

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 10 August 2010**

Case Number: T 0146/09 - 3.2.04

Application Number: 01918043.9

Publication Number: 1265478

IPC: A01J 5/017

Language of the proceedings: EN

Title of invention:

A device for supporting a milking member

Patentee:

DeLaval Holding AB

Opponent:

GEA WestfaliaSurge GmbH

Headword:

-

Relevant legal provisions:

EPC R. 115(2)

Relevant legal provisions (EPC 1973):

EPC Art. 100(a)

Keyword:

"Novelty (yes)"

"Inventive step (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 0146/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 10 August 2010

Appellant: GEA WestfaliaSurge GmbH
(Opponent) Siemensstrasse 25-27
D-59199 Bönen (DE)

Representative: Schütte, Hartmut
BSB
Anwaltskanzlei
Am Markt 2 (Eingang Herrenstrasse)
D-59302 Oelde (DE)

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

Representative: Berglund, Stefan
Bjerkéns Patentbyrå KB
Östermalmsgatan 58
SE-114 50 Stockholm (SE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
4 November 2008 concerning maintenance of
European patent No. 1265478 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

- I. In its interlocutory decision posted 4 November 2008, the Opposition Division found that, taking into consideration the amendments made by the patent proprietor, the European patent and the invention to which it relates met the requirements of the EPC. On 30 December 2008 the Appellant (opponent) filed an appeal. The appeal fee was paid on 2 January 2009. The statement setting out the grounds of appeal was received on 4 March 2009.
- II. The patent was opposed on the grounds based on Article 100(a) (novelty and inventive step) EPC 1973.
- III. The following documents played a role in the present proceedings
- D2: WO-A-96/13150
D7: US-A-3 738 321
D8: US-A-4 491 085
D10: US-A-4 586462
D11: Prospectus "Westfalia die grüne Reihe Nr. 10
Nachmelkautomatic Finilactor"
- IV. Oral proceedings before the Board took place on 10 August 2010.
- By letter dated 21 July 2010 the Appellant which had been duly summoned informed the Board that he would not attend the oral proceedings. According to Rule 115(2) EPC the proceedings were continued without him.

The Appellant (Opponent) requested in writing that the decision under appeal be set aside and that the patent be revoked.

He mainly submitted that the subject-matter of the independent claims 1 and 16 lacks novelty with respect to D2 and D10. Furthermore, starting from D7 as closest prior art the claimed invention does not involve an inventive step when considering either the common general knowledge of the skilled person or the teaching of D8. Finally D2, D10 and D11 would also constitute possible starting points for the invention and in combination with D7 would lead in an obvious manner to the claimed subject-matter.

The Respondent (Patentee) contested the arguments of the Appellant and submitted that:

Neither D2, D7 nor D10 disclose a retracting device for the support arm comprising a pulling cord connected to the milking member.

Starting from D7 as closest prior art, the problem the invention seeks to solve could be seen in simplifying the retracting devices for the arm and the milking member. However, none of the cited documents discloses or suggests that a single pulling cord could be used to retract both the arm and the milking member. Therefore, the claimed device and milking stall arrangement involve an inventive step.

The Respondent (Patentee) requested dismissal of the appeal, that is maintenance of the patent in the amended form held allowable by the opposition division.

V. Claims 1 and 16 held allowable by the Opposition division read, in the form of a feature analysis, as follows:

- a) "1. A device for supporting a milking member in a milking stall (1),
- b) the milking member including a claw (8), a number of teatcups (9) connected to the claw (8) by a respective short milk conduit (10), and a long conduit member (11,12) connecting the claw (8) to a milk-receiving member (7) of a milking machine (6),
- c) the milking stall (1) including an enclosing structure (2) defining a space (3) for an animal to be milked, and a passage (4) permitting the animal to enter and/or exit the space (3),
- d) the device (15) including an arm (16), which has a first proximal end portion (16a) and a second distal end portion (16b) and which is pivotable between an active position during a milking operation and an inactive, retracted position between milking operations,
- e) the arm (16) including means for supporting the milking member in the active position and the inactive position,
- f) the device (15) including first stop means (41, 23) defining the active position of the arm and second stop means (42, 23) defining the inactive position of the arm,
- g) characterised in that said supporting means of the arm includes a holding member (25), which is arranged to hold the long conduit member (11, 12) of the milking member,

- h) wherein the holding member (25) is provided at the second end portion (16a) of the arm (16), and
 - i) in that a retracting device (30, 31) is provided for retracting the arm from the active position to the inactive position after a milking operation,
 - j) wherein the retracting device includes an actuator (30) and a pulling cord (31) connected to the actuator (30) and to the milking member (8),
 - k) wherein the arm (16) includes a guiding member (32) arranged to guide the pulling cord (31) during the retraction of the arm (16)."
-
- a') "16. A milking stall arrangement including
 - b') at least one milking member including a claw (8), a number of teatcups (9) connected to the claw (8) by a respective short conduit member (10), and a long conduit member (11) connecting the claw to a milk-receiving member (7) of a milking machine,
 - c') at least one milking stall (1) including an enclosing structure defining a space (3) for an animal to be milked, and a passage (4) permitting the animal to enter and/or exit the space,
 - d') at least one support device (15) including an arm (16), which has a first proximal end portion (16a) and a second distal end portion (16b) and which is pivotable between an active position during a milking operation and an inactive, retracted position between milking operations,

- e') the arm (16) including means for supporting the milking member in the active position and the inactive position,
- f') the device (15) including first stop means (41, 23) defining the active position of the arm and second stop means (42, 23) defining the inactive position of the arm,
- g') characterised in that said supporting means of the arm includes a holding member (25), which is arranged to hold the long conduit member (11, 12) of the milking member and thereby supporting the milking member,
- h') wherein the holding member (25) is provided at the second end portion (16a) of the arm (16), and
- i') that a retracting device (30, 31) is provided for retracting the arm from the active position to the inactive position after a milking operation,
- j') wherein the retracting device includes an actuator (30) and a pulling cord (31) connected to the actuator (30) and to the milking member (8),
- k') wherein the arm (16) includes a guiding member (32) arranged to guide the pulling cord (31) during the retraction of the arm (16).

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*
 - 2.1 In D2 (Figures) the support device for the milking cluster includes an articulated arm consisting of three arm portions each being capable of pivoting horizontally. At the free end of the third outermost arm portion is attached the milking cluster. A pulling cord is attached to the first arm portion and extends through guide rings positioned on the third outermost arm portion. The pulling cord is not connected to the milking member (features j or j'). No stop means are provided for defining an active and a passive position of the support arm (features f or f').
 - 2.2 In D7 (Figure 1) the retracting device for the support arm (column 5, lines 59 to 67) is separate from the retracting device for the milking member (column 3, lines 12 to 19). Although a pulling cord is provided in D7 for retracting the milking cluster, this cord is not used for retracting the support arm. Accordingly, D7 does not disclose at least features j), k) and j'), k').
 - 2.3 In D10 there is no retracting device for retracting the arm supporting the milking cluster with the aid of a pulling cord from the active and the inactive position (features i and j or i' and j'). A flexible tensioning device attached at one end to the outermost arm portion which carries the milking cluster is provided for releasing the milking cluster from the udder of the cow,

not for retracting the support arm (column 4, lines 12 to 14, Figure 1).

2.4 Consequently, the subject-matter of claims 1 and 16 is novel with respect to D2, D7 or D10.

3. *Inventive step - claim 1*

3.1 D7 is considered as closest prior art in the decision under appeal.

The device for supporting a milking member in a milking stall according to claim 1 differs in essence from that of D7 in that:

the retracting device comprises a pulling cord connected to the actuator and to the milking member, wherein the arm includes a guiding member arranged to guide the pulling cord during the retraction of the arm (features j) and k)).

3.2 D7 comprises two retracting devices: a first one for the milking member, comprising a pulling cord (13) connected to the milking member (6), wherein the arm includes a guiding member (pulley 15) arranged to guide the pulling cord during the retraction of the milking member and a second device for retracting the arm which comprises a ram unit (17), a counter balance weight or a return spring (column 5, lines 59 to 67; column 6, lines 10 to 13) and a bracket or like projection on the support arm.

Starting from this closest prior art the objective problem the invention seeks to solve may thus be seen in simplifying the retracting devices for the arm and the milking member.

3.3 The Appellant argued that according to D7 the retracting device for retracting the teat cup assembly could alternatively be a spring or counter-balance operated mechanism and that in this case this device has by definition to be activated by the actuator 17b for retracting the arm 1.

There is however no teaching in D7 as to how the arm retraction device 17 can be combined with the teat cup assembly retracting means 7, 8 to form a single retracting device for retracting both the support arm and the teat cup assembly.

3.4 The Appellant also contended that a skilled person seeking to make the retracting devices less complicated would obviously consider using a single actuator for all retraction operations as taught by D8 and therefore connect the cord-like member of D7 to the teat cup assembly and to the actuator.

This reasoning cannot be accepted either. Even if a skilled person had thought of using only one actuator as taught by D8 in order to simplify the installation, he would have made use of a first cord for retracting the milking member and a second one for retracting the support arm as disclosed in D8. Nothing in this prior art would have led him to retract the support arm and the milking member with the aid of a single cord.

3.5 In D10 the device for supporting the milking cluster comprises two arm portions. The outermost second arm portion, which carries at its free end the milking cluster, is connected to the first arm portion at a joint in such a way that the second arm portion can

pivot horizontally. The first arm portion can be moved up and down and also pivot horizontally.

The milking cluster attached to the first arm portion can therefore be easily moved into the desired position below the udder of the cow. An eye for attaching a flexible tensioning element is also positioned at the free end of the second arm portion.

The flexible tensioning element is not designed for pivoting the first and second arm portions between an active and an inactive retracted position when the milking operation is finished, but only for releasing the milking cluster from the udder of the cow with the aid of a removing device, not illustrated (see column 4, lines 12 to 14)

There is thus nothing in D10 to suggest providing of a pulling cord for both removing the milking cluster from the udder of the cow and for moving the support arm into its inactive retracted position when the milking operation is finished (features i and j).

Furthermore, there is no disclosure in D10 of an enclosing structure defining a space for a cow to be milked and a passage permitting the cow to enter and/or exit the space (feature c)). This citation discloses neither a guiding member for guiding the pulling cord during retraction of the arm (feature k)), nor stop means for defining the active and inactive positions of the support arm (feature f)).

3.6 There is no reason whatever why combining D10 with D7 and D10 should suggest the claimed device.

The device of D10 has a very different construction to the device of D7. More importantly, neither D10 nor D7 discloses or suggests the claimed features i) and j),

that is the provision of a pulling cord connected to the milking cluster for both removing the milking cluster from the udder of the cow and for moving the support arm into its inactive retracted position when the milking operation is over.

- 3.7 As indicated by the Appellant in his letter dated 16 March 2009, D11 is a brochure showing a milking stall arrangement corresponding to D10 (page 11, lines 1 to 3); whereas D2 constitutes an improvement of the device of D10 which has in essence the same scope as D10 (page 11, second paragraph and first sentence of the third paragraph of section 3.4). Thus, D2 or D11 cannot lead to another conclusion in the assessment of inventive step than D10.

Accordingly, neither D7 alone, nor in combination with any of D8, D10, D2 or D11 even if taking into account the common knowledge of the skilled person can lead in an obvious manner to the subject-matter of claim 1. Furthermore, the use of a same pulling cord for retracting both the milking member and its support arm at once (i.e. claimed features j) and k)) is neither disclosed nor suggested by any other of the cited prior art documents. Therefore, the subject-matter of claim 1 involves an inventive step with respect to the cited prior art documents.

The above findings in respect of inventive step of the subject-matter of claim 1 apply mutatis mutandis to the subject-matter of independent claim 16 for a milking stall arrangement having in essence the same features as the device according to claim 1.

Order

For these reasons it is decided that:

The appeal is dismissed.

The registrar:

The Chairman:

G. Magouliotis

M. Ceyte