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Datasheet for the decision of 11 November 2013

Case Number: T 0874/09 - 3.5.04

Application Number: 98962795.5

Publication Number: 1038265

IPC: G06T1/00, A01J5/017, A01K29/00, G07C9/00, G08B13/196

Language of the proceedings: EN

Title of invention:
AN APPARATUS AND A METHOD FOR MONITORING AN ANIMAL RELATED SPACE

Patent Proprietor:
DeLaval Holding AB

Opponent:
Octrooibureau Van der Lely N.V.

Relevant legal provisions:
EPC 1973 Art. 56
EPC Art. 123

Keyword:

Decisions cited:
G 0009/91, T 0006/92, T 0769/97, T 0805/00

Catchword:

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Case Number: T 0874/09 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 11 November 2013

Appellant: (Opponent)	Octrooibureau Van der Lely N.V. Weverskade 110 3147 PA MAASSLUIS (NL)
Representative:	Seerden, Adrianus Maria Octrooibureau Van der Lely N.V. Weverskade 110 3147 PA Maassluis (NL)
Respondent: (Patent Proprietor)	DeLaval Holding AB P.O. Box 39 147 21 Tumba (SE)
Representative:	Gray, Helen Mary ZACCO GmbH Bayerstraße 83 80335 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 31 March 2009 concerning maintenance of the European Patent No. 1038265 in amended form.**

Composition of the Board:

Chairman: F. Edlinger
Members: A. Dumont
B. Müller

Summary of Facts and Submissions

I. The opponent appealed against the decision of the opposition division maintaining European patent No. 1 038 265 in amended form.

II. An opposition had been filed based on the grounds of lack of novelty and lack of inventive step (Article 100(a) together with Articles 52(1), 54 and 56 EPC 1973).

III. The opposition division decided that the patent in amended form according to the first auxiliary request met the requirements of the EPC. In particular, the division found that claim 1 did not merely specify the transmission of image data to a remote device via a telecommunications network, which would not be inventive per se. Claim 1 also specified remote control via the telecommunications network, which remote control involved an inventive step over the relevant prior art.

IV. In an annex to the summons to oral proceedings, the board raised the question of whether claim 1 in the form as maintained by the opposition division in the decision under appeal implied remote control of the controllable device through control means, different from the mere transmission of image data to a remote device.

V. In a letter of 11 October 2013, the appellant (opponent) filed an auxiliary request that the patent should be maintained on the basis of a proposal of claims filed therewith.

VI. With a letter of 8 November 2013 the respondent (patent proprietor) filed an amended main request in response to the appellant's auxiliary request. Referring to a decision by a board of appeal (T 0006/92, erroneously cited as T9/92), the respondent submitted that the appellant's request was a partial withdrawal of the appeal and that the board had no discretionary power to examine the substantive merits of the claimed subject-matter of the new main request.

VII. In the oral proceedings, the respondent submitted amended claims and an amended description, and requested that the patent be maintained in amended form on the basis of these documents and the drawings of the patent specification. The appellant requested that the decision under appeal be set aside and that the patent be maintained in the form as requested by the respondent.

VIII. Claim 1 according to the main request reads as follows:

"An apparatus for monitoring at least a part of a stall for lactating animals, comprising a controllable device (2) with a movable robot arm (4) provided with a gripper (6) for handling animal related devices (6, 14), and at least one image capturing device (14, 15) for generating and supplying captured image data regarding said stall for lactating animals, wherein said image capturing device (14, 15) is associated with a communications port (24) connectable to a telecommunications network (26), for association of said image capturing device (14, 15) with a remote control device (28) connectable to said telecommunications network and adapted to receive said captured image data; and,

a control means (16) is provided between said controllable device (2) and said communications port (24), said controllable device (2) being automatically controlled by said control means (16), and wherein said controllable device (2) is associated with said communications port (24) and said control means (16) is switchable to a remote control mode for receiving a control instruction from said remote control device, said controllable device being adapted to perform an operation in response to said remote control device via said control means."

IX. Independent claim 16 according to the main request reads as follows:

"A method of monitoring at least a part of a stall for lactating animals, comprising a controllable device (2) with a robot arm (4) provided with a gripper for handling animal related devices (6, 14), and at least one image capturing device (14, 15) for generating and supplying captured image data regarding said stall for lactating animals, including the steps of
connecting said image capturing device (14, 10 15) to a communications port (24) for allowing connection to a telecommunications network (26);
automatically controlling said controllable device (2) by means of a control means (16) provided between said controllable device (2) and said communications port (24)
connecting a remote control device (28) to a further communications port (30) for allowing connection to said telecommunications network (26);
adapting said remote control device (28) to receive said captured image data;

providing said remote control device (28) with a display unit (32);
entering a control instruction in a data input means (34) associated with said remote control device (28);
switching said control means (16) to a remote control mode;
transmitting said control instruction via said further communications port (30);
allowing said control means (16) to receive said control instruction from said remote control device (28); and
interactively manipulating said controllable device (2) by said remote control device (28) via said control means (16) in response to said control instruction."

Reasons for the Decision

1. The appeal is admissible

2. In the present case, the claims which were maintained by the opposition division were further restricted following observations by the appellant and the board. The appellant and the respondent now agree on the version in which the patent should be maintained.

3. In appeal case T 0006/92, mentioned by the respondent, the sole appellant (opponent) withdrew the appeal on the condition that the claims were limited to a particular use. After the respondent had filed claims that were limited correspondingly, the board found the amendments to the claims to be allowable under Article 123(2) EPC and stated that it had no power to examine the substantive merits of the subject-matter after the appellant had partially withdrawn the appeal. The present case is different in that the sole appellant (opponent) did not (partially) withdraw the

appeal (see also Case Law of the Boards of Appeal of the European Patent Office, 7th edition 2013, sections IV.E.3.2.1c) and IV.E.6.3.5).

4. According to decision G 0009/91 (see point 19 of the reasons), the amendments are to be fully examined as to their compatibility with the requirements of the EPC. For instance in decisions T 0769/97 and T 0805/00, the board accordingly ascertained that the grounds for opposition did not prevent maintenance of the patent in amended form.

5. In the present case, the board is satisfied that amended claims 1 to 25 meet the requirements of Article 84 EPC 1973 and Article 123(2) and (3) EPC.

6. Novelty was not at issue in the present appeal case.

7. The last feature of claim 1 as amended ("*and wherein said controllable device (2) is associated with said communications port (24) and said control means (16) is switchable to a remote control mode...*") removes any doubt expressed by the board as to whether the apparatus is remotely controlled, as opposed to being merely remotely monitored (see section IV above). Thus claim 1 is to be interpreted as implying remote control of the controllable device through control means, as assumed in the impugned decision. On this basis, the board shares the (now undisputed) finding in the impugned decision that the subject-matter of claim 1 also involves an inventive step within the meaning of Article 56 EPC 1973.

The same applies by analogy to independent method claim 16, which was amended correspondingly.

8. The dependent claims were adapted to the amended independent claims 1 and 16. Furthermore, the description was brought into conformity with the amended claims (Rule 27(1)(b) and (c) EPC 1973).

9. In conclusion, the board is satisfied that, taking into account the amendments made by the patent proprietor, the patent and the invention to which it relates meet the requirements of the 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 as amended in the following version:

Description:
Columns 1 to 8 received during the oral proceedings of 11 November 2013;
Claims:
Nos. 1 to 25 received during the oral proceedings of 11 November 2013;
Drawings:
Figures 1 to 4 of the patent specification.

The Registrar: The Chairman:

K. Boelicke F. Edlinger

Decision electronically authenticated