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**Datasheet for the decision
of 27 September 2007**

Case Number: T 0596/05 - 3.2.04

Application Number: 00200059.4

Publication Number: 0990386

IPC: A01J 7/02

Language of the proceedings: EN

Title of invention:

A method of cleaning teat cups

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB

Headword:

Cleaning/MAASLAND

Relevant legal provisions:

EPC Art. 54, 100(a)

Keyword:

"Lack of novelty"
"Incorporation by reference"

Decisions cited:

T 0153/85

Catchword:

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Case Number: T 0596/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 27 September 2007

Appellant: DeLaval International AB
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Representative: Lerwill, John
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Respondent: MAASLAND N.V.
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NL-3155 PD Maasland (NL)

Representative: Corten, Maurice Jean F.M.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 22 March 2005
rejecting the opposition filed against European
Patent No. 0990386 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 filed against the European patent No.990 386 was rejected by decision of the opposition dated 22 March 2005.

Claim 1 of the patent reads as follows:

"A method of cleaning the teat cups of an implement for automatically milking animals, comprising milk conductivity sensors, **characterized in that**, when during milking an increased milk conductivity value is established for a specific animal, the teat cups are cleaned immediately after milking by leading therein a cleaning liquid."

- II. On 9 May 2005 the opponent (hereinafter appellant) lodged against this decision an appeal for which the appeal fee was paid on 6 May 2005.

With the statement setting out the grounds of appeal, received on 27 July 2005, the appellant filed three new documents, among them WO-A-94/16553 (D17) and WO-A-93/05647 (D18). D17 is in the name of the patent proprietor (hereinafter respondent) and D18 is referred to in D17.

- III. The parties were summoned to oral proceedings to be held on 27 September 2007.

In its communication dated 6 August 2007 the board informed the parties that it intended to take into account documents D17 and D18 which were cited at the earliest possible moment in the appeal proceedings.

IV. The respondent, who did not reply to the statement setting out the grounds of appeal, informed the board by letter dated 27 June 2007 that he would not attend the oral proceedings and requested a decision on the basis of the written submissions.

By a communication dated 19 July 2007, oral proceedings were cancelled.

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

He essentially argued that the subject-matter of granted claim 1 was not novel with regard to either the article "*Robot milker with human touch*", in "*Dairy Farmer*", November 1991, pages 20 and 22 (hereinafter document D4) or document D17 in which document D18 should be incorporated by reference.

VI. The respondent only requested a decision on the basis of the written submissions.

Reasons for the Decision

1. The appeal is admissible.

2. *Novelty*

2.1 Claim 1 specifies the feature that "when during milking an increased milk conductivity is established for a specific animal, the teat cups are cleaned immediately after milking by leading therein a cleaning liquid".

This feature cannot be interpreted as meaning that the teat cups are immediately cleaned **if and only if** an increased milk conductivity is established.

This is consistent with the patent specification, in which it is stated that "a ... cleaning procedure can be performed each time an animal has been milked" (column 1, lines 36 to 38) and that "it may be advantageous to clean only the teat cups, each time after an animal has been milked, in order to reduce the risk of cross-infection" (column 7, lines 54 to 57).

2.1.1 Document D4 discloses a method of cleaning the teat cups of an implement for automatically milking animals comprising milk conductivity sensors for measuring the electrical conductivity of the milk obtained from each udder quarter and a cleaning apparatus ("flush-head") for cleaning the teat cups. In this method the teat cups are cleaned immediately after milking by leading therein a cleaning liquid by means of the flush-head, this cleaning procedure being performed each time an animal has been milked, see particularly page 22, left-hand column (paragraph beginning with "After all the teat cups...") and central column (paragraph beginning with "When the teatcups have been pulled..."). This necessarily means that the teat cups are cleaned immediately after milking also when during milking an increased milk conductivity is established.

2.1.2 Thus, document D4 discloses a method having all the features specified in claim 1.

2.2 As stated in the board's communication dated 6 August 2007 the board, if a document (D17) refers explicitly to another document (D18) as providing more

detailed information on certain features, the teaching of the latter (D18) is to be regarded as being incorporated into the document (D17) containing the reference, see T 153/85, OJ EPO 1988, 1 as well as Guidelines C IV, 7.1.

Document D18 was published on 1 April 1993 and thus was available to the public on the date of publication (4 August 1994) of document D17.

2.2.1 Document D17 discloses (see particularly Figure 3) a method of cleaning the teat cups of an implement for automatically milking animals comprising milk conductivity sensors, i.e. sensors (7) for measuring the electrical conductivity of the milk obtained from each udder's quarter of a cow, a waste milk dump (35) and a cleaning apparatus (70) comprising sprayers (76) for cleaning the teat cups. According to the paragraph bridging pages 27 and 28, an intermediate rinsing operation, consisting *inter alia* in leading tepid water into the teat cups by means of sprayers (76), is performed each time after the milk of a milked animal has been discharged to the waste milk dump (35). Thus, when the milk yield from a specific animal is discharged to the waste milk dump, the teat cups are cleaned immediately after milking by leading therein a cleaning liquid.

Document D17 indicates that the milk of a milked animal is discharged to the milk waste dump when the cow "is troubled with mastitis" (see particularly page 26, lines 2 to 4) but is silent as to the function of the conductivity sensors.

However, D17 refers to D18 in connection with the particular sensors including the conductivity sensors (see page 6, line 34 to page 7, line 5). In D18, the conductivity sensor is described as providing a signal indicating whether the cow is affected by mastitis. According to this citation, if the milk is infected with mastitis an higher electrical conductivity value is established and on the basis of this higher value the milk is discharged into a waste tank 30 (see page 10, line 24 to page 11, line 2). Thus, the part of document D18 which provides more detailed information on the conductivity sensors used in D17 should be considered as incorporated by reference into the disclosure D17.

2.2.2 Thus, document D17, in conjunction with the part of document D18 describing the conductivity sensors, discloses a method in which when during milking an increased milk conductivity is established for a specific animal, the teat cups are cleaned immediately after milking by leading therein a cleaning liquid, i.e. a method having all the features specified in claim 1.

2.3 Therefore, since the subject-matter of claim 1 lacks novelty (Article 54 EPC) with respect to each of documents D4 and D17, the ground for opposition under Article 100(a) EPC prejudices the maintenance of the patent.

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