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Datasheet for the decision of 26 May 2009

Case Number: T 1758/06 - 3.2.04

Application Number: 02077022.8

Publication Number: 1234496

IPC: A01J 7/02

Language of the proceedings: EN

Title of invention:
A method of cleaning teat cups and an implement for milking animals

Patentee:
MAASLAND N.V.

Opponents:
WestfaliaSurge GmbH
DeLaval International AB

Headword:
Discharge means/MAASLAND

Relevant legal provisions:
EPC Art. 54

Relevant legal provisions (EPC 1973):
-

Keyword:
"Lack of novelty"

Decisions cited:
-

Catchword:
-

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Case Number: T 1758/06 **-** 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 26 May 2009

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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 4 October 2006 rejecting the opposition filed against European patent No. 1234496 pursuant to Article 102(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

I. Two oppositions (based upon Article 100 (a) EPC) filed against the European patent No. 1 234 496 were rejected by the opposition division by its decision dated 4 October 2006.

Claim 1 as granted reads as follows:

"1. A method of cleaning the teat cups of an implement for automatically milking animals, **characterized in that**, with the object of cleaning a teat cup, a cleaning liquid is fed into the teat chamber of a teat cup, whilst the discharge means from the teat chamber to the milk line connected to the teat cup is shut off."

II. On 20 November 2006 opponent II (hereinafter appellant II) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 7 January 2007.

On 28 November 2006 opponent I (hereinafter appellant I) lodged a further appeal and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 5 February 2007.

III. Oral proceedings before the board were held on 26 May 2009.

IV. The appellants requested that the decision under appeal be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed, i.e. the patent be maintained as granted.

V. The appellants essentially submitted that claim 1 lacked novelty over *"The end-of-milking sequence and its mechanization"*, by P.-D. Thompson *et al*, American Society of Agricultural Engineers, 1976, pages 1 to 14 (hereinafter D6).

In this respect, the respondent essentially submitted that

– D6 does not disclose an "implement for automatically milking animals" capable of automatically connecting the teat cups to the teats of an animal,

– the shut-off in D6 occurs in the milk line and not as claimed at "the discharge means from the teat chamber to the milk line connected to the teat cup".

Reasons for the Decision

1. The appeals are admissible.

2. *Novelty*

2.1 Granted claim 1 is directed to a method of cleaning the teat cups of an implement for automatically milking animals.

According to paragraph [0008] of the patent specification, the method "is more in particular of importance when it is integrated into a **fully automated** milking machine" (emphasis added). This paragraph goes on to say this: "The method is, therefore, further characterized in that the teat cups can be connected to a relevant tubular element by moving a robot arm, which functions as a carrier for the teat cups, towards a carrier for the tubular elements or by moving a robot arm, which acts as a carrier for the tubular elements, towards a carrier for the teat cups". It follows therefrom that the claimed method is not necessarily integrated into a fully automated device, i.e. a milking robot.

The integration of the claimed method into a milking robot is subject-matter of dependent claim 11, not of claim 1. Claim 1 thus defines a method of cleaning which is not integrated into a milking robot but into an implement "for automatically milking animals". The fact that in the patent specification an implement for automatically milking animals does not necessarily imply a milking robot is further illustrated by claim 12 as granted. This claim, which is namely directed to an implement for automatically milking animals, defines this implement as being provided with "a robot arm structure (31) which acts as a support for the teat cups (53, 54), with the aid of which milking robot the teat cups (53, 54) can automatically be connected to the teats of the animals to be milked".

D6 (see particularly page 1, 1st paragraph; Figures 1, 2 and 4 to 6) discloses a milking machine, which is suitable for automatically performing the end phases of

the milking procedure (namely: vacuum shut-off, teat dip application, teat cup removal, as well as machine rinsing and drying cycles). Thus, having regard to the above considerations, this known milking machine has to be regarded as an implement for automatically milking animals within the meaning of claim l.

2.2 Claim 1 makes it clear that there is provided a discharge means located between the teat chamber and the milk line connected to the teat cup. Thus as shown for example in Figure 4 of the patent specification the teat cup liner (69) forming in its upper part the teat cup chamber is provided at its lower end with a discharge outlet which communicates to a milk line (68). Through the discharge outlet milk from the teat chamber flows out and is discharged into the milk line.

In D6 each teat cup comprises a teat cup shell which surrounds a flexible lining forming a teat cup chamber. The flexible lining extends through the lower end of the teat cup shell and is connected at its lower end by means of a nipple to a breaker cup which communicates with a milk line. The area where the lower end of the flexible lining and the tubular nipple of the breaker cup are joined, forms a discharge outlet, through which milk from the teat cup chamber formed by the flexible lining flows out and is discharged via the breaker cup into the milk line. When air pressure is produced around an area of the flexible lining, extending outside of the teat cup shell, the flexible lining is pressed inwardly in such a manner that the downwardly located discharge outlet, where the lower end of the flexible lining and the tubular nipple of the breaker cup are joined, is shut off. Thus, when cleaning liquid

is fed into the teat chamber lining, the discharge outlet from the teat chamber, ie from the flexible lining forming the teat chamber, to the milk line connected to the teat cup is shut off.

Therefore, D6 discloses a method of cleaning the teat cups of an implement for automatically milking animals having all the features of claim 1.

2.2.1 In this respect, the respondent essentially submitted that in D6 the shut-off occurs at the end of a short milk tube formed by the lower portion the teat cup lining and the breaker cup and not between the teat chamber and the milk line which is directly connected to the teat cup.

The board cannot accept this argument because - as has been already explained - the short milk tube is integral with the teat cup chamber and formed by a common flexible lining, whose end portion forms a discharge means, through which milk from the teat cup chamber flows away and is discharged into the milk line via the breaker cup. Thus, the discharge means in D6 is located between the flexible lining forming the teat cup and the milk line. It is also observed that in particular in the embodiment of Figure 4 of the patent specification the flexible lining defining the teat chamber at its lower portion is also made integral with a tubular element having a substantially thicker wall. The lower end of this tubular element is fastened to the teat cup shell and forms the discharge outlet of the teat cup chamber. It is also noted that claim 1 does not define how the teat chamber of the teat cup is connected to the milk line and that the terms

"discharge means from the teat chamber to the milk line connected to the teat cup" do not imply that the milk line is directly connected to the teat cup.

2.3 Therefore, the subject-matter of granted claim 1 lacks novelty (Article 54 EPC).

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