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**Datasheet for the decision
of 8 December 2010**

Case Number: T 0557/08 - 3.2.04

Application Number: 99949453.7

Publication Number: 1037524

IPC: A01K 9/00

Language of the proceedings: EN

Title of invention:

A method of and an implement for automatically feeding animals

Patentee:

MAASLAND N.V.

Opponent:

DeLaval International AB

Headword:

Mother's milk/MAASLAND

Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

-

Keyword:

"Inventive step (no)"

Decisions cited:

T 1321/04

Catchword:

-



Case Number: T 0557/08 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 8 December 2010

Appellant:
(Patent Proprietor)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 18 January 2008
revoking European patent No. 1037524 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The opposition division, by its decision dispatched on 18 January 2008, revoked the European patent No. 1 037 524.

The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 19 March 2008 and simultaneously paid the appeal fee. The grounds of appeal were received on 27 May 2008.

- II. Oral proceedings before the board were held on 8 December 2010.

The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of claims 1 to 11 of the auxiliary request filed with the grounds of appeal. The main request on file was withdrawn during oral proceeding before the board.

Claim 1 of the sole appellant's request reads as follows:

- "1. A method of automatically feeding animals, being calves, in which
- mother's milk, is a component part of the feed,
 - the amount of feed is attuned to the nutritive need of the individual animal,
 - the feed is supplied to the individual animal,

characterized in that

- the mother's milk is yielded by a milking machine,
- the mother's milk is supplied automatically and directly from the milking machine to the individual animal, or the mother's milk is supplied automatically after having been stored in a first or further storage means and **in that**
- one or more characteristics, such as an identification number, of the dairy animal, such as a cow from which the mother's milk has been yielded, are stored in a memory,
- the mother's milk from the dairy animal is supplied to the corresponding individual animal, being a calf of said dairy animal."

III. The respondent (hereinafter opponent) requested that the appeal be dismissed.

IV. The appellant submitted inter alia that amended claim 1 did not contravene the requirements of Article 123 EPC and that the claimed subject-matter involved an inventive step over the cited prior art: None of the cited prior art documents suggested the feature of automatically feeding a calf with milk from its own mother. Moreover, the skilled person starting from US-A-5 355 833 (D1) would have been restrained from modifying the system of D1.

V. The respondent essentially submitted that the amendment in claim 1 that removes "such as beestings, ... or colostrum" after "mother's milk" would have contravened

either Article 123(3) EPC, if the expression (in granted claim 1) "mother's milk, such as beestings, ... or colostrum" were to be considered as limiting the claim to the feeding of "beestings, ... or colostrum", or Article 123(2) EPC, if the term "mother's milk" were to be interpreted as excluding "beestings, ... or colostrum".

The respondent also submitted that the claimed subject-matter lacked inventive step in view of D1 in combination with common general knowledge as illustrated in "*Animal Welfare - A Cool Eye Towards Eden*", by J. Webster, Oxford 1994, pages 178 to 180 (D4) and EP-A-628 244 (D2).

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

2.1 In granted claim 1 the features

(a) "method of automatic feeding animals, **such as calves**, in which "**milk** or mother's milk, **such as beestings, beestingslike milk, foremilk or colostrum**, is a component part of the feed", and

(b) "the **milk** or mother's milk from the dairy animal is supplied to the corresponding individual animal, **such as a calf or a cow**" (emphasis added)

have been amended to read

(a') "method of automatic feeding animals, **being calves**, in which mother's milk is a component part of the feed", and respectively

(b') "the mother's milk from the dairy animal is supplied to the corresponding individual animal, **being a calf of said dairy animal**" (emphasis added).

2.1.1 The amendment that removes an alternative ("milk") from "milk or mother's milk" does not result either in the extension of the subject-matter beyond the content of the application as filed (Article 123(2) EPC) since claim 1 of the application as filed (WO-A-00/21359) discloses both alternatives ("milk" and "mother's milk") or in the extension of the protection conferred (Article 123(3) EPC).

The replacement of feature a) by feature a') results in the introduction of a limiting feature ("feeding ... calves") which was specified in granted claim 1 as well in claim 1 of the application as granted as a facultative feature ("feeding animals, such as calves ...". Thus, the suppression of the words "such as" is self supported by granted claim 1 as well as by claim 1 of the application as filed and limits the scope of the claim.

The amendment that replaces feature a) by the more restricted feature a') is supported by claim 1 of the application as filed and limits the scope of the claim.

On the other hand, the wording "such as beestings ... or colostrum" has no limiting effect on the features of the claim and its removal does not change the meaning of the term "mother's milk", which defines - in the context of the patent in suit - the milk secreted by a dairy animal in any stage of its lactation period.

Moreover, these amendments in so far as they are "self-supported" by granted claim 1 do not render the claim 1 unclear.

- 2.1.2 The amendment that replaces feature (b) by feature (b') is clearly and unambiguously derivable from page 2, lines 32 to 34 of the application as filed, according to which "... it is possible for the individual animal to receive milk or mother's milk **from its mother**" (emphasis added).

Thus, amended claim 1 is restricted to feeding calves with milk from their own mothers and therefore complies with the requirement of Article 123(3) EPC.

Furthermore, this amendment does not render the claim unclear.

- 2.2 Contrary to the respondent's submissions, the features following the terms "such as" have no limiting effect on the features of the claim and thus can be removed therefrom. The term "mother's milk" is to be interpreted on the basis of the description which also serves to clarify the terms used therein. In this respect, the description may be seen as a dictionary for the terms used in the claims but in the absence of an apparently special meaning, terms should be given

their normal meaning (see e.g. decision T 1321/04, not published in the OJ, point 2.2 of the Reasons).

Therefore, this feature is interpreted by the board as defining the milk secreted by a dairy animal **at any stage of the lactation period** and thus also includes "beestings, ... or colostrum".

2.3 Therefore, amended claim 1 complies with the requirements of Article 84 EPC and Article 123(2) and (3) EPC.

3. *Inventive step*

3.1 Document D1 discloses a method of automatically feeding animals, being calves (see column 1, lines 8 to 13) in which

- milk is a component part of the feed (see column 5, lines 17 to 20),
- the amount of feed is attuned to the nutritive need of the individual animal (see column 5, lines 66 to 68),
- the feed is supplied to the individual animal (see column 8, lines 36 to 38),
- the milk is supplied automatically after having been stored in a storage means ("milk tank" 50; see Figure 6),
- the milk is supplied to the corresponding individual animal at a feeding station 60 (see column 8, lines 17 to 26 and 36 to 38; Figure 6),
- a characteristics of the dairy animal, namely the mother's voice of a calf presenting at the feeding station, is stored in a memory.

3.2 The claimed subject matter differs from D1 in that

- i) the milk supplied to each individual animal is the mother's milk of a dairy animal, wherein said individual animal is a calf of said dairy animal,
- ii) the mother's milk is yielded by a milking machine.

3.3 The effect obtained by feature (i) is in essence to reduce the death rate of calves in the first weeks of life, in so far as the calf in the first days of life can acquire from the colostrum, i.e. from the milk secreted by the mammary glands of its mother immediately after parturition, the antibodies necessary to protect it against infectious diseases.

Feature (ii) provides the advantage of improving the efficiency of the milking phase.

In the present case there is no technical effect achieved by features (i) and (ii) taken in combination. Thus, these features contribute separately to the solution of two partial problems and can therefore be discussed independently for inventive step.

The problem underlying feature (i) is to maintain the health state of calves in their first weeks of life, while the problem underlying feature (ii) is to improve the efficiency of the method with respect to the milking phase.

3.4 It is well known to supply a calf with milk from its mother for about 24 hours after its birth in order to

allow the calf to acquire the antibodies contained in the colostrum which are necessary to protect it from infectious diseases, see e.g. D4, page 17, lines 11 to 14. It is also known from D4 to allow calves to drink the milk from their mother at least until they reach two or three weeks of age (see page 179, lines 26 and 27). It would be obvious for a skilled person starting from the method of D1 in which milk is automatically supplied to the calves to arrive - on the basis of the common general knowledge, as illustrated by D4 - to a method in which calves automatically receive milk from their respective mothers. Therefore, distinguishing feature i) is obviously derivable from the common general knowledge as illustrated by D4. It follows that the claimed subject-matter does not involve an inventive step in view of D1 and common general knowledge, regarding the partial problem of protecting calves against infectious diseases.

- 3.5 It is also well known to yield milk from a dairy animal by a milking machine. Document D2 discloses a method of milking animals by using an automatic milking machine which co-operates with an animal identification system, in which method the milk obtained from different animals is collected in different storage containers for the separate collection of milk of a different quality or composition (see particularly claims 1 and 2). It would be obvious for a skilled person seeking for a solution to the partial problem of improving in D1 the efficiency of the milking stage to arrive - on the basis of the teaching of D2 - at a method in which the mother's milk is yielded by a milking machine. Since distinguishing feature ii) is obviously derivable from D2, the claimed subject-matter does not involve an

inventive step in view of D1 and D2, regarding the partial problem of improving the efficiency of the milking phase.

3.6 In this respect, the appellant has essentially submitted the following:

- The skilled person would find in D4 the specific teaching of leaving a calf with its mother for about 24 hours after its birth and not the teaching of **automatically** feeding calves with milk from their respective mothers.

- The invention requires a storage means comprising a plurality of separate reservoirs, so that the milk from different mother animals can be kept in different reservoirs, wherein the identification code of the mother animal and the position of the mother's milk in the storage means are stored in a memory, so that the mother's milk can be automatically supplied to its own calf.

The skilled person starting from a complex system for automatically feeding calves as disclosed in D1 would have no incentive to modify the system. Since the apparatus of D1 is provided with a common milk tank, it would be technically impossible to automatically feed the calves with the milk of their own mothers. The skilled person seeking for a solution to the problem of automatically feeding the calves with milk from their respective mothers, would have to modify the apparatus of D1 so as provide it with a plurality of separate reservoirs and thus, in order to avoid

increase of costs, would be restrained from doing it, in particular because the importance of the reduction of the cost of the equipment is referred to in D1 (column 8, lines 48 and ff.).

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

- The skilled person reading D4 would immediately understand that a calf drinking enough milk secreted by its mother in the first 24 hours after its birth receives the antibodies necessary to protect it against infectious diseases independently of whether it drinks this milk directly from the teats of its mother. In other words, D4 provides the general teaching of feeding a calf with milk from its own mother. The skilled person would see the advantages of this teaching and have no difficulties in applying it to the automatic feeding of D1.

- Claim 1 specifies the feature that "mother's milk is supplied automatically after having been stored in a first storage means or a further storage means", without specifying that the storage means is provided with a plurality of separate reservoirs. Moreover, according to claim 1, "one or more characteristics, **such as** an identification number of the dairy animal, **such as** a cow from which the mother's milk has been yielded, are stored in a memory" (emphasis added). Since the features following the terms "such as" have no limiting effect on the features of claim 1, this claim does not encompass the technical features

that the identification code of the mother animal and the position of the mother's milk in the storage means are stored in a memory.

- Moreover, claim 1 does not require that a calf receives mother's milk only from its mother. Therefore, it would be possible for the skilled person starting from the method of D1 to use the common milk tank to feed a calf with milk from its mother together with milk from other mothers.

- It would not be technically difficult for a skilled person starting from D1 to arrange a plurality of separate reservoirs, each containing milk of a mother animal, in order to arrive at method in which each calf automatically receives the milk from its own mother which is stored in a separate reservoir. In this respect, it has to be noted that the apparatus used in D1 is provided with a plurality of separate tanks (66 to 71) each containing a different additive to be supplied to the calves (see Figure 6). Thus, D1 also teaches the use of an apparatus comprising separate reservoirs for supplying different components of the feed. The skilled person starting from D1 would certainly consider the cost of the equipment but would not be restrained from arranging a plurality of separate reservoirs in view of the advantages to be achieved.

In this respect, it has to be noted that in the method of D2, in which the yielded milk can also be used for animal food (see column 1, lines 15 to 19), the milk obtained from different animals is

collected in different storage containers (see claim 2) and data concerning the quality or composition of the yielded milk are measured, stored and updated in the memory of a computer for each dairy animal in connection with decisions concerning inter alia the destination of the yielded milk (see particularly column 3, line 43 to column 4, line 1). In other words, D2 provides the teaching of using separate reservoirs for the milk and of storing in a memory data concerning the identity of a mother's animal and the milk yielded from this mother's animal.

3.7 The board therefore concludes that the opposition ground of lack of inventive step prejudices the maintenance of the patent as amended.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte