BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [X] To Chairmen
(D) [ ] No distribution

Datasheet for the decision of 23 November 2006

Case Number: T 0715/04 - 3.2.04

Application Number: 95200151.9

Publication Number: 0665434

IPC: G01N 33/04

Language of the proceedings: EN

Title of invention:
A construction for milking animals

Patentee:
MAASLAND N.V.

Opponent:
DeLaval International AB

Headword:
Display/MAASLAND

Relevant legal provisions:
EPC Art. 56
RPBA R. 106

Keyword:
"Admissibility of an auxiliary request filed after the statement of grounds of appeal (yes)"
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0715/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 23 November 2006

Appellant: (Patent Proprietor)
MAASLAND N.V.
Weverskade 10
NL-3155 PD Maasland (NL)

Representative:
Corten, Maurice Jean F.M.
Octrooibureau Van der Lely N.V.
Weverskade 110
NL-3147 PA Maassluis (NL)

Respondent: (Opponent)
DeLaval International AB
P O Box 39
S-147 21 TUMBA (SE)

Representative:
Amery, Marcus James
Albihns GmbH
Bayerstrasse 83
D-80335 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 30 April 2004 revoking European patent No. 0665434 pursuant to Article 102(1) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. An opposition based upon Article 100(a) EPC was filed against the European patent No. 665 434. The opposition division revoked the patent in a decision dated 30 April 2004.

Claim 1 of the patent as granted reads as follows:

"A construction including at least one implement for milking animals, such as cows, said implement being provided with a milk quantity meter (9) and a milk checking member (10) for the determination of the grade of fat and/or albumen in the milk, obtained from the individual animals during milking, **characterized in that** the implement is constituted by a milking robot for automatically milking animals, and in that the checking member (10) is connected to the quantity meter (9) and the checking member (10) is provided with a display screen (12) on which the quantity of milk obtained from an individual animal during milking and the fat grade and/or the albumen grade thereof can be read."

In the decision under appeal the opposition division found that the subject-matter of claim 1 did not involve an inventive step having regard *inter alia* to documents US-A-3 841 756 (D5) and EP-A-534 565 (D6).

II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 24 May 2004 and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 30 August 2004.

III. By letter dated 30 October 2006 the appellant filed amended claims 1 to 12 which were referred to as "first auxiliary request".

Amended claim 1 reads as follows:

"A construction including at least one implement for milking animals, such as cows, said implement being provided with a milk quantity meter (9) and a milk checking member (10) for the determination of the grade of fat and/or albumen in the milk, obtained from the individual animals during milking, **characterized in that** the implement is constituted by a milking robot for automatically milking animals, and in that the checking member (10) is connected to the quantity meter (9) and the checking member (10) is provided with a display screen (12) on which the quantity of milk obtained from an individual animal during milking and the fat grade and/or the albumen grade thereof can be read permanently during the milking."

IV. Oral proceedings before the board were held on 23 November 2006.

Second and third auxiliary requests filed with the letter dated 30 October 2006 were withdrawn during oral proceedings.

V. During the appeal proceedings not only documents D5 and D6 were referred to but also an article concerning the automation of milk procedures, published in *"Nederlands Dagblad"* on 16 May 1992, page 8 (hereinafter document D8), for which a translation of the relevant parts had

been submitted during the previous opposition proceedings.

VI. The appellant requested that the decision under appeal be set aside and the patent be maintained either as granted (main request) or, auxiliarily, on the basis of amended claims 1 to 12 which were filed as "first auxiliary request" in the letter dated 30 October 2006.

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

VII. The appellant essentially argued that the subject-matter of claim 1 of the main request as well as that of the auxiliary request involved an inventive step with respect to the documents referred to during the appeal proceedings.

The appellant's arguments were contested by the respondent, who also argued that the auxiliary request of the appellant should not be admitted into the proceedings because it was late filed.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request*

2.1 The novelty of the claimed subject-matter was not disputed. As is apparent from the reasons set out below, the subject-matter of granted claim 1 is novel (Article 54(2) EPC).

2.2 Document D5 discloses a construction including at least one implement for milking animals, the implement being provided with a milk quantity meter ("weight sensing device" 34) and a milk checking member ("milk analyzing unit" 26) for the determination of the grade of fat in the milk obtained from the individual animals during milking, the implement being constituted by a milking machine (16) for milking animals, the checking member (26) being connected to the quantity meter (34).

The milk checking member is provided with a display means, constituted by the printout of a printing unit (96), on which (printout) the quantity of milk obtained from an individual animal during milking and the fat grade of the milk can be read (see particularly column 1, lines 45 to 46; column 3, lines 20 to 25; column 4, lines 23 to 46; column 7, lines 46 to 58; Figures 1 and 2). In particular (see column 6, lines 1 to 36), when the milking of an animal has been completed an operator presses a button (86) of the milk checking member (26) to record in the printing unit (94) *inter alia* the quantity of milk and the fat content thereof. Therefore, the printout (shown in Figure 9) of the printing unit (94) displays the total quantity of milk obtained from an individual animal at the end of the milking turn and the fat grade of the milk "for later analysis of individual milk production of the cows" (see column 4, lines 43 to 46).

2.2.1 The subject-matter of the granted claim 1 differs from this prior art in that

a) the implement is constituted by a milking robot for automatically milking animals;

b) the display means is constituted by a display screen.

2.2.2 Feature a) solves the problem of providing further automation of the milking implement.

Feature b) solves the problem of providing an alternative way to display the data concerning the quantity of the milk yield from an individual animal and its quality (fat content and/or albumen content).

Accordingly, these distinguishing features solve two partial problems having no interrelationship, which can thus be considered separately.

2.2.3 Document D6 refers (see particularly column 1, lines 4 to 18) to a milking implement comprising **a milking robot for automatically milking animals**, which is provided with a robot arm functioning as a carrier for one or several teat cups and for automatically connecting them to teats of the animal's udder.

Since it is a normal aim of the skilled person to replace manual operations by operations which can be executed automatically, it would be obvious for the skilled person to provide the construction according to document D5 with a milking robot for automatically milking animals as referred to in document D6.

Therefore, feature a) represents an obvious modification of the construction known from document D5

and thus fails to render the claimed subject-matter inventive.

In this respect, it has to be noted that the appellant did not submit any argument supporting the inventive character of this feature.

2.2.4 The partial problem to be solved by feature b) relates to data displaying. The use of a display screen for presenting the results of measured parameters clearly belongs to the basic general knowledge of the skilled person.

In particular, document D6 reflects this basic knowledge in relation to the presentation of data concerning the milk obtained from individual animals during milking.

Indeed, document D6 refers to a milking implement provided with a computer for processing signals originating from sensors and makes it clear that the information from the sensors can be indicated "on the monitor display of the computer and/or by means of a printer".

Having regard to this basic knowledge, it would be obvious for the skilled person to replace or to complement the printout of the printing unit of the construction according to document D5 by a display screen in order to indicate the data concerning the milk yield from an individual animal.

2.2.5 The appellant essentially argued as follows:

– Granted claim 1 refers to a display screen "on which the quantity of milk **obtained** from an individual animal **during milking** and the fat grade ... can be read" (emphasis added). Because of the presence of the words "during milking", this claim has to be interpreted as implicitly defining that the data (quantity of milk and fat grade) **can be read during milking**. The skilled person would not arrive in an obvious way at the claimed subject-matter, because none of the cited documents suggests the use of a display screen on which the data can be read during the milking, i.e. also before the end of the milking turn.

The board cannot accept these arguments for the following reasons:

– The words "during milking" in the granted claim 1 do not refer to the data which can be read on the screen but to **the quantity of milk obtained from an individual animal**. The wording of claim 1 does not allow the specific interpretation submitted by the appellant, which is also inconsistent with the description of the patent, according to which the data can be read "during and/**or after** the milking turn" (see column 5, lines 31 to 34; emphasis added).

– Furthermore, even if the interpretation of the appellant were to be accepted, it has to be considered that for any measuring device which is equipped with display means there is a natural

desire to display the measured results immediately they become available.

2.3 Therefore, the ground for opposition according to Article 100(a) EPC prejudices the maintenance of the patent as granted, since the subject-matter of claim 1 does not involve the inventive step required by Article 56 EPC.

3. *Auxiliary request*

3.1 The respondent submitted that the auxiliary request filed by letter dated 30 October 2006 was late filed and should not be introduced into the proceedings. The board does not share this view for the following reasons:

– Amended claim 1 according to the auxiliary request differs from granted claim 1 in that the words "permanently during milking" have been added after the terms "can be read".

– In the statement setting the grounds of appeal, the appellant argued that neither document D5 nor document D6 suggested an immediate and permanent display of the data.

– In his reply (dated 13 January 2006) to the statement setting the grounds of appeal, the respondent submitted that granted claim 1 did not define data made available immediately and permanently.

– Thus, the amendment made in claim 1 of the auxiliary request clearly represents a reaction of the appellant to the respondent's objection and is also occasioned by the ground of opposition under Article 100(a) EPC (see Rule 57a EPC).

– Moreover, since the decision under appeal was based upon the assumption that "making the results available immediately and permanently on the display is implicit in claim" (see section 3 of the reasons; page 4, last paragraph), the amendment made in the auxiliary request did not raise issues which the board or the respondent could not be expected to deal with without adjournment of the oral proceedings (Rule 10b of the Rules of Procedure of the Boards of Appeal (RPBA)).

Under these circumstances, the board decided to consider the auxiliary request.

3.2 The subject-matter of claim 1 of the auxiliary request differs from the construction known from document D5 not only by the above mentioned feature a) but also in that

b') the display means is constituted by **a display screen**, on which the quantity of milk obtained from an individual animal during milking and the fat grade and/or the albumen grade thereof can be read **permanently during milking**.

3.2.1 Having regard to the consideration in the above section 2.2.3, feature a) represents an obvious modification of

the construction known from document D5 and thus fails to render the claimed subject-matter inventive.

3.2.2 Feature b') does not interact with feature a), in so far as it relates to a problem concerning the presentation of the measured data which can be solved independently of the problem which feature a) relates to.

Feature b') offers the advantage that the farmer can individually monitor in a more accurate way the animals so that the milk production can be individually followed and the feeding of an individual animal can be adapted to the quantity and the quality of the milk.

3.2.3 Having regard to the considerations in section 2.2.4, it would be obvious for the skilled person - on the basis of his common general knowledge - to replace a printout by the display screen of a computer for presenting the data measured by the milk quantity meter and the milk checking member of the implement according to document D5. The skilled person, being also aware that the display screen of a computer permits data display in real time, would be motivated to use it for displaying measured data as soon as possible (see also point 2.2.5).

In this respect, the basic technical knowledge is reflected by document D8 which refers to the monitoring of the quantity of the milk obtained from animals milked by means of a milking robot as well as of its quality. According to this document, the quantity of milk measured in a milk meter can be sent to a personal computer and recorded such that the dairy owner can

follow the production run per cow so as to directly notice the effect of a ration of food and to correct this if a decrease occurs (see the English translation of the paragraph headed "Produktieregistratie" (Recording Production)). Moreover, according to the passage bridging columns 1 and 2 of this document (see the paragraph headed "Kwaliteitsbewaking" (Monitoring of quality)), it is very important for a farmer to get the data concerning the quality of the milk (such as the protein content) and to have them available to him "à la minuut", i.e. as soon as possible.

Therefore, it would be obvious for the skilled person looking for a more accurate way to monitor the milk production of individual animals to provide the construction according to document D5 with a display screen on which the measured data can be read permanently during milking.

3.2.4 In this respect, the appellant argued that the combination of documents D5 and D8 would not guide the skilled person to the claimed subject-matter, since

– the fact that the display screen is suitable for displaying data in real time implies an algorithm which renders it suitable for this purpose, while document D8 only discloses the idea of measuring in real time data concerning the milk obtained from an individual animal without referring to the possibility of displaying in real time the measured data, i.e. of making them available immediately after measurement, and

– in an non-automated system such as disclosed in document D5, in which the farmer has to carry out manual operations, the permanent display of the measured data would be useless.

The board cannot accept these arguments for the following reasons:

– Feature b') does not define more than the idea of using a display screen for displaying data in real time, i.e. as soon as the data have been measured. Document D8 discloses the idea of making the data available to the farmer as soon as possible and refers to a personal computer for recording measured data (see section 3.3.2, 2nd paragraph). Thus, this document suggests the use of the monitor screen of a personal computer to display in real time the measured data. Neither claim 1 nor document D8 refer to an algorithm. In any case, even if feature b') were to be interpreted as implying a computer provided with an algorithm, also document D8 should be interpreted as implying it.

– Document D5 concerns a semi-automated system in which the teat cups have to be connected manually, while further milking operations can be performed automatically. Thus, information concerning the quantity and the quality of the milk obtained from the animals would not be useless if it were to be made available to the farmer during the milking turn, when after the manual connection of the teat cups the milking operation proceeds automatically.

3.2.5 The appellant also submitted that claim 1 defines a milk checking member which is suitable for performing two measurement methods, i.e. for measuring data not only in real time (as referred to as in column 1, lines 50 to 9 and in column 5, lines 30 and 31 of the patent specification) but also in non-real time (e.g. according to the Gerber, the Babcock, the Rose-Gottlieb or the Kjeldahl methods which are referred to in the patent specification), and for displaying them immediately after measurement, while none of the available documents discloses a milk checking member suitable for performing both measurement methods.

The board cannot accept this argument because the possibility of having both measurement methods is neither specified in nor implied by claim 1.

3.2.6 Therefore, the subject-matter of claim 1 of the auxiliary request does not involve the inventive step required by Article 56 EPC.

4. In view of the above finding, it is not necessary to examine whether the subject-matter of amended claim 1 goes beyond the content of the application as filed (Article 123(2) EPC), this issue being irrelevant for the finding of the present decision.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte