

Examiners' Report Paper C 2018

Purpose and extent of the examiners' report

The purpose of the present examiners' report is to enable candidates to prepare for future examinations (cf. Article 6(6) of the Regulation on the European qualifying examination for professional representatives).

1. Introduction

This year's paper focussed on novelty, inventive step and added subject-matter, with some considerations to the validity of priority having effects on novelty.

The client's letter drew attention to the following relevant aspects:

- 1) the opposition should be filed in the name of the company,
- 2) priority is claimed from a German patent application which is identical to the patent application of Annex 1 as originally filed,
- 3) claim 5 was added during the examination procedure,
- 4) Annex 6 was filed by the same applicant as Annex 1, and
- 5) the status of Annex 6.

Annex 1, the patent to be opposed, relates to a device for soaking and cleaning the teats of a dairy animal, to a method for milking a dairy animal and to a fluid, and it contains three independent claims.

Independent claim 1 is directed to a device for soaking and cleaning the teats of a dairy animal outside a milking robot. The device comprises soaking means for applying a soaking fluid, and at least one rotating brush which is arranged to rotate and simultaneously contact the teats during application of said soaking fluid. This subject-matter is then further defined in dependent claims 2 and 3.

Independent claim 4 relates to a method for milking a dairy animal, said method comprising the following steps in the following order: soaking the teats of the animal outside a milking robot, wherein at least two litres of a soaking fluid are used per animal, marking the animal outside the milking robot, letting the animal enter the milking robot, and

milking the animal. Its subject-matter is further defined in dependent claim 5, which was added during examination and comprises two alternatives.

Independent claim 6 concerns a fluid comprising water, soap, ethanol and a colourant, the colourant concentration being 0.4% by volume.

2. General comments

Marks were awarded for establishing the effective date of each claim and for determining which documents are valid prior art when arguing against novelty and inventive step of specific claims.

All the information necessary to oppose the patent is to be found in the Annexes (including Annex 1 and the client's letter). Candidates shall not use any special knowledge they may have of the technical field of the invention. (R. 22(3) IPREE).

The Annexes provided relevant information in addition to claim features, such as definitions, technical effects, objective technical problems, motivations and hints. That information allowed to develop convincing arguments. For example, in this year's paper the information that marking the animal means that information is associated to it by appropriate means which reveals that soaking took place was given in Annex 1, [0018]. Citation of this reference was a convincing argument that Annexes 3 or 5 disclose said step.

The specific reference in the relevant document (e.g. paragraph, line, claim, figure, as appropriate) has to be cited. If prior art uses different terminology to the feature in a claim, it should be explained why it has the same meaning, on the basis of the information provided in the Annexes.

For each inventive step attack, the problem-solution approach requires identification of the closest prior art. A reasoning for the choice of the closest prior art should include the identification of the purpose of the subject-matter to be attacked and of the selected document over and above the disclosure of the other documents. General unsubstantiated statements such as "Annex X is the most promising springboard to the invention because

it has the most features in common” or “Annex X relates to the same general purpose and therefore is the closest prior art” are not typically considered as a convincing reasoning for selecting the closest prior art.

In this year’s paper Annexes 2, 3 and 4 disclosed devices for cleaning and soaking the teats of a dairy animal. An example of a reasoned motivation concerning the choice of the closest prior art could be that, in the case of claim 2, Annex 4 can be considered as the closest prior art since it is the only document disclosing an autonomous soaking and cleaning device which can reach animals distributed on a field, which addresses the same purpose as said claim.

An inventive step argument should clearly identify the distinguishing feature(s) of the claim when compared to the closest prior art. Any associated technical effect(s) to that (those) feature(s), as set out in the patent to be opposed, has to be identified and the appropriate basis must be cited. This applies both to independent and dependent claims. The objective technical problem(s) to be solved has (have) to be established based on the technical effect(s).

A comprehensive answer includes specific reasons explaining why the skilled person would combine documents, for example by pointing to a specific part of the other document that is related to the same purpose or the same objective technical problem. In this year’s paper, the argumentation about the inventive step of claim 2 involves consultation of Annex 2. A substantiated argument would be to cite that Annex 2 also relates to applying fluid onto teats by means of nozzles (Annex 2, [0008]) as in Annex 4.

The reasoning for lack of inventive step should also include a substantiated argumentation as to “how and why” one would arrive at the subject-matter of a claim when combining the teaching of prior art documents. General statements (e.g. “The skilled person would combine the teaching of the documents without any technical hindrance”) are generally not considered as a convincing reasoning for combining features of specific documents. For example, a possible reasoning in this year’s paper concerning the attack on claim 2 is that Annex 4 is disclosed as being prepared for receiving further components on board (according to [0016]) such as the brush disclosed in Annex 2.

Alternatively to the attacks set out in the “possible solution”, marks were awarded for other

plausible, well-founded attacks. For instance, attacks against claim 2 on grounds of lack of an inventive step departing from Annex 3 attracted marks depending on the argumentation provided, in particular motivating why certain modifications would be made.

For the opposition to be admissible it is required that the patent to be opposed as well as the opponent are identified. Payment of the opposition fee should be indicated. It should be borne in mind that the opponent is generally the company and not the person signing the client's letter. This was the case in this year's paper according to the opponent's letter. Use of the pre-printed opposition form can be helpful when fulfilling such formal issues.

A reply letter to the client was not expected.

3. Notice of opposition

Effective dates of the claims and prior art

The information provided in the opponent's letter and the annexes was to be used to establish the effective dates of the claims and the relevance of each piece of prior art with regard to those.

Claims 1, 2, 3 and 4 as granted were contained in the priority document and in the application as filed, and no particular issue arises concerning the validity of their priority.

Claim 5 as granted was introduced during the examination procedure and has two alternatives, which had to be assessed separately.

The first alternative (applying a conditioning composition to the teats) finds a basis in [0021], [0022] and [0023] of Annex 1, which were also contained in the priority document according to the information provided in the opponent's letter.

The second alternative (applying a conditioning composition to both the teats and the udder) extends beyond the content of the application as filed.

The right to claiming priority in the case of claim 6 is affected by the fact that Annex 6 proves that the German priority document indicated on Annex 1 was not the first filed application in the sense of Article 87 EPC.

Marks were thus awarded for arguing that claim 6 is merely entitled to the filing date as an effective date.

Annex 6 could not jeopardise the priority right of claim 1 since: 1) there is no disclosure in said document about the suitability of the device for soaking and cleaning the teats of a dairy animal outside the milking robot, and 2) it is not disclosed that the rotating hair rollers contact the teat, let alone during application of the soaking fluid, since [0005] merely states a function without disclosing how it would be performed and figure 1 is schematic.

Marks were also awarded for an analysis of the relevance of Annex 6. This document could not be considered as prior art under Article 54(3) EPC since the filing fee was never paid and no further means of redress were available to remedy that according to the opponent's letter (Article 153(5) EPC and Rule 165 EPC). However, given the effective date of claim 6, Annex 6 is prior art under Article 54(2) EPC for that claim.

Claim 1

A novelty attack was expected based on the disclosure of Annex 2. An argumentation about the implications of the wording "for soaking and cleaning the teats of a dairy animal outside a milking robot" and about the suitability of Annex 2 for such purpose was expected.

If claim 1 was attacked by making use of a combination of documents along the lines of a plausible inventive step attack against one of the dependent claims, marks were awarded under the corresponding dependent claim.

Claim 2

Annex 4 is considered to be the closest prior art since it discloses an autonomous soaking and cleaning device which can reach animals distributed on a field, requiring the least amount of structural and/or functional modifications. The best answers provided a complete argumentation about why the skilled person would modify the device of Annex 4 with the hair rollers of Annex 2.

The device of Annex 2 lacks the necessary autonomy for being displaced by reason of its

liquid supply and requires major structural modifications to arrive at the subject-matter of claim 2.

The device of Annex 3 uses a single motor to optimize electricity consumption as an essential feature. Thus the skilled person is discouraged from modifying this feature. The presence of rails as disclosed in Annex 3 in principle teaches away from providing individually steerable wheels.

Claim 3

Annex 2 is considered as the most promising starting point since it is the only document explicitly disclosing a device able to dispense a specific amount of soaking fluid per animal corresponding to the claimed range and it discloses all features of claim 1. The best answers provided a complete argumentation about why the skilled person would modify the device of Annex 2 with the infrared sensor of Annex 4.

The device of Annex 3 has fewer features in common with the subject-matter of claim 3. Further, [0006] teaches away from mounting optical equipment or heat sensors on the device due to dirt, thus none of the available checking means are compatible with it. Annex 3 [0010] teaches that *“operation of the cameras is only reliable within the milking robot due to the precise position of the cow”*. The cameras of Annex 3 are thus not reliable to verify “outside the milking robot” that the soaking fluid has actually been applied.

Starting from Annex 4 is less plausible since the reservoir is only a one-litre one, which implies that the amount of soaking fluid applied per treatment would not be two litres as claimed in claim 3.

Claim 4

A novelty attack was possible based on the disclosure of Annex 5. A good answer should provide an argumentation as to why Annex 5 can be considered as disclosing each step of the claimed method in the claimed order.

If claim 4 was attacked by making use of a combination of documents along the lines of a plausible inventive step attack against dependent claim 5, marks were awarded under said claim.

Claim 5

First alternative

Annex 3 is the closest prior art, since it explicitly discloses cleaning teats outside the milking robot as an embodiment ([0007]), and is functionally closer to claim 5 than the other prior art documents, thus requiring fewer modifications.

Although Annex 2 discloses a device suitable for cleaning the teats outside, the document teaches away from using warm water since cold water has an advantageous effect ([0008]), and it thus also teaches away from heated nozzles.

Annex 5 is not a good starting point for an inventive step attack against claim 5 since the only available fluid contacting the teats is the river.

Annex 4 does not disclose a milking method because further cleaning is necessary due to the use of Kilemol. Moreover there are no heated nozzles or any reason to use them in Annex 4, and the volume is much less than the claimed 2 litres.

Given that there are two distinguishing features over Annex 3 with separate and unrelated technical effects, an inventive step attack based on partial problems was possible (see the Guidelines, G-VII, 5.2 or 6) with the combination of Annex 3, Annex 2 and Annex 4.

Second alternative

An objection related to subject-matter extending beyond the content of the application as originally filed was expected. A complete reasoning required a consideration of the information available in the application as filed and why this was not considered as a sufficient basis for the concerned alternative.

Claim 6

The effective date of claim 6 rendered possible a novelty attack against said claim based on Annex 6, which is prior art in the sense of Article 54(2) EPC.

Possible solution - Paper C 2018

Notice of opposition (in combination with Form 2300)

Effective dates of the claims and prior art (15 marks)

Effective dates of the claims

Independent claim 1 and dependent claims 2, 3 and 4 were part of the priority document DE102013114110 and of the application as filed.

They are thus entitled to the priority date, i.e. 16.12.2013.

Dependent claim 5 was added during examination, and it comprises two alternatives.

Claim 5, alternative "*teats*", finds a basis in:

[0021], concerning the aspect of applying a conditioning composition after the step of soaking the teats,

[0022], concerning the concentration of lower alcohol between 30 and 45% by volume, and [0023], concerning the use of heated nozzles for applying the soaking fluid.

Said paragraphs were also present in the priority document.

Thus claim 5, alternative "*teats*", is also entitled to the priority date (16.12.2013).

Claim 5, alternative "*both the teats and the udder*", extends beyond the content of the originally filed application (see below).

Annex 6 shows the same patent applicant as the patent proprietor of Annex 1.

According to Art.87(1) EPC an applicant has "*a right to priority during a period of 12 months from the date of filing of the first application*" concerning the same invention.

The filing date of Annex 6 is 15.05.2013, which is prior to the priority date claimed in Annex 1, namely 16.12.2013.

Annex 6 discloses the invention claimed in claim 6 (see below).

Therefore, the priority document DE102013114110, filed on 16.12.2013, was not the first application filed by the applicant for the subject-matter of claim 6.

As a consequence, claim 6 is not entitled to the priority date according to Art.87(1) EPC, but just to the filing date of Annex 1, i.e. 15.12.2014.

Prior art

Annex 2, Annex 3, Annex 4 and Annex 5 were all published before the priority date of Annex 1 (16.12.2013). Thus, they are prior art according to Article 54(2) EPC for all claims.

Annex 6 was published on 20.11.2014, thus between the priority date and the filing date of Annex 1, and it was filed on an earlier date than the priority of Annex 1, namely on 15.05.2013. Annex 6 is a PCT application designating all EPO Member States, but for which the payment of the filing fee has not been made. Therefore it did not enter the European phase according to Article 153(5) EPC and Rule 165 EPC, and it does not form part of the prior art under Article 54(3) EPC for claims enjoying the right to priority. However, it constitutes prior art under Article 54(2) EPC for claims which cannot benefit from the right to priority but which just have the filing date as an effective date (i.e. claim 6).

Claim 1 (13 marks)

Annex 2 discloses a device for applying a fluid onto a teat (Annex 2, [0008] or [0007]) of a cow, which is a dairy animal (Annex 1, [0001]). Since said fluid application corresponds with the definition of “*soaking*” provided in Annex 1 (see [0005]), it must be concluded that Annex 2 discloses a device for soaking teats. Annex 2 also discloses that the device is used for cleaning (see title, [0001] or [0003]).

The capability of “*using a portable cleaner outside the milking robot*” is explicitly disclosed in [0010], even if it is “*less preferred*”.

According to Annex 1, the soaking means can be fluid applicators (see [0007]). From Annex 3 it is known that nozzles are used as fluid applicators (see [0005]).

Since Annex 2 discloses nozzles in the cleaning device (see Annex 2, [0004], [0006], or

[0008]) it must be concluded that Annex 2 discloses soaking means which apply a soaking fluid (see [0008]).

Annex 2 discloses the presence of at least one rotating hair roller (see Annex 2, [0004], [0006] or [0007]) and hair rollers are a kind of brush (see Annex 5, page 1, line 15), thus Annex 2 also discloses the feature “*at least one rotating brush*”. Said hair rollers are arranged to simultaneously rotate and contact the teats during application of said soaking fluid (see [0007]).

Therefore the requirements of Article 54(2) EPC are not fulfilled concerning claim 1.

Claim 2 (20 marks)

Annex 4 is the closest prior art, because it is the only document disclosing an autonomous soaking and cleaning device which can reach animals distributed on the fields.

Annex 4 discloses a device for soaking teats, since a fluid is applied on them (see [0004] or [0007]), which fulfils the definition given in Annex 1 [0005]. The device of Annex 4 is also a device for cleaning teats since the fluid is intended “*to clean the skin of the teat from bacteria*” (see [0007] or [0008]) and moreover it incorporates an ultrasonic cleaner “*to clean the surface of the teat*” (see [0011]). Annex 4 [0004] discloses that the device can perform both functions outside a milking robot.

Annex 4 discloses a nozzle (see [0007], [0009] or claim 1), which is a fluid applicator according to Annex 3 [0005]. Fluid applicators are a form of soaking means according to Annex 1 [0007]. Thus Annex 4 discloses soaking means for applying a soaking fluid, i.e. the solution which soaks the teat.

Annex 4 discloses a reservoir (see [0014]) for storing the soaking fluid.

Annex 4 discloses wheels (see [0004] or figure), and [0005] of said document discloses a navigation antenna and antennas of cows. These are electronic location indicating means in the sense of Annex 1 [0015] or [0016], since they supply information about the positions of both the cows and the soaking and cleaning device.

Annex 4 [0004] or [0005] also discloses the arrangement of an individual electric motor for each wheel and of a control unit which, in response to the information about the positions, actuates said individual electrical motors (see Annex 4 [0005]).

The subject-matter of claim 2 differs from Annex 4 in that at least one rotating brush is arranged to simultaneously rotate and contact the teats during application of the soaking fluid. The technical effect of the difference is to spread the fluid in a uniform manner over the skin (see Annex 1 [0009]). The objective technical problem is how to ensure uniform wetting of the teat.

By mentioning the risks associated with obstructions in the nozzles (see Annex 4 [0009]), Annex 4 motivates the skilled person to look for a solution to the objective technical problem.

The skilled person would consult Annex 2 since it also relates to applying fluid onto teats by means of nozzles (see Annex 2 [0008]). Annex 2 deals with the same problem (see [0007], last sentence), and proposes to use polyethylene hair rollers (see [0007]) for ensuring uniform wetting in order to enable the liquid to perform its function on the whole teat. Since, according to Annex 5, p.1, l.15, hair rollers are brushes, Annex 2 discloses the same solution as claimed in the distinguishing features of claim 2 for solving the same technical problem.

The skilled person would have no hindrance for mounting the brush of Annex 2 onto the device of Annex 4 in order to solve the posed objective technical problem. According to Annex 4 [0016], the batteries of the mobile treatment device are of a large capacity and the on-board computer is prepared to take control over further elements on the device.

Therefore, the subject-matter of claim 2 does not involve an inventive step over Annex 4 combined with Annex 2 and it does not comply with the provisions of Article 56 EPC.

Claim 3 (15 marks)

Annex 2 is the closest prior art since it is the only prior art document disclosing a device able to dispense a specific amount of soaking fluid per animal per application corresponding to the claimed range (Annex 2 [0009]) and it discloses all features of claim 1.

The subject-matter of claim 3 differs from Annex 2 in the presence of checking means for

verifying outside the milking robot that the soaking fluid has been actually applied onto the teats. The technical effect of the difference is to detect presence of the soaking fluid on the teat (Annex 1 [0011]). The associated objective technical problem can thus be defined as how to verify application of a soaking liquid.

Annex 2 [0011] discloses that the correct application of soaking fluid onto the teat must be verified, and it remarks on the difficulty inherent to visual verification. This would motivate the skilled person to modify the teaching of Annex 2.

The skilled person would be motivated to consult Annex 4 since it also relates to applying a fluid onto teats by means of nozzles. Annex 4 also deals with the problem of checking the correct application of a liquid (see [0012]), and it discloses an infrared sensor as a solution (see [0012] again).

The infrared sensor of Annex 4 would work in the device of Annex 2 since Annex 2 employs cold water which makes temperature fall up to 7°C (see Annex 2 [0008]). This is within the range which can be detected by the infrared sensor of Annex 4 ("*6 degrees or more*"; see Annex 4 [0012], [0015]).

The device of Annex 2 is suitable to be used outside the milking robot (see Annex 2 [0010]) and the infrared sensor of Annex 4 is disclosed for being used on the fields (see Annex 4 [0004], [0012]). Therefore, the device resulting from the combination of Annex 2 and Annex 4 would be suitable for verifying outside the milking robot that the soaking fluid has been actually applied.

Thus, the subject-matter of claim 3 does not involve an inventive step over Annex 2 combined with Annex 4 and it does not comply with the provisions of Article 56 EPC.

Claim 4 (10 marks)

Annex 5 discloses a method for milking a dairy animal (see, for instance, page 1, lines 9, 11 or 13, or also the title), said method comprising the steps of:

- Soaking the teats of the animal outside a milking robot: Before entering the milking robot,

the animals must cross the river (page 2, line 17, or figure 2). During the crossing, teats are soaked, since water reaches almost half the belly of the animal (page 2, line 18 or 20). Thus the definition of “soaking” provided in Annex 1 itself (see [0005]) is fulfilled. A further confirmation that teats are soaked is given in page 2, line 20 of Annex 5, where teats are disclosed as being wet at the milking robot after the cow has crossed the river on its way towards it.

- Wherein at least two litres of a soaking fluid are used per animal: the river clearly applies more than two litres since it is flowing (page 2, line 17) and is deep enough to reach half the belly of the cow (page 2, line 18).

- Marking the animal outside the milking robot: the back of the cow is painted (page 1, lines 18 and 19). This fits the definition of marking as provided in Annex 1 [0018], because an information is associated to the animal after soaking (i.e., after crossing the river; see page 2, line 17).

Since going from the salt block to the milking robot implies crossing the river (see figure 2), animals which are prompted to go to the milking robot unavoidably get their teats soaked (page 2, line 18). Thus, marking an animal (by means of the paint roller 3; see page 1, lines 18 and 19) which has been prompted to go to the milking robot implies “*associating information to it by appropriate means which reveals that soaking took place*”.

- Letting the animal enter the milking robot: See page 1, line 19, figure 1 or figure 2, where it is disclosed that animals enter the milking robot after being marked by the painting roller.

- Milking the animal: The milking robot disclosed in, a.o., page 1, lines 9, 11 or 13, clearly has the purpose of milking.

Thus, Annex 5 discloses the steps of claim 4 in the claimed order.

Therefore the requirements of Article 54(2) EPC are not fulfilled concerning claim 4.

Claim 5 (22 marks)

First alternative

The first alternative of claim 5 claims that the conditioning composition is applied to the teats.

Annex 3 is the closest prior art, since it explicitly discloses as an embodiment cleaning the teats for the purpose of milking outside the milking robot.

Annex 3 discloses a method for milking a dairy animal (see [0005], [0007] or [0010]) comprising the steps of:

- Soaking the teats: [0005] discloses that the nozzles project fluid against the teats, thus complying with the definition of “soaking” as provided in Annex 1 [0005].
- Outside the milking robot: [0007] discloses that it is possible to project the fluid against the teats at a location between the milking robots, and therefore outside of them.
- Marking the animal outside the milking robot: [0011] discloses the provision of an electronic sub-module 10 for recording information about the clean status of the teats on the ear tags of the cows, thus associating information to the animal as explained in Annex 1 [0018]; [0012] discloses that the electronic sub-module used for marking can be actuated as soon as nozzles finish ejecting fluid; [0007] discloses that soaking can take place outside the milking robot. Thus, marking is also carried out outside the milking robot in such case.
- Letting the animal enter the milking robot: when the device of Annex 3 is used outside the milking robot as hinted by [0007], the animal must enter the milking robot afterwards (see [0007] last sentence, and/or the arrows in figure 1).
- Milking the animal: The purpose of a milking robot is to milk a dairy animal (see Annex 3 [0001]).

- Using heated nozzles 7 for applying the soaking fluid (see [0005] or [0008]).

The subject-matter of claim 5, first alternative, differs from Annex 3 in that:

a) At least two litres of a soaking fluid are used per animal.

The technical effect of said first difference is to soften the dirt, as disclosed in Annex 1 [0007]. The objective technical problem solved by the first distinguishing feature can thus be defined as how to render the cleaning of dirt easier.

b) After soaking, a conditioning composition is applied to the teats, said conditioning composition comprising 30-45% by volume of a lower alcohol.

The technical effect of said second difference is cooling the teats, as disclosed in Annex 1 [0021]. The objective technical problem of the second distinguishing feature can be defined as how to guide animals to milking.

The technical effects of the first and second distinguishing features are unrelated. Thus, there is no technical effect achieved by the two distinguishing features taken in combination, but rather a plurality of partial problems which are independently solved. Consequently, the inventive activity related to the two different posed partial problems can be separately assessed (GL, G-VII, 5.2 or 6).

Concerning distinguishing feature a), Annex 3 discloses that a large reservoir with a capacity of around 50 litres (see [0008]) is used for the soaking fluid, but it does not disclose how many litres are used per cow in order to clean the dirt on the teats.

The skilled person, when looking for a solution to the technical problem of rendering easier the cleaning of dirt, would consult Annex 2, since it also belongs to the technical field of teat cleaning (see Annex 2 title or [0001]).

Annex 2 deals with the same problem in [0009], and it discloses that at least 3 litres of water per cow must be used in order to soften the dirt (see [0009], second sentence).

Since the reservoir of Annex 3 can contain around 50 litres of soaking fluid (see [0008]), the skilled person would consider the amount disclosed in Annex 2 as being compatible with the device of Annex 3 and would therefore adopt said amount in order to ensure cleaning of the dirt.

Concerning distinguishing feature b), Annex 3 motivates the skilled person to ensure that the cow walks into the milking robot immediately after cleaning (see [0007], last sentence).

The skilled person, when looking for a solution to the technical problem of guiding animals to milking, would consult Annex 4, since it deals with the problem of guiding animals to a given place of the farm (see Annex 4 [0013] or [0014]).

In order to solve that problem, Annex 4 discloses that an aqueous solution of ethanol 20-40% by volume can be used for said purpose (see [0014]). Since ethanol is a lower alcohol, as disclosed in Annex 5, page 1, lines 21 and 22, Annex 4 discloses an aqueous solution of a lower alcohol at a concentration of 20-40% by volume, the end point (40%) of said disclosed range falling within the claimed range of claim 5 (30-45%).

Annex 4 [0014] discloses that a small reservoir - much smaller than one litre - is needed for containing the aqueous solution. This would clearly motivate the skilled person to mount the separate reservoir of Annex 4 onto the device of Annex 3, because it would not increase its size or weight in a significant way. Furthermore the separate reservoir is disclosed as being independently usable (see Annex 4 [0015]), thus motivating the skilled person to take the separate reservoir from the device of Annex 4 and to integrate it in the device of Annex 3 in order to guide the cow to milking after soaking.

According to the disclosure of Annex 4 [0015], the same training can be used to guide the cow to different places of a farm. The skilled person would thus recognize that the same solution is applicable to animals which must be guided to milking.

The subject-matter of claim 5, first alternative, results therefore in an obvious way from the combination of Annex 3 with Annexes 2 and 4, and it does not satisfy the requirements of Article 56 EPC.

Second alternative

Claim 5 was added during the examination procedure.

The second alternative of claim 5 claims that the conditioning composition is applied “*to both the teats and the udder*”.

Annex 1 [0021], only discloses applying a conditioning composition to the teats “*when the method is used for soaking the teats*”. Annex 1 [0022] and [0023] are the only passages further referring to the use of a soaking composition, and they only refer to the teats, not to “*both the teats and the udder*”. Even if Annex 1 [0008] discloses that teats and udder can be brushed, this disclosure concerns the cleaning aspect, and it does not provide a basis for an embodiment concerning conditioning.

Therefore, no basis can be found in the originally filed application for a method comprising the step of applying a conditioning composition “*to both the teats and the udder*”.

The second alternative of claim 5 thus does not comply with the provisions of Article 123(2) EPC.

The claim is therefore objected to under Article 100(c) EPC.

Claim 6 (5 marks)

Annex 6 discloses a fluid comprising water (see [0003] or claim 1), soap (see [0003] or claim 1), ethanol (see [0003] or claim 1) and a colourant (see [0003] or [0006]).

According to Annex 6 [0006], the preferred value for the concentration of the colourant, which coincides with the end point of the disclosed range, is 0.4% by volume. The same end point of the range is disclosed in claim 1 of Annex 6.

Therefore, the subject-matter of claim 6 is not novel with regard to Annex 6 (Art.54(2) EPC; see section “*Effective dates of the claims and prior art*”).

Examination Committee II: Paper C - Marking Details - Candidate No

Category		Max.	Marks	
			Marker 1	Marker 2
General	General	15		
Claim 1	Claim 1	13		
Claim 2	Claim 2	20		
Claim 3	Claim 3	15		
Claim 4	Claim 4	10		
Claim 5	Claim 5	22		
Claim 6	Claim 6	5		
Total				