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**Datasheet for the decision
of 3 May 2007**

Case Number: T 0526/05 - 3.2.04

Application Number: 95942359.1

Publication Number: 0800341

IPC: A01K 1/12

Language of the proceedings: EN

Title of invention:

An apparatus for and a method of managing animals

Patentee:

DeLaval Holding AB

Opponent:

Maasland N.V.

Headword:

-

Relevant legal provisions:

EPC Art. 100(a)

Keyword:

"Novelty (yes)"

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0526/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 3 May 2007

Appellant: Maasland N.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 11 March 2005
rejecting the opposition filed against European
patent No. 0800341 pursuant to Article 102(2)
EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. By its decision dated 11 March 2005 the Opposition Division rejected the opposition. On 19 April 2005 the Appellant (opponent) filed an appeal and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 19 July 2005.
- II. The patent was opposed on the grounds based on Article 100 (a) EPC (novelty and inventive step).
- III. The following documents played a role in the present proceedings:
- D4: EP-A-0 617 887
D6: US-A-3 460 515
- IV. Oral proceedings before the Board took place on 3 May 2007.

The Appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

He mainly argued as follows:

The subject-matter of claim 1 according to the main or first auxiliary request lacks novelty with respect to D4. It is not disputed that D4 discloses all the features of the pre-characterising part of claim 1 of these requests. The characterising part of claim 1 of the main request requires that there is control means for activating the enticing means from a rest state to an activated state. In D4 the feeding stations provided outside the milking stall form enticing means to entice the cows to leave the milking stall. The refilling of the empty feeding

stations also constitutes the activation of the control system for the enticing means. Thus, D4 also discloses the characterising feature of claim 1 according to the main request. It is implicit for a skilled person that in D4 too the control means is adapted for activating the milking as well as the enticing means. Consequently, D4 discloses also all features of claim 1 of the first auxiliary request.

Additionally, the subject-matter of claim 1 of these requests lacks inventive step starting from D4 and combining D4 with the teaching of D6.

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

In D4 the feeding stations are always provided with a sufficient quantity of fodder. Thus, this citation contains no disclosure of an enticing means which can be controlled to take either an activated state or a rest state. Therefore, novelty of the subject-matter of claim 1 according to all requests is given.

The problem to be solved by the invention is to improve the efficiency of the milking robot by speeding up the animal traffic, i.e. to have the animal leaving the milking station as soon as possible.

D4 is not concerned by animal traffic; the aim of D4 is to prevent animals from lying down on the floor after having been milked. D6 discloses means for enticing an animal to enter a cage but not to leave it as soon as possible. Therefore, the combination of the teaching of D4 with that of D6 cannot lead a skilled person to the claimed subject-matter.

The Respondent requested that the appeal be dismissed (main request) or in the alternative that the decision

under appeal be set aside and that the patent be maintained on the basis of the set of claims filed as first auxiliary request with letter dated 2 December 2005, or on the basis of one of the sets of claims filed as second and third auxiliary request with letter dated 30 March 2007.

VI. Claims 1 and 21 as granted read as follows:

"1. An apparatus for managing an animal, comprising: a milking stall (1) having an entrance (2) and an exit (3) and provided for housing one single animal, an exit area (11) accessible to the animal from the exit (3) of the milking stall (1), and by enticing means provided to entice the animal to move from the milking stall (1) into the exit area (11), characterized by control means for activating the enticing means from a rest state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall."

"21. A method of automatically managing an animal in a milking stall, comprising the following steps:

- identifying the individual animal entering the stall;
- examining the condition of the identified animal;
- milking the identified animal in response to the result from the condition examination, and
- enticing the animal away from the milking stall by activating an enticing means from a rest state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall."

Claims 1 and 21 according to the first auxiliary request read as follows:

"1. An apparatus for managing an animal, comprising a milking stall (1) having an entrance (2) and an exit (3) and provided for housing one single animal, milking means (7) for automatic milking of the animal present in the milking stall (1),
an exit area (11) accessible to the animal from the exit (3) of the milking stall (1),
an enticing means provided to entice the animal to move from the milking stall (1) into the exit area (11), and
control means for activating the milking means (7),
characterized in that the control means is adapted for activating the enticing means from a rest state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall."

"21. A method of automatically managing an animal in a milking stall, wherein the milking stall defines a milking area, wherein milking means is provided for automatic milking of the animal present in the milking stall and wherein control means is provided for activating the milking means, the method comprising the following steps:

- identifying the individual animal entering the stall;
- examining the condition of the identified animal;
- milking the identified animal in response to the result from the condition examination, and
- enticing the animal away from the milking stall by activating by means of the control means an enticing means from a rest state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall."

Claims 1 and 21 according to the second auxiliary request read as follows:

"1. An apparatus for managing an animal, comprising a milking stall (1) having an entrance (2) and an exit (3) and provided for housing one single animal, milking means (7) for automatic milking of the animal present in the milking stall (1),
an exit area (11) accessible to the animal from the exit (3) of the milking stall (1),
an enticing means provided to entice the animal to move from the milking stall (1) into the exit area (11), and
control means for activating the milking means (7),
characterized in that the control means is adapted for activating the enticing means from a rest state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall, wherein the enticing means comprises several enticing devices, whereby the control means (9) is provided for selectively activating any one or a combination of the enticing devices."

"21. A method of automatically managing an animal in a milking stall, wherein the milking stall defines a milking area, wherein milking means is provided for automatic milking of the animal present in the milking stall and wherein control means is provided for activating the milking means, the method comprising the following steps:

- identifying the individual animal entering the stall;
- examining the condition of the identified animal;
- milking the identified animal in response to the result from the condition examination, and

- enticing the animal away from the milking stall by activating by means of the control means an enticing means, comprising several enticing devices, from a rest state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall, whereby any one or a combination of the enticing devices are selectively activated."

Claim 1 of the third auxiliary is identical with claim 1 of the second auxiliary request, whereas all method claims have been cancelled.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request:*
 - 2.1 Novelty:
 - 2.1.1 Novelty of claim 1 has been disputed with respect to D4.
 - 2.1.2 In D4 (column 4, lines 49 to 53) it is stated that "it is ensured that there is always a sufficient quantity of fodder for the animals in the feeding stations. In this way it is avoided that a periodical supply of fodder causes a rush towards the feeding stations."

Thus, in D4 the enticing means are always kept in a state in which they entice the animals.
 - 2.1.3 However, according to claim 1 there is provided "control means for activating the enticing means from a rest

state in which it does not entice the animal to an activated state in which it entices the animal to leave the milking stall."

2.1.4 It follows that novelty of the subject-matter of claim 1 is given with respect to D4.

2.2 Inventive step:

2.2.1 D4 is the closest prior art. This is agreed by both parties. Since in D4 there is always sufficient quantity of fodder available in the feeding stations, there is no additional enticing effect at the moment the animal should leave the milking stall.

The Respondent submitted that the problem to be solved by the invention with respect to D4 is to improve the efficiency of the milking robot by speeding up the animal traffic, so that the animal will leave the milking stall promptly and voluntarily after the milking operation has been finished.

However, this problem is clearly addressed in D4, it is stated in column 1, lines 51 to 55 that: "the animal, after the end of the automatic milking procedure in the milking box, will leave same comparatively rapidly in order to go and feed in the feeding area ..."

Therefore, the problem to be solved by the distinguishing features of claim 1 of the main request can be seen in further improving the effectiveness of the enticing means.

2.2.2 D6 discloses enticing means to entice an animal to enter a cage. This is achieved by dropping feed into a feed

trough. In column 12, lines 13 to 15 it is stated: "the cow about to enter that particular cage will see this food drop and be encouraged to enter."

Thus, D6 teaches that in addition to the expectation to find food in the trough, the animal can be further encouraged to move, by showing the animal food dropping into the trough. This is achieved in D6 by control means that activates the slide gates of the feed supply, i.e. the enticing means, from a rest state to an activated state.

2.2.3 Faced with the problem of improving the enticing means of D4, the skilled person would consider the teaching of D6 and control the food supplying means of D4, so that when the milking operation has been finished, the animal can see food dropping into the trough and is thus more enticed to leave promptly the milking stall.

2.2.4 The Respondent submitted that D4 would teach away from the claimed invention, since the automatic feeding stations disclosed therein should always be filled with a sufficient quantity of fodder.

However, the fact that there is always a sufficient quantity of fodder in the feeding stations is not at variance with the fact that some additional food can nevertheless be added in such a manner that the animal can see it drop, at the moment the animal should leave the milking stall.

The Respondent further argued that D4 is not concerned with animal traffic and that in D6 the enticing means is used to encourage the animal to enter a given location

and not to leave it. However, as indicated in section 2.2.1 one of the objects of D4 is to ensure that the animal will promptly leave the milking box after milking and a further object is to prevent it from lying down after milking. Thus, D4 addresses the problem of speeding up animal traffic in a herd of diary animals. D6 teaches how to entice an animal to get to a specific place. It is clear for a skilled person that this teaching can be applied to get the animal either into a milking box or out of the same.

2.2.5 Consequently, the subject-matter of claim 1 does not involve an inventive step.

3. *First auxiliary request:*

3.1 Amendments:

3.1.1 In addition to the features of claim 1 as granted, claim 1 according to the first auxiliary request comprises the following features:

- the milking stall comprises milking means for automatically milking the animal,
- there are control means for activating the milking means, and
- the same control means are also adapted for activating the enticing means.

3.1.2 These additional features are disclosed in the application as originally filed (WO-A-96/19917) page 6, lines 1 to 5; page 13, line 35 to page 14, line 7 and further limit the scope of protection conferred by the claims. Thus, the requirements of Article 123 EPC are met.

3.2 Inventive step:

3.2.1 With respect to claim 1 according to the main request, claim 1 of the first auxiliary request further specifies that the milking stall comprises milking means for automatically milking the animal, and that there is control means for activating the milking means, which is also adapted for activating the enticing means.

3.2.2 D4 too discloses an automatic milking plant (column 4, lines 14 and 15) comprising a milking stall (Figure 1) defining a milking area and control means (computer, column 3, lines 37 and 38) that control the automatic milking of the animals.

3.2.3 The Respondent argued that D4 does not disclose any link between the automatic feeding system and the computer for controlling the milking robot; whereas, in the patent in suit, the fact that the control means activates both the milking and the enticing means contributes to solve the problem of speeding up the animal traffic, in that it simplifies the timing between the milking operations and the enticing means.

3.2.4 However, it is implicit from the description of D4, column 3, lines 19 to 34 and Figure 1, that the computer used for controlling the milking robot also controls the entrance and exit doors of the milking parlour and the fodder dispensing means disposed therein. Consequently, if as suggested in D6 fodder has to be provided in specific feeding stations at the moment the exit door of the milking parlour is opened, it is obvious for a skilled person that this operation could also be

controlled by the same computer provided for controlling the milking robot and the exit doors.

3.2.3 Thus, the subject-matter of claim 1 according to the first auxiliary request does not involve an inventive step either.

4. *Second and third auxiliary requests:*

4.1 Amendments:

Claim 1 according to the second and third auxiliary requests differs from claim 1 as granted in that it comprises in addition the features of claim 2 as granted

These modifications do not contravene the requirements of Article 123 EPC.

4.2 Inventive step:

4.2.1 With respect to claim 1 according to the main request, claim 1 of the second and third auxiliary requests further specifies that the enticing means comprises several enticing devices, whereby the control means is provided for selectively activating any one or a combination of the enticing devices.

4.2.2 D4 (column 4, lines 46 and 47) discloses also the use of "a plurality of feeding stations", i.e. several enticing devices.

4.2.3 The Respondent argued that the description of the patent in suit refers to different kinds of enticing devices. Therefore, the wording in claim 1 "selectively

activating any one or a combination of the enticing devices" should be construed as meaning the selective activation of one or more various enticing devices.

This point of view cannot be shared by the Board. The above quoted reference in claim 1 is clearly unambiguous and means what it says, that is the selective selection of one or more enticing means, which can be either the same or different.

Furthermore, according to the patent specification enticing devices of the same type are also activated selectively to guide the animal to a predetermined destination, see column 8, lines 8 to 17 "... For this purpose, loudspeakers 30f and 30g are arranged at a suitable distance from the treatment stall in order to entice the animal to leave the treatment stall. Thereby, the loudspeaker 30f generates an enticing sound responsive to a signal from the sensing means 32f or to a signal from a sensor that senses when the exit gate 12 is open. When the animal approaches the loudspeaker 30f and the sensor 32g senses the cow's transponder, an enticing sound is generated in loudspeaker 30g ..."

4.2.4 These features solve the additional problems of enhancing the enticing effect and of guiding the animal to a chosen destination.

However, to activate several devices of the same kind is known from D4 and to activate selectively the device nearest to the destination where the animal is to be guided lies clearly within the normal capability of a skilled person.

4.2.5 Thus, the subject-matter of claim 1 according to the second and third auxiliary requests does not involve an inventive step either.

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