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Datasheet for the decision of 20 September 2007

Case Number: T 0527/05 - 3.2.04

Application Number: 99202492.7

Publication Number: 0951822

IPC: A01J 9/02

Language of the proceedings: EN

Title of invention:
A milking construction

Patentee:
MAASLAND N.V.

Opponents:
WestfaliaSurge GmbH
Prolion B.V.
DeLaval International AB

Headword:
Filter/MAASLAND

Relevant legal provisions:
EPC Art. 56
EPC R. 71(2)

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0527/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 20 September 2007

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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 23 February 2005 revoking European patent No. 0951822 pursuant to Article 102(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

I. Three oppositions were filed against the European patent No. 951 822. The patent was revoked by the decision of the opposition division dated 23 February 2005, which found that the subject-matter of amended claim 1 filed on 22 April 2004 lacked an inventive step having regard to documents US-A-3 139 857 (D6) and SU-A-1 489 619 (D10).

This claim reads as follows:

"1. A milking construction including a milking plant, wherein the milk when discharged from the milking plant, for example to a milk tank, passes a milk filter (85), which milk filter is accommodated in a process computer-operable device (85') for automatically renewing the filter (85), characterized in that the construction includes means at or near the line portion in which the filter is incorporated, for informing the process computer that replacement of the filter is required."

II. On 19 April 2005 the patent proprietor (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 24 June 2005.

III. Oral proceedings before the board were held on 20 September 2007.

Opponent II (respondent II), although duly summoned, did not appear at the oral proceedings. According to Rule 71(2) EPC, the proceedings were continued without

him. Respondent II did not reply to the grounds of appeal but informed the board that he would not attend the oral proceeding.

IV. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of amended claim 1 filed on 22 April 2004.

Opponents I and III (hereinafter respondents I and III) request that the appeal be dismissed.

V. The appellant essentially argued that the claimed subject-matter was novel and involved an inventive step. In particular, he argued that there is no disclosure or suggestion in document D1 of a means for informing the control device that replacement of the filter is required, since according to this citation the filter is replaced after each milking turn.

Respondents I and III based their arguments of lack of inventive step essentially upon documents DD-A-258 614 (D1), D6 and D10.

Reasons for the Decision

1. The appeal is admissible.

2. *The claimed subject-matter*

2.1 Claim 1 *inter alia* specifies the features that "the milk filter is accommodated in a process computer-operable device (85') for automatically **renewing** the filter (85)" and "the construction includes means at or

near the line portion in which the filter is incorporated, for informing the process computer that **replacement** of the filter is required" (emphasis added).

2.2 During oral proceedings the appellant submitted that the features "renewing the filter" and "replacement of the filter" have the same meaning, even though they have a different wording in the claim.

Respondent I agreed with this interpretation. Respondent III essentially argued that there was an ambiguity with respect to the meaning of these terms.

2.2.1 The appellant declared that he was prepared to amend claim 1 for sake of clarity, if the board were to consider it necessary, i.e. to change either the word "replacement" into "renewal" or the word "renewing" into "replacing".

2.2.2 The appellant also submitted that claim 1 covers only the embodiment according to Figures 6 and 7, in so far as it is the only embodiment concerning "a device for automatically renewing the filter" in which the pressure sensors 101 and 102 shown in Figure 6 correspond to the "means ... for informing the process computer that replacement of the filter is required", as defined in claim 1. In this respect the appellant declared that he was prepared to amend the description of the patent so as to excise the embodiments, for instance that according to Figures 9 and 10, which he considered as not being covered by claim 1.

2.3 Putting the question of clarity aside, for the purpose of examining inventive step, the board accepts the

above mentioned interpretation of the terms "renewing" and "replacement" (see section 2.2 above), since in the patent specification (see for instance column 23, lines 32 to 34 and column 24, line 54 to column 25, line 2) the terms "renewing" and "replacement" are both used in the same technical context, namely in a context which refers to the embodiment according to Figures 6 and 7, in which an unused filter portion substitutes an used portion.

3. *Inventive step*

3.1 Both respondents I and III argued that the claimed subject-matter differs from the milking construction disclosed in document D1 only in that there is a process computer, which can operate the device for automatically renewing the filter and is informed that replacement of the filter is required.

3.2 Document D1 discloses a milking construction including a milking plant, in which the milk discharged from the milking plant passes a milk filter, i.e. the filtering material (7) interposed between the two halves of a disc (4) which is provided with windows (see Figures 1 and 2), the milk filter being accommodated in a device for automatically renewing the filter, i.e. in a device comprising the disc (4), milk line coupling portions (1 and 2) which can be removed from each other, and a rotating shaft (see particularly see Figure 1). The filter is renewed by rotating the disc (4) around the axis of the rotating shaft (5), whereby the filter material is automatically displaced in a sectional cut through the milk line such that an unused portion of the filter material (7) substitutes an used portion.

The renewal of the filter occurs automatically (see page 3, 7th line). This implies the presence of a control device.

Moreover, according to the last sentence on page 3 of D1, the automatic renewal of the filter occurs immediately after each milking turn due to the fact that the milking cluster ("Melkzeug") is removed from the animal ("Melkzeugabnahme") or it is attached to its hook ("Melkzeughaken"). This necessarily implies the existence of a means for informing the control device that renewal or replacement of the filter should be made.

The milk filter is incorporated in the milk line downstream of the collecting chamber ("Milchsammelstuck"; see page 3, first sentence) of the milking cluster. Thus, the above mentioned means for informing the control device is also arranged "near the line portion in which the filter is incorporated". In this respect, it has to be noted that the term "near", which is used in claim 1 in alternative to the term "at", has no clear and unequivocal meaning in the context of the patent specification in so far as the patent specification refers to means "at or near the line portion in which the filter is accommodated" in a general way without giving the word "near" a more precise meaning (the embodiment of Figure 6 shows pressure sensors arranged "at" the line portion in which the filter is accommodated, without there being any embodiment showing pressure sensors arranged "near" said line portion).

3.3 Document D1, which is dated 1983, does not indicate which kind of control device is used to automatically renew the filter. The claimed subject-matter differs from the prior art known from document D1 in that the device for automatically renewing the filter is a process computer operable device.

At the date of filing of the patent in suit (1993) process computers were well known for instance for controlling the automatic application of the teat cups to the teats of an animal to be milked or for controlling the milk production. Thus, it would be obvious for a skilled person to use in the construction known from D1 a well-known process computer for performing the same functions of the automatic control device referred to therein.

3.4 With respect to document D1, the appellant essentially argued as follows:

(i) The claimed invention relates to the problem of automatically renewing a clogged filter, while document D1 relates to a totally different problem consisting in automatically identifying animals having an illness at the udder, such as mastitis, and solves this problem by renewing the filter after each milking turn.

(ii) In a construction in which the filter is renewed after each milking turn, independently of whether the filter is clogged, the use of pressure sensors to detect whether the filter is clogged is useless. Thus, document D1 does not disclose

any means for informing the control device that replacement of the filter is required.

3.4.1 The board cannot accept these arguments for the following reasons:

(i) Firstly, claim 1 is not restricted to a milking construction provided with means for informing the computer that the filter is **clogged**. Secondly, in a passage of the patent specification which relates to the embodiment of Figures 6 and 7, it is stated that "contact of the milk with a contaminated filter can be significantly reduced by renewing the filter each time after a milk animal has been milked (see column 15, lines 28 to 31).

(ii) Claim 1, which only refers to "means for informing the process computer ...", is not restricted to "pressure sensors", which are referred to in dependent claims 12 to 14. This is consistent with the description of the patent in so far as it indicates that the renewal of the filter can also be realized "each time after a presettable number of milking turns" (column 24, lines 2 to 45), i.e. without using pressure sensors.

(iii) In any case, any difference between the automatic control device disclosed in D1 and a computer operable device as claimed in claim 1 would not in itself be sufficient to render the claimed subject-matter inventive, since - as already explained - the use of computer for control

aspects of milking automation was standard practice in the art at the filing date of the European patent.

3.5 Therefore, the subject-matter of claim 1 lacks the inventive step required by Article 56 EPC.

Since the findings of the present decision are based upon an interpretation of claim 1 which is consistent with the embodiment of Figures 6 and 7 (see section 2.3 above), the appellant's proposals to amend claim 1 (see section 2.2.1 above) and the description (see section 2.2.2 above) would not change these findings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte