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**D E C I S I O N**  
**of 13 September 2004**

**Case Number:** T 0416/03 - 3.2.2

**Application Number:** 96850124.7

**Publication Number:** 0752253

**IPC:** A61M 39/20

**Language of the proceedings:** EN

**Title of invention:**

Multi-purpose cap for hydraulic ports on a medical device

**Applicant:**

BAXTER INTERNATIONAL INC.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 84

**Keyword:**

"Clarity (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0416/03 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 13 September 2004

**Appellant:** BAXTER INTERNATIONAL INC.  
One Baxter Parkway  
Deerfield, Illinois 60015 (US)

**Representative:** Dee, Ian Mark  
Eric Potter Clarkson  
Park View House  
58 The Ropewalk  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 29 November 2002  
refusing European application No. 96850124.7  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** T. K. H. Kriner  
**Members:** D. Valle  
E. J. Dufrasne

## Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal, on 12 December 2002, against the decision of the examining division, posted on 29 November 2002, refusing the European patent application No. 96 850 124.7. The fee for the appeal was paid on 13 December 2002 and the statement setting out the grounds of appeal was received on 27 March 2003.
- II. In accordance with the appellant's request that a decision be issued based on the written submissions which then were on the official file, the examining division refused the European patent application No. 96 850 124.7 for the reasons presented in the communication dated 30 December 2000, 30 April 2001 and 19 September 2002.
- III. In the appeal proceedings the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 17 filed on 27 March 2003, and auxiliarily that oral proceedings be held.
- IV. On 20 February 2004 the board summoned the applicants for oral proceedings on 17 September 2004. In a communication annexed to the summons the appellant was informed that claim 1 did not meet the requirements of Article 84 EPC.
- V. With his letter of 11 August 2004 the appellant withdrew the request for oral proceedings and requested that a decision be issued based on the written submissions on file, without any comment on the

preliminary opinion of the board with respect to the lack of clarity of claim 1.

VI. Claim 1 reads as follows:

"A cap (10) comprising a female portion (16) which comprises a receptacle (34) which is capable of individually receiving and being removably attached to a first male blood nipple (46) and to a second male blood nipple (46) so as to maintain an internal condition of a medical device until time of use, wherein the receptacle can be removably attached to the first male blood nipple when it is not attached to the second male blood nipple, characterized in that the first male blood nipple is of a tapered male barbed nipple type which co-operates with an interior surface (28) of the cap (10) and the second male blood nipple is of a type according to DIN 13090 part 3."

### **Reasons for the Decision**

1. The appeal is admissible.

2. *Clarity*

According to its initial wording, claim 1 is directed to a cap comprising a female portion which comprises a receptacle. All the following features exclusively refer to a first and a second male blood nipple to which the receptacle may be removably attached. In other words, claim 1 does not define a cap "per se", but its relationship to the blood nipples. Consequently, claim 1 seeks to define the claimed cap

by reference to features of the use to which the cap is to be put.

Furthermore, claim 1 attempts to define the invention by the result to be achieved, e.g. the capability of the cap to be attached to the first and second blood nipple without describing the features of the cap which enables this dual use of the cap.

With respect to the above findings, the board comes to the conclusion that claim 1 lacks clarity and therefore does not comply with Article 84 EPC.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner