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D E C I S I O N
of 30 May 2001

Case Number: T 1096/98 - 3.2.4

Application Number: 89107976.6

Publication Number: 0332231

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Language of the proceedings: EN

Title of invention:
Device for milking animals, such as cows

Patentee:
MAASLAND N.V.

Opponent:
(I) Alfa Laval Agri AB
(II) PROLION B.V.

Headword:
Milking box/MAASLAND

Relevant legal provisions:
EPC Art. 56, 100(a), 100(b), 100(c), 123

Keyword:
"Extended subject-matter (main request: yes; subsidiary request: no)"
"Inventive step: (yes)"

Decisions cited:
-

Catchword:

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1096/98 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 30 May 2001

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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 12 October 1998 concerning maintenance of European patent No. 0 332 231 in amended form.**

Composition of the Board:

Chairman: C. A. J. Andries

Members: P. Petti
H. Preglau

Summary of facts and submissions

I. The European patent No. 332 231 results from European patent application No. 89 107 976.6 filed as a divisional application (hereinafter DA) of the earlier European patent application No. 86 200 064.3 published under the number EP-A-189 954 (hereinafter PA, ie parent application).

Two oppositions were filed against this patent, the first opposition being based upon Articles 100(a), (b) and (c) EPC, the second one being based only upon Articles 100(a) and (c) EPC.

With its decision dispatched on 12 October 1998 the opposition division maintained the patent in an amended version.

II. A first appeal against this decision was lodged on 27 November 1998 by opponent I (hereinafter appellant I) who simultaneously paid the appeal fee and filed on 4 February 1999 a statement setting out the grounds of appeal. A second appeal was lodged on 7 December 1998 by opponent II (hereinafter appellant II) who simultaneously paid the appeal fee and filed on 22 February 1999 its statement setting out the grounds of appeal.

III. Oral proceedings were held on 30 May 2001. During the oral proceedings the proprietor of the patent (hereinafter respondent) filed two amended independent claims on which a main request and a subsidiary request were based.

Claim l of the main request reads as follows:

"A device for milking animals, such as cows, comprising a milking parlour (1) with an entry door (3), an exit door (4) and lateral guide means (27) giving the animal only a limited freedom of movement and bounding the area of the milking parlour where the animal stands during the milking process and with a manger (9) attached to the exit door (4) of the milking parlour from which the animal can eat fodder during its stay in the milking parlour so that the animal then is in a given position in the milking parlour, the device comprising a computer-controlled milking machine with a milking cluster (34) couplable to the udder of the animal and with a unit (28) suitable for either spraying a liquid or for spraying a liquid and drying, the milking cluster (34) being supported on a milking cluster supporting means (17, 40, 41) and the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being supported on a cleaning/drying unit supporting means (17, 40, 41), said milking cluster supporting means (17, 40, 41) permitting an upwardly and downwardly movement of the milking cluster (34), said cleaning/drying unit supporting means (17, 40, 41) permitting an upwardly and downwardly movement of the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying, the milking cluster (34) being located in its non-operative position on one side of said area and outside said area such that it is adjacent to the udder of the animal when the animal is in the milking parlour, the milking cluster supporting means (17, 40, 41) and the cleaning/drying unit supporting means (17, 40, 41) each comprising a first vertical hinge pin (30) and being fastened to the floor of the milking parlour in the

region of the first hinge pin (30), each supporting means (17) comprising a first connecting member (40) swivelling around the first vertical hinge pin (30), a second vertical hinge pin and a second connecting member (41) connected to the first connecting member (40) by the second vertical hinge pin (31), the milking cluster (34) and the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being supported on the respective second connecting member (41) of the support (17), the first vertical hinge pin (30) permitting a swivelling movement of the support (17) and the second vertical hinge pin (31) permitting a swivelling movement of the connecting members (40, 41) relative to each other so that the resulting movements of the milking cluster (34) and the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying are caused in such a way that they approach the udder of the animal from the respective side of the milking parlour between a foreleg and a hindleg of the animal and then move backwards to the udder, the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being couplable to the udder of the animal and capable of spraying a liquid against the udder and teats, the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being located in its non-operative position on the other side of said area and outside said area such that it ist adjacent to the udder of the animal when the animal is in the milking parlour."

Claim l of the subsidiary request reads as follows:

"A device for milking animals, such as cows, comprising a milking parlour (1) with an entry door (3), an exit

door (4) and lateral guide means (27) giving the animal only a limited freedom of movement and bounding the area of the milking parlour where the animal stands during the milking process and with a manger (9) attached to the exit door (4) of the milking parlour from which the animal can eat fodder during its stay in the milking parlour so that the animal then is in a given position in the milking parlour, the device comprising a computer-controlled milking machine with a milking cluster (34) couplable to the udder of the animal and with a unit (28) suitable for either spraying a liquid or for spraying a liquid and drying comprising a bowl-shaped basin (16) connectable to the udder of the animal and provided with spraying means (32) for spraying said liquid against the animal's udder and teats, said liquid being a cleaning, rinsing or disinfecting agent, the milking cluster (34) being supported on a milking cluster support (17, 40, 41) and the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being supported on a cleaning/drying unit support (17, 40, 41), said milking cluster support (17, 40, 41) permitting an upwardly and downwardly movement of the milking cluster (34), said cleaning/drying unit support (17, 40, 41) permitting an upwardly and downwardly movement of the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying, the milking cluster (34) being located in its non-operative position on one side of said area and outside said area such that it is adjacent to the udder of the animal when the animal is in the milking parlour, the milking cluster support (17, 40, 41) and the cleaning/drying unit support (17, 40, 41) each comprising a first vertical hinge pin (30) and being fastened to the floor of the milking parlour in the region of the first hinge pin (30), each support

(17) comprising a first connecting member (40) swivelling around the first vertical hinge pin (30), a second vertical hinge pin and a second connecting member (41) connected to the first connecting member (40) by the second vertical hinge pin (31), the milking cluster (34) and the bowl-shaped basin of the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being supported on the respective second connecting member (41) of the support (17), the first vertical hinge pin (30) permitting a swivelling movement of the support (17) and the second vertical hinge pin (31) permitting a swivelling movement of the connecting members (40, 41) relative to each other so that the resulting movements of the milking cluster (34) and the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying are caused in such a way that they approach the udder of the animal from the respective side of the milking parlour between a foreleg and a hindleg of the animal and then move backwards to the udder, the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being couplable to the udder of the animal, the unit (28) suitable for either spraying a liquid or for spraying a liquid and drying being located in its non-operative position on the other side of said area and outside said area such that it ist adjacent to the udder of the animal when the animal is in the milking parlour."

IV. During the oral proceedings the appellants referred to the documents EP-A-91 892 (D2), US-A-4 010 714 (D4), DE-A-2 654 245 (D3), US-A-3 605 694 (D9) and US-A-3 938 470 (D10).

V. The appellants essentially argued that the subject-

matter of Claim 1 of both the main and auxiliary requests extended beyond the content of the DA and the PA as filed, that the patent did not disclose the invention in a manner sufficiently clear for it to be carried out by a skilled person and that the subject-matter of both Claims 1 did not involve an inventive step having regard *inter alia* to documents D2 and D4.

The respondent contested the arguments of the appellants.

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

The respondent requested that the impugned decision be set aside and that the patent be maintained on the basis of Claims 1 of either the main request or the subsidiary request as filed during the oral proceedings of 30 May 2001.

Reasons for the decision

1. The appeal is admissible.

2. *The main request of the respondent*

2.1 Claim 1 of the main request refers to a computer-controlled milking machine provided with "a unit (28) suitable for either spraying a liquid or for spraying a liquid and drying" and defines this unit (28) as being "couplable to the udder of the animal and capable of spraying **a liquid against the udder and teats".**

These features correspond to the features in Claim 1 as granted according to which the computer-controlled milking machine is provided with a cleaning and/or drying unit which is "couplable to the udder of the animal" and which "can spray a fluid against the teats".

2.1.1 Appellant I asserted that these features extend beyond the content of the PA as filed in so far as they define a cleaning/drying unit in terms which are more general than those employed in the PA as filed. In particular, it was argued that the PA as filed discloses means for spraying a liquid against the udder and teats only in combination with a bowl-shaped basin which is connectable to the udder of the cow.

In this respect, the respondent argued that the passages on page 4, lines 25 to 29; page 5, lines 23 to 33 and page 7, lines 12 to 22 of the description of the PA as filed provide a basis for these general features. In particular, it was argued that the passage on page 7 makes it clear that the function of spraying a liquid can be performed without a bowl shaped basin.

2.1.2 The board cannot accept the arguments of the respondent for the following reasons:

The passages on pages 4 (lines 25 to 29) and 5 (lines 23 to 33) of the PA as filed refer respectively to "an automatic washing machine and/or a drying unit" and to "an automatic rinsing device ... with which the teats of the animal can be cleaned ...", these devices being more general

than the unit defined in Claim 1 of the main request in so far as they do not specify any spraying means. Thus, these passages cannot provide a basis for a spraying means which is not associated with a bowl-shaped basin.

The passage on page 7 refers firstly to an implement which "may include ... a rinsing device ..." (lines 14 to 16), secondly to a rinsing device which "may comprise a bowl-shaped basin which is connectable to the udder" (lines 18 and 19) and then to a bowl-shaped basin "optionally being provided ... with spraying means for spraying..." (lines 19 to 21). Thus, this passage refers in a sequential way to a rinsing device which comprises a bowl-shaped basin, said basin being provided with spraying means. In other words, this passage could provide a basis for a bowl-shaped basin without spraying means but does not provide a basis for a spraying means without a bowl-shaped basin.

2.2 Furthermore, the claims of the PA as filed do not refer at all to a cleaning/drying unit and Figure 3 and the description of the PA (see particularly the passages on page 16, lines 12 to 18 and page 17, lines 12 to 19) systematically refer to a unit comprising a bowl-shaped basin connectable to the udder of the animal and provided with spraying means for spraying a liquid against the animal's udder and teats.

2.3 Having regard to the above comments, Claim 1 of the main request extends beyond the content of the PA as filed and contravenes Articles 100(c) and 123(2) EPC.

Therefore, the main request of the respondent cannot be allowed.

3. *The admissibility of the amendments concerning the subsidiary request of the respondent with respect to Articles 100(c), 123(2) and 123(3) EPC*

3.1 Claim 1 of the subsidiary request of the respondent has been analysed as being directed to a device for milking animals, such as cows, having the following features:

(A) the device comprises a milking parlour (1),
(A1) the milking parlour is provided with an entry door (3) and an exit door (4),
(A2) the milking parlour is provided with lateral guide means (27),
(A21) the lateral guide means give the animal only a limited freedom of movement,
(A22) the lateral guide means bound the area of the milking parlour where the animal stands during the milking process,
(A3) the milking parlour is provided with a manger (9),
(A31) the manger is attached to the exit door (4) of the milking parlour,
(A32) the animal can eat fodder from the manger during its stay in the milking parlour,
(A4) so that the animal then is in a given position in the milking parlour,
(B) the device comprises a computer-controlled milking machine,
(B1) the milking machine is provided with a

milking cluster (34),

(B11) the milking cluster is couplable to the udder of the animal,

(B12) the milking cluster (34) is supported on a milking cluster support (17, 40, 41),

(B121) the milking cluster support (17, 40, 41) permits an upwardly and downwardly movement of the milking cluster (34),

(B2) the milking machine is provided with a unit (28) suitable either for spraying a liquid or for spraying a liquid and drying,

(B21) the unit (28) is couplable to the udder of the animal,

(B22) the unit (28) is supported on a cleaning/drying unit support (17, 40, 41),

(B221) the cleaning/drying unit support (17, 40, 41) permits an upwardly and downwardly movement of the unit (28),

(B13) the milking cluster (34) is located in its non-operative position on one side of said area and outside said area such that it is adjacent to the udder of the animal when the animal is in the milking parlour,

(B23) the unit (28) is located in its non-operative position on the other side of said area and outside said area such that it is adjacent to the udder of the animal when the animal is in the milking parlour,

(B24) the unit (28) comprises a bowl-shaped basin (16) connectable to the udder of the animal,

(B241) the bowl-shaped basin (16) is provided with spraying means (32) for spraying said liquid against the animal's udder and teats,

(B2411) said liquid is a cleaning, rinsing or disinfecting agent,

(B3) each support (i.e. each of the milking cluster support and the cleaning/drying unit support) comprises a first vertical hinge pin (30) and is fastened to the floor of the milking parlour in the region of the first hinge pin (30),

(B4) each support (17) comprises a first connecting member (40) swivelling around the first vertical hinge pin (30), a second vertical hinge pin and a second connecting member (41) connected to the first connecting member (40) by the second vertical hinge pin (31),

(B41) the milking cluster (34) and the bowl-shaped basin of the unit (28) are supported on the respective second connecting member (41) of the support (17),

(B42) the first vertical hinge pin (30) permits a swivelling movement of the support (17) and the second vertical hinge pin (31) permits a swivelling movement of the connecting members (40, 41) relative to each other so that the resulting movements of the milking cluster (34) and the unit (28) are caused in such a way that they approach the udder of the animal from the respective side of the milking parlour

between a foreleg and a hindleg of the animal and then move backwards to the udder.

3.1.1 Feature B defines a computer-controlled milking device. The further features of the group B1 to B42 relate to the structural components of the milking machine and to their functions. It has to be understood that the operations of the milking machine, ie the operation of all of its components, are computer-controlled.

3.1.2 The term "milking parlour" has to be interpreted as defining a box comprising the area in which the animal stands during the milking process and the spaces, which are *inter alia* defined by the guide means, in which the milking cluster 34 and the unit 28 are located when they are in the non-operative position (see Figures 1 and 2 and the description of the patent, column 3, lines 7 to 11 and column 4, lines 26 to 36).

3.2 In order to examine whether Claim 1 of the subsidiary request contravenes Article 123(3) EPC (or not), its relationship to Claim 1 of the patent as granted has to be analysed.

3.2.1 Claim 1 of the patent as granted was directed to a device for milking animals, such as cows, having the following features:

(A) the device comprises a milking parlour (1),

(A') the device comprises means for positioning an animal to be milked in

the milking parlour,

(B) the device comprises a computer-controlled milking machine,

(B1) the milking machine is provided with a milking cluster (34),

(B'2) the milking machine is provided with a cleaning and/or drying unit (28),

(B21) the unit (28) is couplable to the udder of the animal,

(B'22) the unit (28) can spray a fluid against the teats,

(B'23) the unit (28) is also located near a side of the milking parlour adjacent to the udder of the animal,

(B'12) the milking cluster (34) and the cleaning and/or drying unit (28) are supported on supporting means (17, 40, 41),

(B'121) the supporting means (17, 40, 41) permit an upwardly and downwardly movement of the milking cluster (34) and the cleaning and/or drying unit (28),

(B'3) the supporting means (17, 40, 41) permit a swivelling movement about a first substantially vertical shaft (30),

(B'4) the supporting means (17, 40, 41) comprise a second substantially vertical shaft (31) in order to swivel the milking cluster and the cleaning and/or drying unit in such a way that they approach the udder of the animal from a side of the milking parlour between a foreleg and a hindleg of the animal and then move backwards to the udder.

3.2.2 Claim 1 differs from Claim 1 of the patent as granted in that:

(i) features A1 to A4 have replaced feature A';

(ii) features B2, B24, B241 and B2411 have replaced features B'2 and B'22;

(iii) features B13 and B23 have replaced feature B'23;

(iv) features B12, B121, B22 and B221 have replaced features B'12 and B'121;

(v) features B3, B4, B41 and B42 have replaced features B'3 and B'4.

These amendments result in the definition of a device which is specified in more detail with respect to the subject-matter of Claim 1 as granted.

3.2.2.1 With respect to the amendment according to item (i) Appellant I argued as follows:

The patent as granted relates to a "blind system", ie to a milking device in which the application of the milking cluster (as well as of the cleaning unit) is controlled only on the basis of the relevant data of each animal and which requires an accurate positioning of the animal. Features A1 to A4, particularly feature A21, define means for positioning the animal in a very imprecise way, while feature A' defines means for exactly positioning the animal in the milking parlour.

Therefore, this amendment results in an extension of the scope of protection.

3.2.2.2 The board cannot accept this argument because - apart the fact that Claim 1 does not indicate an "exact positioning" but only a "positioning", it is based on an interpretation of feature A' which is not supported by the description of the patent.

Indeed, the description of the patent does not contain any information at all relating to an exact positioning of the animal in the milking parlour. However, the description of the patent contains the following passages concerning the position of the animal in the milking parlour, which clearly indicate that an exact position is not intended:

(a) "guide means 27 ... are provided with the object of giving the animal only a limited freedom of movement" (column 4, lines 28 to 31),

(b) "because the animal eats the fodder supplied, it is in a given position" (column 7, lines 46 to 50).

The first passage relates to the lateral position of the animal, since it is clear from Figure 2 that the guide rods 27 are "lateral guide means". The second passage concerns the longitudinal position of the animal in the milking parlour, ie the position of the animal with respect to the manger 9 from which the animal can eat fodder during its stay in the milking parlour. The means for positioning as defined by feature A' essentially

relate to the arrangement of the manger on the exit door of the milking parlour and to the lateral guide means which permit the animal to be in a given position in the milking parlour so that the units to be coupled to the udder can be controlled by the computer and coupled in an appropriate way (see column 4, lines 46 to 50). Thus, features A1 to A4 define the "means for positioning" in a more precise way, so that the animal is in a "given position".

3.2.3 Therefore, Claim 1 of the subsidiary request does not contravene Article 123(3) EPC.

3.3 In order to examine whether or not Claim 1 of the subsidiary request contravenes Articles 100(c) and 123(2) EPC, its relationship to both the DA and the PA as filed has to be analysed.

3.3.1 The subject-matter of Claim 1 according to the subsidiary request differs from Claim 1 of the DA as filed, which specifies *inter alia* features A, B, B1, B11 and B21)

in that

(i) feature B2 has replaced the features that the milking machine is provided with "a cleaning and/or drying unit (28)" which "can spray a fluid against the teats",

and in that

(ii) features A1, A2, A21, A22, A3, A31, A32 and A4,

(iii) features B12, B121, B22, B221, B13, B23, B3, B4, B41 and B42, and

(iv) features B24, B241, B2411

have been added.

With respect to the amendment according to item (i), it has to be noted that the term "and/or" (in Claim 1 of the DA as filed) permitted an interpretation according to which the milking machine may be provided either with a cleaning unit (without drying unit) or with a drying unit (without cleaning unit) or with a combined cleaning and drying unit. Now, this amendment makes it clear that the milking machine may be provided either with a cleaning unit or with a combined cleaning and drying unit and, thus, is self supported by Claim 1 of DA as filed. The introduction of the term "liquid" instead of "fluid" has a basis in the description of the DA (page 5, lines 27 to 33).

The features of the group (ii) can be derived from Figures 1 and 2 in combination with the following passages in the description of the DA as filed:

page 3, lines 19 to 22;
page 3, line 36 to page 4, line 1;
page 5, lines 11 to 13;
page 10, line 38 to page 11, line 4.

The features of the group (iii) can be derived from

Figures 2 to 4 in combination with the following passages in the description of the DA as filed:

page 5, lines 13 to 26;
page 6, lines 22 to 29;
page 7, lines 30 to 32.

The features of the group (iv) can be derived from Claim 2 and Figure 3 in combination with the following passages in the description of the DA as filed:

page 2, lines 7 to 11;
page 5, lines 27 to 33;
page 6, lines 34 to 37.

3.3.2 Claim 1 can be derived from the passage on page 5, lines 17 to 33 of the description of the PA as filed, in so far as this passage refers to two devices which are automatically couplable to the udder of the animal. This passage defines namely a milking device comprising an automatic milking machine with a milking cluster (ie "an automatic machine of a type customary for milking animals") couplable to the udder of the animal and a unit suitable either for spraying a liquid or for spraying a liquid and/or drying (ie "an automatic rinsing device or automatic dryer, with which the udder and the teats can be cleaned ... and, optionally dried thereafter"), which is also couplable to the udder of the animal. Therefore, Claim 1 differs from the combination of features defined by this passage in that the feature that the machine is **automatic controlled** has been replaced by the feature that

(i) the machine is **computer-controlled**,

and in that the following groups of features have been added:

(ii) A1, A2, A21, A22, A3, A31, A32 and A4,

(iii) B12, B121, B22, B221, B13, B23, B3, B4, B41 and B42,

(iv) B24, B241, B2411.

The amendment according to item (i) can be derived from a passage on page 20, lines 17 to 21 of the PA as filed.

The features of the group (ii) can be derived from Figures 1 and 2 in combination with the following passages in the description of the PA as filed:

page 13, line 35 to page 14, line 1;
page 14, lines 16 to 19;
page 15, lines 32 to 35;
page 20, lines 17 to 21.

The features of the group (iii) can be derived from Figures 2 to 4 in combination with the following passages in the description of the PA as filed:

page 15, line 35 to page 16, line 9;
page 17, lines 6 to 16;
page 18, lines 20 and 21.

The features of the group (iii) can be derived from Figure 3 in combination with the following passages

in the description of the PA as filed:

page 7, lines 16 to 22;
page 16, lines 12 to 18.

3.3.3 With respect to the position of the milking cluster 34 and of the unit 28 (as defined by features B13 and B23) and to the movements of the supports supporting the milking cluster 34 and the unit 28, (as defined by features B4, B41 and B42), appellant I argued as follows:

(i) Neither the PA nor the DA contains the information that the milking cluster 34 or the unit 28 in their non-operative position are adjacent to the udder of the animal.

(ii) According to the description of the PA as well as of the DA as filed, the movement of each support is effected by computer-controlled electric motors which permit the milking cluster 34 or the unit 28 to be moved in any desired position (see PA, page 18, lines 22 to 24 or DA, page 7, lines 32 to 35). However, features B4, B41 and B42 do not refer to electric motors. Thus, Claim 1 extends beyond the content of the PA as filed in so far as the movement of the supports is disclosed in the PA only in combination with the computer-controlled electric motors.

(iii) Feature B42 defines a two-stage movement of the supports. In other words, each of the supports firstly approached the udder from

the side until it is in middle of the milking parlour and then moves straightaway backwardly to the udder. This two-stage movement is not disclosed either in the PA or in the DA.

With respect to feature A32, Appellant II argued as follows:

(iv) According to the description of the DA (page 10, line 38 to page 11, line 4), fodder **is** supplied in order to ensure that the animal is in a given position in the milking parlour. Since feature A32 does not refer to a fodder supply means, it extends beyond the content of the DA as filed in so far as the given position of the animal is only possible if fodder is supplied.

3.3.3.1 The board cannot accept the above arguments for the following reasons:

(i) The expression "adjacent to the udder" has to be construed in the context of features B13 and B23 as well as of feature B42 which relates to the movement of the supports from the non-operative to the operative position. In this context, the term "adjacent to", which literally means "not distant from", defines a non-operative position which is next to the udder such that the movement of the support as defined in feature B41 is possible. This can be unambiguously derived from the Figure 2.

(ii) Figure 2 shows schematically for each support the non-operative and the operative position and thus implicitly gives information concerning the movement of the milking cluster and of the cleaning unit. This is done without representing the electrical motors 38 and 39 which according to a passage on page 18, lines 22 to 24 of the PA (see DA, page 7, lines 32 to 35) move the milking cluster 34 to enable its connection to the udder. Moreover, the description of the PA (see page 15, line 37 to page 16, line 9) as well as of the DA (page 5, lines 15 to 24) refers to the movements of the milking cluster and of the cleaning unit without referring to the electrical motors.

(iii) The argument referred to in section 3.3.3(iii) is based upon the assumption that the term "move backwards" indicates a rectilinear movement along the longitudinal axis of the milking parlour. However, the movement of the milking cluster 34 or of the unit 28 as defined in feature B42 has to be construed as comprising a first movement from the side and a second movement having a backward component. It can be clearly derived from Figure 2 that the movement of the supports has a mainly transverse component in the first phase and a mainly backward component in the further phase.

(iv) According to the passage referred to by appellant II "the animal eats the fodder

supplied". Feature A32 refers to a manger from which the animal can eat fodder and thus implicitly defines a fodder supply. In any case, it has to be noted that the longitudinal position of the animal in the milking parlour does not depend on the fodder itself but on the position of the manger.

3.3.4 The further objections raised by the appellant during the oral proceedings related to the previous filed Claim 1 and no longer applied for Claim 1 of the subsidiary request.

3.4 Having regard to the comments above the subject-matter of Claim 1 of the subsidiary request can be derived from the description and the drawings of the PA as filed and of the DA as filed and therefore does not contravene Articles 100(c) and 123(2) EPC.

4. *The opposition ground under Article 100(b) EPC*

4.1 Appellant I asserted that the patent does not disclose the invention in a manner sufficiently clear for it to be carried out over its whole extent as defined by Claim 1. In this respect, appellant I argues as follows:

(i) Claim 1 defines a particular movement of the supporting means but the description does not contain sufficient information for this movement to be achieved;

(ii) Claim 1 requires an exact positioning of the

animal in the milking parlour but the description does not disclose how to achieve an exact positioning.

Appellant II argued as follows:

(iii) Claim 1 defines a milking implement which cannot work in so far as it does not refer to a means for determining the identity of the animal. Such an identification means would be needed in order to control by the computer the coupling of the milking cluster to the udder of the animal when the animal is in the given position. Furthermore, even if the identity of the animal were to be provided to the computer, the implement would not work properly because the position of the teats would not be known.

4.1.1 The board cannot accept these arguments for the following reasons:

(i) The description and the drawings of the patent (see particularly Figure 3 and column 5, lines 17 to 37) disclose in detail the geometry of the support 17. Moreover, Figure 2 clearly indicates the non-operative and the operative position of the support 17. This information would enable the skilled person to arrive at a support capable of performing the movements defined in Claim 1.

(ii) Claim 1 does not define an exact positioning of the animal. According to Claim 1, the

animal is in a given position (see feature A4). Moreover Claim 1 defines the features which allow the animal to be in the "given position", namely features A2, A21 and A22 which relate to the positioning of the animal in the transverse direction and features A3, A31 and A32, which relate to the positioning of the animal in the longitudinal direction.

(iii) The description of the patent clearly discloses identifying means for transmitting the identity of the animal to the computer in order to control the operation of the milking machine (see column 7, lines 36 to 50). Moreover, the description also discloses the information that the mutual positions of the teat cups have to be adapted to the udder of the specific animal (see column 7, lines 50 to 57).

4.2 The board is satisfied that the ground for opposition according to Article 100(b) EPC does not prejudice the maintenance of the patent in suit.

5. *Concerning the prior art*

5.1 Document D2 (see in particular the embodiment described by referring to Figures 2 and 5 to 9) discloses a device for milking animals, such as cows, having the following features:

(a) the device comprises *a plurality of* milking parlours (1),

(a1) each milking parlour is provided with an

entry door (4') and an exit door (4''),

(a2) each milking parlour is provided with lateral guide means (the lateral guide means of one side is formed by the entry door and the exit door of the milking parlour),

(a21) the lateral guide means give the animal only a limited freedom of movement,

(a22) the lateral guide means bound *the milking parlour* (in the lateral direction),

(a3) the milking parlour is provided with a manger,

(a32) the animal can eat fodder from the manger during its stay in the milking parlour,

(a4) so that the animal can be in a given position in the milking parlour,

(b) *each milking parlour* comprises a computer-controlled milking machine,

(b1) each milking machine is provided with *a milking means (6)*,

(b11) each milking means (6) comprises four teat cups, each teat cup being couplable to the teats of the udder of the animal,

(b12) each milking means (6) is supported on a milking means supporting unit (7) *associated with the respective milking parlour*,

(b121) *the device comprises a robot assembly (8, 13) common to all milking parlours, the robot assembly (13) carrying a support (16) for the teat cups, the support of the robot assembly being*

suitable for bringing the teat cups from their non-operative position to their operative position, the support of the robot assembly permitting an upwardly and downwardly movement of the milking means (6),

(b2) *the device* may be provided with *a cleaning means*,

(b13) the milking means (6) is located in its non-operative position on one side *of the milking parlour* and outside *the milking parlour* such that it is adjacent to the udder of the animal when the animal is in the milking parlour.

5.1.1 As far as the cleaning means (see feature (*b2*) are concerned, it has to be noted that document D2 does not describe in detail the cleaning means. The passage of the description of document D2 (see page 6, lines 1 to 8) only states that "there may be such means in each stall 1 but otherwise they may be in the form of a separate attachment to the robot or support unit". In any case, document D2 does not disclose the feature that the cleaning means is located in its non-operative position on the other side of the area where the animal stands during milking.

5.1.2 Figure 4 of document D2 relates to an embodiment applicable to large plants. It is clear that this embodiment is not provided with features A1 and A31 since the entry/exit for the animal is located at the end of the each parlour opposite to the end at which the manger is located. The parlours are arranged in a star-like configuration which defines

interspaces between the parlours, the milking means supporting units (7) being located in the interspaces.

5.2 Document D4 (Figure 1) discloses a plant for milking animals, such as cows, having the following features:

(a) the plant comprises *a stanchion stool (1)* in which the animal can be milked,

(*a1*) *the stanchion stool is provided with a door (1c),*

(a2) the stanchion stool is provided with lateral *restraining means* (supporting plates 3a provided with air bags 3b),

(a21) the lateral restraining means (3a, 3b) give the animal *no freedom of movement (during the milking process)*,

(a22) the lateral restraining means bound the area of the stanchion stool in which the animal stands during the milking process,

(a3) the stanchion stool is associated with a manger (8),

(a32) the animal can eat fodder from the manger (8) during its stay in the stanchion stool (1),

(a4) so that the animal then is in a given position in the stanchion stool,

(b) the plant comprises a computer-controlled milking machine,

(b1) the milking machine is provided with a milking unit (5, 14),

(b11) the milking unit (5, 14) is couplable to the udder of the animal,

(b12) the milking unit (5, 14) is supported on a milking cluster support (13, 18, 15),

(b121) the milking unit support (13, 18, 15) permits an upwardly and downwardly movement of the milking unit (34),

(b2) the milking machine is provided with a cleaning unit (6) suitable for spraying a liquid,

(b21) the cleaning unit (6) is couplable to the udder of the animal,

(b22) the cleaning unit (6) is supported on a cleaning unit support (28, 29, 6d),

(b221) the cleaning unit support (28, 29, 6d) permits an upwardly and downwardly movement of the cleaning unit (6),

(b13) the milking unit (5, 14) is located in its non-operative position *under the floor of the stanchion stool in a pit (11) formed in the ground*,

(b23) the cleaning unit (6) is located in its non-operative position *under the floor of the stanchion stool in a pit (11) formed in the ground*,

(b24) the cleaning unit (6) comprises a basin (6a) connectable to the udder of the animal,

(b241) the basin (6a) is provided with spraying means (6b) for spraying said liquid against the animal's udder and teats.

According to the description of document D4 (see particularly column 4, lines 1 and 2), the udder - after washing - is dried by means of a drier or naturally.

6. *Novelty (subsidiary request)*

The subject-matter of Claim 1 is novel (Article 54 EPC) with respect to the cited prior art. Novelty was not disputed.

7. *Inventive step (subsidiary request)*

7.1 The subject-matter of Claim 1 is distinguished from the prior art known from document D2 (Figure 2 or Figure 4) at least by the following features or groups of features:

(a) A31;
(b) B23;
(c) B24 and B241;
(d) B3, B4, B41, B42.

Feature A31 (item (a)) defines - in conjunction with features A2, A21 and A22 - the geometry of the milking parlour. Feature B23 (item (b)) defines - in conjunction with feature B13 - the position of the cleaning/drying unit support with respect to the milking cluster support as well as the position of these supports within the milking parlour. The features of the group (c) define the structure of the cleaning/drying unit, while the features of the group (d) define the structure of the supports.

Starting from document D4, the problem to be solved is to provide a device for milking animals, in which the cleaning unit and the milking cluster can be brought under the animal's udder in a more efficient way. It has to be noted that feature B23 - and in particular the fact that the

cleaning/drying unit and the milking unit (ie the milking cluster) are located on different sides with respect to the milking cluster - allows the milking unit to be brought into its operative position while the cleaning/drying unit is brought into its non-operative position without risking that these units interfere with each other. This contributes substantially to improve the efficiency of the milking device.

Having regard to the following comments - in particular to the comments in section 7.1.2, items (ii) and (iii) - it would not be obvious for a person skilled in the art to arrive at a milking device in which the milking unit and the the cleaning/drying unit are located on the opposite sides of the milking parlour as defined by feature B23 read in conjunction with feature B13.

7.1.1 In these respects, the appellants essentially argued as follows:

(i) Feature A31 defines - in conjunction with feature A1 - only the way in which the animal enters and leaves the milking parlour. These features, which do not contribute to the cleaning of the udder of the animal, could be arrived at by the skilled person without exercising any inventive skill. Feature B23 only defines the position of the cleaning unit relative to the milking cluster. Starting from the milking plant according to document D2, it would be only a matter of design to arrange the cleaning unit on the other side of the

milking parlour.

(ii) The features of the group (d) are known from document D4, while the structure of a support as defined by the features of the group (c) is known from document D10 or D3 or D9. It would be obvious for the skilled person to apply these features to the milking plant according to document D2.

(iii) Therefore, it would be obvious for a skilled person to arrive at the subject-matter of Claim 1.

7.1.2 The Board cannot accept the arguments of the appellants for the following reasons:

As far as the distinguishing feature B23 is concerned the following has to be considered:

(i) If the skilled person starts from the embodiment described in document D2 by referring to Figures 2 and 5 to 9, it would be impossible for him to arrange the cleaning/drying unit on the side of the parlour opposite to the side on which the milking unit is arranged because of the presence of entry and exit doors on that side.

(ii) None of the cited documents suggests either the idea of arranging the milking unit and the cleaning unit at opposite sides of the milking parlour or indicates the advantages which can be obtained by this feature.

Moreover, it has to be noted that document D2 suggests to either arrange the cleaning unit either "in each stall", ie inside the milking parlour, or attach it to the milking robot common to all milking parlours or to arrange it on the support unit. Moreover, it could be possible to arrange it on the same side as the milking unit. This means that the skilled person is not obliged to arrange the cleaning unit as defined by feature B23 but has many other possibilities (no one-way street situation).

(iii) Feature B23 has to be read in conjunction with features A2, A21 and A22 in so far as it refers to the "area of the milking parlour where the animal stands during the milking process" as defined in feature A22. This means that the two lateral guide means are parts of the milking parlour (feature A2) which not only bound the central area of the milking parlour (ie where the animal stands during the milking process) but also define two lateral spaces where the milking unit and the cleaning unit, respectively, are arranged and, thus, that these lateral areas are parts of the milking parlour (see section 3.1.2 above). Therefore, even if the skilled person - starting from the embodiment according to Figure 4 - were to arrange the cleaning unit opposite to the milking unit, these units would be arranged outside the milking parlour.

As far as the distinguishing feature A31 is

concerned, the following has to be considered:

(iv) There is no document suggesting the arrangement of a manger on a door of a milking parlour.

(v) It can be derived from the Figure 2 of document D2 that the exit door (4'') is pivotally connected to a link which is pivotally connected to the front side of the milking parlour. If the skilled person were to start from this embodiment, it would be difficult for him to arrange the manger on this lateral exit door, since the manger could interfere with the link during the movement of the door.

(vi) The description of the embodiment according to Figure 4 does not refer to any exit door but to "retaining means 4, preferably in the form of a necklock" (page 9, lines 11 to 14), the manger being arranged on the front side of the milking parlour, the rear side being open. Thus, it has to be understood that this embodiment is not provided with a door. In any case, a door could only be arranged on the rear side of the milking parlour. Thus, if the skilled person were to start from this embodiment, it would be impossible for him to arrange the manger on the rear door.

7.1.3 Having regard to the comments above, it would not be obvious for the skilled person to arrive at the claimed subject-matter, starting from the prior art

disclosed in document D2.

7.2 The subject-matter of Claim 1 is distinguished from the prior art known from document D4 at least by the following features or groups of features:

(a) A1 and A31;
(b) B23;
(e) B13.

7.2.1 With respect to the distinguishing features according to item (a) the appellants argued as in section 7.1.1(i) above, while with respect to features B13 and B23 it was substantially argued as follows:

- The aspect of the technical problem to be solved by the contribution of these features essentially consists in avoiding the need for a pit in which the milking unit and the cleaning unit are located. Document D2 clearly suggests how to arrange a milking unit on a side of the milking parlour. Therefore, it would be obvious for the skilled person to arrange not only the milking unit but also the cleaning unit on a respective side of the milking parlour and thus arrive in an obvious way at the claimed subject-matter.

7.2.2 The Board cannot accept the arguments concerning features B13 and B23 for the same reasons as given in section 7.1.2 above, items (ii) and (iii).

With respect to arguments concerning features A1 and A31, it has to be noted that document D4 has to

be understood as concerning a system for managing cows in a stanchion stool in which the cow may stay for a longer time, ie not only during the milking process, while the claimed milking device has to be construed as a device for milking cows having a milking parlour which the cow enters in order to be milked and leaves when the milking process has terminated. Therefore, there is no need in a system of the type described in document D4 to arrange a separate exit door. Moreover, if an exit door were to be arranged, it would not be expedient in such a system to arrange the manger on the exit door of the stanchion stool instead of the manger or feeder 8 (see Figure 1, column 2, lines 25 and 26) arranged on the floor, because this would make it disadvantageous to supply the fodder.

7.3 The further arguments put forward by the appellants during the written phase of the appeal proceedings were no longer pursued during the oral proceedings. In any case the board considers these arguments as being less relevant. Moreover, the board considers that the further documents referred by the appellants during the written phase of the appeal proceedings as well during the previous opposition proceedings are not prejudicial for the inventiveness of the claimed subject-matter.

7.4 Having regard to the comments above it would not be obvious for a skilled person to arrive at the subject-matter of Claim 1 of the subsidiary request on the basis of the documents referred to by the parties.

8. Therefore, the patent can be maintained on the

basis of the subsidiary 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 to 6 of the first auxiliary request as filed during the oral proceedings,

   - description pages 1, 2, 2a, 2b as filed during the oral proceedings,
     pages 2c, 3, 4 and 5 as maintained by the Opposition Division,

   - Figures 1 to 7 as granted.

The Registrar: The Chairman:

G. Magouliotis C. Andries