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D E C I S I O N
of 11 January 2006

Case Number: T 0416/04 - 3.2.04

Application Number: 95200027.1

Publication Number: 0663146

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:

A construction for automatically milking animals

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB

Headword:

-

Relevant legal provisions:

EPC Art. 111(1), 123(2)

EPC R. 27(1)

Keyword:

"Main request - added subject-matter (no) "

"Remittal for further prosecution (yes) "

Decisions cited:

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Catchword:

-



Case Number: T 0416/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 11 January 2006

Appellant: MAASLAND N.V.
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Respondent: DeLaval International AB
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 25 February 2004
revoking European patent No. 0663146 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
H. Preglau

Summary of Facts and Submissions

I. By its decision dated 25 February 2004 the Opposition Division revoked the patent. On 22 March 2004 the Appellant (patentee) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 28 June 2004.

II. The patent was opposed on the grounds based on Articles 100(a) (54 and 56) EPC, 100(b) EPC and 100(c) EPC.

The Opposition Division held that claim 1 as granted did not meet the requirements of Article 123(2) EPC.

III. Claim 1 as granted reads as follows:

"1. Construction for milking animals, such as cows, comprising at least one milking machine a first computer and at least one milking robot, the or each milking robot being associated with its own animal recognition system and second computer, the first computer storing data in respect of each animal, characterized in that the first and respective second computers are connected for data exchange whereby. when an animal has been recognised by the recognition system, data concerning the animal is communicated from the first to the second computer. following which data communication the second computer may control the respective milking robot and milking machine to perform the milking and wherein data held in the second computer enable performance of the milking under the control of the second computer even if the data

communication from the first computer is unsatisfactory."

IV. Oral proceedings before the Board took place on 11 January 2006.

The Appellant requested that the decision under appeal be set aside and that the patent be maintained as granted or on the basis of the sets of claims according to a first or second auxiliary request, both filed with the statement setting out the grounds of appeal.

He mainly argued as follows: The feature of claim 1 that "the first and respective second computers are connected for data exchange" is disclosed in the application as filed, page 6, lines 28 to 31 and page 1, lines 17 to 19. The feature that "the second computer may control the respective milking robot and milking machine to perform the milking" cannot be interpreted in the sense that the second computer controls the entire construction, because as it is clear from the wording of claim 1 itself, the term "milking machine" can only mean "entity suitable for milking". Thus, the requirements of Article 123(2) EPC are met.

The Respondent (opponent) countered the Appellant's arguments and mainly argued as follows:

The expression of claim 1 as granted "the first and respective second computers are connected ..." includes the possibility of a "direct connection" between said computers. However, there is no disclosure of a direct connection between the first computer and the second

computer throughout the description as originally filed. Said description solely indicates that data may be exchanged between the first and the second computer via the identification means associated with each robot.

The milking machine is consistently defined as a separate entity to the milking robot - it is not defined interchangeably with said milking robot. The originally filed description makes no reference to the second computer being able to control the milking machine as defined in the specification, i.e. the whole construction, as stated in claim 1 as granted.

Consequently, claim 1 according to the main request does not fulfil the requirements of Article 123(2) EPC.

The Respondent requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request - added subject-matter:*
 - 2.1 Claim 1 as granted comprises inter alia the two following statements: "the first and respective second computers are connected for data exchange" and "following which data communication the second computer may control the respective milking robot and milking machine to perform the milking".

2.2 In the description as originally filed it is stated "... the milking robot is capable of being connected to a first computer" (page 1, lines 18 and 19; claim 1); "a plurality of milking robots is capable of being jointly connected to the first computer." (page 1, lines 23 to 26; page 4, lines 7 to 9). Thus, there is disclosed a connection between the first (joint) computer and the robot(s). It is further disclosed that "If the second computer 5 decides that the animal should be milked, the second computer reads out the following data on the relevant animal at the joint computer 1 through line 2 ..." (page 5, lines 13 o 16) and "a relevant milking robot is capable of going on with milking by means of its second computer 5 as an autonomous unit" (page 6, lines 23 to 25). Thus, it is clear that the second computer controls the robot so as to perform milking. Consequently, in the statement "the milking robot is connected to the first computer", the terms "milking robot" and "second computer" are interchangeable, because the interface between the first computer and the robot cannot be anything else than the second computer which controls the robot. Thus, the original description discloses a connection between the first and second computers for data exchange.

2.3 In the Respondent's view the term "connection" leaves open the possibility of a direct as well as an indirect connection, whereas the description solely discloses an indirect connection via the identification means. There is thus no basis in the original disclosure for the claimed statement that "first and respective second computers are connected for data exchange".

2.4 The Board cannot agree to this.

As indicated in section 2.2 above, the description as filed discloses, in its portion relating to the disclosure of the invention as claimed (in accordance with Rule 27(1)c) EPC), a connection between the first and second computers for data exchange. This is a sufficient basis for the above statement, i.e. "that the first and second computers are connected for data exchange". The fact that in the detailed disclosure of one way of carrying out the invention (in accordance with Rule 27(1)e) EPC) solely an indirect connection is disclosed, has no limiting effect on the more generic disclosure.

Consequently, the statement "the first and respective second computers are connected for data exchange" fulfils the requirements of Article 123(2) EPC.

- 2.5 According to the second contested statement of claim 1, the second computer may control the respective milking robot and milking machine.

The first sentence of claim 1 as granted reads "Construction for milking animals, such as cows, comprising at least one milking machine, a first computer ..."

This statement indicates, on the one hand that the construction may comprise more than one milking machine and on the other hand that the construction comprises "a" first computer that is **one** first computer. If the term "milking machine" were to be understood as meaning the whole installation (i.e. a first computer and a plurality of milking entities), then a plurality of

milking machines would imply a plurality of first computers. It is therefore clear, that in the context of claim 1 the term "milking machine" is not interchangeable with "whole installation". Further it is stated "the second computer may control the respective milking robot and milking machine to perform the milking". As it is clear from the description (see description as originally filed page 6, lines 21 to 25 and page 7, lines 2 to 6) to this effect the second computer controls the robot, the pulsator, the vacuum controller etc. i.e. an entity suitable for milking.

Thus, claim 1 of the patent in suit uses the term "milking machine" in sense of "entity suitable for milking" in a consistent manner. Any other interpretation of that term would not be consistent with the teaching of the description and would not make sense technically.

- 2.6 The Respondent argued that the description also gives a consistent definition of "milking machine" in the sense of "whole installation".

This might be true, however it is obvious for a skilled person, although regrettable, that the same term "milking machine" has been used in the description and in claim 1 to designate on the one hand the "whole installation" and on the other hand an "entity suitable for milking"; consequently, he would have no difficulty to determine when the one or the other definition applies so that the disclosure is technically sensible.

2.7 The Respondent also argued that according to the description it is the milking robot and not the second computer which has some control over "parts" but not over "all" of the milking machine.

However, it is clear from the description that the milking robot is part of the milking machine. Thus, by controlling the milking robot which controls parts of the milking machine the second computer also controls these parts of the milking machine. Furthermore, as indicated above, in the meaning of claim 1 in suit "milking machine" does not mean the whole installation. Moreover, claim 1 stipulates that the second computer controls the milking machine to perform milking. This means that the second computer controls the milking machine to such an extent that milking can be performed, i.e. those parts of the machine necessary to perform milking (see description as originally filed page 6, lines 21 to 25 and page 7, lines 2 to 6).

2.8 Therefore, the statement "following which data communication the second computer may control the respective milking robot and milking machine to perform the milking" does not contravene the requirements of Article 123(2) EPC.

2.9 Thus, claim 1 as granted fulfils the requirements of Article 123(2) EPC.

3. *Further processing:*

Since proceedings before the Boards of Appeal are primarily concerned with the examination of the contested decision, remittal of the case to the

Opposition division in accordance with Article 111(1) EPC is normally considered by the Boards in cases where the Opposition division issues a decision solely upon a particular issue (extended subject-matter) and leaves substantive issues regarding sufficiency of disclosure (Article 83 EPC), novelty (Article 54 EPC) or inventive step (Article 56 EPC) undecided.

The Board therefore considers it appropriate to remit the case to the first instance for consideration of the undecided issues.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte