

Internal distribution code:

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

**Datasheet for the decision
of 26 January 2022**

Case Number: T 0743/19 - 3.2.04

Application Number: 13151483.8

Publication Number: 2625953

IPC: A01J7/04, A01J7/02

Language of the proceedings: EN

Title of invention:

Teat treatment device and method of use

Patent Proprietor:

An Udder IP Company Ltd

Opponent:

GEA Farm Technologies GmbH

Headword:

Relevant legal provisions:

EPC Art. 100(c), 100(a)

Keyword:

Amendments - added subject-matter (no) - intermediate
generalisation no
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

G 0002/10

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0743/19 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 26 January 2022

Appellant: GEA Farm Technologies GmbH
(Opponent) Postfach 1348
59195 Bönen (DE)

Representative: Keenway Patentanwälte Neumann Heine Taruttis
PartG mbB
Postfach 10 33 63
40024 Düsseldorf (DE)

Respondent: An Udder IP Company Ltd
(Patent Proprietor) 1 Camelia Court
Shellbridge Road
Slindon
West Sussex
BN18 0LT (GB)

Representative: Ashton, Gareth Mark
Baron Warren Redfern
1000 Great West Road
Brentford TW8 9DW (GB)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 11 January 2019 rejecting the opposition filed against European patent No. 2625953 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
 C. Heath

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition filed against the patent in suit.
- II. The opposition division decided that:
- the subject-matter of the claims as granted did not extend beyond the contents of the application and the parent applications as filed; and
 - the subject-matter of the claims as granted was novel and involved an inventive step.
- III. In a communication in preparation for oral proceedings the Board gave a preliminary opinion on the relevant issues including novelty for the main request. Oral proceedings were held before the Board in the form of a videoconference on 26 January 2022.
- IV. The appellant-opponent requested that the decision under appeal be set aside and the patent be revoked.
- The proprietor-respondent requested that the appeal be dismissed, or that the patent be upheld on the basis of one of the first to sixth auxiliary Requests, all filed with the reply to the statement of grounds of appeal.
- V. The independent claims of the main request (as granted) read as follows:

"1. A milking cluster comprising:
a plurality of teat cups (1) in which each teat cup comprises a flexible liner (3) for engaging about a teat of an animal to be milked and has a head portion (6) provided with a mouth (7) through which the teat is

engageable with the liner, a nozzle means (13) for discharging treatment fluid into the head portion (6) of the liner, and a discharge end (4) of the teat cup where the flexible liner communicates with a flexible, short milk tube (11), the discharge end being opposite the mouth;

a clawpiece (106) connected to the short milk tubes for collecting milk extracted from the animals teats, and for connecting to a flexible long milk tube (107) via which the milk is delivered to a collection line (108); and a distributor (111) mounted on the clawpiece (106) for distributing treatment fluid to the nozzle means (13) of the liners, the distributor comprising an inlet (114) for treatment fluid and outlets (115) connected to the nozzle means (13) of the teat cups, characterised in that the distributor (111) has a safety valve (123) that is connected to the distributor inlet (114), said safety valve being actuatable during a milking cycle to open a drain port through which the treatment fluid may flow to waste to prevent treatment fluid entering the liner and contaminating the milk in the event of a malfunction which causes treatment fluid under pressure to be fed to the distributor".

"11. A method of milking comprising the steps of applying teat cups (1) of a milking cluster (102) to the teats of an animal to be milked, each of the teat cups including a flexible liner (3) engaging about a teat and having a head portion (6) provided with a mouth (7) through which the teat is engaged with the liner, and a discharge end (4) of the teat cup where the flexible liner communicates with a flexible, short milk tube (11), the discharge end being opposite the mouth, the milking cluster comprising a clawpiece (106) connected to the short milk tubes (11) for collecting milk extracted from the animals teats, and for

connecting to a flexible long milk tube (107) via which the milk is delivered to a collection line (108), activating the flexible liners (3) to perform a milking cycle and, when the milking cycle is terminated, discharging the treatment fluid into the head portions (6) of the liners (3) and withdrawing the teat cups (1) from the teats, supplying treatment fluid to the milking cluster via a delivery line (112) and a distributor (111) mounted on the clawpiece of the milking cluster having an inlet (114) connecting to the delivery line and outlets (115) connecting to the head portions of the liners, characterised by actuating a safety valve of the distributor during the milking cycle to open a drain port through which the treatment fluid may flow to waste to prevent treatment fluid entering the liner and contaminating the milk in the event of a malfunction which causes treatment fluid under pressure to be fed to the distributor, wherein the safety valve (123) is connected to the inlet of the distributor".

VI. In this decision, reference is made to the following documents:

Parent application: WO2005/102035A2

D1: DD261300 A1

D2: WO2005/022986 A1

D3: DE2622764 A1

D4: U.S. Department of Health and Human Services
Public Health Service Food and Drug
Administration "Grade "A" pasteurized Milk
Ordinance", 2003 Revision

VII. The appellant-opponent's arguments can be summarised as follows:

Claims 1 and 11 of the main request add subject matter extending beyond the parent application and the application as filed because they are an intermediate generalisation of the original disclosure of a safety valve with a non-return valve in the supply line to the distributor. The words *safety valve being actuatable* in claim 1 mean no more than that the valve can be actuated, which applies to all valves. However, there is no original disclosure of such a generic valve. Moreover, there is no original disclosure of activating a valve due to a malfunction as claimed and, in any case only specific malfunctions are disclosed, so this represents a further intermediate generalisation of the original disclosures.

The subject matter of claims 1 and 11 lacks novelty with respect to D1 and D2 and lacks inventive step starting from D3 with D4 or from D1 with D4.

VIII. The respondent-proprietor's arguments can be summarised as follows:

Claims 1 and 11 do not add subject matter extending beyond the application as filed. Figures 5 and 6 and the associated description provide a basis for extracting a safety valve without a non-return valve because these two elements are not disclosed as being structurally or functionally related. The independent claims relate to a safety valve that is to be activated during the milking cycle to open a drain port. The safety valve is not activated by malfunctions of any kind.

The cited prior art does not take away the novelty or inventive step of the independent claims.

Reasons for the Decision

1. The appeal is admissible.
2. Background

The invention relates to milking equipment, in particular to a device and method for improving control of the milking cycle and the disinfecting and cleaning of teats and teat cups after milking (see published patent specification, paragraph [0001]). Conventional milking equipment (see paragraphs [0002] and [0003]) has teat cups which are inserted onto animal teats for milking. These are connected via short milk tubes to a so called clawpiece which collects the milk. The teat cups can be provided with nozzles in the liner for injecting treatment fluids, such as disinfectant, after milking. These nozzles are connected to a distributor on the clawpiece. The distributor is fed treatment fluids via a delivery line and distributes these to the individual nozzles. It is important that fluids, such as disinfectant, cannot contaminate the milk (see published patent specification, paragraph [0004]). Therefore, their supply is shut-off during milking. However, should a malfunction cause this shut-off not to work, fluid, such as disinfectant, could be fed to the distributor and then contaminate the milk being harvested.

To this end (see paragraphs [0008], [0018] and [0019] and the independent claims), the distributor is provided with a safety valve connected between the treatment fluid delivery line and the distributor inlet. It can output to a drain port during milking so

that any treatment fluid on the delivery line flows to waste rather than reaching the distributor.

3. Main request, claim 1, added subject matter

3.1 In deciding the question of allowability of amendments under Article 123(2) EPC (and Article 76(1) EPC), the Board, following well established practice (see Case Law of the Boards of Appeal, 9th edition, 2019 (CLBA), II.E.1.3.1 and the decisions cited therein), must consider whether the amendments in question are directly and unambiguously derivable by the skilled person from the application as filed, using normal reading skills and, where necessary, taking account of their general knowledge. This is the "gold" standard according to which amendments are assessed (see **G2/10**, reasons 4.3).

Furthermore (see CLBA, II.E.1.9), according to established jurisprudence, it will normally not be allowable to base an amended claim on the extraction of isolated features from a set of features originally disclosed only in combination, e.g. a specific embodiment in the description. Such an amendment results in an "intermediate generalisation". An intermediate generalisation is justified only in the absence of any clearly recognisable functional or structural relationship among the features of the specific combination or if the extracted feature is not inextricably linked with those features.

3.2 In the present case it is common ground that the disclosures in the description and drawings of the parent application and the application as filed are the same. Therefore, if there is a basis for claim 1 in these parts of the parent application, there must also

be a basis in the application as filed. References in the following are to the parent application.

- 3.3 The appellant-opponent has argued that the parent application only discloses a safety valve with a non-return valve in the line delivering treatment fluid to the distributor. Therefore, so it argues, by claiming a safety valve without a non-return valve downstream of it, claim 1 constitutes an unallowable intermediate generalisation.
- 3.4 The Board agrees with the appellant-opponent that there is no direct and unambiguous disclosure of a safety valve without such a non-return valve in the claims of the parent application. The *safety valve 123* is introduced in claim 9 where it is said to be connected to *said other* [non-return] *valve (126)*. The Board considers that this can only mean the [an]*other valve (126)* introduced in claim 8, in spite of claim 9's back reference to both claims 7 and 8.
- 3.5 The general part of the description introduces the *safety valve* on page 5 (see lines 9 to 13 and 19 to 22). There it is said to be located *downstream of the check or non-return valve*. Thus it is described structurally linked to the *non-return valve*.
- 3.6 As to the detailed embodiments, figure 5 is a schematic fluid diagram of the valve control system (see page 9, lines 19 to 25). It shows (cf. page 13, line 26 to page 14, line 8) a stall control unit 103 which supplies treatment fluid via two delivery lines 112 and 113 to the distributor 111. Both lines 112 and 113 can supply disinfectant (products 1 and 2). Therefore, the Board is not convinced by the appellant-opponent's argument that line 113 only carries non-contaminating water and

air. Figure 5 also shows a safety valve 123 and a non-return valve 126 (also referred to as a check valve). When the safety valve is open to a drain port during milking, treatment fluid arriving at the safety valve will go to waste rather than reach the distributor from where it might contaminate the milk (cf. page 15 lines 1 to 8).

3.7 The description (see page 14, lines 18 to 21) explains that delivery line 112 supplies disinfectant (product 1 in the figures) to the distributor via a valve 117 in the stall control unit. The description continues (see page 15, lines 1 to 5) by explaining how this safety valve 123 is arranged with respect to the line 112: Because the line 112 is primed with *product 1* up to a non-return valve 126, the safety valve is located *downstream* of the non-return valve 126 and between the latter and the inlet 114 of the distributor. This stands to reason. If the safety valve were inserted upstream of the non-return valve, the priming fluid in line 112 would drain away during a milking cycle.

3.8 This part of the description does not explain how the safety valve is arranged with respect to the delivery line 113. However, it is immediately clear from figure 5 that line 113 directly connects the stall control unit 103 to the safety valve 123. This line has no non-return valve and meets the line 112 at the safety valve 123, that is *downstream* of the non-return valve 126. This means that any fluid on line 113 reaches the safety valve 123 without passing through a non-return valve. In this respect the Board is not convinced by the appellant-opponent's argument that the non-return valves 116 shown at the right side of figure 5 would be on line 113. This is because these valves are not located in a supply line leading to the distributor but

are after the distributor (see page 14, lines 2 to 8), thus upstream of the safety valve 123 (nor are any such non-return valves shown in figure 6).

Although, at the top of page 15 only the supply line 112 is mentioned, the third sentence of that page (*During the milking cycle...*) describes the function of the safety valve (sending any treatment fluid to waste during milking) with reference to [a malfunction in] *the system* upstream of the safety valve 123. This part of the system includes the delivery line 113. Thus, the skilled person understands that the safety valve 123 functions with respect to any disinfectant on delivery line 113 (which has no non-return valve) just as it does for disinfectant on line 112. Put a different way, if the valve 118 were to fail during milking, causing disinfectant to reach line 113, the safety valve 123 would send the disinfectant to waste because its drain port would be open. Consequently, the safety valve 123 is disclosed functionally independent of a non-return valve.

3.9 In the Board's view the skilled person sees the supply lines 112 and 113 as independent supply line structures because they are in parallel. They will recognise that one of these (line 113) has no non-return valve. Therefore, the Board holds that the safety valve 123 is originally disclosed structurally independent of a non-return valve. Although this conclusion is reached with reference to figure 5, the same considerations apply to the embodiment shown in figure 6 which has essentially the same features.

3.10 From the above, the Board considers that the parent application discloses a safety valve functionally and structurally independent of a non-return valve

downstream thereof. Therefore, including the safety valve feature in claim 1 without such a non-return valve is not an unallowable intermediate generalisation so does not add subject matter extending beyond the parent application as filed.

3.11 The last characterising feature of claim 1 reads: *said safety valve being actuatable during a milking cycle to open a drain port through which the treatment fluid may flow to waste to prevent treatment fluid entering the liner and contaminating the milk in the event of a malfunction which causes treatment fluid under pressure to be fed to the distributor.*

3.12 The appellant-opponent has interpreted this feature as merely defining that the safety valve can be actuated, be that during a milking cycle or at any other time, which would apply to any generic valve. The argument is based on the premise that *actuatable* merely expresses a possibility of actuation rather than saying that it *is* actuated. Following this logic, the words *during a milking cycle* pose no limitation on the claim so can be ignored. Moreover, the appellant-opponent considered that the feature defines that actuation of the valve happens as a result of a malfunction. This, the appellant argues, has no basis in the parent application.

3.13 The Board disagrees with the appellant's interpretation. The term *actuatable* is used in the claim as a cognate of *actuate*. It may well be that the skilled person reads *actuatable* to imply that there are circumstances in which the safety valve might not be actuated, if the milking cluster were not in use for example. However, *actuatable* is followed by the words *during the milking cycle*. Together, these words define

that, when the safety valve is actuated it is for the duration of the milking cycle. Therefore, the Board holds that the feature defines a milking cluster that is specifically adapted to actuate the safety valve for the duration of the milking cycle. Were the skilled person to have any doubts about this reading (the Board holds that they would not), the description (see for example paragraphs [0008] and [0019]) would dispel such doubts: The safety valve *provides protection during the milking cycle and during the milking cycle the safety valve is open to the drain port.*

The feature also specifies that this actuation opens a drain port. This allows *treatment fluid [to] flow to waste*. The next part of the feature commences with the word "*to*". The word announces the purpose of what went before, as in the expression [in order] *to*. This purpose is *to prevent treatment fluid entering the liner in the event of a malfunction which causes treatment fluid under pressure being fed to the distributor*. This part of the feature is explicit about what a malfunction would cause: treatment fluid being fed to the distributor [at a time when it should not]. It does not define that a malfunction would cause actuation of the safety valve as the appellant-opponent has argued.

Understood in this way, the Board considers the feature to have a basis in the parent application as filed. In particular, page 5, lines 22 to 24 explain that: During the milking cycle, the safety valve is open to the drain port so that treatment fluid can flow to waste. Thus the system is arranged such that the safety valve can be actuated to open the drain port *specifically* during the milking cycle.

With this understanding of the characterising feature, the appellant-opponent's argument that there is no basis in the parent application for a generic safety valve which can be actuated at any unspecified time (rather than during a milking cycle) is moot. Moreover, the argument that there is no basis in the parent application for a safety valve actuated by a malfunction, be it in general or of the control system or the manifold, (cf. page 5, lines 9 to 13 and 19 and 22) is likewise moot because, as explained above, the safety valve is not defined in the claim as being actuated by a malfunction.

- 3.14 For the above reasons, the Board considers that the subject matter of claim 1 does not extend beyond the parent application as filed.

The Board's conclusions for claim 1 (no added subject matter) also apply to the method claim 11 which corresponds to claim 1 with the features expressed in terms of method steps.

- 3.15 Furthermore, since it is not in dispute that the description and drawings of the parent application and the application as filed contain the same subject matter, neither claim 1 nor claim 11 add subject matter extending beyond the application as filed for at least the reasons presented above.

4. Main request, claims 1 and 11, novelty with respect to D1 and D2

- 4.1 In its communication in preparation for the oral proceedings (see sections 3 and 4) the Board gave a preliminary opinion that neither D1 nor D2 were

prejudicial to novelty of the independent claims. In particular it stated the following:

"3. Novelty with respect to D1

3.1 The Board agrees with the finding of the opposition division that D1 does not take away the novelty of claim 1. In particular, the Board considers that D1 does not disclose a distributor with a safety valve as claim 1 requires.

3.2 D1 discloses a milking cluster. The main features can be seen in figures 1 and 2. The milking cluster has a plurality of teat cups 1 (see D1, claim 3) and a nozzle for discharging treatment fluid (Reinigungsflüssigkeit) into the head of the liner (see page 2, paragraph immediately under the short description of the drawings, claim 3 and figure 2: nozzle 9). A discharge end of the teat cup has a short milk tube 10. This connects to a clawpiece (Melkzeugzentrale 2), which in turn connects via a long milk tube 14 to a milk collection line 16.

3.2 D1 also discloses (see claim 3 and figure 1) a distributor (Verteiler 5) mounted on the clawpiece for distributing treatment fluid to the nozzles (via connectors 7).

3.4 However, in the Board's view, D1 does not disclose a safety valve as claimed. The skilled person, with their mind willing to understand, would interpret the feature the distributor has a safety valve that is connected to the distributor inlet, to mean that the safety valve was part of the distributor, and that its point of connection was the distributor inlet.

As seen in D1, figure 1, the distributor 5 has no such valve, however the opposition division may have considered the claimed safety valve to operate. The distributor 5 is merely a valveless junction, connecting treatment fluid from the main treatment fluid line 13 to the shorter lines 6 that supply individual teat cups.

3.5 The valve 15, which the appellant-opponent has argued is a safety valve as claimed, is not part of the distributor 5 but part of the clawpiece 2. Therefore, for this reason alone, D1 does not take away novelty of claim 1.

3.6 For completeness, the Board notes that the valve 15 (quite apart from its not belonging to the distributor) does not perform the function of the claimed safety valve. During a milking cycle (see D1, page 2, third from last paragraph), the valve 15 closes the route to the drain via the milk tube 3. Consequently, it is not actuatable during a milking cycle to open a drain port as claimed.

3.7 For all these reasons, the arguments of the appellant-opponent have not convinced the Board that D1 takes away novelty of claim 1. The same considerations apply to claim 11.

4. Claim 1, novelty with respect to D2

4.1 D2 is post published but claims an earlier priority and thus falls within the terms of Art 54(3) EPC and is thus relevant for novelty only. D2 (see abstract and figure 1) discloses a milking cluster comprising a plurality of teat cups 13. The cluster has a clawpiece 10 as claimed.

4.2 In the Board's view, D2 also discloses a distributor for treatment fluids. This is disclosed in paragraph [0060] with figure 16, for example the valve [unit] 140 (the same applies to the valve units 142 and 144).

4.3 The same paragraph discloses that the valve unit 140 comprises a safety valve port: During milking, any treatment fluid delivered under pressure causes the fluid to be diverted out of the distributor 140. Thus, in the event of a malfunction during a milking cycle, the safety valve is actuatable to open a drain port and send the treatment fluid to waste.

4.4 However, the Board agrees with the opposition division's finding (see impugned decision, reasons, point 16.1.2) that D2 does not disclose a nozzle means for discharging treatment fluid into the head portion of the liner. In this respect, the Board considers that the feature defines that the discharge itself takes place into the head portion of the liner, and not merely that the fluid could be discharged in some undefined place, as long as some of it could find its way into the liner afterwards. Put differently, the feature implies that the nozzle is located inside the liner, contrary to how the appellant-opponent has argued (cf. grounds of appeal, page 11, middle).

4.5 In D2 the nozzles are not suitable for discharging treatment fluid into the head portion. Rather, each teat cup (see paragraph [0046] with figure 3) has nozzles 60, 62 and 64 located above the top of the teat cup shell 42, so that treatment fluid is discharged across a plane over the opening of the teat cup. The idea (see paragraphs [0012] and [0013]) is to discharge

fluid across the top of the teat cup and to dispense cleaning fluid over the openings of the flexible milking sleeves. The same is true of another embodiment (see paragraph [0014], sentence bridging pages 5 and 6 and claim 34): the nozzles apply fluid horizontally across the top of the teat cups. In the light of this, the information given there that fluid is directed in an inward fashion can only mean that the fluid is directed (horizontally) towards, rather than away from the major axis of the teat cup, and not that it is discharged into the head portion of the liner as the appellant-proprietor would have it.

The Board also agrees with the opposition division (see impugned decision, reasons, page 13) that D2 does not disclose that the distributor is mounted on the clawpiece.

Recalling that D2's distributor is the valve unit 140, 142 or 144, the Board is of the opinion that D2 is completely silent as to where or how this is mounted.

D2 (see paragraph [0058]) first describes these valve units 140, 142, 144 in conjunction with figure 16, which is a schematic diagram of the system that does not show the clawpiece, nor any mounting arrangement for the valve units.

How these valves operate is described in paragraphs [0058] to [0061]. Nowhere is it mentioned where they are to be mounted. In other words D2 discloses neither a direct nor an indirect mounting arrangement for the distributor on the claw piece. In the absence of any such disclosure, the appellant's considerations as to whether the claim feature defines a direct or indirect

mounting arrangement for the distributor are irrelevant.

For the above reasons, the Board is of the opinion that D2 does not take away the novelty of claim 1. The same considerations apply to claim 11."

- 4.2 The appellant-opponent did not comment on this opinion in the subsequent written proceedings, nor at the oral proceedings before the Board. Instead, it relied on its written submissions in the grounds of appeal. The Board sees no reason to deviate from this aspect of its preliminary opinion. Therefore, it confirms its preliminary finding that the subject matter of claims 1 and 11 is novel with respect to D1 and D2.
5. Main request, claim 1, inventive step starting from D3 with D4
- 5.1 The appellant-opponent has argued that the teachings of D3 and D4 in combination would lead the skilled person to the milking cluster of claim 1 as a matter of obviousness. The Board disagrees. In the following, D3's page references are to the hand written numbers at the top of each page.
- 5.2 D3 discloses a milking cluster with a plurality of teat cups with flexible liners (see D3, page 10, first complete paragraph). Each teat cup has a nozzle for discharging treatment fluid into the liner (see for example page 13, first complete paragraph with figure 1 - nozzle 18). D3's milking cluster also has a clawpiece (cf. figure 1 - Sammelstück 5 and page 17, penultimate paragraph, Milchsammelstück 5), which appears to correspond to the rectangular shape in figure 5. The appellant-opponent argues lack of inventive step from

the second embodiment of D3 (see pages 16, last paragraph to page 18, first complete paragraph with figure 5). In this embodiment a sanitiser control valve 43 comprising a piston 45 acts as a distributor.

- 5.3 The valve 43 is mounted on the clawpiece (see page 16, last paragraph). The Board agrees with the opposition division (see impugned decision, page 14, last paragraph) that valve 43 is a kind of safety valve because it prevents treatment fluid from reaching the milk during milking (when the piston 45 is moved to its upper position, see page 17, first complete paragraph, last sentence).
- 5.4 Therefore, leaving aside the question as to whether D3 discloses a nozzle means that discharges treatment fluid into the head of the liner, the subject matter of claim 1 differs from this embodiment at least in that the safety valve is arranged to be actuatable during a milking cycle to open a drain port through which treatment fluid may flow to waste (the valve 43 merely blocks treatment fluid reaching the teat cups during a milking cycle).
- 5.5 According to the patent (see published patent specification, paragraph [0008], last sentence) the effect of this arrangement is to prevent treatment fluid from contaminating the milk. However, since D3 discloses a safety valve (the piston and cylinder valve in the distributor itself) which achieves this, a less ambitious objective technical problem must be formulated. This can be expressed as: how to modify the milking cluster of D3 to *further* reduce the risk of treatment fluid contaminating milk.

- 5.6 D4 is an ordinance governing pasteurised milk production. Section 15p.(B) on page 72 concerns separation requirements for connection points between treatment fluid circuits and milking circuits.
- 5.7 The appellant-opponent has argued that, in solving the above problem, the skilled person would replace D3's piston and cylinder valve in the distributor itself with a double valve as disclosed in D4, page 72 and so arrive at the subject matter of claim 1. The Board disagrees.
- 5.8 It may well be that the skilled person would look to D4 to solve the problem of *further* reducing the risk of treatment fluid contaminating milk. This is because D4 is concerned with *fail-safe*, in other words extra secure, arrangements for preventing contamination of milk products with cleaning solutions.

To this end, D4 (see page 72, point 15p.(B)1.b.(3)) proposes arranging two valves in series (or a double seated valve) to isolate circuits that carry milk from those that carry disinfectant. In particular, D4 teaches to have the two valves *blocked* before cleaning, so they *block* during a cleaning cycle. Two valves offer more secure isolation than one because if just one fails to block the other will still block. D4 furthermore teaches to provide a drainable opening to the atmosphere, called a vent, between the two valves (see points 15p.(B) 1.b.(1) and (6)).

- 5.9 D3's valve 43 allows or blocks the passage of cleaning fluid to the teat cups (cf. D3, page 17, second paragraph). During milking it must block the flow of cleaning fluid, otherwise the milk would be contaminated. If the skilled person were to replace

D3's sanitiser control safety valve 43 (cf. D3 figure 5) with a double valve as disclosed in D4, they would not arrive at the claimed invention but at a system with a valve that *blocked* during cleaning, which would not allow the teat cups to be cleaned. For this reason, the Board holds that the skilled person would not arrive at the subject matter of claim 1, as a matter of obviousness, simply by combining D3 and D4.

5.10 If the skilled person were to modify the combination of D3 and D4 in a further step so that the double valve *blocked* during a milking cycle rather than during cleaning (the Board holds that this modification would not be obvious), they would still not arrive at the subject matter of claim 1 as the appellant-opponent has argued. During the milking cycle, as both valves would have to block, the blocking valve on the cleaning fluid side would prevent the cleaning fluid from reaching the drain port between the two valves. In other words, D4's valve (even if modified) would not be capable of being actuated during a milking cycle to open a drain port through which the treatment fluid might flow to waste. This is all the more true since D4 teaches (see top of page 73, point 15p.(B) b(6)) that the vent is to be cleaned *after* removing or isolating milk, thus it teaches that the drain port should only be open during cleaning. This means that during a milking cycle, D4's drain port would be shut.

5.11 Nor has the Board been convinced by the appellant-opponent's speculative argument that, if the skilled person were to insert D4's double valve into D3's system, modified as explained above and then the valve closest to the cleaning fluid were to fail during milking, this would result in a valve as claimed. A valve failure is not to actuate a valve, even if it

results in the opening of a valve that was blocking. Put differently, this imagined random failure of the safety-valve's blocking action is not to actuate it, let alone to do so for the duration of a milking cycle. Nor, as already explained, would the drain between the valves be open during a milking cycle.

5.12 For these reasons, the Board considers that the combination of D3 and D4 would not lead the skilled person to the subject matter of claim 1 as a matter of obviousness. The same considerations apply to claim 11, which defines corresponding subject matter to claim 1 expressed in method step terms.

6. Main request, claim 1, inventive step starting from D1 with D4

6.1 As explained above in the discussion of novelty, the Board considers that D1 does not disclose a safety valve that is *actuatable* during a milking cycle to open a drain port as claimed (see section 4.1 of this decision quoting points 3.4 to 3.6 of the Board's communication).

6.2 It has also been explained above (see point 5.8) that D4 does not disclose such a safety valve. Rather, D4 discloses a valve that blocks during cleaning, not milking. Therefore, however obvious the combination of D1 and D4 might be, it would not result in a milking cluster as claimed in claim 1. The conclusion also applies to the corresponding method claim 11.

7. In summary, the arguments submitted by the appellant-opponent in appeal have not convinced the Board that the opposition division was wrong to reject the opposition.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated