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Datasheet for the decision of 13 February 2007

Case Number: T 1384/04 - 3.2.04

Application Number: 96203152.2

Publication Number: 0774204

IPC: A01J 5/017

Language of the proceedings: EN

Title of invention:
A construction including an implement for milking animals

Patentee:
MAASLAND N.V.

Opponent:
De Laval International AB

Headword:
Inclined teat cup/MAASLAND

Relevant legal provisions:
EPC Art. 100(b), 100(a), 123, 111(1)

Keyword:
"Sufficiency of disclosure (yes)"
"Novelty (yes)"
"Remittal for further prosecution"

Decisions cited:
-

Catchword:
-

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Case Number: T 1384/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 13 February 2007

Appellant: (Patent Proprietor)
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 21 October 2004 revoking European patent No. 0774204 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 Articles 100(a), (b) and (c) EPC - was filed against the European patent No. 774 204. The opposition division by decision dated 21 October 2004 revoked the patent.

The opposition division held that the subject-matter of amended claim 1 filed during oral proceedings lacked novelty over document GB-A-2 226 941 (D1).

II. On 8 December 2004 the patent proprietor (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 25 February 2004.

III. Oral proceedings before the board were held on 13 February 2007.

During the oral proceedings the appellant filed a further amended claim 1, which reads as follows:

1. A construction including an implement for milking animals, provided with one or more milking robots (5), teat cups (6) and one or more milk boxes (1) each having a horizontal floor (17), each teat cup (6) being disposed on a carrier (32) of a milking robot arm in an inoperative position, while, when a relevant teat cup (6) is connected to a teat of an animal to be milked, the teat cup (6) is brought in a substantially vertical position by means of the carrier (32), in order to bring the teat cups back to their inoperative position the implement being provided with withdrawing members

(54) by means of which respective teat cups (6) can be drawn towards the carrier (32), characterised in that in the inoperative position each teat cup (6) forms an angle with a vertical line, extending perpendicular on the horizontal floor (17).

IV. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of claims 1 to 23 filed during oral proceedings before the board.

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

V. The respondent essentially argued that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a skilled person over the full scope of claim 1 and that the subject-matter of this claim lacked novelty with respect to each of documents WO-A-85/02973 (D3), EP-A-566 201 (D4) and EP-A-545 916 (D10).

The appellant contested these arguments.

During the written phase of the proceedings, the respondent had also argued that the claimed subject-matter lacked novelty with respect to documents D1 and GB-A-2 258 382 (D2).

Reasons for the Decision

1. The appeal is admissible.

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

2.1 Amended claim 1 differs from granted claim 1 in that the features

(i) "implement for milking animals, provided with ... **teat cups** (6)", and

(ii) the feature "each teat cup (6) being **disposed** on a carrier (32)"

have respectively replaced the features "implement for milking animals, provided with ... **one or more** teat cups (6)" and "each teat cup (6) being **disposable** on a carrier (32)" (emphasis added), and the following feature has been added:

(iii) "in order to bring the teat cups back to their inoperative position the implement being provided with withdrawing members by means of which respective teat cups (6) can be drawn towards the carrier (32)".

2.1.1 Feature (i) can be clearly and unambiguously derived from independent claim 3 of the application as filed which refers to "one or more teat cups".

Feature (ii) is inter alia supported by claim 3 of the application as filed stating that a teat cup is disposed on a carrier (32).

Feature (iii) is clearly supported by claim 15 in conjunction with column 2, lines 39 to 43 of the application as filed.

2.1.2 Moreover, the amendments do not extend the scope of the claim over that of granted claim 1 (Article 123(3) EPC).

2.1.3 Thus, amendments (i) to (iii) do not contravene the requirements of Articles 123(2) and (3) EPC.

2.2 The feature that the each milking box has "a horizontal floor" can be derived from Figures 2 and 3 of the application as filed.

In addition, the term "horizontal" appears for example in column 5, lines 11 and 12 in which it is stated that the first side of the back wall (28) shown in Figure 3 includes an angle of approximately 140° with the horizontal line. Since this horizontal line is parallel to the floor, the floor shown in Figure 3 is horizontal.

2.2.1 Therefore, the ground for opposition according to Article 100(c) EPC does not prejudice the maintenance of the patent of the basis of amended claim 1.

3. *Article 100(b) EPC*

3.1 The description of the patent discloses, in relation to the drawings, an embodiment of the invention in which each box-like housing 35 of the carrier 32 is pivotally mounted about an axis 36 with respect to a girder 37 of the milking robot (see particularly column 5, paragraph

[0019]), wherein in each box-like housing 35 there is disposed a withdrawing member 54 (see particularly column 6, paragraph [0021]). Thus, the patent specification describes in detail a way of carrying out the claimed invention.

3.2 The respondent essentially argued as follows:

– Claim 1 does not contain the structural features enabling the pivotal movement of the carrier and does not define the withdrawing members as being arranged within the carrier.

– Claim 1 covers undisclosed embodiments in which the movement of the carrier can be provided other than by a pivotal mounting of the carrier of a robot arm and in which the withdrawing members can be arranged remotely from the carrier.

– Therefore, the patent specification contains insufficient information to allow the skilled person to carry out the invention within the whole area that is claimed.

3.3 The board cannot accept the respondent's arguments for the following reasons:

(i) Claim 1 clearly indicates that each teat cup is brought by means of the carrier from a position in which the teat cup is inclined with respect to a vertical line to an operative position in which it is substantially vertical. Thus, claim 1 implies a pivotal movement of the carrier. The skilled person would have no difficulty in

providing an articulation for the carrier so as to allow such a pivotal movement.

(ii) Claim 1 clearly defines the function of the withdrawing members. The skilled person would have no difficulty in arranging the withdrawing members either inside or outside of the carrier such that they can perform this function.

3.3.1 Therefore, the ground for opposition according to Article 100(b) EPC does not prejudice the maintenance of the patent of the basis of claim 1.

4. *Novelty*

4.1 During oral proceedings the respondent no longer submitted that claim 1 lacks novelty over documents D1 or D2.

4.1.1 However, as to document D1 the following is to be noted:

– Claim 1 requires that the teat cup should be brought in a substantially vertical position by means of the carrier. The carrier is also the element which brings the teat cup from its inoperative position into a substantially vertical position.

– In document D1, the teat cups are brought by means of the cluster drive CD from an inoperative position ("relaxation position"), in which each teat cup forms an angle of 90° with a vertical line, into an operative position in which each teat cup is substantially vertical. Thus, according to this citation the carrier is formed by the cluster drive

CD and there is no disclosure of withdrawing members by means of which respective teat cups can be drawn toward the cluster drive which corresponds to the claimed carrier.

4.1.2 As to document D2, it is to be observed that this citation refers to an implement provided with teat cups, which in their inoperative position are stored on a separate store TF (see Figure 4), and with a manipulator MA comprising gripping means GM, the manipulator being suitable for taking the teat cups from the separate store TF one after the other, for orienting a teat cup in different positions, bringing it into the operative position in which it can be connected to a teat of the animal's udder and bringing it back to the store TF.

Thus, the subject-matter of claim 1 differs from this prior art *inter alia* in that the implement is provided with **a plurality** of withdrawing members each being associated with the respective teat cup.

4.1.3 Thus, the claimed subject-matter is novel over each of documents D1 and D2.

4.2 Document D3 (see Figures 1, 3 and 5) discloses a construction including an implement for milking animals, which is provided with a milking robot carrying four teat cups (26). The construction also includes a milking box having a horizontal floor. The milking robot comprises a tilting robot arm (15) on which a milking unit (20) comprising a plate (22) carrying the teat cups is pivotally mounted. More particularly, each of teat cups (26) is supported on the plate (22) of the

milking unit (20) by means of two positioning plates (23 and 24) ensuring horizontal positioning of the teat cup. Each teat cup (26) is resiliently supported by the respective positioning plate (24) by means of springs or elastic straps (25). The robot arm (15) of the milking robot (20) can move from a lower position in which the teat cup cups are inoperative to a higher position in which the teat cups can be connected to the teats of an animal.

It cannot be derived from this document that in the inoperative position each teat cup forms an angle with a vertical line, because the milking unit (20) - due to its pivotal connection to the robot arm (15) - may substantially maintain a horizontal position during tilting of the robot arm (see particularly page 5, lines 18 to 21). Even if it might be theoretically possible that a teat cup assumes an inclined position in its operative position, document D3 does not clearly and unambiguously disclose that it actually does.

Thus, the subject-matter of claim 1 differs from this prior art at least in that in the inoperative position each teat cup forms an angle with respect to a vertical line.

Furthermore, since the springs or elastic straps (25) are described as allowing vertical, horizontal and tilting movement of each teat cup in its plate (see particularly page 5, lines 5 to 7), they cannot be considered as withdrawing members by means of which the teat cup can be drawn toward the carrier.

4.2.1 Therefore, the claimed subject-matter is novel over document D3.

4.3 Document D4 (see Figures 2 and 3) discloses a construction including an implement for milking animals, provided with a milking robot, teat cups and a milking box having a horizontal floor, each teat cup (79) being disposed on a carrier (41) of a milking robot arm (40, 62) in an inoperative position. More particularly, the carrier comprises for each teat cup a supporting element (46) provided with a conical seat in which the teat cup is disposed in its inoperative position. The supporting element (46) is capable of pivoting about a shaft (47) with respect to the carrier (41) while being biased by a spring (48). When a relevant teat cup is connected to a teat of an animal to be milked, the teat cup is positioned under the teat by means of the milking robot arm and then moved upwardly toward the teat by means of a magnet 80. In order to bring the teat cups back to their inoperative position, the implement is provided with withdrawing members (pulling members 50) by means of which respective teat cups can be drawn towards the carrier.

The subject-matter of claim 1 differs from this prior art in that in the inoperative position each teat cup forms an angle with respect to a vertical line.

4.3.1 In this respect, the respondent argued that when the teat cup has to be connected to the relevant teat the respective pulling member (50) is released and thus, because the supporting element (46) can rotate about the shaft (47), the teat cup will be in a position in which it forms an angle with a vertical line.

The board cannot accept this argument not only because document D4 does not clearly and unambiguously disclose teat cups which are actually inclined in their inoperative position but also because it is clear that the springs (48) hold the teat cups in a vertical position.

4.3.2 Therefore, the claimed subject-matter is novel over document D4.

4.4 Document D10 (see Figures 6, 7 and 9) discloses a construction including an implement for milking animals, provided with a milking robot, teat cups and a milking box having a horizontal floor, the teat cups (80) being disposed on a robot arm portion (54) of a milking robot arm in an inoperative position. The robot arm portion (54) comprises (see particularly Figure 9) for each teat cup a teat cup carrier (76) sliding in a guide means (86), the teat cup being provided with a connection arm (111) which is pivotally mounted on a connection member (113) by means of an inclined pin (112). The connection member (113) is pulled up against the teat cup carrier (76) by means of cord (81), so as to hold the teat cup in its inoperative position. When a relevant teat cup (80) has to be connected to a teat of an animal to be milked, the teat cup is positioned under the teat by means of the milking robot arm and is moved upwardly toward the teat by means of the teat cup carrier (76) which slides in the guide means (86). In order to bring the teat cup back to its inoperative position, the cord (81) acts as a withdrawing member drawing the respective teat cup toward the carrier.

The subject-matter of claim 1 differs from this prior art in that in the inoperative position each teat cup forms an angle with respect to a vertical line.

4.4.1 In this respect, the respondent argued that as disclosed in document D10 each teat cup has some freedom of movement about the pin (112) so that the teat cup in its inoperative position may form an angle with respect to a vertical line.

The board cannot accept this argument because there is no unambiguous disclosure of an inclined teat cup in its inoperative position. Furthermore, in column 8, lines 24 to 27 of document D10, it is said that "the extension of the pin passes through the centre of the aperture of the teat cup, so that, when pivoted upwardly, this aperture approximately maintains its position". This means that there is no change in the inclination of the teat cup which remains in a substantially vertical position.

4.4.2 Therefore, the claimed subject-matter is novel over document D10.

5. It follows that the subject-matter of amended claim 1 is novel over the cited prior art (Article 54 EPC).

However, the issue of inventive step has not been considered by the opposition division. 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 further prosecution.

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