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**D E C I S I O N**  
**of 26 October 1994**

**Case Number:** J 0001/94 - 3.1.1

**Application Number:** 92303279.1

**Publication Number:** 0532148

**IPC:** A61N 1/365

**Language of the proceedings:** EN

**Title of invention:**

Rate adaptive pacemaker controlled by ejection fraction

**Applicant:**

Cardiac Pacemakers, Inc.

**Opponent:**

-

**Headword:**

Correction of mistake/CARDIAC II

**Relevant legal provisions:**

EPC Art. 60(3), 61  
EPC R. 88

**Keyword:**

"Correction substituting the name of the real applicant"  
"Sufficient evidence of proof"

**Decisions cited:**

J 0018/93

**Catchword:**

A correction substituting the name of the applicant is allowable under Rule 88 EPC.



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Boards of Appeal

Chambres de recours

Case Number: J 0001/94 - 3.1.1

**D E C I S I O N**  
of the Legal Board of Appeal 3.1.1  
of 26 October 1994

**Appellant:** Cardiac Pacemakers, Inc.  
Hamline Avenue North 4100  
St. Paul  
Minnesota 55112-5798 (US)

**Representative:** MacGregor, Gordon  
Eric Potter & Clarkson  
St. Mary's Court  
St. Mary's Gate  
Nottingham, NG1 1LE (UK)

**Decision under appeal:** Decision of the Receiving Section of the European  
Patent Office dated 18 August 1993 refusing a  
request for correction under Rule 88 EPC with  
respect to European patent application  
No. 92 303 279.1.

**Composition of the Board:**

**Chairman:** R. L. J. Schulte  
**Members:** B. J. Schachenmann  
G. Davies

### Summary of Facts and Submissions

I. European patent application No. 92 303 279.1 was filed with the UK Patent Office on 13 April 1992 by a professional representative in the name of Cardiac Pacemakers, Inc. The inventor was given as Raul Chirife.

II. By a letter dated 8 June 1992, the representative requested correction of the applicant's name pursuant to Rule 88 EPC to Raul Chirife, who was also the applicant in the priority application.

It was argued that the filing instructions of the US attorneys had been misunderstood by the representative; rights to the invention had merely been licensed and not assigned to Cardiac Pacemakers, Inc. A copy of the relevant letter of 6 April 1992 was filed as evidence.

III. By a decision of 18 August 1993, the Receiving Section refused the request on the ground that Rule 88 EPC was not intended to allow the substitution of one applicant for another. According to Article 60(3) EPC, a person named as an applicant is deemed to be entitled to exercise the right to the European patent. Thus, the applicant's entitlement is not verified but is accepted by the EPO solely on the basis of his identification as applicant in the request, so that he may not be replaced by way of correction, even if his entitlement is disputed. In the latter case, the Convention provides for a special procedure, which cannot be circumvented by applying Rule 88 EPC, especially in view of the fact that Articles 60(3) and 61 EPC have precedence over Rule 88 EPC (Art. 164, 2 EPC).

Furthermore, no indication of exceptional circumstances could be derived from the documents in the file, as was the case in decision J 07/80, in which correction of the name of the applicant had been allowed. In that case, the use of the Swedish language by a Dutch company (subsidiary of a Swedish company) had raised doubts even at the time of filing as to whether the right person (firm) had been named as applicant in the application, so that it did not therefore come as a surprise that the Swedish company was in fact the applicant.

IV. An appeal against the decision was lodged on 15 October 1993, the appeal fee being paid on the same day, and the Statement of Grounds was filed on 10 December 1993. The principal grounds relied on are the following:

- the decision stating that Rule 88 EPC did not permit substitution of a wrongly-named applicant had no foundation. The Receiving Section even contradicted itself, as it had stated that correction of the applicant's name was permitted in decision J 07/80, due to exceptional circumstances. In that decision, the language aspect was, however, peripheral and correction was in fact permitted because sufficient evidence had been provided. Furthermore, Rule 88 EPC permitted the correction of any document filed at the EPO (J 08/80).
  
- The provisions of Article 61 EPC did not affect the provisions of Rule 88 EPC, which was concerned with correction of a mistake, not with ownership disputes.

V. The Appellant requested:

- that the decision under appeal be set aside and that the named applicant be changed to Raul Chirife under Rule 88 EPC;
- that in the alternative the change be effected under Article 61(1)(a) EPC;
- that the appeal fee be reimbursed under Rule 67 EPC in view of the failure of the Receiving Section to consider the arguments submitted concerning Article 61 EPC.

VI. On 13 April 1994 a declaration from Cardiac Pacemakers, Inc. was received, acknowledging that Raul Chirife should be the applicant and consenting to the register being corrected in this respect.

**Reasons for the Decision**

1. The facts and submissions referred to above are the same as those underlying the appeal decision J 0018/94 issued on 2 September 1994 concerning European patent application Nr. 92 303 280.9 filed by the same applicant and on the same day as the application Nr. 92 303 279.1 under appeal.

The same error regarding the identity of the applicant was made in both cases. The requests for correction under Rule 88 EPC were rejected by the Receiving Section on the same grounds.

2. Therefore, the two cases are fully parallel and the **Reasons for the Decision** given in the decision J 0018/93 issued on 2 September 1994 equally apply to the present case. Since in both cases the parties to the proceedings are the same, the mere reference to the reasons given in the former decision J 0018/93 appears to be sufficient without an explicit repetition thereof in the present decision.

### Order

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. It is ordered that the name of the applicant in European patent application No. 92 303 279.1 be corrected to that of Raul Chirife (Pirovano 137, 1640 Martinez, Buenos Aires, Argentina).
3. The request for reimbursement of the appeal fee is rejected.

The Registrar

The Chairman

M. Beer

R. Schulte