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**Datasheet for the decision
of 18 June 2010**

Case Number: T 2036/07 - 3.2.04

Application Number: 01100040.3

Publication Number: 1084611

IPC: A01J 5/017

Language of the proceedings: EN

Title of invention:

A milking machine for automatically milking animals

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB

Headword:

Carrousel/MAASLAND

Relevant legal provisions:

EPC Art. 76(1), 100(c)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter"

Decisions cited:

-

Catchword:

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Case Number: T 2036/07 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 18 June 2010

Appellant: DeLaval International AB
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 16 October 2007
rejecting the opposition filed against European
patent No. 1084611 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-1 084 611 filed as divisional application of the parent application EP-A-848 588, published as International application No. WO98/01022, was rejected by the opposition division by its decision dated 16 October 2007.

Granted claim 1 reads as follows:

"1. A milking machine for automatically milking of animals, such as cows comprising a milking robot with a robot arm construction (3) and a milk unit for the automatically connecting of the teat cups (25) of the machine to the teats of the cow, said milk units being arranged in a carrousel, characterized in that at least one rail (5, 6) is extending in a complete circle along the carrousel or thereabove, along which rail (5, 6) the robot arm construction (3) is movable".

- II. On 18 December 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 26 February 2008.
- III. Oral proceedings before the board were held on 18 June 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 the decision under appeal be set aside and the patent be maintained in an amended form based on claim 1 of the patent as granted, deleting all dependent claims 2 to 10 (auxiliary request).

V. The appellant essentially submitted that nowhere in the parent application is there a suggestion of an embodiment in which a robot arm construction is provided in addition to and separate from a plurality of milk units for automatically connecting the teat cups to the teats of a cow.

VI. The respondent essentially submitted the following arguments:

- (i) The term "milk unit", which is used in granted claim 1 as well as in claim 25 of the parent application as filed is commonly used to denominate a set of teat cups with ancillary equipments, such as milk lines, a pulsator and a milk tank.
- (ii) Granted claim 1 defines a milking machine comprising a milking robot provided with a robot arm construction and a number of milk units for the automatically connecting of teat cups of the machine to the teats of an animal, wherein the milk units, i.e. the sets of teat cups, are arranged in a carrousel so that the same robot arm construction serves for the teat cup attachment of more milk units, which therefore do not each comprise a robot arm construction.

- (iii) Claim 25 of the parent application as filed provides a basis for granted claim 1.

Reasons for the Decision

- 1. The appeal is admissible.
- 2. *Articles 100 (c) and 76 (1) EPC (main request)*
 - 2.1 Granted claim 1 contains the terms "milk units ... arranged in a carrousel" which are referred to only in the independent claim 25 of the parent application as filed, which is directed to "[a]n implement for the automatically milking of animals, such as cows[,] comprising a milk unit for the automatically connecting of the teat cups of the machine to the teats of the cow, characterized in that the milk units are arranged [in] a carrousel and whereby at least one rail is extending in a circle along the carrousel or thereabove and along which the robot arm construction is movable".

Indeed, the further claims of the parent application as filed do not refer to "milk units ... arranged in a carrousel" but to "milk boxes arranged in a carrousel" (see claim 24) and the description does neither refer to milk units arranged in a carrousel, nor describe a way of carrying out a milking implement in which milk units are arranged in a carrousel.

- 2.2 Granted claim 1 differs from independent claim 25 of the parent application as filed inter alia in that the terms

- i) "**implement** for the automatically milking of animals ... comprising **a milk unit** for the automatically connecting of the teat cups of the machine to the teats of the cow, characterized in that the milk units are arranged in a carrousel"

have been amended to read

- ii) "**milking machine** for automatically milking of animals ... comprising **a milking robot with a robot arm construction (3) and a milk unit** for the automatically connecting of the teat cups (25) of the machine to the teats of the cow, said milk units being arranged in a carrousel" (emphasis added).

2.3 In the present case, the patent specification does not clearly define the meaning of the term "milk unit". Thus, this term can be given, as submitted by the respondent, the meaning of "set of teat cups with ancillary equipments".

In the context of a claim defining a plurality of milk units arranged in a carrousel, the replacement of the term "milk unit" by the terms "milking robot with a robot arm construction (3) **and** a milk unit" (emphasis added) introduces subject-matter which extends beyond the content of the parent application as filed and is therefore unallowable since the skilled person is presented with new information that a plurality of "milk units", i.e. sets of teat cups, are associated with the same robot arm construction, i.e. that there is a common robot arm construction which serves for the

teat cup attachment of more milk units arranged in a carousel.

- 2.4 The pre-characterising portion of claim 25 of the parent application as filed refers to "a milk unit for the automatically connecting of the teat cups", without referring either to a milking robot or to a robot arm construction. The characterising portion refers to "milk units" as being "arranged in a carousel" and to "the robot arm construction" as being movable along at least one rail extending in a circle around the carousel.

It can be understood from claim 25 that there are functional and structural relationships between "milk units ... arranged in a carousel" and "robot arm construction", in so far as the milk units are suitable "for the automatically connecting of the teat cups" and the robot arm construction is movable along a rail extending in a circle around the carousel. However, this does not necessarily imply that the milk units are separate entities with respect to a common robot arm construction, since claim 25 may also be construed as defining milk units which are each associated with their own robot arm construction for connecting the teat cups to the teats of an animal in order to perform milking and automatically disconnect the teat cups from the teats at the end of milking.

Therefore, claim 25 of the parent application as filed does not provide a clear and unambiguous basis for a milking machine in which the same robot arm construction serves for the teat cup attachment of a plurality of milk units arranged in a carousel.

2.5 Furthermore, no such milking machine is directly and unambiguously derivable from the remaining portions of the parent application as filed:

- According to page 1, lines 14 to 28, the invention is also defined as "an implement for automatically milking animals provided with at least a milk box and an automatic milking machine including a milking robot for automatically connecting teat cups to the teats of an animal ..., automatically milking said animal and automatically disconnecting the teat cups from the teats ..., the milking robot comprising a robot arm construction".

- The description of the embodiments according to Figures 1 to 3 (see page 3, lines 33 to page 6, line 28) concerns a milking box provided with a robot arm construction comprising a "supporting unit 4", which is movable (along rails) in the longitudinal direction of a milking box, a "pivotable portion 13", which is connected to the supporting unit 4 by means of a hinge construction, a "carrier 14" connected to pivotable portion 13, and a "robot arm 15" to which a further carrier 24 for a set of teat cups 25 is attached. In other words, this part of the description discloses a robot arm construction with a teat cup carrier attached thereto, so that the robot arm construction is adapted to connect the teat cups to the teats of an animal in order to perform milking and to automatically disconnect the teat cups from the teats at the end of milking.

- The description of the embodiment according to Figure 4 concerns two milking boxes arranged side by side with a robot arm construction located in the space between the milking boxes, wherein the teat cups carrier 24 is attached to the robot arm 15 of the robot arm construction, which (robot arm) is pivotable - together with the teat cup carrier - around a vertical axis so as to serve both milking boxes.

- According to page 3, lines 10 to 17 and page 8, lines 2 to 17, instead of arranging two milking boxes side by side, several milk boxes may be arranged either behind each other, wherein the robot arm construction is movable along a longitudinal rail extending along the milking boxes, or in a carrousel (or in a circle), wherein the robot arm construction is movable along a rail extending along the carrousel (or along the circle). These parts of the description - due to the terms "[b]esides two milk boxes arranged side by side ..." and "[i]nstead of arranging two milk boxes side by side..." (page 3, line 10 and page 8, line 2) - have to be read in the context of a robot arm construction with a teat cup carrier attached thereto, as disclosed in the embodiment concerning two milking boxes arranged side by side.

Thus, in the parent application as filed, which consistently discloses an implement comprising a robot arm construction to which a teat cup carrier is attached, there is no basis for a robot arm

construction adapted to serve for the teat cup attachment of a plurality of "milk units".

2.6 Therefore, the subject-matter of granted claim 1, in so far as this claim defines a milking machine in which the same robot arm construction serves for the teat cup attachment of a plurality of "milk units", i.e. sets of teat cups, arranged in a carrousel, extends beyond the content of the parent application as filed (Article 76(1) EPC).

2.7 Having regard to the above considerations, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted (main request).

3. *Articles 100(c) and 76(1) EPC (auxiliary request)*

The auxiliary request is also based upon granted claim 1. The deletion of the dependent claims 2 to 10 does not change the interpretation of granted claim 1. Therefore, the above considerations also apply to the auxiliary request. Accordingly, the auxiliary request has to be rejected because the subject-matter of claim 1 extends beyond the content of the parent application as filed (Articles 100(c) or 76(1) EPC).

4. Since none of the respondent's requests is allowable, the patent is to be revoked.

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:

A. Counillon

M. Ceyte