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 16 July 2010

Case Number: T 1912/07 - 3.2.04

Application Number: 01937096.4

Publication Number: 1286585

IPC: A01J 5/017

Language of the proceedings: EN

Title of invention:
Notification method and system

Patent proprietor:
DeLaval Holding AB

Opponent:
Octrooibureau Van der Lely N.V.

Headword:
Notification/DELAVAL

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1912/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 16 July 2010

Appellant: (Opponent)
Octrooibureau Van der Lely N.V.
Weverskade 110
NL-3147 PA MAASSLUIS (NL)

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

Respondent: (Patent Proprietor)
DeLaval Holding AB
P.O. Box 39
S-147 21 Tumba (SE)

Representative:
Lerwill, John
A.A. Thornton & Co.
235 High Holborn
London, WC1V 7LE (GB)

Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 24 October 2007 rejecting the opposition filed against European patent No. 1286585 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: P. Petti
E. Dufrasne

Summary of Facts and Submissions

I. An opposition filed against the European patent EP-B-1 286 585 was rejected by the opposition division by its decision dated 24 October 2007.

Granted claim 1 reads as follows:

"1. A method for automatically notifying a user of a dairy farm, wherein milking animals, such as cows, are allowed to move freely in an area (1) intended therefore and to visit individually an animal station (9, 39) located in said area, said station comprising an animal identification system (20, 43), and a database of the animals, **characterized by** the steps of:

– receiving a pre-selection of a particular milking animal of the milking animals in the database;

– identifying each milking animal that visits the station; and

– notifying the user of the dairy farm of the pre-selected animal when the pre-selected milking animal visits the station to provide the user with a notification of where said particular milking animal is at a given time."

II. The opponent (hereinafter appellant) lodged an appeal against this decision on 16 November 2007 and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 28 February 2008.

III. Oral proceedings before the board were held on 16 July 2010.

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

The respondent (patent proprietor) 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 in amended form on the basis of one of the first, second and third auxiliary requests, all filed with letter dated 13 August 2009.

Claim 1 of the first auxiliary request reads as follows:

"1. A method for automatically notifying a user of a dairy farm, wherein milking animals, such as cows, are allowed to move freely in an area (1) intended therefore and to visit individually an animal station (9, 39) located in said area, said station comprising an animal identification system (20, 43), and a database of the animals, **characterized by** the steps of:

– receiving a pre-selection of a particular milking animal of the milking animals in the database;

– identifying each milking animal that visits the station; and

– notifying the user of the dairy farm of the pre-selected animal when the pre-selected milking animal visits the station to provide the user with

a notification of where said particular milking animal is at a given time,

wherein the user is notified via a telephone, a mobile phone, a pager or a Bluetooth compatible unit, via a voice or text message."

Claim 1 of the second auxiliary request reads as follows:

"1. A method for automatically notifying a user of a dairy farm, wherein milking animals, such as cows, are allowed to move freely in an area (1) intended therefore and to visit individually an animal station (9, 39) located in said area, said station being an automated milking station (9) provided for automatic milking of the milking animals and comprising an animal identification system (20, 43), and a database of the animals, **characterized by** the steps of:

– receiving a pre-selection of a particular milking animal of the milking animals in the database;

– identifying each milking animal that visits the station; and

– notifying the user of the dairy farm of the pre-selected animal when the pre-selected milking animal visits the station to provide the user with a notification of where said particular milking animal is at a given time,

wherein the dairy farm comprises at least a further animal station (33, 9), which is visited individually

by the freely moving milking animals, each of said milking animal stations (9, 39) comprising an animal identification system (20, 43) and sharing a common database of the animals, and wherein

– the step of identifying also comprises identifying each milking animal that visits the further station (33, 9); and

– the step of notifying also comprises notifying the user of the dairy tam, of the pre-selected animal in dependence on the pre-selected milking animal visiting the further (33, 9) station,

and the step of notifying includes an identification of the animal station (9, 33) that is visited."

Claim 1 of the third auxiliary request reads as follows:

"1. A method for automatically notifying a user of a dairy farm, wherein milking animals, such as cows, are allowed to move freely in an area (1) intended therefore and to visit individually an animal station (9, 39) located in said area, said station being an automated milking station (9) provided for automatic milking of the milking animals and comprising an animal identification system (20, 43), and a database of the animals, **characterized by** the steps of:

– receiving a pre-selection of a particular milking animal of the milking animals in the database;

– identifying each milking animal that visits the station; and

– notifying the user of the dairy farm of the pre-selected animal when the pre-selected milking animal visits the station to provide the user with a notification of where said particular milking animal is at a given time,

wherein the user is notified via a telephone, a mobile phone, a pager or a Bluetooth compatible unit, via a voice or text message,

wherein the dairy farm comprises at least a further animal station (33, 9), which is visited individually by the freely moving milking animals, each of said milking animal stations (9, 39) comprising an animal identification system (20, 43) and sharing a common database of the animals, and wherein

– the step of identifying also comprises identifying each milking animal that visits the further station (33, 9); and

– the step of notifying also comprises notifying the user of the dairy tam, of the pro-selected animal in dependence on the pro-selected milking animal visiting the further (33, 9) station,

and the step of notifying includes an identification of the animal station (9, 33) that is visited."

V. The appellant essentially submitted that the subject-matter claimed in claim 1 of all appellant's requests

lacked an inventive step starting from EP-A-663 146 (D1) in combination either with the common general knowledge and the usual capabilities of the skilled person or with the teaching of EP-A-758 752 (D10).

VI. The respondent essentially submitted the following arguments:

(i) The subject-matter of claim 1 of the main request involves an inventive step because in the method of D1 the step of receiving a pre-selection of a particular animal is not carried out for the purpose of locating the animal and in the method of D10 the step of notifying is made in response to the actuation of the localizing means without there being any pre-selection of a particular animal.

(ii) The subject-matter of claim 1 of the first auxiliary request and that of the third auxiliary request involve an inventive step because the feature that "the user is notified via a telephone, a mobile phone, a pager or a Bluetooth compatible unit, via a voice or text message" provides the unexpected advantage of giving the farmer more freedom in so far as he can do useful work far from the milking station.

(iii) The subject-matter of claim 1 of the second auxiliary request and that of the third auxiliary request involve an inventive step because in D1 there is no need to identify the milking station which was visited by a pre-selected animal and

thus to notify the identification of the visited station.

Reasons for the Decision

1. The appeal is admissible.

2. *The closest prior art*

Document D1 refers (see column 3, line 2 to column 5, line 32) to a system for automatically milking cows, comprising a plurality of milking robots (3) and a main computer (1), which contains a database of the cows. Each of said milking robots (3) comprises an animal identification system (4) and a second computer (5), which also contains a database of the cows and is capable of exchanging data with the main computer (1).

The database comprises inter alia the information of whether a particular cow should be milked under the supervision of an operator (column 3, lines 43 and 44). This implies that a pre-selection of a particular cow is received in the database.

When a cow visits one of the milking robots, the data of the database are retrieved by the corresponding second computer (5), whereafter the computer decides whether the cow is allowed to be milked or should leave the milking station. The main computer (1) is connected to a personal computer (6) which allows the user of the dairy farm to read at any point in time data concerning a cow. In particular, the separation of the animal can be read from the main computer into the personal

computer and can be processed in a management program provided in the personal computer, whereafter the user of the farm at any point in time can retrieve and examine the data of any animal in order to exercise appropriate supervision over all herd (column 3, lines 38 to 49). This implies that when an animal which needs to milked under supervision (i.e. a preselected animal) visits one of the milking stations the system decides that the animal has to leave the milking station, be separated from the other animals of the herd and guided to a separation area. Thus, when a preselected animal visits each of the milking stations, the system processes data concerning where this particular animal is at a given time so that these data are made available to the user of the farm.

Thus, D1 discloses a method for automatically making information available to a user of a dairy farm, wherein milking animals are allowed to move freely in an area intended therefore and to visit individually a plurality of animal stations (3) located in said area, each of said stations (3) being an automated milking station provided for automatically milking of the milking animals comprising an animal identification system (4) and sharing a common database of the animals, in which

– a pre-selection of a particular milking animal of the milking animals is received in the database,

– each animal that visits an animal station (3) is identified,

– information of where said particular animal is at a given time is made available to the user of the farm when said particular animal visits one of the milking stations.

3. *Main request (inventive step)*

3.1 In the method of D1, when a particular pre-selected animal visits one of the milking stations the system processes the information that said particular animal is in a separation area at a given time so that this information is available to the user of the farm who may retrieve the data of said particular animal at any point in time. However, the availability of this information does not mean that the user is notified of this information. Thus, the method of D1 has the disadvantage that an animal which needs supervision is not always milked when it wishes, i.e. when it visits the milking station, but has to wait in a separation area at least until the user of the farm retrieves the data of said particular animal and knows that this animal is in the separation area.

3.1.1 The subject-matter of claim 1 of the main request differs from the method of D1 in that the user of the farm is provided with a notification of this information.

Starting from D1 as closest prior art, the technical problem addressed by the claimed invention may be formulated as how to facilitate the location of a certain animal in an area in which animals are allowed to move around freely, so as to provide a method which

does not present the disadvantages of the closest prior art.

3.2 As has been stated, there are provided in D1 three milking stations arranged for voluntary milking of the freely walking animals which are free to enter a milking station provided with a robot and upon entry are identified by an animal recognition system. Since the animals in the large area farm of the kind disclosed in D1 are only identified at each milking station they visit, the skilled person in its attempt to locate the pre-selected animal among the herd of animals walking around freely would have no choice but to locate the animal when it is identified at one milking station. Furthermore, since in D1 there is provided an alarm system for drawing the attention of the user that a fault exists in the data exchange between the main computer and a milking robot (see particularly column 5, lines 10 to 23), it would have been obvious for the skilled person seeking to facilitate the location of a pre-selected animal to use the alarm system to notify the user of the farm of the pre-selected animal when it visits one of the milking stations to provide him with the notification of where the animal is at a given time. In this way the skilled person would arrive - on the basis of his usual technical capabilities - at the claimed subject-matter without exercising any inventive skill.

3.3 D10 discloses a method of localizing animals, which are allowed to move freely in an area (1) and to visit individually a milking station (5) located in said area, in which method an operating person wishing to determine the location of an animal pre-selected out of

a group of animals receives an indication regarding the location of the selected animal in so far as his attention is drawn to the location of the pre-selected animal either by means of acoustic or optical signals or by means of the display screen of a computer. Thus, D10 teaches to provide the user of a dairy farm with the notification of where a particular pre-selected animal is at a given time.

3.4 Confronted with the above technical problem, the skilled person would consider the teaching of D10 and apply it to the method of D1 and thus arrive in a obvious way at a method of notifying the user of a dairy farm as claimed in claim 1 of the main request.

3.5 The board cannot accept the respondent's argument that in D1 the step of receiving a pre-selection of a particular animal is not carried out with the purpose of locating the animal, because in D1 the pre-selected animals which should be milked under supervision should necessarily be located in order to be milked under the supervision of the operator.

The board does not find convincing the further respondent's argument that in D10 the notification is made in response to the actuation of the localizing means without there being a pre-selection, because the step of pre-selecting a particular animal is already known from D1, while D10 teaches the step of notifying or warning the user of the dairy farm. In any case the step of pre-selecting a particular animal is also known from D10, in so far as this document refers to an operating person who activates the transmitter of the localizing means when he wishes "to determine the

location of an animal **pre-selected** out of a group" (column 3, lines 43 to 46; emphasis added).

3.6 Therefore, the subject-matter of claim 1 of the main requests lacks an inventive step (Article 56 EPC).

4. *First auxiliary request (inventive step)*

4.1 The subject-matter of claim 1 of this request differs from that of the main request by the additional feature that the user of the farm is notified "via a telephone, a mobile phone, a pager or a Bluetooth compatible unit, via a voice or text message".

4.2 The additional feature defining the means suitable for notifying the information solves a further problem which may be formulated as how to notify the user of a dairy farm of the presence of the pre-selected animal at one milking station.

4.3 Each of the devices (telephone, mobile phone, pager or Bluetooth compatible unit) defined by this additional feature were well known means for notifying a message in the form of a text or voice message. The choice of one of such means clearly lies within the capabilities of the person skilled in the art and thus cannot contribute to the inventiveness of the claimed subject-matter.

4.4 The respondent submitted that the above mentioned additional feature contributes to the inventiveness of the claimed solution step since it provides the unexpected advantage of giving the farmer more freedom

in so far as he can do useful work far from the milking station.

The board does not find convincing this argument because the advantage of giving the farmer more freedom is not linked to the choice of the means used to notify information but to the step of notifying. Moreover, this advantage is in essence achieved in D1 since the user of the dairy farm is provided with a personal computer, which may be a portable laptop capable of being connected to the joint computer, and thus is not obliged to use a specific terminal placed in a separate control room to get access to information or initiate a specific action.

4.5 Therefore, the subject-matter of claim 1 of the first auxiliary request lacks an inventive step (Article 56 EPC).

5. *Second auxiliary request (inventive step)*

5.1 In D1 the information concerning the location of a pre-selected animal is processed by the system in dependence on the pre-selected animal visiting each milking station.

5.1.1 The subject-matter of claim 1 of the second request differs from the method of D1 in that the user of the dairy farm is provided with a notification of this information (step of notifying) and in that the notification includes an identification of the animal station that is visited.

5.2 The technical problem addressed by the claimed subject-matter may be formulated as how to facilitate the location of a certain animal in an area in which the animals are allowed to move freely for providing attention to that animal, in the case where the area in question comprises two or more milking stations.

5.3 Starting from the method of D1, it would be obvious for the skilled person seeking for a solution to this problem to provide each milking station with an alarm system to notify the user of the dairy farm of the pre-selected animal when it visits each milking station so as to provide him with the notification of where the animal is at a given time. In a dairy farm including a plurality of milking stations, which is the case of D1, this notification would inevitably include the identification of the milking station that is visited. In doing so, the skilled person would arrive - on the basis of his usual capabilities - at the claimed subject-matter without exercising any inventive skill.

5.4 Furthermore, as explained in section 3.4 above, the skilled person would consider the system of D10, which teaches that the user of a farm is notified of where a pre-selected animal is at given time, apply this teaching to the method of D1 and arrive in a obvious way at the claimed subject-matter.

The board does not find convincing the respondent's argument that in D1 there is no need to identify the milking robot which was visited by a pre-selected animal and thus to notify the identification of the animal station that is visited, because the method of D1 is carried out in a dairy farm comprising a

plurality of milking stations, wherein each animal is free to choose any milking station and thus the visited milking station needs to be identified.

6. *Third auxiliary request (inventive step)*

6.1 The subject-matter of claim 1 of this request differs from that of the second auxiliary request by the additional feature that the user of the farm is notified "via a telephone, a mobile phone, a pager or a Bluetooth compatible unit, via a voice or text message".

6.2 For the same reasons as given above with respect to the second auxiliary request, the distinguishing features concerning the notifying step and the fact that the notification includes an identification of the animal station that is visited cannot be considered as involving an inventive step.

For the same reasons as given above with respect to the first auxiliary request, the additional feature defining the specific means suitable for notifying the information cannot contribute to the inventiveness of the subject-matter of claim 1 of the third auxiliary request.

6.3 Therefore, the subject-matter of claim 1 of the third 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