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Datasheet for the decision of 25 March 2010

Case Number: T 0967/07 - 3.2.04

Application Number: 95203036.9

Publication Number: 0721732

IPC: A01K 5/00

Language of the proceedings: EN

Title of invention:
A construction for displacing feed for animals

Patentee:
MAASLAND N.V.

Opponent:
DeLaval Holding AB

Headword:
Loading member/MAASLAND

Relevant legal provisions:
EPC Art. 54(3), 56
EPC R. 115(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0967/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 25 March 2010

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

Representative:
Schmidt, Karsten
Albihns.Zacco
Bayerstrasse 83
D-80335 München (DE)

Respondent: (Patent Proprietor)
MAASLAND N.V.
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 12 April 2007 concerning maintenance of European patent No. 0721732 in amended form.

Composition of the Board:

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

Summary of Facts and Submissions

I. In its interlocutory decision dated 12 April 2007, the opposition division found that, having regard to the amended version submitted by the patent proprietor, the European patent No. 0721 732 met the requirements of the European Patent Convention.

II. Claim 1 of this amended version reads as follows:

"1. A construction for automatically displacing feed in an accommodation for animals to said animals by means of a displaceable implement, which implement includes automatically operating control means and at least one motor and a storage box (11) for the feed, characterized, in that the storage box (11) comprises an automatically controlled drivable loading member for loading feed from at least one silo into the storage box (11), the loading member comprising a cutting device (12), and a mixing and discharging auger (13) provided inside the storage box (11)."

The opposition division held that the subject-matter of claim 1 was novel over WO-A-96/14735 (D7) and involved an inventive step starting from US-A-5 069 165 (D1) and combining this citation with the Storti International brochure, Edition March 1993 (D2) or the Handbook of the Alfa Laval Diet Feeders "Jollyfeed 8-11", Edition December 1989 (D3) or the Handbook of the Storti International "Carro miscelatore distributore Bull Dog", Edition January 1995 (D4).

III. On 8 June 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 10 August 2007.

With the grounds of appeal the appellant filed document US-A-GB-A-1 556 431 (D8).

IV. On 30 October 2009 the parties were summoned to oral proceedings. A board's communication was annexed to the summons.

Oral proceedings before the board were held on 25 March 2010. By letter dated 16 November 2009 the appellant informed the board that he would not attend the oral proceedings and requested a decision on the basis of the status of the file. In accordance with Rule 115(2) EPC the oral proceedings were held without him.

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

The patent proprietor (respondent) requested that the appeal be dismissed.

VI. In the grounds of appeal the appellant essentially submitted that the subject-matter of claim 1 lacked novelty over D7 and did not involve an inventive step having regard to either D8 in combination with common general knowledge or D1 in combination with any of D2 to D4.

Reasons for the Decision

1. The appeal is admissible.

2. *Novelty (over D7)*

2.1 D7, an Article 54(3) EPC document, discloses (see particularly Figure 2) a construction for automatically displacing feed in an accommodation for animals to said animals by means of a displaceable implement (1), which implement (1) includes automatically operated control means, at least one motor and a storage box (8), wherein the displaceable implement (1) comprises an automatically controlled drivable loading member (31, 35) for loading feed from at least one silo (5, 6) into the storage box (8), the loading member (31, 35) comprising a cutting device (31) arranged at the front side of the storage box (9), the implement also comprising two unloading or discharging augers (33) arranged transversely to the longitudinal direction of the implement.

In D7, fodder is admitted into the discharging augers (33) "[a]fter the automatic opening of a slide in the bottom of the feed box 8" (see page 7, lines 2 to 4), while the mixing augers are "arranged in the lower part of the feed box " (see page 6, lines 17 to 20). Thus, the implement of D7 is provided with discharging augers and additional mixing augers.

Therefore, D7 does not disclose a mixing and discharging auger, so that the subject-matter of claim 1 is novel over this prior art.

3. *Inventive step (starting from D1)*

3.1 Claim 1 requires that "the storage box (11) comprises an automatically controlled drivable loading member for loading feed from at least one silo into the storage box (11)". This implies that the storage box includes the loading member, i.e. has that loading member as one of its parts. In order that the loading member be regarded as one part of the storage box, it should be mounted on that storage box.

Therefore, contrary to the appellant's submissions, a loading member which is linked to the storage box by means of a pivotable arm is not one of its parts and the storage box does not include or comprise in that case such a loading member.

3.2 Document D1 (see particularly Figures 1, 6 and 10) discloses a construction for automatically displacing feed in an accommodation for animals to said animals by means of a displaceable implement ("mobile feeder unit" 10), which is suspended from a roof rail. This implement includes automatically operated control means, at least one motor and a storage box ("feed container" 14), which includes a main compartment 15 for ensilage and a set of secondary compartments 16 for containing different granulate feeds, wherein the storage box (14) comprises a mixing and discharging auger (67) which is arranged inside the storage box and ensures that ensilage and granulate fodder are mixed as well as that the mixed feed is discharged.

Furthermore, the construction of D1 (see particularly Figures 2 and 16) comprises loading stations (11a-11d),

each station comprising a silo (88) and an automatically controlled drivable loading member ("discharge screw" 89) for loading feed from the silo (88) into the secondary compartments (16) of the storage box (14). D1 is silent as to how the main compartment (15) of the storage box (14) is replenished.

The storage box of the implement (10) of D1 also comprises a cutting device constituted by a pair of shredders (80) arranged inside the main compartment (15) of the storage box (14) for cutting the ensilage before it falls on the mixing and discharging auger (67).

3.3 The claimed subject-matter differs in essence from D1 in that

a) the storage box comprises an automatically controlled drivable loading member for loading feed from at least one silo into the storage box, and

b) the loading member comprises a cutting device.

Thus, the compactness of the claimed displaceable implement may be increased, in so far as the storage box comprises not only the mixing and discharging auger but also the loading member.

According to the above feature b), the claimed displaceable implement is designed for loading feed from a silo containing fibrous feed which needs to be cut, such as from a flat silo containing ensilage.

Therefore, starting from D1 as closest prior art, the technical problem to be solved by the claimed invention may be seen in providing a compact implement equipped with a storage box which can be automatically replenished with fibrous feed from a flat silo.

3.4 D2 refers inter alia to an implement known as "Idroboxer" and defined as a "self-propelled mixing/desilator milling-roller" provided with a cutting device arranged at one end of a pivotable arm mounted for rotation on the implement. The cutting device is designed for removing silage from a flat silo, wherein the removed silage is conveyed through the pivotable arm into a storage box mounted on the self-propelled implement. D2 also refers to further similar implements, such as the "Bull-Dog" and the "Boxer", which differs from the "Idroboxer" in that they are not self-propelled but trailed vehicles.

D4 discloses further details of the implement referred to in D2 as "Bull-Dog".

D3 also concerns a trailed implement for loading silage from a flat silo, the implement being provided with a cutting device mounted on a pivotable arm.

All these documents concern displaceable implements comprising a storage box for containing feed to be distributed to animals and a loading member designed as a cutting member for loading feed from a silage, which cutting member is connected to the storage box by means of a pivotable arm which can moved upwards over the height of the storage box so that feed, such as silage,

is loaded from a flat silo at different height levels and conveyed to the storage box. Moreover, these implements are easily displaceable laterally with respect to the front of the flat silo so as to remove silage from different front sections of the silo.

3.5 The roof rail suspension of the implement of D1 limits the possibility of loading the storage box with fibrous feed from a flat silo with a cutting device which works over a large height range in so far as the rail limits the possible height of the flat silo. Furthermore, the roof rail suspension, in so far as it determines the path along which the implement is displaced, restricts its freedom of movement and prevents the implement from moving in a lateral direction with respect to the front of a flat silo.

Therefore, the skilled person confronted with the problem of providing an implement by means of which the storage box of the implement of D1 can automatically be replenished with fibrous feed from a flat silo, would immediately realize that the self-propelled or trailed implements known from documents D2 to D4 are incompatible with the implement disclosed in D1 which is suspended on an overhead track.

Furthermore, each of D2 to D4 discloses a loading member comprising a cutting device which is connected to the storage box by means of a pivotable arm, wherein the cutting device is arranged remotely from and outside of the storage box.

Thus, even if the skilled person were to apply the teaching of these documents to the implement of D1, he

would not arrive at the claimed implement in which the storage box "comprises" the loading member, i.e. has that loading member as a one of its parts.

Therefore, the subject-matter of claim 1 involves an inventive step having regard to D1 in combination with any of D2 to D4.

4. *Inventive step starting from D8*

4.1 D8 discloses (see particularly Figures 1 to 6) a construction for displacing feed in an accommodation for animals to said animals by means of a displaceable implement, which can be displaced by means of a tractor, the displaceable implement including a storage box (1) and a drivable loading member for loading feed from at least one silo into the storage box (1), the loading member comprising a cutting device ("cutting roller" 12). The storage box (1) comprises a discharging auger (6) provided inside the storage box. It can also be assumed that this displaceable implement includes control means, in so far D8 refers to "a plurality of mutually adjustable segments arranged above the cutting roller for control the cut stock ..." (see page 1, lines 78 to 83).

4.2 The claimed subject-matter differs from the implement of D8 in that:

a') the storage box comprises the drivable loading member,

b') the discharging auger is designed for mixing the loaded feed,

c') the implement includes at least a motor, the control means is automatically operating and the drivable loading member is automatically controlled.

4.3 Features a') and b') solve a first problem of increasing the compactness of the implement. Feature c') solves a second different problem of reducing the labour required to control the operation of the implement, without there being any interaction between these two technical problems.

4.3.1 The board cannot accept the appellant's submission that the difference between the claimed subject-matter and D8 was only the fact that the control means of D8 are not automatically operating, for the following reasons:

i) In D8, the loading member is linked to the storage box by means of arms (10 and 11) which are mounted for rotation about a horizontal axis (13) such that the loading member can perform an up and down movement. Thus, the storage box disclosed therein does not comprise the loading member as is being claimed in claim 1.

ii) In D8, the auger (6) is referred to as an "auger conveyor" for discharging stock in the storage box through an opening (8) with a cover flap 9 provided in a side wall (2) of the storage box. Thus, a discharging auger and not a mixing and discharging auger claimed in claim 1 is provided inside the storage box.

4.4 The appellant further submitted that starting from D8 as closest prior art the technical problem to be solved was to reduce the labour required to control the operation of the implement and that the solution to this problem, in so far as it consisted in the mere automation of a function previously performed by human operators, would be in line with the general trend in technology and could thus not be considered inventive.

However, D8 neither addresses the above additional problem solved by the limiting features a') and b') of claim 1 nor suggests its solution.

4.5 Furthermore, there is no disclosure or suggestion in the other cited documents of a loading member that is a part of the storage box together with a mixing and discharging auger provided inside the storage box so as to achieve a more compact construction than that disclosed in the cited prior art. Neither do the other cited documents address the same additional problem nor provide the same solution as the claimed invention.

Accordingly, the subject-matter of claim 1 involves an inventive step starting from D8 as closest prior art and combining this closest prior art with any of the other cited documents.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte