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**D E C I S I O N**  
**of 25 July 2002**

**Case Number:** T 0936/00 - 3.2.2

**Application Number:** 93300584.5

**Publication Number:** 0608593

**IPC:** A61B 5/20

**Language of the proceedings:** EN

**Title of invention:**

Method and system for on-line measurement, storage, retrieval  
and analysis of urodynamical data

**Applicant:**

MEDIDENTA B.V., et al

**Opponent:**

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**Headword:**

-

**Relevant legal provisions:**

EPC Art. 84, 123(2)

**Keyword:**

"Clarity and adequate support (yes, after amendments)"

**Decisions cited:**

-

**Catchword:**

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**Case Number:** T 0936/00 - 3.2.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.2**  
**of 25 July 2002**

**Appellants:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted 18 February 2000  
refusing European patent application  
No. 93 300 584.5 pursuant to Article 97(1) EPC.**

**Composition of the Board:**

**Chairman:** W. D. Weiß  
**Members:** M. G. Noël  
J. C. M. De Preter

## Summary of Facts and Submissions

I. European patent application No. 93 300 584.5 was refused by the Examining Division on the grounds that the claimed subject-matter was not clear (Article 84 EPC) and was modified so as to include new subject-matter (Article 123(2) EPC).

The reasons were, among others, that some expressions such as "detrusor contractility" or "contractility parameter" were neither clearly defined in claim 1 nor did they have a well defined and generally known meaning in the description. The applicant's arguments based on Article 69 EPC were also not accepted on the ground that, according to the Guidelines for examination (C-III, 4,2), the meaning and scope of the claims had to be clear from their wording alone.

II. The appellant (applicant) lodged an appeal against this decision. A statement of grounds of appeal was filed on 28 June 2000 along with a new set of claims and a description adapted thereto.

III. In a communication of the Board dated 8 March 2002 the appellant was informed that the claims filed for appeal still were objectionable as to clarity and adequate support under Articles 84 and 123(2) EPC. The appellant was, therefore, proposed an amended and formally acceptable set of claims. Adaptation of the description was found to be premature, since it was the intention of the Board to send the file back to the Examining Division for further prosecution.

IV. In two letters dated 16 and 23 May 2002, respectively, the appellant gave its agreement to the Board's proposals and submitted a retyped version of the amended claims 1 to 5.

It requested that the case be remitted to the first instance for further prosecution on the basis of claims 1 to 5 filed on 23 May 2002.

V. Claim 1 reads as follows:

"Urological diagnostic system for patients having prostatism symptoms or other symptoms associated with voiding disorders, said system comprising

- measuring means (26, 32) for measuring the rate of the fluid flow out of the bladder during voiding of the bladder,
- measuring means (28) for measuring intravesical pressure inside the bladder
- processing means (10, 18, 20) connected to said measuring means (26, 28) for processing the signals generated by said means

characterized in that the system comprises further

- measuring means (30) for measuring the intra-abdominal pressure,
- measuring means (36) for measuring the volume of fluid flowing out of the bladder during voiding of the bladder,
- fluid supply means (29, 34, 36, 38) for supplying a predetermined volume of fluid into the bladder,
- said intra-abdominal pressure measuring means (30) and said volume measuring means (36) also being connected to said processing means,
- said processing means being embodied such that, after a predetermined volume of fluid is supplied

into the bladder and during the succeeding voiding period the signals of all precited measuring means are recorded, said processing means will calculate based on known formulas at least one of the following parameters:

- a parameter (URA) being indicative for the urethral resistance
- a parameter (Wmax or U/1) being indicative for the detrusor contractility of the bladder."

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Amendments*
  - 2.1 Claim 1 now relates to an urological diagnostic system after deletion of the method claim from the set of claims as refused. In the preamble of claim 1 the measuring means and the processing means are supported by the application as filed (published version) at column 3, lines 27 to 46.

The characterising features are supported as follows:

the measuring means for measuring the intra-abdominal pressure are supported by column 4, lines 29 to 33;

the measuring means for measuring the volume of fluid flowing out of the bladder during voiding are supported by column 3, lines 49 to 51 and column 8, lines 2 to 3;

the fluid supply means for supplying a predetermined volume of fluid into the bladder are supported by

column 3, lines 57 to 58 and column 4, lines 5 to 7;

the connection of the above measuring means to said processing means is derivable from Figure 1;

the record of the signals from all precited measuring means and the calculation, by the processing means, of some parameters, are supported by column 4, lines 41 to 50 and column 6, lines 18 to 22.

Among the parameters which are calculated a parameter (URA) indicative for the urethral resistance is supported by column 6, lines 26 to 29, and a parameter (Wmax or U/l) indicative for the detrusor contractility of the bladder is supported by column 9, lines 10 to 11, and column 11, lines 17 to 18 and 45 to 46.

Claim 2, which relates more specifically to the determination of the URA parameter, is supported by column 6, lines 3 to 29, in connection with Figure 3 and by additional information given at column 4, lines 26 to 33. Incidentally, an obvious typing error was introduced in the latest filed set of the claims. In line 5 of claim 2 it should be corrected so as to read "relation closely" instead of "rotation closing".

Claim 3, which relates to the determination of the Wmax or the U/l parameter, is supported by column 9, lines 21 to 28, in connection with Figure 4.

Claim 4, which relates to the determination of a number of parameters by the processing means, is supported by column 9, lines 21 to 42.

Claim 5, which relates to fluid supply means, is

supported by column 3, lines 49 to 52 and by column 4, lines 5 to 9 in connection with Figure 1.

Consequently, all the amendments are clear and fairly supported by the application as filed, in conformity with Articles 84 and 123(2) EPC.

- 2.2 Most of the expressions contested by the Examining Division, which formed the basis for the refusal, have been deleted in the set of claims for appeal, with the exception of "detrusor contractility" or "detrusor contractility parameter" ( $W_{max}$  or  $U/l$ ) which continue to appear in claims 1, 3 and 4.

This expression which is used all over the application (e.g. Background part, column 1, line 56; Summary, column 2, lines 9, 14, 20; presentation of Figure 4, column 3; and so on), is well known in the field of urological disorders, to generally designate the capacity for the detrusor (bladder) muscle for becoming short in response to a suitable stimulus (see e.g. Medical Dictionary Dordland's illustrated, 26th edition, pp. 301 (contractility) and 365 (detrusor)).

Moreover, there is specified in the patent application itself that the strength of a detrusor contraction during voiding (column 6, lines 35 to 36) is represented by the contraction strength variable  $W$  (column 6, line 33) the maximum value  $W_{max}$  of which can be taken as a parameter of contractility (column 9, lines 10 to 11). The same applies to the obstruction parameter  $U/l$ , which can also be considered as a parameter of bladder contractility (column 11, lines 17 to 18). Therefore, the expression "detrusor

contractility" is sufficiently clearly defined and supported by the description as it stands.

In this respect, it should be noted that for the requirement of conciseness (Article 84 EPC) the terms of a claim must not necessarily repeat the definitions given in the description, the purpose of which is just to support the claims and explain in more details the meaning of the wordings used (Article 84 and 69(1) EPC). This is made clear in the Protocol on the interpretation of Article 69(1) according to which the interpretation serves not only to resolve any ambiguity in the claims but also to define the technical terms used therein as well as to clarify the significance of the invention. The description thus may be regarded as a specific glossary for the claimed features so that any other meaning taken out of the context must be excluded. When under certain circumstances such a definition of a term is different from its meaning in the common every day use of the language, only the connotation derived from the patent application or specification is decisive for the interpretation of the claim.

At the primary stage of the formal examination it should be avoided to adopt an excessively formalistic approach. Any remaining lack of clarity is likely to give rise to objections in the course of the subsequent examination on the substantive merits of the claimed subject-matter when compared with the state of the art.

3. *Remittal*

Since the refusal by the Examining Division was exclusively based on formal objections under



Articles 84 and 123(2) EPC, now removed, the Board considers it appropriate to remit the case to the first instance for further prosecution on the substantive issues as also requested by the appellant.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution on the basis of the set of claims 1 to 5 filed on 23 May 2002 with the correction in claim 2 (see point 2.1 above).

The Registrar:

The Chairman:

V. Commare

W. D. Weiß