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D E C I S I O N
of 28 January 1999

Case Number: T 1011/96 - 3.2.4

Application Number: 89101861.6

Publication Number: 0320496

IPC: A01J 7/00

Language of the proceedings: EN

Title of invention:

Device for automatically milking animals

Patentee:

Maasland N.V.

Opponents:

Alfa Laval Agri AB
Prolion B.V.

Headword:

Milking/MAASLAND

Relevant legal provisions:

EPC Art. 56, 123

Keyword:

"Amendments removing inconsistencies between the claims and the description of the patent as granted (admissible)"
"Inventive step (yes)"

Decisions cited:

T 0271/84, T 0371/88, G 0009/92, G 0004/93

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 1011/96 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 28 January 1999

Appellant:
(Opponent I)

Alfa Laval Agri AB
P.O. Box 39
147 21 Tumba (SE)

Representative:

Clivemo, Ingemar
Alfa-Laval AB
Patent Department
147 80 Tumba (SE)

Other party:
(Opponent II)

Prolion B.V.
Kromme Spieringweg 289B
2141 BS Vijfhuizen (NL)

Representative:

Hoorweg, Petrus Nicolaas
Arnold & Siedsma
Avocaten en Octrooigemachtigden
Sweelinckplein 1
2517 GK Den Haag (NL)

Respondent:

Maasland N.V.
(Proprietor of the patent) Weverskade 10
3155 PD Maasland (NL)

Representative:

Corten, Maurice Jean F.M.
Octrooibureau Van der Lely N.V.
Weverskade 10
3155 PD Maasland (NL)

Decision under appeal:

Interlocutory decision of the Opposition Division of
the European Patent Office posted 7 October 1996
concerning maintenance of European patent No. 0 320 496
in amended form.

Composition of the Board:

Chairman: C. A. J. Andries

Members: P. Petti
J. P. B. Seitz

Summary of Facts and Submissions

I. The European patent No. 320 496 results from European patent application No. 89 101 861.6 filed as a divisional application of the earlier European patent application No. 86 200 063.5 which claims the priority date of 16 January 1985 and was published under the number EP-A-188 303 (hereinafter parent application).

Two oppositions, each based upon Article 100(a) EPC, were filed against this European patent. By its interlocutory decision dispatched on 7 October 1996 the opposition division maintained the patent in an amended version based upon Claim 1 filed during the oral proceedings of 11 June 1996 (hereinafter Claim 1 as maintained).

II. On 18 November 1996 opponent I (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 22 January 1997.

III. Oral proceedings were held on 28 January 1999. During the oral proceedings the respondent (proprietor of the patent) filed an amended Claim 1 (hereinafter the present Claim 1) reading as follows:

"1. Device for automatically milking animals, comprising a milking parlour, which is bounded on at least two sides by guide means (2), between which guide means (2) the animal can be positioned, the device further comprising means for positioning and attaching

a milking cluster to the udder of the animal, characterized in that the device further comprises detection means which are suitable for determining the position of the posterior of the animal in both the longitudinal and lateral direction relative to the milking parlour, the detection means comprising two mechanical sensors (8, 9), which are constantly brought into contact with the animal body at least during the phase of the milking process in which the milking cluster has to be attached to the udder in order to determine the position of said posterior of the animal, a computer (12) is provided to which computer (12) first data indicating the position of said posterior of the animal relative to the milking parlour are supplied by the detection means, the device further comprising an animal identification system which supplies second data to the computer (12), the said second data indicate the identity of the animal present in the milking parlour, which furthermore third data indicating the position of the udder of the animal relative to the position of said posterior of the animal are stored in the computer (12) and the computer (12) controls the means for positioning and attaching the milking cluster, in response to the first, second and third data."

- IV. On the subject of the admissibility of the amendments, the appellant asserted that the present Claim 1 was the result of amendments which were such as to extend the protection with respect to that of Claim 1 as granted and of Claim 1 as maintained. In this respect, the appellant argued that the present Claim 1 did not specify two features which were specified in Claim 1 as granted, one of these features being specified also in

Claim 1 as maintained.

The appellant also argued that the subject-matter of the present Claim 1 did not involve an inventive step with respect to the combination of the contents of the article of V. PARENTI CASTELLI and G. VASSURA, *Contributo allo studio dei problemi relativi alla automazione delle operazioni di mungitura*, in *Il Latte*, Vol. IX, Marzo 1984, pages 206 to 218 (document D5), for which an English translation (D'5) had been filed, and of the article "*Gascoigne probeert Nederlandse melkautomaat*" in "*Boerderij*" of 5 December 1984 (document D20), for which an English translation (D'20) of relevant parts was submitted during the oral proceedings.

On the subject of inventive step, the appellant also referred to US-A-4 010 714 (D8) and EP-A-91 892 (D4), to the article "*Rinke Oenema en Roelof Geert Middel van de Praktijkschool...*" in "*Fries Landbouwblad*", 30 November 1984, front page and page 2249 (document D11) and to the article by Carel de Vries "*Ing. W. Rossing: De melkrobot komt eraan*" in *Boerderij/Veehouderij*, 69 (1984), pages 18 to 20, 22 (document D10), for which English translations (D'11 and D'10) had been filed.

- V. The respondent contested the arguments of the appellant.

- VI. The appellant requested that the impugned decision be set aside and that the patent be revoked.

VII. The respondent requested that the impugned decision be set aside and that the patent be maintained on the basis of the following documents:

Claims: 1 as filed during the oral proceedings,
2 to 5 as granted.

Description: page 1 filed with letter dated 6 January 1999, columns 2 to 4 as filed during the oral proceedings, columns 5 and 6 and lines 1 to 13 of column 7 as granted.

Drawings: Figures 1 to 3 as granted.

Reasons for the Decision

1. The appeal is admissible.
2. *Admissibility of the amendments*
 - 2.1 The present Claim 1 differs from Claim 1 as granted in that
 - (a) the expression "detection means for determining the position **of the animal or the position of specific parts** of the animal relative to the milking parlour" has been replaced by the expression "detection means ... for determining the position **of the posterior** of the animal **in both the longitudinal and lateral direction** relative to the milking parlour";

- (b) the expressions "means for **attaching** a milking cluster to the udder of the animal" and "means for **positioning** the milking cluster" have been replaced by the expression "means for **positioning and attaching** a milking cluster to the udder of the animal";
- (c) the expression "the detection means comprises mechanical sensors" has been replaced by the expression "the detection means comprising **two** mechanical sensors";
- (d) the expression "**in order to determine the position of said posterior of the animal**" has been added to the feature that the "mechanical sensors ... are constantly brought into contact with the animal ...";
- (e) the expression "[in the computer] data supplied by an animal identification system indicating the position of specific parts of the animal relative to the measuring point of the mechanical sensors is stored" has been replaced by the expression "[to the computer] **first** data indicating the position of **said posterior of the animal relative to the milking parlour** are supplied by the **detection means**, the device further comprising an animal identification system which supplies **second** data to the computer, the said second data **indicate the identity of the animal present in milking parlour**, while **furthermore third data** indicating the position of the udder of the animal relative to the position of **said posterior of the**

animal are stored in the computer";

(f) the feature that "[the] computer controls the means for positioning the milking cluster" has been replaced by the feature that "the computer controls the means for positioning **and attaching** the milking cluster **in response to the first, second and third data**".

2.1.1 The board is satisfied that these amendments have a basis in the original application as filed.

During the oral proceedings neither the appellant nor the other party (opponent II) objected to the present Claim 1 with respect to Article 123(2) EPC.

2.2 The present Claim 1 was however objected to under Article 123(3) EPC by the appellant only with respect to the amendment according to items (e) and (f).

In particular, the appellant asserted that the present Claim 1, due to the amendments according to items (e) and (f), does not specify the features that

(e') "data indicating the position of specific parts of the animal are supplied **by an animal identification system**"

and

(f') "the computer control **includes the attachment** of the milking cluster".

In this respect, the appellant argued that the scope of protection of the present Claim 1 had been extended with respect to that of Claim 1 as granted because features (e') and (f') were included in Claim 1 as granted.

2.2.1 The board cannot accept this argument for the following reasons:

- (i) According to Claim 1 as granted the device comprises "detection means for determining **the position of** the animal or the position of **specific parts** of the animal **relative to the milking parlour**" (see column 10, lines 15 to 19; emphasis added) and "the detection means comprises mechanical sensors" (see column 10, lines 9 and 10). Moreover, "a computer is provided in which data supplied by **an animal identification system** indicating **the position of specific parts** of the animal **relative to the measuring point of the mechanical sensor** is stored" (see column 10, lines 4 to 7; emphasis added). Thus, Claim 1 as granted lacks clarity with respect to the location of the udder in so far as the expressions "position of specific parts of the animal" and "measuring point of the mechanical sensor" are used with different meanings without referring at all to the location of the udder relative to these specific parts of the animal or to measuring point of the mechanical sensor. Moreover, the functional relationship between the 'computer', the 'animal identification system' and the 'detection means'

cannot be clearly understood from the wording of Claim 1 as granted.

It is clear from the description of the patent that the 'animal identification system' comprises 'identification means' carried by the animal and a 'sensor' which picks up the signal from the identification means, the sensor being connected to the computer (see the passage in column 5, lines 27 to 35, corresponding to the paragraph bridging page 6 and 7 of the divisional application as filed and to the passage on page 12, lines 3 to 10 of the parent application as filed).

It is also clear from the description of the patent as granted that "the position of the mechanical sensors ... [constitutes] an information on the basis of which the position of the animal can be determined" and that "by measuring the position of the animal's posterior ... sufficient information can be obtained to determine, depending on the animal (that is to say, using the data of the relevant animal, stored in the computer), the position of the udder" (see the passages in column 2, lines 15 to 20 and 43 to 49). Furthermore, it is clear from the description of the patent that the mechanical sensors are provided for determining the position of the posterior of the animal in both the longitudinal and lateral direction, that data indicating the position of the posterior (i.e. of **specific parts**) of the animal as measured by the mechanical sensors are

supplied to the computer, that data indicating **the identity of the animal present in milking parlour** are supplied from the animal identification system to the computer (see the passages from column 4, line 50 to column 5, line 35) and that data indicating the position **of the udder** of the animal relative **to the posterior** of the animal are already stored and present in the computer (see the passage in column 2, lines 43 to 49).

Therefore, there is an inconsistency between Claim 1 (as granted) and the description of the patent as granted concerning the relationship between the data indicating the position of the parts of the animal as detected by the mechanical sensors, the data supplied by the animal identification system and the data already stored in the computer. This inconsistency clearly relates to feature (e') referred to by the appellant.

- (ii) Claim 1 as granted refers in the pre-characterising portion to "means for **attaching** a milking cluster to the udder of the animal" and in the characterising portion to a computer "which ... controls **the means for positioning** the milking cluster" (see column 10, lines 7 to 9, 20 and 21; emphasis added). Thus, Claim 1 as granted lacks clarity with respect to the relationship between the "means for attaching ..." and the "means for positioning ...". In other words, it is not clear from the wording of

Claim 1 as granted whether the expressions "means for attaching ..." and the "means for positioning ..." define the same entity or two different entities.

However, it is clear from the description of the embodiment according to Figures 1 to 3 (see particularly the passages on column 5, lines 48 to 56 of patent as granted, corresponding to the passages on page 12, lines 22 to 29 of the parent application as filed) that the milking cluster is associated with a mechanism allowing the milking cluster not only to be adjusted to any desired position in a horizontal plane (in order to position the milking cluster under the udder) but also to be adjusted in the vertical direction (in order to attach the milking cluster to the udder). In other words, it is clear from the description of the patent that the milking cluster is associated with a single technical entity allowing not only the positioning of the milking cluster but also its attachment to the udder of the animal. Thus, there is also an inconsistency between the description of the patent as granted and Claim 1 as granted, in so far as the wording of Claim 1 permits the expressions "means for attaching ..." and the "means for positioning ..." to be interpreted as defining two different entities. This inconsistency concerns feature (f') referred to by the appellant.

Furthermore, according to Claim 1 as granted "[the] computer controls the means for

positioning the milking cluster", while according to the present Claim "the computer controls the means for positioning **and attaching** the milking cluster". Thus, the amendment according to item (f) formally results in the amended feature being limited in scope with respect to the unamended feature.

- (iii) Having regard to the comments above, the amendments according to items (e) and (f) result in the elimination not only of a lack of clarity in Claim 1 as granted but also of inconsistencies between this claim and the description.

These amendments - in so far they remove inconsistencies between the claims and the description of the patent as granted - cannot contravene Article 123(3) EPC because the amended features have the same meaning as the unamended features when correctly interpreted in the light of the description (Article 69 EPC), cf. T 271/84, OJ EPO 1987, 405 (see particularly section 2) and T 371/88, OJ EPO 1992, 157 (see particularly sections 2.3 to 2.5).

2.3 The amendments to the description and drawings consist in the excision from the patent as granted of the figures and the passages of the description which relate to embodiments which are no longer covered by the present Claim 1. Moreover, the reference to document D8 has been introduced into the introductory part of the description.

2.4 The amendments do not contravene the requirements of

Article 123 EPC and do not give rise to objections under Article 84 EPC.

- 2.5 The appellant also pointed out that feature (e') was specified in the maintained Claim 1. In this respect the appellant argued that the amendment according to item (e) had to be considered as being inadmissible because it resulted in an extension of the scope of the present Claim 1 with respect to that of Claim 1 as maintained.

The board cannot accept this argument for the following reasons:

Having regard to the comments in section 2.2.1 above, the amendment according to item (e) results in the elimination of an inconsistency between Claim 1 as granted and the description of the patent which inconsistency also concerns the maintained Claim 1. Therefore, the scope of the present Claim 1 is not extended with respect to that of either Claim 1 as granted or Claim 1 as maintained.

According to the decisions G 9/92 and G 4/93, OJ EPO 1994, 875 (see particularly section 16), when the opponent is the sole appellant against a decision of the opposition division maintaining the patent in amended form, the respondent (i.e. the patentee) is primarily restricted to defending the patent as maintained and amendments could be rejected by the board as inadmissible if they were to be neither appropriate nor necessary.

In the present case, the amendment according to item

(e) has to be considered as being appropriate and necessary in so far as it, firstly, eliminates an inconsistency between the maintained Claim 1 and the description and, secondly, does not extend the protection.

3. *The prior art*

3.1 Document D8 discloses (see Figures 1 or 5 and 6) a device for automatically milking animals comprising a milking parlour 1 or 101, bounded on at least two sides by guide means 1b or 101c, between which the animal can be positioned; the device also comprising **restraining means for setting** the position of specific parts of the animal (e.g. the lower abdomen and the hip back or the shoulders and hipbones) relative to the milking parlour and means for positioning and attaching a milking cluster to the udder of the animal; the **restraining means** comprising mechanical **support members** 3b/3c or 103a/103f which are brought into and held in contact with the animal body at least during the phase of the milking process in which the milking cluster has to be attached to the udder.

Moreover, it can be understood from a passage in column 7 (lines 12 to 17), which relates to the embodiment according to Figure 5, that an animal identification system is provided which supplies data indicating the identity of the animal present in a milking parlour to a control device, that data indicating the position of the teats of the animal relative to the position of said specific parts of the animal are stored in the control device and that the

control device controls the means for positioning and attaching the milking cluster in order to set the teat cups 114 in prearranged positions determined according to the teat positions of the animal.

- 3.2 Document D5 concerns the presentation of the results of a research work on the automation of the milking operations.

In this document, the authors present their "proposed solution" and describe a "prototype for preliminary tests".

The operations according to the "proposed solution" consists of three phases. Firstly, the position of the animal with respect to a fixed reference system in the stall has to be determined; secondly, the teat cups have to be carried to the vicinity of the teats; and, thirdly, the teats of the animal have to be captured (see translation D'5, page 7). It can be understood that the determination of the position of the animal is made by using a yoke delicately attached on the back of the animal. In other words, this document suggests the use of a detection means for determining the position of a specific part of the animal relative to the stall, the detection means comprising a mechanical sensor (i.e. the yoke), which can be brought into contact with the animal's body in order to determine the position of said specific reference part. It is also suggested to determine the position of the udder of the animal relative to the position of said specific reference parts of the animal on the basis of biometric measurements to be carried out on animals of the same breed (and size). In order to perform the above

mentioned operations, it is suggested to use a mechanical device having at least three degrees of freedom. No information concerning the link between the yoke and the milking cluster can be derived from this document.

The "prototype" described in document D5 comprises for each teat of the udder a conventional teat cup provided with a flexible retractable element in the form of a centering cone and is associated with a pneumatic actuation system.

- 3.3 Document D4 discloses a device for automatically milking animals, in which device data indicating the identity of the animal present in milking parlour are supplied from an animal identification system to a computer.
- 3.4 Document D10 gives the information that the animal to be milked can be automatically identified, the position of one teat can be detected, and that data concerning the position of the other teats relative to said one teat can be inputted into the memory of a computer.
- 3.5 Document D20 relates to a milking machine developed by Oenema and Middel which machine, according to the appellant, is "more completely disclosed in D1 [WO-A-85/02973]", cf. the statement setting out the grounds of appeal (page 9).

Oenema and Middel are designated as inventors in document WO-A-85/02973 (D1), which was published on 18 July 1985, after the priority date (16 January 1985) of the present patent. Document D1 relates to a device

for automatically milking animals, comprising a milking parlour 1 bounded on at least two sides by guide means between which the animal can be positioned; the device also comprising horizontally movable means 4 for giving a reference position of the posterior (i.e. the tailbone) of the animal relative to the milking parlour and means 22 for attaching a milking cluster to the udder of the animal, the horizontally movable means comprising a mechanical pusher 9 which is brought into contact with the animal body at least during the phase of the milking process in which the milking cluster has to be attached to the udder; the device further comprising a computer and an animal identification system which supplies data to the computer, said data indicating the identity of the animal present in milking parlour; data indicating the position of the teats of the udder of the animal relative to the position of said specific reference parts of the animal being stored in the computer, whereby the computer controls the means for attaching the milking cluster in response to the data indicating the position of the udder of the animal relative to the position of the posterior of the animal identified to be present in the milking parlour.

- 3.6 Document D11 also relates to the milking machine developed by Oenema and Middel. On the second sheet (i.e. page 2249) of document D11 on the central picture, it is indicated that this machine is provided with a computer "which has stored the teat arrangement of the cow in its memory and controls the milking cluster" (see translation D'11, page 4).

4. *Novelty*

The subject-matter of Claim 1 is novel (Article 54 EPC). Novelty was not disputed.

5. *Inventive step*

5.1 During the oral proceedings as well as during the written phase of the proceedings, the appellant argued that the subject-matter of the present Claim 1 did not involve an inventive step by considering document D5 as being the primary source of information (i.e. the closest prior art) from which a skilled person would start in order to develop a new milking system. In this respect, the arguments of the appellant can be summarized as follows:

Document D5 not only describes the results of a research work on the automation of the milking operations but also suggests future developments for an automatic milking system.

In particular, document D5 explicitly suggests "to determine the position of reference parts of an animal by mechanical sensing, to combine data of the mechanical sensing and stored data of the udder position in relation to the reference parts, and to attach a milking cluster onto the udder by means of the combined data".

Therefore, the skilled person reading document D5 would understand that a milking system is suggested which makes use of a computer and has the requirements of

- means for collecting data from the mechanical sensing,

- means for storing udder position data,
- means for combining the data of the sensing and the stored udder position data,
- means for positioning and attaching a milking cluster, and
- means for controlling the positioning and attaching means in response to the combined data.

The milking system according to document D5 was developed for cows of the same breed and size. This system needs to be improved in order to be useful also for cows of different sizes.

The information that cows of different sizes have different udder positions can be also derived from document D5. Thus, the skilled person analysing this document would immediately recognize that the stored data of the udder position are "a critical parameter" and would try to solve the problem of "how it would be possible to use different udder position data for different cows".

In order to solve this problem, the skilled person would turn to document D20 which discloses the following teaching: "Then the computer registers the coordinates and knows itself after that the following time to find the teats of the cow in question. The robot works in combination with a cow identification system" (see the translation D'20).

In this context, it is clear from document D11 that

this machine is provided with a computer "which has stored the teat arrangement of the cow in its memory and controls the milking cluster".

Therefore, the skilled person would apply the teaching from document D20 to the milking system according to document D5 and arrive at the claimed subject-matter.

5.1.1 The board cannot accept this argument for the following reasons:

- (i) Firstly, it has to be considered that document D5 does not describe in a **specific** way an embodiment of a well defined device for automatically milking animals but only reports of a research work. This document, on the one side, suggests a theoretical solution as a proposal and, on the other side, describes a prototype which was tested on a rubber model of the udder of a cow.

If the skilled person were to start from this document in order to arrive at a new device for automatically milking animals, the problem to be solved would primarily concern the practical realisation of the device, i.e. the problem of how to implement the proposed solution or how to develop from the prototype, which is suitable for test purposes, a milking device suitable for industrial application. The problem of how to use the device to milk cows of different sizes would arise only after that a milking device suitable for industrial application has been developed.

The comments above clearly indicate that the approach of the appellant based on document D5 as primary information source is of artificial nature. In other words, document D5 does not represent a realistic starting point from which the claimed milking device would have been developed in an obvious way.

- (ii) According to a passage on page 207 of document D5 (see the central column, the paragraph having the title "Caratterizzazione della ricerca - Presupposti e finalità"), the aim of the research work was to investigate the feasibility of an automatic system for attaching the teat cups to the teats of the udder, based on a particular configuration in which the adaptable and self-centering structure enables correct operation even without using complex detection and positioning systems and without having to resort to complex automatic systems such as milking robots (see also the translation D'5, page 3).

Thus, document D5 not only does not refer to a computer in which data can be stored but also teaches away from a positioning and attaching means which is controlled by a computer in response to data stored in and/or supplied to the computer.

Therefore, the analysis of document D5 made by the appellant (according to which this document suggests a milking system having means for storing udder position data, means for combining

the data of the sensing and the stored udder position data and means for controlling the positioning and attaching means in response to the combined data) is clearly the result of an *ex post facto* approach.

- (iii) In any case, even if the skilled person were to combine the contents of documents D5 and D20, this would not lead to the claimed subject-matter.

According to Claim 1 the computer controls the means for positioning and attaching the milking cluster **in response to the first, second and third data**. In other words, the computer, in which for each animal third data indicating the position of the udder relative to the posterior of the animal are stored, receives from the detection means the first data indicating the position of the posterior of the animal relative to the milking parlour and from the animal identification system the second data indicating the identity of the animal. On the basis of these data, the computer can determine the position of the udder relative to the milking parlour and control the means for positioning and attaching the milking cluster.

It is correct that, according to document D20, the milking robot works in combination with an animal identification system and a computer. However, in the machine developed by Oenema and Middel there is no need to supply to the computer data indicating the position of the

posterior of the animal relative to the milking parlour because there is a mechanical link between the milking unit and the horizontally movable means (i. e. the plates or tubes) which contact the animal in the bone parts at its posterior of the animal (see also document D1, Figure 1). Therefore, the combination of documents D5 and D20 (and/or D11) would not lead to a milking device in which data indicating the position of the posterior of the animal in both the longitudinal and lateral direction **are supplied by a detection means to the computer.**

- 5.2 As far as document D4 is concerned, the appellant asserted that this document teaches the use of identification means to identify different cows entering the milking parlour and of a computer to store the relevant data for the different cows and argued that it would have been obvious to a skilled person to combine the content of documents D5 and D4.

As far as document D10 is concerned, the appellant asserted that this document discloses the idea of automatically identifying the cows to be automatically milked and having individual physical data of different cows stored in a computer in order to make possible automatic attachment of the teat cups and argued that the claimed subject-matter would not involve an inventive step in view of the combination of the contents of documents D5 and D10.

The board cannot accept these arguments not only in view of the comments according to items (i) and (ii) in

the above section 5.1.1 but also because the information that 'data indicating the position of the udder of the animal **relative to the position of the posterior of the animal** are stored in the computer' cannot be derived either from document D4 or from document D10.

- 5.3 The appellant argued that the subject-matter of the present Claim 1 did not involve an inventive step when document D8 is considered as being the primary source of information. In these respects, the arguments of the appellant can be summarized as follows:

Document D8 describes a milking device comprising a computer, in which data are stored indicating the position of the teats of each animal relative to the mechanical support members which are brought into and held in contact with the animal body, the computer being used to position the teat cups of a milking cluster by means of said data and to attach the milking cluster to the udder of the animal, the mechanical support members being adapted to keep the animal in a fixed position in the milking parlour.

The milking device according to document D8 suffers from the disadvantage that the animals do not feel comfortable when being forced to take a fixed position. Starting from document D8 the problem to be solved would be how to position and attach the milking cluster if the animal would be free to move in the milking parlour.

The obvious solution to this problem would be to arrange a sensor connected to the computer to determine

the actual position of the animal, so that the milking cluster can follow the movement of the animal, a sensor for this purpose being disclosed in document D5.

The skilled person would improve the milking device according to document D8 by using a mechanical sensor device as suggested in document D5 and arrive at the claimed subject-matter.

5.3.1 The board cannot accept this argument for the following reasons:

- (i) Neither document D8 nor document D5 discloses the feature that data indicating the position of the posterior of the animal relative to the milking parlour in both the longitudinal and lateral direction are supplied by a detection means to a computer which controls the means for positioning and attaching the milking cluster also in response to these data.
- (ii) Moreover, the use of a detection means which determines the actual position of the posterior of the animal and supplies the detected position to the computer is not the only solution to the problem of allowing free movement of the animal to be milked. Other solutions are possible, for instance the solutions according to document D4 or D1. Thus, the skilled person would not be in a one way street leading compulsorily to the claimed subject-matter.

5.4 Having regard to the above comments, the board finds that the subject-matter of the independent Claim 1 is not obvious to a person skilled in the art, so that the subject-matter of the independent Claim 1 is considered as involving an inventive step as required by Article 56 EPC.

6. The patent can therefore be maintained on the basis of the independent Claim 1 and dependent Claims 2 to 5 according to the request of the respondent.

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 maintain the patent in the following version:

Claims: 1 as filed during the oral proceedings,
2 to 5 as granted.

Description: page 1 filed with letter dated 6 January 1999, columns 2 to 4 as filed during the oral proceedings, columns 5 and 6 and lines 1 to 13 of column 7 as granted.

Drawings: Figures 1 to 3 as granted.

The Registrar:

The Chairman:

N. Maslin

C. Andries