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D E C I S I O N
of 25 February 1997

Case Number: T 0115/96 - 3.2.4

Application Number: 93910266.1

Publication Number: 0641159

IPC: A01K 5/02

Language of the proceedings: EN

Title of invention:
ANIMAL FEEDING APPARATUS

Applicant:
BRISBY, Ian

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 84, 123(2), 54, 111(1), 56

Keyword:
-

Decisions cited:
T 0056/87

Catchword:
-



Case Number: T 0115/96 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 25 February 1997

Appellant: BRISBY, Ian
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Representative: Denmark, James
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 31 October 1995
refusing European patent application
No. 93 910 266.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: R. E. Gryc
M. Lewenton

Summary of Facts and Submissions

I. The appellant lodged an appeal, received at the EPO on 28 December 1995, against the decision of the Examining Division notified by post on 31 October 1995, refusing the European patent application No. 93 910 266.1 filed as an international application PCT/GB93/01062 and published under the international publication number WO-A- 93/23991.

The fee for appeal and the written statement setting out the grounds of appeal were respectively paid and received on 28 December 1995.

II. The Examining Division held that the subject-matter of Claim 1 submitted to examination did not meet the requirements of Articles 52 and 54 EPC having regard to the state of the art disclosed in prior art document:

D1: EP-A-0 044 465

III. In the statement of the grounds of appeal, the appellant pointed out that the invention is concerned specifically with a "competitive" feeder for pigs i.e. a feeding apparatus allowing the animals to compete for the food in the tray insofar as the pigs which are aggressive animals by nature feed better if they have to compete with other pigs.

According to the appellant this can be achieved by arranging the outlet of the feed passage dispensing feedstuff onto the feed tray above the centre of the feed tray sufficiently to enable any pig to feed from under the outlet and to reach across the feeding tray into the opposite side of the tray.

The appellant was of the opinion that the teaching of D1 would not lead a person skilled in the art to the invention because, in order to allow the pigs to reach across the feeding tray into the opposite side of the tray of the feeder of D1, the removal of the feed wheel, which is an essential part of the feeder of D1, would have been necessary.

With a letter dated 17 July 1996, the appellant submitted a copy of and relied on an affidavit of an expert in support of the patentability of the invention. On this occasion the following prior art document was brought to the attention of the board:

D2: US-A-5 085 173

IV. With the letter dated 13 January 1997 sent in reply to a communication of the Board, the appellant filed a new set of 15 claims, a new page 3 of description and a "schedule of amendments" to be made to the application on file.

The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

Claims: 1 to 15 filed with the letter of 13 January 1997;

Description: pages 1, 2, and 4 to 13 filed with the letter of 4 May 1994 and page 3 filed with letter of 13 January 1997; with pages 1, 2, 4 to 6 and 8 as amended according to the schedule of amendments filed with the letter of 13 January 1997;

Drawings: (Figures 1 to 5) as originally filed.

V. The wording of Claim 1 reads as follows:

"Feeding apparatus for the feeding of pigs in the growing stage comprising an upright feed passage (14, 24) having a lower end outlet (26), a feed tray (28) fixed relative to the outlet (26) to receive feedstuff falling from said outlet (26), a feedstuff dispensing mechanism (50, 76) responsive to animal operation to dispense feedstuff from the passage (14, 24) onto the feed tray (28), and a frame (19, 21) which supports the upright passage (14, 24) to enable a number of animals radially arranged around the tray (28) feed simultaneously, the passage (14, 24) being positioned in relation to the feed tray (28) so that feedstuff is dispensed into the centre of the feed tray (28), characterised in that the apparatus provides a competitive feeder by having the feedstuff dispensing mechanism (50-76) independent of the feed tray (28) and by having the outlet (26) located above the centre of the feed tray (28) sufficiently to enable any pig in that growing stage that the feeder to feed from under the outlet (26) and also to reach across the feeding tray (28) into the opposite side of the tray (28)."

Reasons for the Decision

1. Admissibility of the appeal.

After examination the appeal has been found to be admissible with regard to Articles 106 to 108 and Rule 64 EPC.

2. *Amendments (Articles 84 and 123(2) EPC)*

2.1 Since the description of the application as filed refers in particular :

- to feeding apparatuses for pigs (see page 1, paragraph 1 and page 5, line 2),
- to the stage of the rearing of pigs termed the "growing stage" (see page 1, paragraph 3),
- to "growing pigs" (see page 1, end of paragraph 4),
- to "feeding for growth" (see page 2, line 1), and also
- to "growth rates" (see page 1, paragraph 2; page 2, paragraph 1 and pages 10 and 11),

the board considers that to restrict the technical field of the invention from animal feeders in general to feeders for the feeding of "pig(s) in the (or that) growing stage" (see the introduction of the amended description and new Claim 1) is supported by the application as filed and thus does not contravene Article 123(2) EPC. This modification is therefore acceptable.

2.2 Also Claim 1 has been amended in order to define the outlet of the feed passage and the dispensing mechanism relative to the feed tray more properly, the added characteristics being supported by the description and the drawings as originally filed (see for example from the end of page 5 to line 9 of page 6 and Figures 1 to 5).

Support for the new feature of Claim 1, according to which the location of the outlet of the upright feed passage is such that the animals can feed from under the outlet and reach across the tray into the opposite side of the tray, can also be found in the description of the application as filed, in particular in the last paragraph of page 9 and the first paragraph of page 10.

Therefore the amendments made to Claim 1 fulfill the requirements of Articles 84 and 123(2) EPC and are allowable.

- 2.3 Dependent claims 2 to 15 correspond to claims 2 to 15 of the application as filed with the text of said claims being amended in order that the terminology is consistent throughout the application according to Rule 35(13) EPC.

Therefore no objection can be made to these modifications.

- 2.4 In order to comply with Rule 27 EPC, the introductory part of the description (see page 1, paragraphs 4 and 5 and page 3, paragraph 4) has also been modified so as to cite documents reflecting the background art and to disclose the invention as claimed. Also these modifications are acceptable.

3. *Novelty (Article 54 EPC)*

- 3.1 It appears clearly from Figures 1, 2 and 7, 8 of D1 that the bottom 46 of the hopper 45 is not located above the centre of the feed tray sufficiently to enable a pig to feed from under the outlet of the hopper and to reach across the feeding tray into the opposite side of the tray. Moreover it is explicitly

stated in D1 that individual pigs are retained within respective feeding stations (see D1: page 9, lines 11 to 13) and that the feed material is not accessible by a pig on the inner portion of the tray (see page 6, lines 8 to 12).

Also in D1, the dispensing mechanism is rotatably mounted on an axle structure attached to the base bottom of the tray (see D1: page 3, lines 26 to 34 and Figures 2, 3 , 6 and 7) and thus cannot be described as being independent of the feed tray as claimed in Claim 1.

In comparison with the state of the art disclosed in D1, the subject-matter of Claim 1 appears thus to be new in the meaning of Article 54 EPC.

- 3.2 D2 concerns a feeder which cannot be used for feeding piglets because the feed bowl is suspended rather delicately on a rod which acts as the feed dispensing mechanism and would be destroyed rapidly by pigs having regard to their destructive nature (see page 14, section 17 of the affidavit filed with the applicant's letter of 17 July 1996). Moreover, the dispensing mechanism of the feeder disclosed in D2 is rigidly secured to the tray instead of being independent according to the invention.

Therefore with regard to the state of the art disclosed in D2, the subject-matter of Claim 1 appears also to be new.

- 3.3 Since moreover none of the other documents cited during the proceedings discloses a combination of all the features of the apparatus claimed in Claim 1, the subject-matter of Claim 1 should be considered as new in the meaning of Article 54 EPC.

3.4 Since the substantial examination of inventive step has not yet been completed by the first instance, the Board makes use of its power under Article 111(1) EPC to further prosecute the examination of the application.

4. *The state of the art closest to the invention*

The scope of Claim 1 being limited to feeders for feeding pigs in the growing stage, D2 cannot be considered as sufficiently relevant for the above mentioned reasons (see above section 3.2).

Among all the cited documents, D1 appears to disclose the state of the art closest to the invention in so far as it concerns a feeding apparatus for pigs having a frame which enables a number of animals radially arranged around the tray to feed simultaneously and so far as it refers also to the "aggressive feeding habits" of the pigs (see D1: page 6, lines 22, 23).

The apparatus according to Claim 1 differs from the one disclosed in D1 in that its feedstuff dispensing mechanism is independent of the feed tray and the outlet of the passage is located above the centre of the feed tray sufficiently to enable the pigs in the growing stage at the feeder to feed from under the outlet and to reach across the tray into its opposite side of the tray.

5. *Problem and solution*

When starting from the state of the art known from D1, and taking into account the above-mentioned differences, the problem to be solved by the person skilled in the art could be objectively determined as being to modify the known apparatus in such a way that enhanced growth rates of the piglets can be obtained (see the application as filed, page 2, lines 4 to 7).

According to the invention, such an enhanced growth is obtained by clearing the area above the centre of the feed tray sufficiently so that more than one pig has access under the feed supply and pigs can compete for the same portions of feed. The Board is satisfied that the solution described in Claim 1 solves the above-mentioned problem effectively.

6. *Inventive step (Article 56 EPC)*

6.1 When examining whether the modification of the closest state of the art along the lines of the claimed solution involves an inventive step, what should first be investigated is whether the prior art seen by the skilled person in the light of his general common knowledge would place the essential means at his disposal so that he could arrive at the invention. Secondly the question should be considered whether the prior art would prompt the skilled person to use these means in and apply this teaching to the closest prior art in expectation of the improvement for which he was searching.

Moreover, in line with the established case law of the Boards of Appeal (see in particular decision T 56/87, OJ EPO 1990, 188), when investigating inventive step it should also be borne in mind that the technical disclosure in a prior art document should be considered in its entirety, as it would be done by a person skilled in the art. It is not justified arbitrarily to isolate parts of such document from their context in order to derive therefrom a technical information, which would be distinct from or even in contradiction with the integral teaching of the document.

6.2 The structure of the feeding apparatus of D1 does not suggest permitting the pigs to compete when eating. On the contrary, D1 teaches structural measures to be taken to avoid the more dominant animals attempting to prevent others from feeding (see D1: from line 35 of page 8 to line 13 of page 9) so that the less aggressive ones can have access to the feed material too.

In particular, by providing a centrally located support on the base bottom wall of the feed tray for the axis of the feedstuff dispensing means, the access to the opposite side of the tray across the feeding tray is impeded (see D1: Figures 2 to 6) and the individual pigs are laterally retained within their respective feeding stations by the circumferentially arranged support members (58) (see page 9, lines 11 to 13).

By consulting D1, the skilled person would be led neither to the idea of giving each pig the possibility to eat the feed portion of the others nor to clear the central area of the feeding tray to provide a passage to the animals from one side of the tray to the other.

Therefore, at the priority date, the skilled person had a priori no reason to combine the teaching of D1 with those of D2, all the more so since the apparatus disclosed by D2 is not usable as a pig feeder as already mentioned in section 3.2 above.

And, even if he did make such a combination, there would still remain so many structural modifications and adaptations to be made to arrive at the invention that it cannot be considered as following logically from the prior art.

6.3 For the foregoing reasons, the Board is convinced that to improve the feeding apparatus known from D1 according to the teaching of D2 with the supplemental structural adaptations described in Claim 1 does not follow plainly and logically from the prior art illustrated by D1 and D2 but implies an inventive step within the meaning of Article 56 EPC.

6.4 As far as the other documents cited in the search report are concerned, either they relate to single space feeders so that the feed is accessible by one animal only or, where more than one pig has access simultaneously to the feed, the feeding tray is partitioned so that the animals can eat from anywhere but their own stalls. In no case can these cited prior art documents suggest the modification of the feeder of D1 according to the invention in order that the feeding animals can compete for the same portions of feed.

6.5 Therefore the invention as described and claimed in the application under appeal appears to meet the requirements of the EPC and a patent can be granted as requested by the appellant (see section IV above) provided that the clerical errors of Claim 1 as filed with letter of 13 January 1997 be corrected according to the following:

- line 9, the term "to" should be inserted between the words "tray (28)" and "feed" and
- between the words "stage" and "the" of line 16, the term "that" should be replaced by "at".

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent based on the following documents:

Claims: 1 to 15 filed with the letter of 13 January 1997 with the clerical errors in lines 9 and 16 of Claim 1 being corrected;

Description: pages 1, 2, and 4 to 13 filed with the letter of 4 May 1994, page 3 filed with the letter of 13 January 1997, with pages 1, 2, 4 to 6 and 8 as amended according to the schedule of amendments filed with the letter of 13 January 1997;

Drawings: Figures 1 to 5 as originally filed.

The Registrar:



N. Maslin

The Chairman:



C. Andries

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ke
h.G.

