6) having a single robot arm (6) able to carry near its end teat cups (45 to 48) and being provided with sensor means (51) comprising a laser, by means of which the position of the teats of the animal relative to the robot arm (6) are determined, and with control means (18, 22, 26, 36, 40, 80 to 83) for conveying the robot

arm (6) under the animal's udder and connecting the teat cups (45 to 48) to the teats of the animal characterized in that the method comprises searching for teats, starting from an initial position based on stored teat position data from an animal recognition data source, and determination of the position of the teats in pairs, namely front teats and rear teats, involving comparison with the stored teat position data from the animal recognition data source, whereafter for a teat a tracking procedure is started, wherein the determined teat position data are registered and updated with information from said sensor means (51) and the respective teat cup, based on the updated teat position information, is moved below said teat by means of said control means (18, 22, 26, 36, 40, 80 to 83), whereupon said teat cup is moved upwardly and is connected to said teat."

IV. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent requested that the decision under appeal be set aside and that the patent be maintained as amended on the basis of claim 1 as filed during the oral proceedings as main request or, auxiliarily, on the basis of claim 1 according to either the first auxiliary request or the second auxiliary request as filed during the oral proceedings.

V. The appellant essentially argued that all the amended claims 1 of the respondent's requests introduced fresh subject-matter in contravention of Articles 100(c) and 123(2) EPC.

The respondent contested the arguments of the appellant.

Reasons for the Decision

1. The appeal is admissible.

2. *Articles 100(c) and 123(2) EPC*

2.1 In a case in which the patent is based upon a divisional application of a second generation, the issues of whether the patent contravenes the requirements of Articles 100(c) and 123(2) EPC have to be considered not only with respect to the application as filed but also with respect to the parent application and the grandparent application. Thus, the subject-matter claimed in the European patent must be disclosed in each of the application as filed, the parent application and the grandparent application.

2.2 According to claim 1 of each of the respondent's requests as well as to claim 1 as granted,

(a) "the method comprises searching for teats, starting from an initial position **based on stored teat position data from an animal recognition data source**", and

(b) "the determination of the teats in pairs [involves] comparison with **the stored teat position data from the animal recognition data source**" (emphasis added).

The above quoted features (a) and (b) were not specified either in claim 1 of the application as filed (EP-A-643 907) or in claim 1 of the parent application.

2.2.1 In this respect, the appellant essentially pointed out that the stored teat position data from the animal recognition data source were defined without referring to any reference point relative to which these data were calculated and argued that these features represented an undisclosed generalisation in so far as the application as filed and the parent application consistently disclose a searching procedure in which the position of the teats is determined relative to a reference point on the animal's rear centre.

The respondent essentially countered as follows:

(i) The sentence "Subsequently, this last position is compared with the data regarding this position as derived from the animal recognition data source" in the application as filed (column 11, lines 46 to 48) and in the parent application (column 12, lines 46 to 48) represents a basis for these features.

(ii) A reference point for the stored teat position data is not essential for the invention.

2.2.2 The board cannot accept the arguments of the respondent for the following reasons:

The sentence in column 12, lines 46 to 48 relied upon by the respondent has to be read in its context, which means that the paragraph bridging columns 11 (line 16)

and 12 (line 12) has to be taken into account. This paragraph describes the "searching procedure" of the animal's teats and states the following in column 11, lines 16 to 20: "For the searching procedure ...it is of importance to register the position of the teats **relative to a reference position, here a point on the animal's rear centre**..." (see also the parent application as filed, column 12, line 16 to 20; emphasis added). Thus, "the data regarding this position as derived from the animal recognition data source" in the sentence referred to by the respondent are predetermined position data of the animal's teats relative to a reference point on the animal's rear centre".

It follows that (i) the patent application as filed and the parent application consistently disclose that the position of the teats is determined relative to a reference point on the animal, and (ii) the reference point is explained as essential ("of importance") in these disclosures. As a consequence the information that the position of the teats may be determined without any consideration of its reference point on the animal, is not derivable from that presented in the application as filed or in the parent application.

Accordingly the above quoted features (a) and (b) insofar they do not refer to stored data of the teat position relative to a reference point on the animal introduce fresh subject-matter in contravention of Article 100(c) EPC, since it cannot be clearly derived from the application as filed or from the parent application that the reference point on the animal can

be omitted when determining or calculating the teat position.

In any case, the decisive issue in the present case is whether the application as filed as well as the parent application disclose an animal recognition data source in which predetermined teat position data are stored without referring to a reference point on the animal. The question of whether a reference point for the stored teat position data is not essential for the invention is not relevant for this issue.

2.2.3 Therefore, due to the presence of the above quoted features (a) and (b) in amended claim 1 of all the respondent's requests, the ground for opposition laid down in Article 100(c) EPC prejudices the maintenance of the patent on the basis of each of these requests.

2.3 Moreover, the amended claims 1 of the respondent's requests have been amended in such a way that they contain subject-matter extending beyond the content of the application as filed.

In particular, the amended feature relating to the "determination of the teat position in pairs**, namely front teats and rear teats"** (emphasis added), which is specified in the independent claims of all requests, refers to the pairs of teats without defining the sequence of the determination of their position. Thus, it represents a generalisation of specific features referred in column 11, lines 21 to 57 of the application as filed, according to which the searching procedure of the teats occurs with a specific sequence, namely it begins with the determination of the position

of the front teats, whereafter the position of the rear teats is determined. It has to be noted that the descriptions of the application as filed, of the parent application as well as of the grandparent application consistently refer to a robot arm which approaches the animal's udder from the front side so as to position the laser sensor carried on the end of the robot arm firstly in the middle in front of the front teats. In other words, the above mentioned sequence is also determined from the geometry and the kinematics of the robot arm. Moreover, this sequence in the determination of the teat position is particularly important in the present case in so far as the claims are directed to a method.

2.3.1 The respondent argued that this feature can be derived from Figure 10 of the application as filed, which is identical with Figure 10 of the parent and grandparent applications.

The board cannot accept this argument because also Figure 10 clearly indicates the above mentioned sequence in the determination of the position of the teats.

2.3.2 Therefore, the amended claims 1 of all the respondent's requests also contravene the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte