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**D E C I S I O N**  
**of 30 May 2006**

**Case Number:** T 0745/04 - 3.2.04

**Application Number:** 96201558.2

**Publication Number:** 0749682

**IPC:** A01J 7/04

**Language of the proceedings:** EN

**Title of invention:**

A method of automatically cleaning or otherwise treating the udder or at least the teats of animals

**Patentee:**

MAASLAND N.V.

**Opponent:**

DeLaval International AB

**Headword:**

Cleaning and milking/MAASLAND

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

"Inventive step (no) "

**Decisions cited:**

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**Catchword:**

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Case Number: T 0745/04 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 30 May 2006

**Appellant:** DeLaval International AB  
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**Respondent:** MAASLAND N.V.  
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**Representative:** Corten, Maurice Jean F.M.  
Octrooibureau Van der Lely N.V.  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 8 April 2004  
rejecting the opposition filed against European  
patent No. 0749682 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

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

## Summary of Facts and Submissions

- I. The opposition division rejected the opposition filed against the European patent No. 749 682 by its decision dated 8 April 2004.
- II. On 8 June 2004 the opponent (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 6 August 2004.
- III. Oral proceedings before the board were held on 30 May 2006.

During oral proceedings the respondent filed an amended claim 1 which reads as follows:

"1. A method of automatically cleaning the udder or at least the teats of animals and automatically milking animals that are allowed to walk around freely in an accommodation, such as a stable or cowshed or a meadow, and to go individually to a specific place where, after identification of the animals, there can be started a cleaning program to be executed by a computer for cleaning the udder or at least the teats of the animals, as well as a milking program to be executed by the computer for connecting teat cups to the teats of the animals and milking same characterised in that the cleaning program and the milking program can be started independently of each other, whereby the cleaning program is started when a defined period of time has elapsed since the previous cleaning of the udder or at least the teats of an animal."

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

The respondent requested that the decision under appeal be set aside and the patent be maintained on the basis of the amended claim 1 filed during oral proceedings.

V. The appellant *inter alia* argued that the subject-matter of claim 1 did not involve an inventive step having regard to the teaching of document EP-A-634 097 (D3) in combination with the general knowledge of the skilled person.

The arguments of the appellants were contested by the respondent.

### **Reasons for the Decision**

1. The appeal is admissible.

2. *The amendments*

Amended claim 1 differs from granted claim 1 only in that the terms "or otherwise treating" (column 4, lines 7 and 8), "or otherwise treating same" (column 4, lines 15 and 16()) and "or other treatment" (column 4, line 23) have been deleted.

These amendments do not contravene the requirements of Articles 123(2) and 123(3) EPC.

3. *The claimed subject-matter*

- 3.1 The method according to the pre-characterising portion of Claim 1 relates to the so called "voluntary systems" for automatically milking animals.

It is well known that in a voluntary milking system, an animal to be milked goes individually to the milking box in which, after identification, it is milked if a defined period of time has elapsed since its previous milking.

- 3.2 According to the first characterising feature of claim 1, "the cleaning program and the milking program can be started independently of each other" (hereinafter this feature will be referred to as feature A), while according to the second characterising feature "the cleaning program is started when a defined period of time has elapsed since the previous cleaning of the udder or at least the teats of an animal" (hereinafter this feature will be referred to as feature B).

According to the patent specification there is a first category of animals which are consecutively cleaned and milked and a second category of animals "with whom cleaning ... has to take place more frequently and has to be separated from the milking proper" (see column 1, lines 48 to 55). Furthermore, in order to realize that an animal is more frequently cleaned than being milked the period of time claimed in claim 1 (see feature B) "may be considerably shorter than the interval between consecutive milking runs" (see column 1, lines 8 to 12).

Thus, feature A has to be construed as defining a method step according to which it is decided whether an animal is cleaned without being consecutively milked, i.e. whether the cleaning program is started independently of the milking program, or cleaned and milked immediately after finishing the cleaning program. It follows from this feature that animals of the second category can be cleaned more frequently than those of the first category.

Feature B refers to a defined period of time between two consecutive cleaning operations: an animal of the second category can be cleaned more frequently but only if this period of time has elapsed.

3.3 Claim 1 generally refers to a "specific place" in which a cleaning program as well as a milking program can be started. The description of the patent refers to the expression "specific place" also in general terms, without indicating in detail an embodiment of this "specific place" and without defining it more specifically.

#### 4. *Novelty*

Since none of the cited prior art documents discloses feature B, the claimed subject-matter is novel. Novelty was not objected to during the appeal proceedings.

#### 5. *Inventive step*

5.1 Document D3, which is considered to be the closest prior art, refers to "a construction for automatically

milking animals ... comprising a milk box [sic] having a milking robot" (see column 1, lines 1 to 3).

The parties agreed that this document concerns a "voluntary system" for milking animals. This document discloses a method of automatically cleaning the udder of animals that are allowed to walk around freely in an accommodation, such as a stable or cowshed or meadow, and to go individually to a structure constituted by three aligned boxes 1, 2 and 3, arranged one after the other, such that an animal can be cleaned in the first box, massaged in the second one and milked in the third one.

- 5.1.1 The structure constituted by the three aligned boxes 1, 2 and 3 represents "a specific place" as defined in the pre-characterising portion of claim 1, i.e. a place "where, after identification of an animal, there can be started a cleaning program to be executed by a computer for cleaning the udder or at least the teats of the animal, and, after identification of the animal, there can be started a milking program to be executed by a computer for connecting teat cups to the teats of the animal and milking the same".

In this respect, the respondent argued that the "specific place" referred to in claim 1 defines a single box in which the animal can be cleaned and milked, whereas document D3 does not disclose a "specific place" since cleaning and milking take place in separate boxes 1 and 3.

The board cannot accept this argument because the term "specific place", also having regard to the

considerations in section 3.3 above, does not necessarily define a single box in which the animal can be firstly cleaned and subsequently milked.

- 5.1.2 According to document D3, "it may happen that animals present in a box other than the milk box are still denied access to the milk box" (see column 2, lines 32 to 34) and "so as to render it possible for animals, which entered the box 1 or the box 2 but to which thereafter access to box 3 must be denied ... the railing is provided at the longitudinal side 6 with respective exits 17 and 18" (see column 4, lines 9 to 14). Thus, if access to the milking box 3 is denied to an animal present in box 2, the animal whose udder has been cleaned in box 1, leaves box 2 without being consecutively milked.

Therefore, document D3 also discloses feature A. This was not disputed by the respondent.

- 5.2 Accordingly, the subject-matter of claim 1 differs from the prior art known from document D3 by virtue of feature B, according to which the cleaning program is started when a defined period of time has elapsed since the previous cleaning of the udder or at least of the teats of an animal.

Feature B, which in conjunction with feature A makes it possible that animals which do not need to be milked yet (because not enough time has elapsed from the previous milking) are cleaned without being consecutively milked, ensures that these animals are cleaned only if cleaning is necessary (because enough time has elapsed from the previous cleaning) so as to



avoid a too frequent cleaning of animals which do not need to be milked yet.

Therefore, the problem to be solved by the claimed invention can be seen in providing in a voluntary milking system a method of milking which, while ensuring that some animals are more frequently cleaned than milked, avoids a too frequent cleaning of these animals and thus optimizes the utilization of the specific place where the animals can be cleaned and milked in so far as it is avoided that the specific place is unnecessarily occupied by animals which do not need to be milked yet.

5.2.1 The skilled person generally knows that there are animals which need to be cleaned more frequently or more accurately than other animals (for instance because of health problems). The milking system described in document D3, due to the structure of the specific place constituted by boxes 1 to 3, is suitable for cleaning some animals more frequently than other animals. Therefore, the skilled person would immediately arrive at the idea of using the specific place of document D3 in such a way that these animals can be cleaned more frequently than other animals which are only submitted to combined cleaning and milking operations.

5.2.2 Moreover, according to document D3, "an optimum capacity utilization of the milk box 3 is important" and, therefore, "the time required for cleaning the animals ... must at all times be shorter than the time required for milking" (column 3, lines 8 to 19).

Thus, document D3 itself suggests to the skilled person the importance of the problem of optimising the utilisation of the "specific place".

- 5.2.3 The skilled person also knows that in a voluntary milking system, in order to avoid that the milking box is unnecessarily occupied by an animal which does not yet need to be milked, the milking program is started when a defined period of time has elapsed since the previous milking run.

The skilled person would immediately realize that - analogously with the period of time between two consecutive milking runs - a period of time should also be foreseen between two consecutive cleaning operations, simply to avoid that an animal repeatedly occupies the cleaning box and thereby blocks the access of other animals to the cleaning box.

Thus, the skilled person starting from the method known from document D3 would apply the criterion used for deciding whether an animal may be milked also for deciding whether an animal may be cleaned without exercising any inventive skill.

- 5.3 The respondent essentially argued that the claimed invention also applies to animals which get dirty to a considerable extent. According to the claimed teaching these animals can be cleaned once without being consecutively milked; alternatively, they can be cleaned longer and milked immediately after finishing cleaning. Thus, the claimed invention does not represent the sole method for cleaning animals which become dirtier than other animals.

The board cannot accept this argument because the choice of an alternative among two or more obvious alternatives does not necessarily render the selected alternative unobvious, which as explained in section 5.2.1 above is suggested by document D3 itself.

5.4 Therefore, the claimed subject-matter does not involve the inventive step required by Article 56 EPC.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The European patent is revoked

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte