

BESCHWERDEKAMMERN  
DES EUROPÄISCHEN  
PATENTAMTS

BOARDS OF APPEAL OF  
THE EUROPEAN PATENT  
OFFICE

CHAMBRES DE RECOURS  
DE L'OFFICE EUROPEEN  
DES BREVETS

**Internal distribution code:**

- (A) [ ] Publication in OJ
- (B) [ ] To Chairmen and Members
- (C) [ ] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision  
of 26 January 2010**

**Case Number:** T 0221/07 - 3.2.04

**Application Number:** 98932636.8

**Publication Number:** 0946088

**IPC:** A01J 5/017

**Language of the proceedings:** EN

**Title of invention:**

A construction including an implement for automatically milking animals

**Patentee:**

MAASLAND N.V.

**Opponent:**

DeLaval International AB

**Headword:**

Separate cups

**Relevant legal provisions:**

EPC Art. 54, 56

**Relevant legal provisions (EPC 1973):**

-

**Keyword:**

"Lack of novelty (main request)"

"Lack of inventive step (auxiliary request)"

**Decisions cited:**

-

**Catchword:**

-

**Case Number:** T 0221/07 - 3.2.04

**DECISION**  
of the Technical Board of Appeal 3.2.04  
of 26 January 2010

**Appellant:** DeLaval International AB  
(Opponent) P.O. Box 39  
SE-147 21 Tumba (SE)

**Representative:** Gray, Helen Mary  
Albihns.Zacco GmbH  
Bayerstrasse 83  
D-80335 München (DE)

**Respondent:** MAASLAND N.V.  
(Patent Proprietor) Weverskade 10  
NL-3155 PD Maasland (NL)

**Representative:** Corten, Maurice Jean F.M.  
Octrooibureau Van der Lely N.V.  
Weverskade 110  
NL-3147 PA Maassluis (NL)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
8 December 2006 concerning maintenance of  
European patent No. 0946088 in amended form.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** P. Petti  
C. Heath

## Summary of Facts and Submissions

- I. In its interlocutory decision dated 8 December 2006, the opposition division found that, having regard to the amended version submitted by the patent proprietor, the European patent No. 0 946 088 met the requirements of the European Patent Convention.
- II. On 6 February 2007 the opponent (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 4 April 2007.
- III. Oral proceedings before the board were held on 26 January 2010.
- IV. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- V. The patent proprietor (respondent) requested that the appeal be dismissed (main request) or, in the alternative, that the decision under appeal be set aside and the patent be maintained on the basis of the auxiliary request filed with letter dated 15 January 2010.

Claim 1 according to the main request, which is identical to granted claim 1, reads as follows:

"1. A construction including an implement for automatically milking animals, such as cows, which implement comprises teat cups (16) which are capable of being connected to the teats of an animal to be milked, and which implement comprises separate cups (20) having

another function than teat cups and which can be connected to the teats of an animal and means of the separate cups (20) the teats can be cleaned and/or foremilked and/or disinfected and/or stimulated, characterized **in that** the implement comprises a cleaning device (23) for cleaning the separate cups (20)."

In claim 1 according to the auxiliary request, the additional feature of granted claim 2 is introduced that "the implement is provided with a first cleaning device (17) for cleaning the teat cups (20)".

VI. The appellant essentially submitted that the subject-matter of claim 1 according to the main request lacked novelty over EP-A-728 412 (D1) and that the subject-matter of claim 1 according to the auxiliary request did not involve an inventive step in view of EP-A-536 836 (D3) in combination with the Japanese publication "Report of study and investigation concerning milking system for milk cow aiming at resource saving and high productivity breeding", March 1984 (hereinafter D5), for which an English translation was submitted.

VII. The respondent essentially submitted that the subject-matter of claim 1 of the main request was novel over D1 because the cleaning device described therein does not completely clean the separate cups and forms a part of these separate cups. Moreover, the subject-matter of claim 1 according to the auxiliary request involves an inventive step over the combination of D3 with D5 because none of these documents disclose a cleaning means for cleaning separate cups.

## Reasons for the Decision

1. The appeal is admissible.
2. *Novelty (main request)*
  - 2.1 D1 discloses a construction including an implement for automatically milking animals comprising teat cups (28) which are capable of being connected to the teats of an animal to be milked and separate cups (additional teat cups 29) having another function than the teat cups (28) and which can be connected to the teats of an animal, wherein by means of the additional teat cups (29) the teats can be cleaned and foremilked.

Each additional teat cup 29 is provided near its upper side with a ring-shaped collecting space (60) into which a cleaning fluid supply line (59) debouches and, near its lower part, with a connecting piece (52) which can be connected to a discharge line for the cleaning fluid. In order to clean a teat, an additional teat cup is connected to the teat, the cleaning fluid supplied via the supply line (59) is distributed in the ring-shaped collecting space (60) surrounding the relevant teat, than flows downward along the internal wall of the additional teat cup and is discharged via the connecting piece (52). Thus, the ring-shaped collecting space (60), the cleaning fluid supply line (59) and the discharge line are parts of a cleaning device which is suitable for cleaning not only the teats but also - even if only partially - the additional (separate) cups (29).

2.2 In this respect, the respondent essentially submitted that the cleaning device of claim 1 had to be construed as being separate from the cups for cleaning the teats and as allowing a complete cleaning of these cups and that D1 does not disclose such a cleaning device.

The board cannot accept these arguments for the following reasons:

- The wording in claim 1 "cleaning device (23) for cleaning the separate cups (20)" does not necessarily imply that the cleaning device is a separate entity. This wording also covers a cleaning device having all or some of the constitutive parts integral with the cups for cleaning the teats.
- The terms "cleaning device (23) for cleaning the separate cups (20)" define a device having a cleaning function with respect to the separate cups (20) without defining the extent or the degree of the cleaning. Moreover, the description of the patent does not refer to a cleaning device for completely (i.e. inside and outside) cleaning the separate cups. The mere reference to the problem (see paragraph [0003] of the patent specification) of providing a construction working "in a very hygienically (*sic*) way" does not imply that the cleaning device is designed for cleaning the separate cups inside and outside.

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

3. *Inventive step (auxiliary request)*

3.1 EP-A-536 836 (D3) discloses (see particularly Figures 2 to 4 and 10 and 15 as well as the corresponding parts of the description) a construction including an implement for automatically milking animals comprising teat cups (53, 54) which are capable of being connected to the teats of an animal to be milked and a teat cleaning means (84) for cleaning the teats, the implement also comprising a first cleaning device (57) which is suitable for completely cleaning the teat cups (53, 54) and a second cleaning device (89) for cleaning the teat cleaning means (84).

The teat cleaning means (84) comprises profiled cleaning rollers (85) which can be brought into contact with the teats of an animal. The second cleaning device (89) for cleaning the teat cleaning means (84) comprises a box-like housing (90) into which the cleaning rollers (85) may be placed, the box-like housing being provided with spray elements (102).

The construction according to D3 works very hygienically in so far as it permits not only the teats of the animal but also the teat cups and the teat cleaning means, which are brought into contact with the teats, to be cleaned.

3.2 The subject-matter of claim 1 according to the auxiliary request differs from the construction according to D3 in that the teat cleaning means comprises separate cups having another function than the teat cups and which can be connected to the teats of an animal.

Starting from D3 as closest prior art, the technical problem to be solved by the claimed invention is to provide an alternative construction which still works in a very hygienic way (see paragraph [0003] of the patent specification).

3.3 A teat cleaning means comprising separate cups for cleaning the teats is well known: D5 inter alia discloses (see particularly Figures 1-27, 1-29 and 1-32 on pages 67 and 70 as well as the English translation, pages 18 and 19) a construction including an implement for automatically milking animals comprising teat cups (reference 3 in Figure 1-32) which are capable of being connected to the teats of an animal to be milked and separate cups (reference 4 in Figure 1-32) having another function than teat cups and which can be connected to the teats of an animal.

It would be obvious for the skilled person seeking for an alternative construction which still works in an efficient and very hygienic way to replace the cleaning rollers of the implement according to D3 by the separate cleaning cups disclosed in D5 and thus to arrive at the subject-matter of claim 1 of the auxiliary request.

3.4 In this respect, the appellant essentially submitted that

- the skilled person would not arrive at the claimed subject-matter by combining D3 with D5 because neither D5 nor D3 discloses or suggests a cleaning means for cleaning separate cups,



- the cleaning device for cleaning the cleaning rollers of the implement of D3 would be unsuitable for cleaning the separate cups of the implement disclosed in D5, since it comprises a box-like housing (90) into which the cleaning cups could not be introduced. Therefore, the skilled person would not have combined D3 with D5 because of their incompatibility.

The board cannot accept these arguments for the following reasons:

- The general idea of providing a milking implement with a cleaning device for cleaning the means for cleaning the teats is already known from D3.
- The incompatibility referred to by the appellant concerns structural features relating e.g. to the shape or the dimensions of the cleaning device of the implement according to D3. Claim 1 only requires that the implement comprises a "cleaning device (23)" for cleaning the "separate cups (20)", without defining any structural features of this device. It is true that in D3 the box-like housing of the cleaning device is not designed for cleaning the separate cups of D5. However, this incompatibility is not inherent in the features specified in claim 1. In any case, designing the box-like housing so as to be capable of receiving separate cups to be cleaned is a technically straightforward modification, well within the ordinary skill in the art. A person skilled in building milking robots would do it without

difficulty. In this respect, it has to be noted that the patent specification - in analogy to D3 - refers to a second cleaning device (23) provided with a box-shaped housing (18) in which the separate cups (20) are placed and cleaned with fluid and/or air (see column 3, line 58 to column 4, line 6; claim 3).

3.5 Therefore, the subject-matter of claim 1 of the auxiliary request does not involve an inventive step (Article 56 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