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**Datasheet for the decision
of 7 February 2008**

Case Number: T 0915/05 - 3.2.04

Application Number: 00200172.5

Publication Number: 0990387

IPC: A01J 7/02

Language of the proceedings: EN

Title of invention:

An implement for milking animals

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB
Prolion B.V

Headword:

Cleaning member/MAASLAND

Relevant legal provisions (EPC 1973):

EPC Art. 100(b)

Keyword:

"Insufficiency of disclosure"

Decisions cited:

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Catchword:

-



Case Number: T 0915/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 7 February 2008

Appellant: MAASLAND N.V.
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Respondent I: DeLaval International AB
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Respondent II: Prolion B.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 2 June 2005
revoking European patent No. 0990387 pursuant
to Article 102(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. European patent No. 0 990 387, against which two oppositions were filed, was revoked by decision of the opposition division dated 2 June 2005 which found that the ground for opposition according to Article 100 (b) EPC prejudiced the maintenance of the patent.

Claim 1 as granted reads as follows:

"1 An implement for automatically milking animals, such as cows, comprising a robot (8) including a robot arm (37) adapted to carry teat cups (53,54), by means of which robot (8) the teat cups (53,54) can automatically be connected to the teats of an animal, and a cleaning member (57) for the teat cups (53,54) and the milk lines connected thereto, which cleaning member (57) includes a number of cleaning fluid supply nozzles (62), by means of which a cleaning fluid can be applied in and over the upper ends of the teat cups (53,54), **characterized in that** the cleaning member (57) is designed in such a way that, during cleaning of the teat cups (53,54) the same are kept at some distance from the cleaning fluid supply nozzles (62)."

- II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 1 July 2005 and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was filed on 3 October 2005.

III. Oral proceedings before the board were held on 7 February 2007.

Opponent II (hereinafter respondent II), who had been duly summoned and had informed the board by letter dated 21 December 2007 that he would not attend the oral proceedings, did not appear at the oral proceedings which, pursuant to Rule 115(2) EPC, continued without him.

IV. The appellant requested that the decision under appeal be set aside and the patent be maintained as granted.

Opponent I (hereinafter respondent I) and respondent II requested that the appeal be dismissed.

V. The appellant submitted that the patent discloses the claimed invention in manner sufficiently clear and complete for it to be carried out by a skilled person.

Reasons for the Decision

Since the European patent was already granted at the time of the entry into force of the EPC 2000 on 13 December 2007, the transitional provisions according to Article 7 of the Act revising the EPC of 29 November 2000 and the Decisions of the Administrative Council of 28 June 2001 and of 7 December 2006, Article 2, have been applied. When Articles or Rules of the version of the EPC 1973 are cited, the year is indicated.

1. The appeal is admissible.
2. *Article 100 (b) EPC (1973)*
 - 2.1 According to the characterising feature of claim 1, "the cleaning member (57) is designed in such a way that, during the cleaning of the teat cups (53, 54) the same are kept at some distance from the cleaning fluid supply nozzles (62)"

This feature clearly defines a cleaning member provided with means for keeping the teat cups at some distance from the cleaning fluid supply nozzles. However, the patent specification does not contain any information as to how the cleaning member itself is "designed in such a way" to keep this distance.

According to paragraph [0009] of the patent specification (particularly column 6, lines 16 to 28), a cleaning member 57 is provided with cleaning fluid supply nozzles 62, each nozzle debouching into a respective recess 67 constituting a housing for the upper part of a teat cup, each recess being provided with a rubber or synthetic closing ring 68 which, when a teat cup is brought into the respective recess, closes the recess around the upper part of the teat cup.

The above mentioned paragraph [0009] contains the following passage:

"When there **is maintained some distance** between the discharge opening of the nozzles 62 and the upper side of the teat cups, not only the teat cups will be cleaned internally, but also their surface will be rinsed. **The desired distance adjustment** between the

upper side of the teat cups, **when these have been brought into the respective housings of the cleaning member 57** and the debouching point of the cleaning fluid supply nozzles 62 in these housings **is obtained by means of the robot arm 46 which is adjustable in height**, on which robot arm there are provided the teat cups 53, 54" (column 6, lines 34 to 45; emphasis added).

The first sentence of this passage defines the technical effect that is achieved by the feature of maintaining some distance between the nozzles and the respective teat cups. The second sentence, which has to be read in conjunction with the preceding one, clearly relates to a situation in which the teat cups have already been positioned within the respective housings and implies that the distance between the nozzles and the respective teat cups is maintained by means of the robot arm carrying the teat cups.

