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**Datasheet for the decision  
of 21 June 2007**

**Case Number:** T 0960/05 - 3.2.04

**Application Number:** 94910063.0

**Publication Number:** 0688162

**IPC:** A01K 1/12

**Language of the proceedings:** EN

**Title of invention:**

A method and a device for surveying animal functions

**Patentee:**

PROLION B.V.

**Opponent:**

Maasland N.V.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 100(a); 123(2)

**Keyword:**

"Main request - novelty (no)"

First auxiliary request - added subject-matter (no)"

"Novelty (yes) - inventive step (yes)"

"Late submitted prior art document (admitted)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0960/05 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 21 June 2007

**Appellant:** Maasland N.V.  
(Opponent) Weverskade 10  
NL-3155 PD Maasland (NL)

**Representative:** Corten, Maurice Jean F.M.  
Octrooibureau Van der Lely N.V.  
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**Respondent:** PROLION B.V.  
(Patent Proprietor) Kromme Spieringweg 289B  
NL-2141 BS Vijfhuizen (NL)

**Representative:** Hoorweg, Petrus Nicolaas  
Arnold & Siedsma,  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
19 May 2005 concerning maintenance of the  
European Patent No. 0688162 in amended form.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** C. Scheibling  
T. Bokor

## Summary of Facts and Submissions

I. In its interlocutory decision posted 19 May 2005, the Opposition Division found that, taking into consideration the amendments made by the patent proprietor, the European patent and the invention to which it relates meet the requirements of the EPC.

On 21 July 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 September 2005.

II. The patent was opposed on the grounds based on Article 100(a) EPC.

III. The following documents played a role in the present proceedings:

D1: EP-A-0 091 892

D2: Fullwood Afimilk and its translation into English

D3: Landbouwmechanisatie, N°2, February 1992, page 73  
and translation into English

D6: EP-A-0 534 564

IV. Oral proceedings before the Board took place on 21 June 2007.

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

He mainly argued as follows:

D6 discloses all features of claim 1 of the main request and of claim 1 of the first auxiliary request.

Claim 1 of the first auxiliary request, which comprises features taken in isolation from a group of features disclosed in combination in the description, does not meet the requirements of Article 123(2) EPC.

Furthermore, D1 discloses an animal manipulating device in form of a milking robot, with a programmable control system for subjecting the animal to a sequence of operations at least one thereof being programmed in respect of time duration specific per animal. D2 discloses a method for surveying animal behaviour, wherein a warning system is activated in case of deviation. Finally it is general knowledge to provide an automatic milking robot with a system that warns the supervisor in case of malfunction. That this can be done by paging is obvious, particularly in view of D3 which teaches that information from a computer can be transmitted via a telephone line.

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

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

D6 is late filed and should not be admitted into the proceedings. D6 does neither disclose a warning system, nor a paging system that informs a supervisor of one of a number of possible messages. Thus, novelty of claim 1

of the main and the first auxiliary request is given. Claim 1 of the first auxiliary request fulfils the requirements of Article 123(2) EPC since the additional features are clearly disclosed in the patent specification and have no link with the remaining features of the quoted passage. Furthermore, D1 does not disclose a method for surveying animal behaviour and does not comprise a warning or a paging system. In D1 only one operation is programmed in respect of time duration. D2 does not disclose a sequence of operations programmed in respect of time duration either. Thus the combination of D1 and D2 cannot lead to the claimed invention.

The Respondent requested that the appeal be dismissed or that the decision under appeal be set aside and the patent be maintained on the basis of claim 1 according to the first or second auxiliary request, both filed with letter of 21 May 2007.

V. Claims 1 and 4 according to the main request (as accepted by the Opposition Division) read as follows:

"1. Method for surveying animal behaviour by means of an animal manipulating device such as a milking apparatus, in particular a milking robot, wherein a programmable control system is used in order to subject the animal to a predetermined sequence of operations, that is, for instance positioning, applying of teat cups, milking and subsequent or simultaneous feeding and removing the animal, wherein the operations to which the animal is subjected, for instance milking, are programmed in respect of time duration specific per individual animal and that at least one warning signal

is generated by the control system if a time duration for a current operation is exceeding or not attaining said programmed specific time duration due to the current behaviour displayed by the animal, in order to detect non function or aberrant functions of the animal."

"4. Program-controlled animal manipulating device such as a milking robot for performing the method as claimed in claims 1-3, characterized in that the program control is performed with a signal-generating circuit which responds as soon as a pre-programmed time duration in the control has been exceeded."

Claim 1 according to the first auxiliary request reads as follows:

"1. Method for surveying animal behaviour by means of an animal manipulating device such as a milking apparatus, in particular a milking robot, wherein a programmable control system is used in order to subject the animal to a predetermined sequence of operations, that is, for instance positioning, applying of teat cups, milking and subsequent or simultaneous feeding and removing the animal, wherein the operations to which the animal is subjected, for instance milking, are programmed in respect of time duration specific per individual animal and that at least one warning signal is generated by the control system if a time duration for a current operation is exceeding or not attaining said programmed specific time duration due to the current behaviour displayed by the animal, in order to detect non function or aberrant functions of the animal whereby the warning signal pages a supervisor and

informs him of one of a number of possible types of message."

Claim 4 according to the first auxiliary request is identical with claim 4 of the main request.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Admissibility of document D6:*
  - 2.1 D6 cited under Article 54(3) and (4) EPC was submitted at the beginning of the oral proceedings before the Board.
  - 2.2 However, though late filed D6 clearly relates to a method of milking animals in which a computer issues an indication of heat or illness of the animal when the time for a given operation exceeds a predetermined value.

Thus, D6 is relevant on a prima facie basis to the issue of novelty. The Board in exercising its discretion under Article 114(1) EPC therefore decided to admit this document into the proceedings.

3. *Novelty (main request):*
  - 3.1 D6 (column 1, lines 1 to 7) discloses a method of milking animals automatically with a programmable control system and a milking robot, which subjects the animal to a predetermined sequence of operations; this

method comprises the step of comparing the dead time (that is the time which elapses between the moment the teat cups are connected and the instant milk flow is established by a sensor) to a predetermined dead time stored in the computer for a relevant animal. If the predetermined dead time is exceeded by a certain percentage, the farmer obtains an indicating signal of the animal's heat or illness (column 4, lines 38 to 54). This information is displayed on a monitor (column 6, lines 8 to 15, and claim 31).

Thus D6 clearly relates to a method for surveying animal behaviour by means of an automatic milking implement, in order to detect non function or aberrant functions of an animal (claims 18 and 20).

3.2 The Respondent argued that D6 does not disclose a warning system in the meaning of the patent in suit. In his view the term "warning signal" implies that the message is "actively" delivered to a supervisor, so as to make certain that the message reaches him and is not only displayed somewhere, where it could remain unnoticed.

However, claim 1 solely refers to the fact that "a warning signal is generated by the control system" and does not state in which form this signal is generated and transmitted (for instance so that it compulsorily reaches and attracts the attention of the supervisor). In D6 the computer generates an indication of heat or illness of the animal and displays it on a monitor or by means of a printer (claims 20 and 31). This amounts generating a warning signal in the meaning of the patent in suit.



3.3 Consequently, claim 1 according to the main request lacks novelty with respect to D6.

4. *First auxiliary request:*

4.1 Amendments:

Claim 1 according to the first auxiliary request comprises, in addition to claim 1 of the main request, the following features: "whereby the warning signal pages a supervisor and informs him of one of a number of possible types of message."

Page 3 of the description as filed (WO - A - 94/19931) reads "... the control system then establishes that the supervisor must be warned, wherein a choice is also made from a number of possible types of message. Using the paging system 8, for instance a semaphore installation, the supervisor is warned and informed of the steps taken and the urgency of the message."

The Appellant argued that the feature added to claim 1 is disclosed in the description in combination with the feature "and the urgency of the message" and cannot be claimed in isolation.

However, it is clear for any skilled person that a message does not necessarily comprise an indication of its degree of urgency or in other words that a message can be sent without such an indication.

Therefore, the quoted feature can be claimed in isolation and thus, the requirements of Article 123(2) EPC are fulfilled.

The amendment further limits the scope of protection conferred by claim 1 so that the requirements of Article 123(3) EPC are fulfilled as well.

#### 4.2 Novelty with respect to D6:

The Appellant argued that displaying a message on a monitor or printing the same on a printer, is a way of paging.

However, "paging" has normally the meaning of generating via an electronic device a series of beeps or vibrations to inform the wearer that it has received a message. Thus, "paging" implies attracting the attention of the addressee, not simply rendering a message visible on a display screen or a printer. D6 does not disclose the added technical feature that "the warning signal pages the supervisor".

Furthermore, in D6 it is stated "the farmer has accordingly obtained an indication signal of the animal's heat or illness". However, it is unclear whether this means that there can be a warning signal to indicate that the animal is ill and another warning signal to indicate that the animal is on heat (in which case there would be two types of possible messages) or whether the message solely indicates that the animal is one of both ill or on heat without distinction (in which case there would only be one type of message). Thus D6 does not unambiguously disclose that the system

can choose from a number of possible types of message, i.e. is capable of transmitting more than one type of message.

Consequently, the subject-matter of claim 1 of the first auxiliary request is novel with respect to D6.

4.3 Inventive step:

4.3.1 D6 is a document cited under Article 54(3) EPC, which cannot be used for assessing inventive step.

4.3.2 The Appellant considered that D1 discloses the closest prior art.

The subject-matter of claim 1 of the patent in suit refers to "a method for surveying animal behaviour by means of an animal manipulating device".

D1 discloses a method of milking cows using an animal manipulating device, i.e. a computer controlled milking robot. The computerised system can also be "set in operation to clean and suitably also massage the teats" (page 3, lines 13 to 15). Although the computer is utilised to record the points of time at which every cow is milked (page 2, lines 10 to 12) no conclusion is drawn regarding the behaviour of the animals. The system solely checks whether or not a predetermined time has passed after the cow in question was last milked in order to determine whether or not it is desired to milk the cow again (page 2, lines 13 to 20; page 2, line 32 to page 3, line 6). Additionally, "the computer is adapted to interrupt the milking process and to initiate automatic removal of the milking means

from the cow's udder respectively after the predetermined milking time has expired..." (page 3, lines 8 to 11).

However, if the predetermined milking time is exceeded, no warning signal is generated in order to detect that something is wrong with the function of the animal.

Therefore, D1 does not disclose a method for surveying animal behaviour.

- 4.3.3 D2 (see translation page 1, "production monitoring"; page 2, "monitoring udder health and milk quality"; page 3, "cow recognition and activity measurement in one pedometer") discloses a method for surveying milk production, udder health and heat of an animal. It comprises a computer that stores the quantity and the conductivity of milk per cow and compares the number of steps made by a cow per hour with the average over ten days. It further indicates cows with a deviating milk production, milk conductivity or individual activity. Furthermore, D2 comprises an animal manipulating device, i.e. an automatic milking device, page 3 lines 6, 7, 12 and 13: "In case of an attention the milking cluster can only be connected after the start button has been pushed twice" and "... the automatic disconnection of the milking cluster is incorporated as a standard."

Therefore, D2 is considered to represent the closest prior art.

- 4.3.4 The method of claim 1 of the patent in suit differs from that disclosed in D2 in that:

the operations to which the animal is subjected are programmed in respect of time duration specific per individual animal,

a warning signal is generated if a time duration is exceeded or not attained,

whereby the warning signal pages a supervisor and informs him of one of a number of possible types of message.

The problem to be solved by the present invention is to propose a method for detecting animal malfunctions or abnormal functions which can be carried out in a simple manner (patent specification, column 1, lines 25 to 38).

The claimed invention proposes to survey the time duration for a current operation and to signal a deviation with respect to a programmed specific value, whereas D2 teaches to use a pedometer to monitor the activity of each animal and to report when the number of steps made by a cow per hour deviates significantly from the average number of steps per hour over ten days.

Consequently, the claimed invention avoids the use of additional sensors such as pedometers and thus, with respect to D2 simplifies the system used to solve the problem posed. Additionally, the claimed invention ensures that a specific warning signal is effectively delivered to the supervisor.

Thus, the objective problem to be solved with respect to D2 comprises two parts, the problem as identified in the patent specification and the problem of effectively delivering a specific warning signal to a supervisor.

- 4.3.5 Although D2 teaches that dysfunction of an animal can be assumed when the current activity deviates significantly from the previous registered one, D2 does not suggest that other parameters than those disclosed therein could be used as well in order to survey the animals. Especially, D2 does not suggest that malfunction or abnormal function can be inferred from the duration of a current operation. Thus, the teaching of D2 alone cannot lead the skilled person to the subject-matter of claim 1.

In the milking system of D1 an individual time duration for milking a given animal is set by the system and the milking process can be interrupted by the computer if the predetermined time for the operation is exceeded, no signal is issued as a consequence of such an interruption, i.e. the deviation is not monitored. Thus, D1 does not suggest using such information and therefore, even if a skilled person would contemplate using a milking method and a robot as disclosed in D1 together with the monitoring method as disclosed in D2 he would not arrive at the method of surveying animal behaviour according to claim 1.

- 4.3.6 Therefore, the combination of D2 with D1 cannot lead the skilled person in an obvious manner to the subject-matter of claim 1. As the Board also does not consider the claimed solution obvious per se, that is in the

4.3.7 light of the skilled person's common knowledge, it concludes that the claimed invention involves an inventive step (Article 56 EPC).

4.3.8 Claim 4:

Claim 4 relates to a program-controlled animal manipulating device suitable for performing the method as claimed in claim 1. As has been explained, D1 discloses an animal manipulating device which is not suitable for performing the method claimed in claim 1, since the device of D1 is not designed for surveying animal behaviour.

The animal manipulating device in D2 is suitable for surveying animal behaviour with the aid of a pedometer. However, a measurement of time duration is not disclosed in D2 and therefore the device of D2 is not suitable for performing the method claimed in claim 1, since the method claimed is based on the time duration of specific operations. Therefore the combination of D2 with D1 cannot lead the skilled person in an obvious manner to the subject-matter of claim 4.

**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 with the order to maintain the patent on the basis of the following documents:

Description: columns 1 to 4 filed during oral proceedings

Claims: 1 filed as first auxiliary request by letter of 21 May 2007  
2 to 4 of the patent specification

Drawings: single figure of the patent specification

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte