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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UZI BIRK and BJORN JOHANSSON

Appeal 2011-003204
Application 11/570,578
Technology Center 3600

Before DONALD E. ADAMS, ERICA A. FRANKLIN, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 1 and 4-20 (App. Br. 6; Ans. 2). We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

The claims are directed to an apparatus for milking of animals which are permitted to go loose. Claims 1 and 6 are representative and are reproduced in the Claims Appendix of Appellants' Brief.

Claim 6 stands rejected under 35 U.S.C. § 112, second paragraph.

Claims 1, 4-7, 9-12, 14-16, and 18-20 stand rejected under under 35 U.S.C. § 102(b) as being anticipated by Oosterling.¹

Claims 1, 7, and 8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Graupner² and Dyke.³

We reverse.

Definiteness:

ISSUE

Does the evidence of record support Examiner's conclusion that the phrase "openings being movable" as set forth in Appellants' claim 6 is indefinite?

FACTUAL FINDINGS (FF)

FF 1. Examiner finds that, notwithstanding the requirements of Appellants' claim 6, Appellants' figure 1 illustrates that the outlet, *not* the openings of each of the lines, is movable (Ans. 3).

FF 2. Appellants' Specification discloses that "[e]ach one of the separate lines may have an opening" and "the openings of the lines may be movable", which "is an alternative solution to having a movable outlet from the local tank" (Spec. 4:15-26).

¹ Pieter Adriaan Oosterling, WO 00/74472 A1, published December 14, 2000.

² Graupner et al., US 6,073,580, issued June 13, 2000.

³ Dyke et al., GB 1,175,588, published December 23, 1969.

ANALYSIS

The apparatus of Appellants' claim 1 comprises at least two separate lines, wherein each one of the separate lines has an opening (Claim 1). Appellants' claim 6 depends from and further limits the apparatus of claim 1 to require that the openings are movable (Claim 6; *see also* FF 2). Accordingly, we are not persuaded by Examiner's conclusion that "it is unclear if the appellant is claiming the openings are movable or the outlet is moveable" (Ans. 7; *see also* Ans. 3; FF 1; *Cf.* App. Br. 18; Reply Br. 5-6; FF 2). *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1385 (Fed. Cir. 1986) (The requirement of 35 U.S.C. § 112, second paragraph, is satisfied if "the claims, read in light of the specification, reasonably apprise those skilled in the art and are as precise as the subject matter permits.").

CONCLUSION OF LAW

The evidence of record fails to support Examiner's conclusion that the phrase "openings being movable" as set forth in Appellants' claim 6 is indefinite. The rejection of claim 6 under 35 U.S.C. § 112, second paragraph, is reversed.

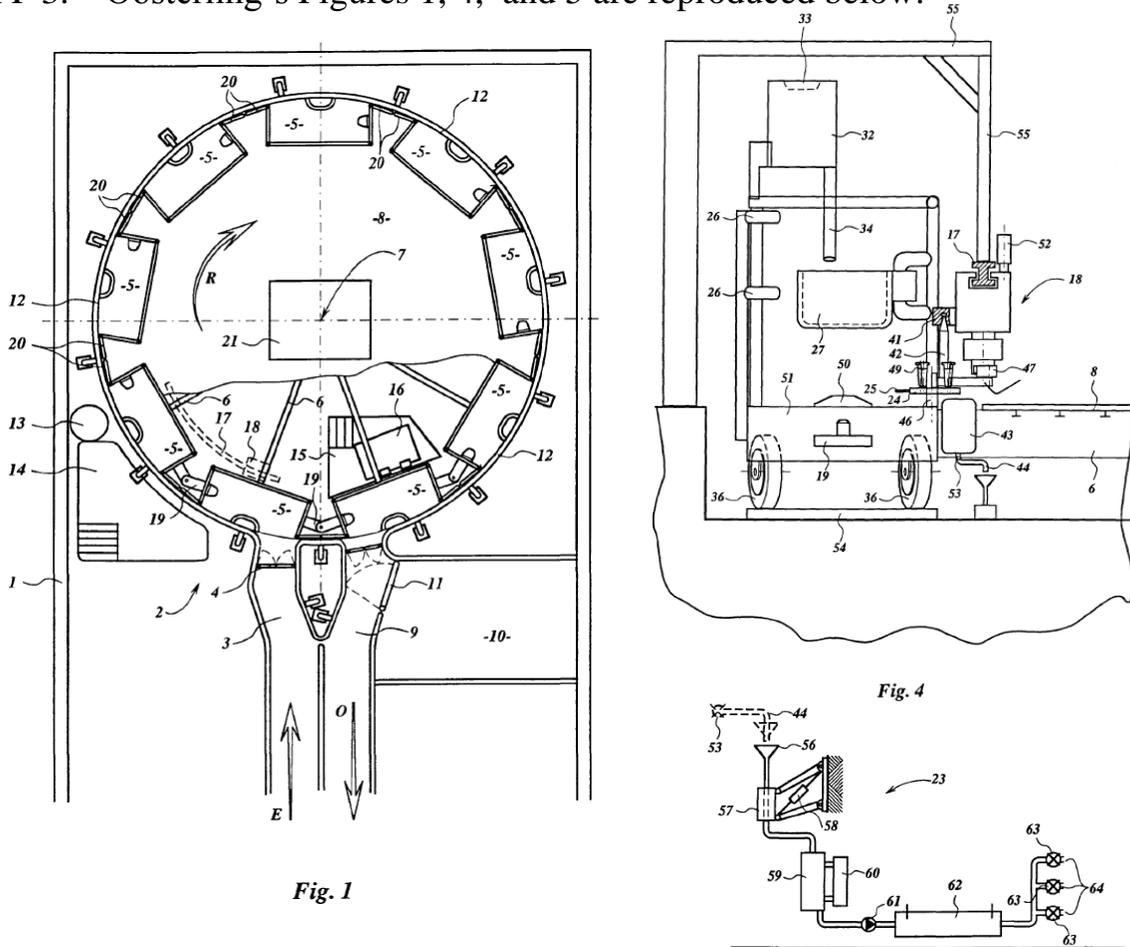
Anticipation:

ISSUE

Does the preponderance of evidence on this record support Examiner's finding that Oosterling teaches Appellants' claimed invention?

FACTUAL FINDINGS (FF)

FF 3. Oosterling's Figures 1, 4, and 5 are reproduced below:



“Figure 1 shows a diagrammatic plan view of a first embodiment of ... [Oosterling's] milking device” (Oosterling 3: 19-20). “Figure 4 shows a back view of the milking stall” (*id.* at l. 25). “Figure 5 shows a detail of the milk collection from Figure[] 1” (*id.* at ll. 27-28).

FF 4. Oosterling teaches “an apparatus comprising a plurality of stalls (5) annularly arranged in a rotatable arrangement ...; wherein each stall comprises teatcups (49), and a local milk tank (43) connected to the teatcups via a respective milk conduit” (Ans. 4).

FF 5. Oosterling's apparatus comprises "at least two separate lines (at 63) arranged to receive the milk from the local milk tanks wherein each local milk tank is arrangeable for transfers of the milk to one of the lines in dependence of the quality of milk" (*id.*).

FF 6. Oosterling's apparatus comprises a testing device "arranged to test the milk on its way from the teatcups to the local milk tank ... or wherein the testing device (60) is arranged to test the milk in the local milk tank" (*id.*; *see also* Oosterling 11: 35-38 ("sensors present in the milking cups ... are used to determine to which tank connection ... the milk will be pumped"); *see also id.* at 29-32 ("milk is stored in the collection vessel 59 for a short time," wherein "the quality of the milk is determined by a measuring device 60"))).

FF 7. Examiner finds that

[E]ach local milk tank [of Oosterling's apparatus] ha[s] an outlet provided with an outlet valve (53); wherein each separate line has an opening (at 64); [and] wherein said at least one outlet from each [of] said [at] least one local milk tank is arranged [through intervening structure and pipes] to be positioned at one of the [line] openings [(at 64)] (via 23), when milk is to be transferred from the local milk tank.

(Ans. 4 and 8; *see also* FF 3, Fig. 5.)

ANALYSIS

The apparatus of Appellants' claim 1 comprises, *inter alia*, at least one outlet from each local milk tank arranged to be positioned at one of the line openings, when milk is transferred from the local milk tank (Claim 1). Examiner interprets this requirement of Appellants' claim 1 to mean that the outlets of each local milk tank *comprise an arrangement* that allows the outlet to line up with the line opening (*see generally* Ans. 8; FF 7). Based

on this interpretation of Appellants' claim, Examiner finds that "[t]he outlet of Oosterling is positioned at the opening by the arrangement of *the intervening structure and pipes* seen in [Oosterling's] Figure 5" (*id.* (emphasis added); *Cf.* App. Br. 21 ("[t]here are a number of components, namely those referenced by numerals 56-62, which are located between the outlet 44 and the tank connections 64 of Oosterling"); Reply Br. 7-8).

Appellants contend that "the limitation in claims 1 and 14, that the outlet from the local milk tank be arranged to be positioned at one of the line openings, is not ... met by the teachings of Oosterling" (App. Br. 21). We agree. We are not persuaded by Examiner's assertion that this requirement of Appellants' claimed invention is anticipated by Oosterling's incorporation of intervening structure and pipes (*Cf.* Ans. 8).

CONCLUSION OF LAW

The preponderance of evidence on this record fails to support Examiner's finding that Oosterling teaches Appellants' claimed invention. The rejection of claims 1, 4-7, 9-12, 14-16, and 18-20 under 35 U.S.C. § 102(b) as being anticipated by Oosterling is reversed.

Obviousness:

ISSUE

Does the preponderance of evidence on this record support a conclusion of obviousness?

FACTUAL FINDINGS (FF)

FF 8. Graupner's Figures 1 and 8 are reproduced below:

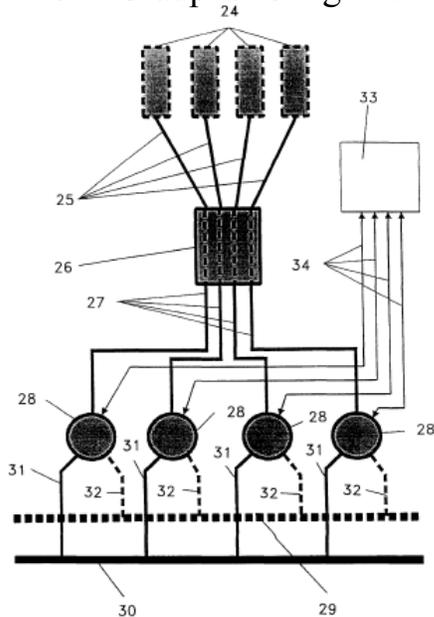


FIG. 8

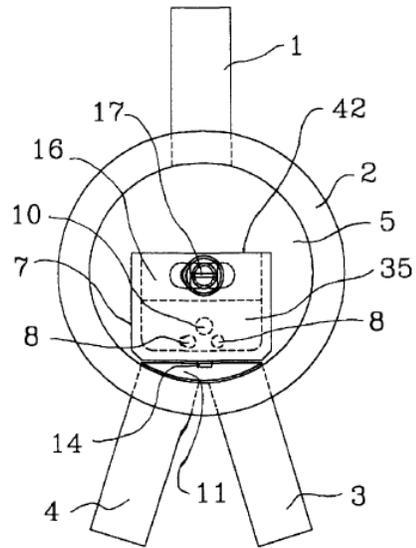


FIG. 1

“**FIG. 8** shows (schematically) a milking means with four teat cups and with four directional valve means according to the present invention, said directional valve means being associated with these teat cups and receiving milk from the respective teat cup” (Graupner, col. 6, ll. 5-9). “**FIG. 1** shows a directional valve means with a measurement chamber according to ... [Graupner's] invention” (*id.* at col. 5, ll. 54-55).

FF 9. Graupner's apparatus comprises teat cups **24** connected to a directional valve means **28**, which “comprises a measurement chamber with electrodes for measuring the conductivity of the milk as well as a temperature sensor for determining the temperature of the milk” (Graupner, col. 6, ll. 16-36; *see generally* Ans. 5-6).

FF 10. Appellants disclose that “milk from the cow that is being milked is collected in the local milk tank in the milking position” (Spec. 1: 26-28; *see also id.* at 9: 6-13 (“During the milking the milk is transferred to the local

milk tank 4. After milking has ... finished ... the milk is transferred from the local milk tank”)).

FF 11. Examiner finds that Graupner suggests “a local milk tank (inside housing 5 of 28)” (Ans. 5).

FF 12. Graupner’s directional valve means **28** comprises a housing **5**, which “has arranged therein a measurement chamber **7** in the form of a vessel” (Graupner, col. 6, l. 64 - col. 7, l. 15).

FF 13. Graupner suggests that

In the operative condition ... a constantly exchanged part of the milk flows into the measurement chamber..., the amount of milk exchanged in the measurement chamber being so small that the flow of milk calms down in said measurement chamber and that, in particular, a substantially bubble-free milk volume is obtained which is adapted to be used for reproducible conductivity measurements via the electrodes

(*id.* at col. 7, ll. 55-67).

FF 14. Examiner relies on Dyke to make up for Graupner’s failure to suggest “a plurality of stalls annularly arranged in a rotatable arrangement” (Ans. 6).

ANALYSIS

Based on the combination of Graupner and Dyke, Examiner concludes that, at the time Appellants’ invention was made, it would have been prima facie obvious to modify Graupner’s apparatus to comprise annularly arranged rotatable stalls as suggested by Dyke (Ans. 6).

Appellants' claim 1 requires a testing device arranged to test the milk *on its way* from the teatcups *to the local milk tank* (Claim 1).⁴ Therefore, even if Examiner is correct in finding that Graupner's measurement vessel could be considered a local milk tank, Graupner's milk is tested in the measurement vessel *not* on its way to the measurement vessel, which is inconsistent with the requirements of Appellants' claim 1 (*see* FF 13; *Cf. see also* Ans. 8 (Appellants have "not claimed that the milk tank is of a certain size, able to hold a certain volume of milk, or holds the milk for a specific amount of time"))).

Examiner failed to establish that Dyke makes up for the foregoing deficiencies in Graupner.

CONCLUSION OF LAW

The preponderance of evidence on this record fails to support a conclusion of obviousness. The rejection of claims 1, 7, and 8 under 35 U.S.C. § 103(a) as unpatentable over the combination of Graupner and Dyke is reversed.

REVERSED

cdc

⁴ Appellants' claims 7 and 8 depend directly or indirectly from Appellants' claim 1.