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**Datasheet for the decision
of 09 September 2008**

Case Number: T 0420/06 - 3.2.04

Application Number: 99200629.6

Publication Number: 0945057

IPC: A01J 7/04

Language of the proceedings: EN

Title of invention:

A device for and a method of cleaning and/or disinfecting a teat of an animal

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB

Headword:

Spraying/MAASLAND

Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

EPC Art. 54

Keyword:

"Lack of novelty"

Decisions cited:

-

Catchword:

-



Case Number: T 0420/06 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 09 September 2008

Appellant: MAASLAND N.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 07 February 2006
revoking European patent No. 0945057 pursuant
to Article 102(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The European patent No. 0 945 057, against which an opposition based *inter alia* upon Article 100 (a) EPC 1973 had been filed, was revoked by the opposition division in its decision dated 7 February 2006.
- II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 16 March 2006 and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 12 June 2006.
- III. Oral proceedings before the board were held on 9 September 2008.
- IV. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of claims 1 to 10 of the main request or, auxiliarily, on the basis of claims 1 to 7 of the auxiliary request, both filed during the oral proceedings before the board.

Claim 1 of the main request reads as follows:

"A device for cleaning and/or disinfecting a teat of an animal, said device being provided with a teat cup (1), said cleaning and/or disinfecting device (4) comprising one or more spraying elements (5) and being fitted to the teat cup (1),

characterized in that said spraying elements (5) are arranged in such a manner that during operation they spray cleaning and/or disinfecting fluid onto a teat being outside the teat cup (1), said spraying elements (5) being disposed near the upper edge (6) of the teat cup (1)."

Claim 1 of the auxiliary request reads as follows:

"A device for cleaning and/or disinfecting a teat of an animal, said device being provided with a teat cup (1), said cleaning and/or disinfecting device (4) comprising one or more spraying elements (5) and being fitted to the teat cup (1),

characterized in that said spraying elements (5) are arranged in such a manner that during operation they spray cleaning and/or disinfecting fluid onto a teat being outside the teat cup (1), the spraying elements (5) being arranged or designed in such a manner that during operation they are spraying the cleaning and/or disinfecting fluid obliquely upwards through the opening of the teat cup (1) in the direction of its centre line."

The appellant essentially submitted that the subject-matter of claim 1 of the main request as well as that of claim 1 of the auxiliary request are novel over document EP-A-801 893 (D4).

V. The opponent (hereinafter respondent) requested that the appeal be dismissed.

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. *Novelty (claim 1 according to the main request or the auxiliary request)*
 - 2.1 Document D4 (see particularly Figures 2 and 3 and the corresponding part of the description) discloses a device for cleaning a teat of an animal. This device comprises a "lower cup portion" 10 and an "upper cup portion" 9, which is fitted to the outer casing of the "lower cup portion" 10. The "lower cup portion" 10 is connectable to the teat of the animal during milking and thus constitutes a "teat cup" (within the meaning of claim 1). The "upper cup portion" is provided with spraying elements 14 and thus constitutes a "cleaning device" (within the meaning of claim 1).

The spraying elements 14 are arranged in such a manner that during operation they spray a cleaning fluid onto a teat which is in the "upper cup portion" 9 but outside the "lower cup portion" 10, i.e. when this "lower cup portion" 10 is not connected to the teat, and are disposed near the upper edge of the "lower cup portion" 10, i.e. near the flexible upper portion 25 provided with the opening 26.

Furthermore the spraying elements 14 are arranged in such a manner that during operation they are spraying the cleaning fluid obliquely upwards in the direction of the centre line of the "lower cup portion" 10. In particular, Figure 2 represents the spraying elements

as spraying the cleaning fluid through a space defined by a cylinder whose basis is the opening of the "lower cup portion" and whose axis coincides with the centre line of this lower cup portion.

2.1.1 Therefore, document D4 discloses all the features specified in claim 1 of the main request as well as of the auxiliary request.

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

- i) In D4, both the upper cup portion 9 and the lower cup portion 10 are parts of the teat cup. Thus, the lower cup portion is not a "teat cup" within the meaning of the patent in suit. Figure 2 of D4 clearly shows spraying elements 14 spraying fluid onto a teat which is inside the upper cup portion, which is a part of the teat cup. Therefore, D4 does not disclose the feature that the spraying elements spray fluid "onto a teat being outside the teat cup", as claimed in claim 1 according to the main request or the auxiliary request.
- ii) Even if the lower cup portion of D4 were to be considered as a "teat cup" within the meaning of the patent, the subject-matter of claim 1 of the main request as well as that of claim 1 of the auxiliary request would be novel over this prior art citation, because not all the spraying elements 14 shown in Figure 2 of D4 are near the upper edge of the teat cup (lower cup portion 10).

iii) Moreover, since the spraying elements 14 of D4 are arranged outside the lower cup portion 10, they cannot spray "through the opening 26" of the lower cup portion 10. Therefore, the subject-matter of claim 1 of the auxiliary request would be novel, because this claim - in so far it refers to spraying elements spraying cleaning fluid **through the opening** of the teat cup - only covers the embodiment where the spraying elements are arranged inside the teat cup and near the upper edge thereof.

2.3 The board cannot accept the appellant's arguments for the following reasons:

- i) In D4 (see the embodiment of Figures 2 and 3), the "upper cup portion" 9 provided with the spraying elements 14 is fitted to the outer casing, i.e. to the "tube-like body" 19, of a "lower cup portion" 10 which comprises a liner 27 defining a pulsation space connected to a pulsating line 29 and a teat space 17 connected to a milk line, wherein during milking the teat of an animal is located within the teat space. According to the patent specification, a "cleaning and/or disinfecting device" 4 provided with spraying elements 5 is fitted to the outer casing of a "teat cup" 1 which is provided with a milk line 2 and a pulsation line 3. Therefore, the "lower cup portion" of D4 is a "teat cup" within the meaning of the patent specification.
- ii) Claim 1 of either the main request or the auxiliary request does not specify the feature

that all the spraying elements are disposed near the upper edge of the teat cup. In D4, the spraying elements are disposed around the upper edge of the teat cup and some of them are just above the opening 26 in the upper edge of the teat cup (see Figure 2). Moreover, since the term "near" has no precise meaning, all the spraying elements 14 of D4 - even the uppermost ones - are considered as being disposed "near the upper edge" of the teat cup.

- iii) The patent specification contains the following passage:

"As shown in Figure 2, the teat cup 1 is provided with a cleaning and/or disinfecting device 4. The cleaning and/or disinfecting device 4 comprises three spraying elements 5 (Figure 3). The spraying elements 5 are disposed near the upper edge 6 of the teat cup 1. In this situation the spraying elements are arranged, or in an other (not shown) embodiment designed, so as to spray the cleaning and/or disinfecting device fluid obliquely upwards through the opening of the teat cup 1 in direction of its centre line" (column 2, lines 17 to 27).

The features referred to, concerning the spraying "through the opening of the teat cup", unambiguously relate to the embodiment according to Figures 2 and 3, which is the sole way of carrying out the invention described in detail in the patent specification, as well to an embodiment (not shown), which is no further

described. On the basis of the description and Figures 2 and 3, the skilled person would interpret the claimed features as meaning that the spraying elements are arranged so as to spray the cleaning fluid obliquely upwards in the direction of the centre line of the teat cup through a three-dimensional opening defined by a cylinder whose basis is the aperture 26 in the upper edge of the teat cup and whose axis coincides with the centre line thereof.

The terms of the claims are namely to be interpreted on the basis of the description and drawings which serve not only to resolve any ambiguity in the claims but also to clarify the terms used therein (see Singer/Stauder, EPC. Vol 1, Art 84, point 14). This feature clarified in the light of the description is clearly disclosed in D4.

Moreover, the embodiment of the invention, where the nozzles are arranged according to Figures 2 and 3 of the patent, is covered by claim 1 of the auxiliary request. D4 discloses the same arrangement of the nozzles disposed near the upper end of the teat cup so as to spray the cleaning fluid obliquely upwards in the direction of the centreline of the teat cup.

Finally, Claim 1 of the auxiliary request results from the combination of the features defined in granted claims 1 and 4, upon which also granted claim 5 was dependent. Granted claim 5, in so far as it refers to a cleaning device "fitted to the

outer casing of the teat cup" encompasses the embodiment where the spraying elements are disposed outside the teat cup. In other words, according to the claims as granted, spraying elements spraying cleaning fluid "through the opening" of the teat cup may be arranged outside the teat cup, like the described arrangement of the nozzles according to Figures 2 and 3.

2.4 For the above reasons, the subject-matter of claim 1 of the main request as well as that of claim 1 of the auxiliary request lack novelty (Article 54 EPC 1973). Therefore, none of the appellant's requests can be allowed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte