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D E C I S I O N
of 18 November 2003

Case Number: T 0144/01 - 3.2.2

Application Number: 93922298.0

Publication Number: 0668738

IPC: A61B 1/00

Language of the proceedings: EN

Title of invention:
Endoscope with sterile sleeve

Patentee:
EBLING, Wendell V.

Opponent:
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Headword:
-

Relevant legal provisions:
EPC Art. 84, 123

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

Decisions cited:
-

Catchword:
-



Case Number: T 0144/01 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 18 November 2003

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 17 August 2000
refusing European application No. 93922298.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. G. Noël
Members: R. Ries
R. T. Menapace

Summary of Facts and Submissions

- I. The Examining Division refused European application No. 93 922 298.0 (International publication No. WO 94/08505) on the grounds that the claimed subject-matter lacked clarity (Article 84 EPC) and extended beyond the content of the application as filed (Article 123(2) EPC).
- II. The appellant (applicant) lodged an appeal against this decision and filed a statement of grounds on 28 September 2000 along with amended claims according to various requests.
- III. In a communication dated 18 March 2003, the appellant was informed, based on the version filed on 11 April 1995 (at the time of entry into the regional phase before the EPO) of possible amendments in order to remove still pending objections under Articles 84 and 123(2) EPC. Further, the appellant was informed of the Board's intention to remit the case to the first instance for further prosecution, if he filed a new set of claims suitably amended.
- IV. The appellant replied on 22 August 2003 and submitted a new set of claims 1 to 9 amended as suggested by the Board.

It requested remittal of the case to the first instance for further prosecution on the substantive issues on the basis of this set of claims.

V. Independent claims 1 and 9 read as follows:

"An endoscope sleeve assembly comprising:

- a) a non-sterile proximal portion (10) and a sterile distal end portion (12) and having a bore (40) formed in said proximal portion (10), said bore having a diameter sized greater than the diameter of a fiber optic image bundle (14) to be inserted within said bore, said sleeve assembly having a length shorter than the length of said fiber optic image bundle; and
- b) a window (38) formed proximate the distal end of the distal portion of said sleeve assembly;
- c) wherein said sleeve assembly of a shorter length provides a biasing means for urging said fiber optic image bundle (14) into abutment with said window (38) when said fiber optic image bundle is inserted within said bore (40) of said sleeve assembly."

"A method for using the endoscope sleeve assembly according to claim 1, the method comprising the steps of:

- a) inserting a fiber optic image bundle (14) into said sleeve assembly (10, 12);
- b) biasing the fiber optic image bundle (14) into abutment with the window (38), the fiber optic image bundle being so isolated within the sleeve assembly that it does not require sterilization;
- c) removing the fiber optic image bundle (14) from the sleeve assembly; and

- d) sterilizing the distal portion (12) of the sleeve assembly."

Reasons for the Decision:

- 1. The appeal is admissible.

- 2. *Amendments*
 - 2.1 Claims 1 to 9 submitted by the appellant is in line with the suggestions of the Board in the above communication. Still remaining obvious clerical errors were corrected by the Board on its own motion, namely:
 - in claim 1 above, first line: "and portion" was replaced by "end portion";

 - in claim 2: "of" was removed so as to read "one illumination fiber";

 - in claim 6: a coma was inserted after "sleeve portions (10, 12)".

 - 2.2 The amendments to the claims were made by the appellant with the view to re-establish the terminology used all over the application as filed and to clarify the definition of the invention by specifying more closely some features with indications drawn up from the description.

Claim 1 is based on original claim 3, supplemented by features supported by the following passages of the original description: page 4, lines 9 to 11; page 7,

lines 30 to 33; page 8, lines 28 to 31 and page 9, lines 10 to 21.

Claims 2, 3, 4, 5, 6, 7 are based on original claims 4, 6, 7, 8, 10, 20, respectively.

Claim 8 is supported by the description as filed on page 5, lines 25 to 29.

Claim 9 is based on original claims 24 and 27, supplemented by more specific features from the following passages of the description: page 3, lines 20 to 24 and page 12, lines 30 to 33.

Therefore, the amendments are not such as to extend the claimed subject-matter beyond the content of the application as filed, in accordance with Article 123(2) EPC.

2.3 Claim 1 defines a sleeve assembly comprising two portions, of which one sterile distal portion for inserting a fiber optic images bundle and thereby avoiding any transmission of contamination. On the other hand, claim 1 defines the essential relationships between the diameters and the lengths of the sleeve and of the fiber optic images bundle, in order to produce a biasing force urging the distal end of the fiber optic images bundle into abutment against the window, thereby insuring proper optical alignment and image transmission.

Therefore, claim 1 is also clear and concise within the meaning of Article 84 EPC and meets the requirements of and Rule 29(1) EPC.

2.4 Independent claim 9 which relates to the use of the endoscope sleeve assembly according to claim 1 is also formally acceptable, since the insertion and the removal of the fiber optic images bundle into and out of the sleeve assembly, i.e. the relationship between these two components, was already present in this form in original claims 24 and 27.

Therefore, the subject-matter of the use claim 9 is sufficiently clear and supported.

3. *Remittal*

Since the refusal by the Examining Division was exclusively based on objections under Articles 84 and 123 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 9 submitted on 22 August 2003 with the corrections mentioned in section 2.1 above.

The Registrar:

The Chairman:

V. Commare

M. Noël