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

**Case Number:** T 0202/08 - 3.2.04

**Application Number:** 99930093.2

**Publication Number:** 1085802

**IPC:** A01K 1/00

**Language of the proceedings:** EN

**Title of invention:**

Arrangement and method for housing lactating animals

**Patentee:**

DeLaval Holding AB

**Opponent:**

Octrooibureau Van der Lely N.V.

**Headword:**

Arrangement/DELAVAL

**Relevant legal provisions:**

EPC Art. 54, 56, 123(2)

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

-

**Keyword:**

"Main request: novelty (no)"

"First and second auxiliary requests: added subject-matter"

"Third auxiliary: inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0202/08 - 3.2.04

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

**Appellant I:** Octrooibureau Van der Lely N.V.  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
27 November 2007 concerning maintenance of  
European patent No. 1085802 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 27 November 2007, the opposition division found that, having regard to the amendments submitted by the patent proprietor, the European patent No. 1 085 802 met the requirements of the European Patent Convention.
- II. The opponent (hereinafter appellant I) lodged an appeal against this decision on 25 January 2008 and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 7 April 2008.
- A further appeal was lodged on 28 January 2008 by the patent proprietor (hereinafter appellant II) who simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 13 March 2008.
- III. Oral proceedings before the board were held on 18 November 2010.
- IV. Appellant I requested that the decision under appeal be set aside and the patent be revoked.

Appellant II requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or in the alternative, on the basis of one of three auxiliary requests, the first auxiliary request being based upon claim 1 filed with the grounds of appeal, the second auxiliary request upon claim 1 filed by letter of 31 March 2010, the third auxiliary request being based upon claim 1 filed during the oral

proceedings before the board and claims 2 to 29 of the patent specification.

V. Granted claim 1 (main request) reads as follows:

1. Arrangement for keeping lactating animals in a loose-housing system comprising at least one milking stall (6) provided between resting (2) and feeding (4) sections of said system, said milking stall (6) being provided with at least one milking robot (11) and entrance- (8) and exit- (10) gates and said system being provided with means (20, 22, 24, 26, 32, 36) for identification of said animals, said milking stall (6) and identification means (20, 22, 24, 26, 32, 36) being connected to a control device (12) for selective milking of the animals, characterized in that the identification means involve at least one identification gate (20, 22, 24), which is separately provided between the resting (2) and feeding (4) sections and at least one identification gate (26, 36), which is associated with the entrance gate (8) to the milking stall (6), and that each gate (8, 10, 20, 22, 24, 26, 32, 36) is manoeuvrable between a first state and a second state by means of the control device (12)."

Claim 1 of the first auxiliary request reads as follows:

- "1. Arrangement for keeping lactating animals in a loose-housing system comprising at least one milking stall (6) provided between resting (2) and feeding (4) sections of said system, said milking

stall (6) being provided with at least one milking robot (11) and entrance- (8) and exit- (10) gates and said system being provided with means (20, 22, 24, 26, 32, 36) for identification of said animals, said milking stall (6) and identification means (20, 22, 24, 26, 32, 38) being connected to a control device (12) for selective milking of the animals, characterized in that the identification means involve at least one identification gate (20, 22, 24), which is separately provided from the milking stall (6) and any associated waiting pen (34) between the resting (2) and feeding (4) sections and at least one identification gate (26, 36), which is associated with the entrance gate (8) to the milking stall (6), and that each gate (8, 10, 20, 22, 24, 26, 32, 36) is manoeuvrable between a first state and a second state by means of the control device (12)."

Claim 1 of the second auxiliary request reads as follows:

- "1. Arrangement for keeping lactating animals in a loose-housing system comprising at least one milking stall (6) provided between resting (2) and feeding (4) sections of said system, said milking stall (6) being provided with at least one milking robot (11) and entrance- (8) and exit- (10) gates and said system being provided with means (20, 22, 24, 26, 32, 36) for identification of said animals, said milking stall (6) and identification means (20, 22, 24, 26, 32, 38) being connected to a control device (12) for selective milking of the animals, characterized in that the identification

means involve at least one identification gate (20, 22, 24), which is separately provided between the resting (2) and feeding (4) sections and at least one identification gate (26, 36), which is associated with the entrance gate (8) to the milking stall (6), and that each gate (8, 10, 20, 22, 24, 26, 32, 36) is manoeuvrable between a first state and a second state by means of the control device (12), wherein said at least one identification gate (20, 22, 24), which is separately provided between the resting (2) and the feeding (4) sections, is adapted such that if an animal is reporting at any side of said identification gate (20, 22, 24), the animal is stopped or allowed to pass the identification gate depending on the present status of the animal."

Claim 1 of the third auxiliary request reads as follows:

- "1. Arrangement for keeping lactating animals in a loose-housing system comprising at least one milking stall (6) provided between resting (2) and feeding (4) sections of said system, said milking stall (6) being provided with at least one milking robot (11) and entrance- (8) and exit- (10) gates and said system being provided with means (20, 22, 24, 26, 32, 36) for identification of said animals, said milking stall (6) and identification means (20, 22, 24, 26, 32, 38) being connected to a control device (12) for selective milking of the animals, characterized in that the identification means involve at least one identification gate (20, 22, 24), which is separately provided between

the resting (2) and feeding (4) sections and at least one identification gate (26, 36), which is associated with the entrance gate (8) to the milking stall (6), and that each gate (8, 10, 20, 22, 24, 26, 32, 36) is manoeuvrable between a first state and a second state by means of the control device (12), wherein all identification gates (20, 22, 24), which are separately provided between the resting (2) and the feeding (4) sections, are adapted such that if an animal is reporting at any side of any of said all identification gates (20, 22, 24), the animal is stopped or allowed to pass the identification gate depending on the present status of the animal."

VI. Appellant I essentially submitted that claim 1 of the main request lacked novelty over EP-A-853 875 (D1), that claim 1 of the first auxiliary requests as well those of second and third auxiliary requests contravened Article 123(2) EPC and that the subject-matter of claim 1 of the third auxiliary request did not involve an inventive step having regard to D1 and WO-A-9619916 (D4).

VII. Appellant II essentially submitted that the subject-matter of claim 1 of the main request was novel over D1, that the amendments made in claim 1 of all auxiliary requests did not contravene Article 123(2) EPC and that the subject-matter of claim 1 of the third auxiliary request involved an inventive step having regard to D1 and D4.

## Reasons for the Decision

1. The appeals are admissible.
2. *Main request (novelty)*
  - 2.1 EP-A-853 875 (D1) discloses (the features of claim 1 are indicated in bold characters) **an arrangement for keeping lactating animals in a loose-housing system comprising** (see particularly column 2, line 2 to column 3, line 33; Figure)
    - **at least one milking stall (5', 5'') provided between a resting section (1) and a feeding section (3) of said system,**
    - a waiting section (2) provided between the resting section (1) and the milking stall (5'),
    - **said milking stall (5') being provided with at least one milking robot (24) and entrance and exit gates,**
    - **said system being provided with means for identification of said animals, said milking stall and identification means being connected to a control device for selective milking of the animals,**
    - wherein **the identification means involve a first identification gate** (access gate 6 comprising identification system 11, swivel gate 15 and one-directional gate 13 (in the direction A2)) **which is separately provided between the resting (1) and the feeding section (3), i.e. at a location separate**



from the milking stall (5'), wherein **the first identification gate (6) is manoeuvrable between a first state**, in which the animal is allowed to pass from the resting section to the feeding section, **and a second state**, in which the animal is prevented from passing to the feeding zone but is allowed to pass into the waiting zone, **by means of the control device**,

- the identification means involving **a second identification gate (12, 23) which is associated with the entrance gate to the milking stall, this second identification gate being manoeuvrable between a first state and a second state by means of the control device.**

2.2 In this respect, appellant II essentially submitted the following arguments:

- (i) In claim 1, the terms "identification gate (20, 22, 24), which is separately provided between the resting (2) and feeding (3) sections" define an identification gate which is not associated with the entrance of milking stall, i.e. a gate which may allow an animal wishing to go the feeding section to present itself at the gate without associating the entrance of the gate with the entrance of the milking stall. Therefore, the access gate (6) of D1 has to be considered as a gate which is not separately provided between the resting and feeding sections, because this gate may also provide access to the milking stall, via the waiting area.

- (ii) Each of the one-directional gates (13-A1 and 13-A2) of D1 is a passive gate, which is not controlled by any control device.
- (iii) The access gate (6) of D1 is a single gate which functions either as an identification gate between resting and feeding sections, or as an identification gate between resting section and waiting area. Thus D1 does not disclose an arrangement provided with two identification gates as claimed in claim 1.
- (iv) The swivel gate (15) of D1 does not stop an animal but guides the animal to either the feeding section or the waiting area.

2.3 The board does not find these arguments convincing for the following reasons:

- (i) The access gate (6) is not associated with the entrance of the milking stall and is thus "separately provided between resting and feeding sections" within the meaning of claim 1, since it allows an identified animal to pass from the resting section (1) to the feeding section (3), when the swivel gate (15) is in its left hand position.
- (ii) In D1, the passageway between the elements (11, 15 and 13-A2) of the access gate (6) represents an identification gate which is controlled by means of a control device, in so far as the swivel gate is manoeuvrable between a first state and a second state.

(iii) In D1, the gate (12, 23) which is associated with the entrance gate to the milking stall represents a second identification gate, in addition to the first identification gate (6; 11, 15, 13-A2) provided between the resting (1) and the feeding (3) sections.

(iv) Swivel gate (15) of D1 does have a stop function, since it stops the animal going into either the feeding space or the waiting area.

2.4 Thus, the subject-matter of claim 1 of the main request lacks novelty over D1. The main request is therefore not allowable.

3. *First and second auxiliary requests (added subject-matter)*

3.1 Claim 1 of the first auxiliary request differs from granted claim 1 in that the terms "**from the milking stall (6) and any associated waiting pen**" have been added after the words "separately provided".

3.1.1 In this respect, appellant II submitted that this amendment had a basis in the application as filed, on page 7, lines 22 to 28 in conjunction with Figure 3.

3.1.2 However, the terms "separately provided ... from any waiting pen" cover not only the waiting pen specifically disclosed with reference to Figure 3 but also any other undisclosed waiting pen. Thus, the skilled person is presented with the new information that any waiting pen other than the waiting pen of

Figure 3 may be associated with the milking stall. As this new information is not directly and unambiguously derivable from the originally filed application, the amendment therefore adds subject-matter, contrary to Article 123(2) EPC.

3.2 Claim 1 of the second auxiliary request differs from granted claim 1 by the additional feature "wherein said at least one identification gate (20, 22, 24), which is separately provided between the resting (3) and feeding (4) sections, is adapted such that if an animal is reporting at any side of said identification gate (20, 22, 24) is stopped or allowed to pass the identification gate depending on the present status of the animal".

3.2.1 In this respect, appellant II submitted that this amendment had a basis in the application as filed, on page 9, lines 14 to 19.

3.2.2 However, the passage referred to by appellant II makes it clear that an animal may be stopped or allowed to pass the gate, if the animal "is reporting at any side **of any of the other identification gates** of the system" (emphasis added). In other words, there is a plurality of identification gates provided between resting and feeding sections, all identification gates being bi-directional gates.

3.2.3 Amended claim 1 however also covers the undisclosed embodiment in which there are more identification gates provided between resting and feeding sections and not all of these identification gates are bi-directional.

Thus, this amendment also adds subject-matter which is not directly and unambiguously derivable from the application as filed and therefore contravenes the requirements of Article 123(2) EPC.

3.3 First and second auxiliary request are therefore not allowable.

4. *Third auxiliary request (admissibility)*

Objections under Article 123(2) EPC concerning claim 1 of the second auxiliary request were raised for the first time during the oral proceedings. The third auxiliary request was filed in order to overcome the objection of added subject-matter raised against the second auxiliary request. Thus, the filing of this new auxiliary request is to be regarded as a response or reaction from appellant II to this new objection and therefore the board finds it equitable to admit it into the proceedings even if formally late filed.

5. *Third auxiliary request (amendments)*

5.1 Claim 1 of the third auxiliary request differs from granted claim 1 by the additional features "wherein all identification gates (20, 22, 24), which are separately provided between resting (3) and feeding (4) sections, are adapted such that if an animal is reporting at any side of any of said all identification gates (20, 22, 24) is stopped or allowed to pass the identification gate depending on the present status of the animal".

5.1.1 This amendment has a basis in the original application, on page 9, lines 14 to 16.

5.1.2 Appellant I submitted that the additional features had been isolated from the context of the embodiment disclosed and thus represented an unallowable intermediate generalisation.

The board does not find this argument convincing because it is immediately apparent from the application as filed that the "at least one identification gate (29, 22, 24)" referred to in claim 1 of the application as filed is more specifically defined in the passage on page 9, lines 14 to 16, which reads as follows: "If an animal is reporting at any side of any of the other identification gates of the system, the animal is stopped or allowed to pass the gate depending on the present status of the animal".

This passage, in so far as it refers to "other identification gates", is linked to the preceding passage which refers to the identification gate (26) associated with the milking stall, which identification gate is included in claim 1 of the application as filed. Thus, the introduction of the above mentioned additional features into granted claim 1 does not require the addition of further features.

5.1.3 Therefore, amended claim 1 of the third auxiliary request does not extend beyond the content of the application as filed and, in so far as it contains additional limiting features, does not extend the conferred protection with respect to granted claim 1.

5.2 Therefore, the amendments do not contravene Article 123, paragraphs (2) and (3) EPC.

6. *Third auxiliary request (inventive step)*

6.1 It is not disputed that D1 represents the closest prior art.

According to this citation (see particularly column 3, lines 26 to 33; Figure), the access gate (6) is a one-directional selector gate, i.e. a gate having one entrance and two exits, which gate is provided with identification means and is manoeuvrable between a first and a second state. If an animal presenting itself at the entrance side of the access gate (6) is identified as being an animal "due for milking", it is prevented from going to the feeding section (3) and is guided to the waiting area (2).

Moreover, in D1 there is an exit gate (10) arranged between the resting (1) and feeding (3) sections, without there being any identification device associated with the exit gate (10).

During the milking time, the exit gate (10) is controlled to open only in the direction from the feeding section (3) towards the resting section (1). Although D1 suggests that the exit gate (10) can be controlled to open in both directions, this document clearly teaches that from the moment that milking time begins the exit gate (10) is operated as a one-way gate, so that the animals can walk from the feeding section (3) to the resting section (1) but cannot walk through the exit gate in the opposite direction (see particularly column 3, lines 11 to 25; Figure). This means that in the arrangement of D1 it is essential to

link this operation mode of exit gate (10) to that of the access gate (6) in order to establish for all animals a one-way routing system leading these animals from the feeding section to the resting section and thus to the access gate (6), wherein those animals which are identified as animals which are "due for milking" are selected and led to the waiting area (2), from which they can go to the milking stall.

If an animal, which is in the resting section, is "not due for milking" and wishes to eat, it can go to the feeding section only via the access gate (6). Thus, during milking times crowding at the entrance side of the access gate (6) may occur, in so far as all animals, those wishing to be milked and those wishing to walk into the feeding section, must report at the same access gate. The crowding may create negative stress for the animals.

6.2 The subject-matter of claim 1 of the third auxiliary request differs from D1 in that all identification gates, which are separately provided between the resting and the feeding sections, are adapted such that if an animal is reporting at any side of any of said all identification gates, the animal is stopped or allowed to pass the identification gate depending on the present status of the animal.

6.2.1 These distinguishing features have the effect of reducing crowding at the entrance side of the identification gate and allowing the animals to easily reach the feeding section.



Thus, the problem underlying the claimed invention is to provide an arrangement in which negative stress is reduced and the animals are allowed to spend more time in the feeding section.

- 6.3 None of the cited prior art documents suggests that the distinguishing features of claim 1 contribute to the solution of the above mentioned technical problem.

Furthermore, having regard to the considerations in section 6.1 above, the skilled person would be restrained from modifying the arrangement of D1 in such a way that all identification gates which are separately provided between the resting and the feeding sections are bi-directional gates, because such a modification would be against the principle of "one-way routing" upon which the arrangement of D1 is based.

Therefore, it would not be obvious for the skilled person starting from D1 to arrive at the claimed subject-matter.

- 6.4 In this respect, appellant I - with a first line of argumentation - essentially submitted that D1 explicitly taught that the exit gate (10) may be adjusted to open in both directions and that the skilled person starting from D1 would have easily identified the technical problem of monitoring the movements of the animals in order to know where the animals are and in order to solve this problem would have provided exit gate (10) with a bi-directional identification means so as to arrive at the claimed subject-matter without exercising any inventive skill.

With a second line of argumentation, appellant I also submitted that the skilled person starting from D1 would have identified the technical problem of simplifying the arrangement of D1 by replacing access gate (6) and exit gate (10) by a single bidirectional gate as disclosed in document WO-A-96/19916 (D4) so as to arrive in an obvious way at the claimed subject-matter.

6.4.1 The board does not find these arguments convincing for the following reasons:

(i) As has been explained before, the skilled person would be restrained from providing the exit gate (10) with a bi-directional identification means allowing animals also to go from the resting section (1) to the feeding section (3) via the exit gate (10), because such a modification of the arrangement of D1 would be against the principle of the one-way routing system upon which that arrangement is based.

In any case, even if the skilled person were to arrange a bi-directional identification means at the gate (10) of D1, he would not arrive at an arrangement in which all the identification gates provided between the resting and feeding sections are bi-directional.

(ii) The access gate (6) is an essential feature of the arrangement of D1 in so far as it allows the selection of the animals which are due for milking. Therefore, the skilled person would not consider the possibility of replacing access gate

(6) and exit gate (10) by a single bi-directional identification gate, which does not allow the possibilities of selecting the animals and guiding the animals which are "due for milking to the waiting area (2) and those which are "not due for milking" to the feeding section (3).

Moreover, replacing access gate (6) and exit gate (10) of D1 by a single bi-directional identification gate as disclosed in D4 would also be against the principle of one-way routing of D1.

6.5 Therefore, the subject-matter of claim 1 of the third auxiliary request involves an inventive step (Article 56 EPC).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of the following documents:
  - Description: Columns 1, 2, 5 and 6 of the patent specification,  
Columns 3 and 4 filed during oral proceedings before the opposition division on 16 November 2007;
  - Claims: 1 filed during the oral proceedings before the board,  
2 to 29 of the patent specification;
  - Drawings: Figures 1 to 3 of the patent specification.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte