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Datasheet for the decision of 30 March 2010

Case Number: T 0607/07 - 3.2.04

Application Number: 00959097.7

Publication Number: 1207748

IPC: A01K 1/12

Language of the proceedings: EN

Title of invention:
System and method for controlling and monitoring the operation of an automatic milking system

Patentee:
DeLaval Holding AB

Opponent:
Octrooibureau Van der Lely N.V.

Headword:
Vocal instructions/DELAVAL

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Lack of inventive step"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0607/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 30 March 2010

Appellant: (Opponent)
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Respondent: (Patent Proprietor)
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 14 February 2007 rejecting the opposition filed against European patent No. 1207748 pursuant to Article 102(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

I. An opposition filed against the European patent EP-B-1 207 748 was rejected by the opposition division by its decision dated 14 February 2007.

Granted claim 1 reads as follows:

"1. A system for controlling and monitoring the operation of an automatic milking system (1), wherein milking animals are allowed to enter, in order to be milked, a milking area (2) at will, and wherein a central processing unit (8) is arranged to receive signals from peripheral hardware units (3,4,5,6,7,R) and to process the signals for obtaining hardware status related information and/or milking animal status related information, and wherein interface means (9,10,11,12,13) is arranged for communication between the central processing unit and an operator, **characterized in**

- **that** the interface means (9,10,11,12,13) includes means for understanding and interpreting vocal instructions from the operator and to translate them into machine understandable instructions, and
- **that** the central processing unit (8) includes means for controlling and/or regulating at least one of said peripheral hardware units (3,4,5,6,7,R) and to provide status related information in vocal form as a response to said vocal instructions."

II. On 12 April 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 20 June 2007.

With the grounds of appeal the appellant filed documents US-A-5 671 158 (D6) and EP-B-688 162 (D7).

III. On 21 October 2009 the parties were summoned to oral proceedings scheduled to take place on 2 March 2010. A board's communication reflecting the preliminary opinion of the board was annexed to the summons.

By letter dated 29 January 2010 the patent proprietor (hereinafter respondent) withdrew his request for oral proceedings and asked that a decision be taken on the basis of the written proceedings.

In response thereto the board informed the parties by a communication dated 18 February 2010 that the oral proceeding were cancelled.

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

The respondent requested that the appeal be dismissed.

V. The appellant essentially submitted that the subject-matter of claim 1 lacked an inventive step inter alia over D7 in combination with D6.

VI. The respondent essentially submitted that documents D6 and D7 should not be admitted into the appeal

proceedings and that the claimed subject-matter involved an inventive step also having regard to these documents.

Reasons for the Decision

1. The appeal is admissible.

2. *Prior art (documents D6 and D7)*

2.1 In his reply to the statement of grounds, the respondent essentially submitted that these late filed documents should not be admitted into the proceedings for the following reasons:

i) Document D7 could have been cited before the end of the opposition term for the patent in suit since it, as European Patent EP-B-688 162, was already known to the appellant who had filed an opposition against it.

ii) Neither of these documents was prima facie sufficiently relevant to justify the introduction into the appeal proceedings.

2.2 However, as has been stated in the board's communication annexed to the summons to oral proceedings, D6 and D7 have been submitted with the grounds of appeal and thus at the earliest possible stage of the appeal proceedings. These submissions also comply with Article 12(2) of the Rules of Procedure of the Boards of Appeal (RPBA) which stipulates that the grounds of appeal and the reply must contain a party's

complete case. Submissions cannot in principle be rejected on the grounds of being late, if they have been prompted by the reasons of the first instance decision. This means that the first instance decision can normally be challenged in the grounds of appeal by means of new prior art documents, if the appellant is the opponent. It is also observed that the respondent as well as the board had ample opportunity to take position on the contents of these two prior art citations. The respondent has indeed dealt with D6 and D7 in some detail in his reply to the grounds of appeal.

The respondent did not reply to the board's communication in which these two prior art documents were also dealt with in detail.

With respect to D7, it has to be noted that the opposition division held in its decision that there was in document US-A-5 878 692 (D5), alleged as closest prior art, no disclosure of the feature "interface means arranged for communication between the central processing and an operator". In the grounds of appeal all the features of the preamble of claim 1 and thus the above quoted feature were said to be known from D7. Thus, the submission of D7 - even if it were to be assumed that it was known to the appellant before the end of the opposition period - cannot be regarded as a procedural abuse but rather represents the appellant's reaction to the reasons given in the appealed decision.

2.3 The board therefore decides not to make use of its power under Article 12(4) RPBA to hold inadmissible D6 and D7 which could have been presented in the first instance proceedings.

3. *Inventive step, starting from D7 and considering D6*

3.1 D6 which concerns a system for use at a motor vehicle emission test station represents a less close prior art than D7.

3.2 D7 discloses a system for controlling and monitoring the operation of a automatic milking system, wherein milking animals are allowed to enter, in order to be milked, a milking area at will, and wherein a central processing unit 6 is arranged to receive signals from peripheral hardware units (e.g. fences 11, placing system 14 and milking system 15) and to process the signals for obtaining hardware status related information and/or milking animal status related information, and wherein an interface means arranged for communication between the central processing unit 6 and an operator. Moreover, the central processing unit 6, controls at least one of said peripheral hardware units.

The interface means comprises a conventional terminal 9 comprising a keyboard and a screen.

Instructions from the operator can be transmitted to the central processing unit by means of the keyboard of the terminal 9 and information from the central processing unit can be transmitted to the operator by means of the screen of the terminal 9, so that the central processing unit can provide status related information in response to the operator's instructions.

Moreover, this monitoring system also comprises a paging system, namely a "semaphone" installation, for warning the operator if an erroneous function is detected.