Therefore, in contrast to claim 1, in the embodiment described in detail in the patent specification, the teat cups are kept at some distance from the cleaning fluid supply nozzles by the robot arm which is adjustable in height, and *not* by the cleaning member.

2.2 In this respect, the appellant essentially argued as follows:

- i) Claim 1 clearly defines a cleaning member which is capable by itself of keeping the teat cups at some distance from the cleaning fluid supply nozzles. It does not cover any arrangement in which this distance is maintained only by means of the robot arm. In particular, the passage in column 6, lines 34 to 45 of the patent specification does not relate to the characterising feature of claim 1 because it only makes clear that the teat cups are

brought into the respective housings of the cleaning member by the robot arm without disclosing the feature that the desired distance is maintained by means of the robot arm.

- ii) The sealing ring 68 shown in Figure 3 has an inner edge which is bent upwardly. This implies that high frictional forces are generated when the teat cups are introduced into the respective closing rings by means of the robot arm. It will be clear to a skilled person that the force with which the teat cups are introduced into the respective closing ring can be adjusted such that the upward movement of the teat cup is stopped before its upper side comes into contact with the plate 61 of the cleaning member.
- iii) Moreover, the closing ring 68 - in the position shown in Figure 3, in which it closes the housing around the upper part the teat cup - exerts on the teat cup a force sufficient to keep the teat cup in that position. Thus, the sealing rings 68 in combination with the plate 66, which is provided with the recesses 67, represent parts of the cleaning member which render the latter "designed in such a way that the teat cups are kept at some distance from the cleaning fluid supply nozzles". Therefore, the skilled person would derive from the drawings of the patent specification sufficient information to enable him to carry out the claimed invention.

2.2.1 Having regard to the considerations in section 2.1, the board cannot accept the argument under 2.2.i). In any

case, even if this argument were relevant, it would not be decisive for the findings of the present decision in so far as the mentioned passage (column 6, lines 34 to 45) does not relate to a cleaning member as defined in the characterising portion of claim 1.

According to the established jurisprudence of the boards of appeal, sufficiency of disclosure must be assessed on the basis of the patent as a whole, i.e. not only on the basis of the claims and the description but also of the drawings. However, in the present case, the board cannot accept the arguments under 2.2.ii) and 2.2.iii) for the following reasons:

- The ring-shaped element represented in Figure 3 with the reference sign "68" is referred to in the description (column 6, lines 23 to 28) as a "closing ring 68" and in claim 4 of the patent as a "rubber or synthetic sealing (68)". Both the description and claim 4 refer to the element 68 only as a means for closing the housing around the upper part of a teat cut when the teat cup is inserted into the housing. There is no disclosure in the patent specification that the closing rings 68 are designed for keeping the teat cups at some distance from the cleaning fluid supply nozzles.
- Even if the skilled person looking at Figure 3 were to understand that the closing means exerts a frictional reaction against the force with which the teat cup is introduced into the opening of the closing ring, he would not find in the patent specification the information that the force with which the teat cups are introduced is adjusted.

- The skilled person looking at Figure 3 would certainly understand that the closing ring exerts a frictional force around the upper part of the teat cup when the teat cup is positioned in the cleaning position. However, he would not derive from the patent specification the information that this frictional force is sufficient to balance the weight of the teat cups.

2.3 The appellant also argued as follows:

- Claim 1 on its own gives a sufficient teaching.
- Designing the cleaning member in such a way that the teat cups are kept at some distance from the nozzle (as defined in claim 1) would not be a complicated task for a skilled person using his general knowledge. In this respect, the appellant referred to the possibility of using well known means such as stopping means or seizing means, and argued that the use of such known means would be self evident for the skilled person.

2.3.1 The board cannot accept this argument for the following reasons:

- The patent specification does not contain any suggestion leading the skilled person to use the known means referred to by the appellant for the purpose of keeping the teat cups at some distance from the nozzle.

- As submitted by both respondent I and the appellant, the teat cups to be kept at some distance are carried by a robot arm which is a heavy structure. Thus, the skilled person needs some information as to how the known means referred to by the appellant have to be arranged, firstly in order to ensure that this heavy structure is maintained in a predetermined position, secondly in order to avoid that these means interfere with the cleaning of the outer surface of the upper part of the teat cups.

- Moreover, having regard to the considerations in section 2.1, the patent specification leads the skilled person in a completely different direction.

2.4 Considering the above, the board finds that the single embodiment described in the patent specification is not in fact covered by the claims, in other words, the patent specification does not contain any embodiment or example falling within the terms of the claims.

2.5 It follows that the European patent does not disclose the invention defined in claim 1 in a manner sufficiently clear and complete for it to be carried out by the skilled person (Article 100 (b) EPC (1973)).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte