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**D E C I S I O N**  
**of 4 April 2002**

**Case Number:** T 1098/00 - 3.2.2

**Application Number:** 96904387.6

**Publication Number:** 0782430

**IPC:** A61G 7/10

**Language of the proceedings:** EN

**Title of invention:**

Device and method for raising or moving a person

**Patentee:**

Careflex Holding B.V.

**Opponent:**

Arjo Limited

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

"Inventive step (yes)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 1098/00 - 3.2.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.2**  
**of 4 April 2002**

**Appellant:** Careflex Holding B.V.  
(Proprietor of the patent) Radonweg 2  
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**Representative:** de Bruijn, Leendert C.  
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**Respondent:** Arjo Limited  
(Opponent) St Catherine Street  
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**Representative:** Higgins, Michael Roger  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 29 August 2000  
revoking European patent No. 0 782 430 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

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

## Summary of Facts and Submissions

I. The Appellant (Proprietor) appeals against the decision of the Opposition Division to revoke the patent which had been opposed by the respondent on the grounds of lack of novelty and of inventive step having regard to seven cited documents.

II. The Opposition Division, after oral proceedings, conceded that the subject-matter of the independent device Claim 1 was novel and involved an inventive step and that the subject-matter of the independent method claim 11 was novel, but it found that this method failed to involve an inventive step having regard to the documents

D1: GB-A-2 140 773 and

D4: "Whole-body Movements During Rising to Standing from Sitting", Physical Therapy, pp. 638-650, Vol. 70, No. 10, October 1990.

and, therefore, revoked the patent.

The Opposition Division gave in particular the following reasons for this finding:

Document D1 disclosed a method of the kind set out in the preamble of Claim 11 in the course of which the person to be raised from the seated to the standing position followed an arcuate path. Starting from this document as the closest prior art, the problem to be solved was to achieve a natural path of movement.

Document D4, in particular in its Figure 4, disclosed such a path of movement which met all the features in

the characterising portion of Claim 11.

- III. The appellant requests that the decision under appeal be set aside and the patent be maintained as granted. Oral proceedings were requested on an auxiliary basis.

The respondent opponent has not filed any submissions during the appeal proceedings.

- IV. Method claim 11 as granted reads as follows:

Method for raising and/or moving a person from a seated to a standing position or vice versa with the use of a lifting device which is arranged on the chest side of a person, comprising a movable lifting arm, the person being supported by a support belt which is placed around his or her back at armpit height and on which force is exerted at the chest side, characterized in that the movement of the lifting arm is such that, starting from a seated position, the person is moved essentially horizontally towards the lifting device during the first part of the movement, this being followed by the person being raised essentially vertically during the second part of the movement.

- V. The appellant argued essentially as follows.

Document D1 corresponded to the pre-characterizing part of claim 11. Furthermore document D4 disclosed a movement pattern which was within the range of the characterizing part of claim 11. The invention aimed at stimulating the person concerned to cooperate in being raised so that his muscle function was maintained and/or trained as far as possible, see paragraph

bridging pages 1 and 2 and the next paragraph on page 2 of the description. The inventive idea consisted in having a person moved with a lifting device in a path corresponding to natural movement in order to stimulate his muscle function. Up to now, nobody had the idea that it might be of importance to use the natural movement in a lifting device to stimulate the related person. No document of the cited prior art suggested any solution for the problem that a person to be lifted should be stimulated as far as possible to use his own power to go from a seated to a standing position and vice versa.

### **Reasons for the Decision**

1. The appeal is admissible.
  
2. The decision under appeal has found that the subject-matter of the independent Claims 1 and 11 is novel and that the subject-matter of Claim 1 also involves an inventive step having regard to all the documents cited. Since the Board concurs with this finding and this has also not been challenged by the respondent this issue needs no further reasoning.

Consequently, the only issue which has to be investigated here is whether the subject-matter of Claim 11 involves an inventive step.

3. It is undisputed that document D1, which is acknowledged as such in the description of the patent in suit, is the prior art which is closest to the invention. This document discloses a method comprising all the features in the preamble of Claim 11 but not

those in its characterising portion.

The device and the method it performs during operation is exclusively aimed at facilitating the daily work of the nursing personal and is silent about the intention of any physiotherapeutical or training effect on the nursed patient.

From the point of view of the nurse, the method of operating this known device is not flexible enough to adapt to patients of different heights (see EP-B-0 782 430, column 1, lines 24/25). This drawback and the problem arising therefrom are obvious for any nursing person.

The other drawback is that the lifting movement performed by this known apparatus is unsuitable for rehabilitation, because it offers no possibilities for providing adjustment to suit persons who still have some strength to stand up on their own (see EP-B-0 782 430, column 1, lines 20 to 24). In order to recognise this drawback, a nursing person which is operating the device disclosed in document D1 has to transcend the circle of his/her daily duties and adopt the point of view of personal responsible for the physiotherapeutical training of the patient. Since document D1 particularly addresses the nursing personnel, the technical problem arising from this physiotherapeutical aspect is not evident for nursing personnel but its recognition already involves a non obvious step to be done.

Only after having had the non obvious idea to modify the operating method of the known device that it simultaneously serves nursing and physiotherapeutic

purposes, the skilled person can have the idea of having his device perform a movement which is close to the natural movement of a body rising to standing from sitting and to direct its search into this direction.

Even if in the course of this search the skilled person would come across document D4 it would not be lead to the invention.

Document D4 is a paper describing the movements of a healthy person during rising to standing from sitting. Figure 4 and the chapter "phases of rising from a chair" mentions four phases of rising marked by four key events:

- Phase I, titled flexion momentum, concerns acquiring the kinetic energy for the successive lift off. During phase I the trunk and pelvis rotate anteriorly (hip extension) generating upper-body momentum, the femurs, shanks and feet remaining stationary.
- Phase II is designated momentum-transfer phase and begins when the buttocks are lifted from the seat, the ankles are flexed and consequently the knees displace anteriorly. The upper-body momentum of phase I is transferred to the total body and contributes to the total body "upward and anterior" movement.
- Phase III (extension phase) initiates when the ankle ceases to flex and terminates when the hip ceases to extend.
- Phase IV concerns the final stabilization in the

upper position.

Although document D4 describes four phases, it is evident from the fact that a momentum is transferred between the phases that there are no clear limits which separate the phases but that there is a flowing motion with no identifiable changes of the velocity of the Center of Mass (CoM). As is visible in particular from Figure 3, the motion runs continuously through all the phases within three seconds.

It cannot be imagined that a disabled person is dragged by a device within three seconds from a sitting to a standing position.

Consequently, document D4 does not individuate a phase where the movement is essentially horizontal and a successive phase where the movement is essentially vertical. To deduce such a sequence from Figure 4 would be a typical example of ex-post analysis.

There are also no direct hints in D4 to apply its teaching to a device for raising and moving a disabled person in order to maintain and/or train his muscle function. The passage at page 646 of D4, right column, where it is said that some impairments can be compensated for with "assistive" devices is too vague to render the subject-matter of the claim obvious.

Accordingly the subject-matter of claim 11 involves an inventive step.



**Order**

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

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:

V. Commare

W. D. Weiß