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D E C I S I O N
of 26 November 2003

Case Number: T 0917/03 - 3.2.2

Application Number: 95929786.2

Publication Number: 0778747

IPC: A61B 7/04

Language of the proceedings: EN

Title of invention:
An electronic stethoscope

Applicant:
BANG & OLUFSEN TECHNOLOGY A/S

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 84, 113(1)

Keyword:
"Clarity (yes), procedural violation (no)"

Decisions cited:
-

Catchword:
-



Case Number: T 0917/03 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 26 November 2003

Appellant: BANG & OLUFSEN TECHNOLOY A/S
Peter Bangs Vej 15
D-7600 Struer (DK)

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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 20 March 2003
refusing European application No. 95929786.2
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. D. Weiß
Members: S. S. Chowdhury
A. Pignatelli

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dated 20 March 2003 to refuse European patent application No. 95 929 786.2.

The ground of refusal was that the claims introduced subject-matter which extended beyond the content of the application as originally filed, contrary to Article 123(2) EPC.

II. On 19 May 2002 the appellant (applicant) lodged an appeal against the decision and paid the prescribed fee on 21 May 2002. On 18 July 2002 a statement of grounds of appeal was filed.

III. The appellant requests that the decision under appeal be set aside and that the application be remitted to the examining division for continuation of the examination, based on claims 1 to 12 filed by letter dated 7 October 1996. The appellant considered its right to be heard to be violated because the examining division did not invite it to oral proceedings before refusing the application.

IV. Claim 1 reads as follows:

"An electronic digital stethoscope comprising a vibration transducer, an amplifier, and a headphone arrangement, characterised in that it further comprises digital filter means which establish at least one impulse transfer function corresponding to at least one acoustic stethoscope type."

Claims 2 to 12 are dependent on claim 1.

Reasons for the Decision

1. The appeal is admissible.

2. The application relates to an electronic stethoscope with the technical problem of adapting the stethoscope to the use of habits of a doctor when supplied with a filter which mimics the transfer function of acoustic stethoscopes. Thus the signals heard will correspond to those learnt by the doctor and the advantages of greater amplification and noise reduction may be realised.

It is stated on page 3, lines 2 to 11 of the application, that "It has been recognized in the invention that it will be possible to obtain a considerably improved stethoscope which has both the advantage of a larger amplification and of knowledgeable analysis by a physician, who will not be confused by a changed sound characteristic, provided that there is in the signal path of an otherwise linear electronic stethoscope connected a filter with an impulse transfer function which corresponds to at least one known acoustic stethoscope."

The application then states (page 3, lines 23 and 24) that "With the access to modern technology it is obvious that digital filtering will be used, because it permits reprogramming without lengthy calibration", and the remainder of this and the next paragraph state the advantages of using a digital filter, as do other

paragraphs of the application. The particular embodiment described with reference to Figure 2 includes a digital filter together with A/D and D/A circuits.

From the foregoing it is clear that the use of a digital filter with a particular transfer characteristic forms the basis of the present invention, and this filter is now defined as an essential feature in claim 1. For this reason the stethoscope is entitled to be termed a "digital stethoscope". The situation is analogous to that of calling a car a diesel car if a diesel engine is at its heart, or a watch automatic if this is a dominant feature of the watch, etc. Therefore, changing the expression "electronic stethoscope" to "electronic digital stethoscope" does not introduce subject-matter which extends beyond the content of the application as originally filed.

3. The decision under appeal is correct in stating that "The term "electronic digital stethoscope" includes all stethoscopes having any digital circuit, for example a standard microprocessor or and A/D converter". However, claim 1 defines specific digital means, ie digital filter means which establish at least one impulse transfer function corresponding to at least one acoustic stethoscope type, which lend the claimed device its nomenclature. Whether such a digital stethoscope is disclosed in the prior art is a matter still to be investigated under Article 52(1) EPC.
4. Regarding the appellant's right to be heard, it must be stated that it has a right to oral proceedings only if

it requests it, which it failed to do, or the examining division may hold oral proceedings if it considers this to be expedient (Article 116(1) EPC), which it did not. The appellant has not given any reasons why it considers that the examining exercised its discretion wrongly. The right to be heard under Article 113(1) EPC would have been violated if the examining division had taken a decision based on grounds or evidence on which the appellant did not have the opportunity to present its comments, but in the present case it is evident from the file that the examining division did fully communicate its objections on which the refusal of the application was based, such that the requirements of Article 113(1) EPC were fulfilled.

Therefore, the Board considers that appellant's right to be heard before the first instance department was not violated.

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.

The Registrar

The Chairman

V. Commare

W. D. Weiß

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