3.2.1 In this respect the respondent essentially argued as follows:

a) According to D7 (column 4, lines 5 to 8), the system is adapted to detect aberrations "which are not related to the operation of the programmed device but to the manner in which the animal functions in the device".

b) In the system of D7 there is no central processing means including means for controlling and/or regulating a peripheral hardware unit.

c) In D7, the paging system, i.e. the "semaphone" installation, transmits a warning signal to the operator if an erroneous function is detected, without there being an interface means including means for understanding and interpreting instructions from the operator and arranged for two-way communication between the central processing unit and the operator. According to D7 (column 2, lines 42 to 45), the system reports on the action taken without contemplating any need for instructions from an operator.

3.2.2 The board cannot accept these arguments for the following reasons:

a') Claim 1 refers to "hardware status related information and/**or** milking animal status related information" (emphasis added). The information related to the manner in which "the animal functions in ... [the] device" as referred to in D7 can be considered as "milking animal status related information". Moreover, D7 also relates to the detection of whether "[t]he moving mechanism of the milking device is blocked" (column 4, lines 1 and 2) which can be considered as being "hardware status related information".

b') In D7 it is stated that "[t]he control system gives actuating signals to the different components of the device" (see column 2, lines 9 to 11). This means that the central processing means includes means for controlling and/or regulating at least one peripheral hardware unit.

c') In D7, the terminal 9 represents an interface means arranged for two way communication between the central processing unit 6 and the operator: the keyboard of the terminal is suitable for transmitting instructions from the operator to the central processing unit and the screen of the terminal is suitable for providing status related information in response to the operator's instructions.

3.3 Therefore, the subject-matter of claim 1 differs therefrom in that

i) the instructions from the operator are vocal instructions which are received and interpreted as well as translated into machine understandable instructions,

ii) the central processing unit provides status related information in vocal form as a response to said vocal instruction.

3.4 In the patent specification (see paragraph [0003]) it is referred to the use of terminals placed in a control room at a distance from the stable room and it is stated that the use of these prior art terminals may be time consuming in so far as the operator has to enter the control room in order to get access to information or initiate a specific action.

The above mentioned distinguishing features provide the advantage that the operator is able to control and monitor the operations of the automatic milking system without entering the control room in which the interface means is arranged.

Thus, the problem to be solved by the invention as claimed in claim 1 may be seen in providing an alternative interface means allowing quick communication of any anomalies in the operation of the milking system so as to enable immediate action to address such anomalies.

3.5 Document D6 discloses a system for automatically controlling a device by means of vocal instructions, comprising a processing unit (16) and interface means

(31, 41, 43 and 39) arranged for communication between the processing unit (16) and an operator. The processing unit (16) "is interconnected to a test equipment (15) for management of the testing procedures used by the equipment" (see column 5, lines 18 to 21) and, thus, includes means for controlling peripheral hardware units. The interface means includes means for understanding and interpreting vocal instructions from the operator and to translate them into computer understandable instructions ("sound card" 36 in conjunction with the "microphone" 24, see Figure 1) as well as means for providing information in vocal form as a response to the vocal instructions by the operator ("sound card" 36 in conjunction with "speaker or earpiece" 23, see Figure 1). Further, "[a]ural information regarding required testing information, status report, ... are transmitted from the computer to the user interface apparatus" (see column 3, lines 10 to 13).

The skilled person would immediately realize that the interface means of D6 provides the advantage that the operator is able to control and monitor the operations of the testing equipment without going from his working place (near the vehicle to be tested) to the central processing unit (see column 3, lines 22 to 33).

Thus, it would have been obvious for the skilled person seeking for a solution to the above mentioned technical problem to apply the teaching of D6 to the system according to the closest prior art.

3.5.1 In this respect, the respondent submitted that only with hindsight can document D6 be considered as

suggesting the characterising features of claim 1 essentially because

a) it does not address the operational requirements of an automatic milking system and does not contain any hint at how to improve an automatic milking system, and

b) describes a system in which the spoken instructions from the operator are rebroadcast as a confirmation without providing status related information to the operator.

3.5.2 The board cannot accept these arguments for the following reasons:

a') D6 specifically relates to a control system for a testing equipment (15) for a vehicle, the testing equipment being connected to a processing unit (16) for management of the testing procedure used by the equipment. However, this citation suggests the use of a remote two-way transmission of vocal information between an operator within a work area and the processing unit or computer. Furthermore, D6 also indicates that two-way transmission of vocal information is particularly advantageous in so far as it allows the operator to remain within the work area without requiring a special trip to the computer, taking additional time (see particularly column 6, lines 11 to 17). In other words, D6 suggests a solution to a problem which is analogous to the problem solved by the subject-matter of claim 1. The problem addressed by the claimed subject-matter is in essence independent of

its specific use in a milking system but rather deals with a computer implemented system where the operator is obliged to use a specific terminal placed in a separate control room to get access to information or initiate a specific action. Such a problem is in essence addressed and solved in D6, where the operator does not have to approach the computer console and manually manipulate a keyboard on the console to have access to information or to issue instructions.

b') The two-way data transmission system of D6 allows the operator to receive "a continuous flow of audio data and audio prompts from the computer" (column 6, lines 16 and 17). In any case, the information that instructions from the operator have been received by the processing unit represents status related information, namely the information that the system is in the status of processing the received instructions as opposed to the situation when there is no feedback because the vocal instructions could not be recognized (or incorrectly recognized) by the system.

3.6 Accordingly, the subject-matter of claim 1 lacks an inventive step starting from D7 as closest prior art and combining D7 with D6 so that the respondent's sole request must fail as a whole. In view of the above conclusion there is no need for the board to consider whether the subject-matter of independent claims 8 and 12 is patentable over the cited prior art documents.

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