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**D E C I S I O N**  
**of 12 May 2004**

**Case Number:** T 1078/03 - 3.2.2

**Application Number:** 98959069.0

**Publication Number:** 0973477

**IPC:** A61H 1/00

**Language of the proceedings:** EN

**Title of invention:**  
Support frame for supine persons

**Applicant:**  
Luklinska, Zofia, et al

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 52, 56, 84

**Keyword:**  
"Clarity, inventive step (yes after amendments)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1078/03 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 12 May 2004

**Appellant:**

Luklinska, Zofia  
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**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 16 May 2003  
refusing European application No. 98959069.0  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** W. D. Weiß  
**Members:** D. Valle  
E. Dufrasne

## Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the examining division to reject the application for lack of clarity and of inventive step on the basis of the documents:

D1: US-A-3 881 469,

D3: US-A-5 103 808 and

D4: US-A-4 230 099.

II. Following a request from the applicant, oral proceedings were held on 12 May 2004. At the end of the oral proceedings the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the request filed at the oral proceedings.

III. Claim 1 as filed during the oral proceedings on 12 May 2004 reads as follows:

"A frame for the support of supine persons comprising a rigid rectangular frame carrying a plurality of parallel rods attached to and crossing the space between the two longer sides of the frame and forming four groups located in the position of the cervical, thoracic, lumbar and pelvic regions of the body, the groups of rods located in the cervical, thoracic and lumbar regions carry a pair of barrel shaped or spherical support members on each rod rigidly fixed to or integral with the rod and spaced equidistantly about the longitudinal axis of the frame and extending

upwardly above the edges of the frame, the rods and support members being mounted so that the upper surfaces of the support members are raised above the sides of the frame, each pair of support members being arranged with a spacing of 30 - 75 mm between the centres of the support members".

- IV. The appellant argued that the last version of the claims complied with the requirements of clarity. Document D1 was far away from the invention because it was directed to a muscle relaxing apparatus. Document D3 disclosed thruster members designed for having only intermittent contact with the spine. Document D4 disclosed a device for aligning the spine.

### **Reasons for the Decision**

1. *The appeal is admissible.*
2. *Clarity*

The last version of the claims per se complies with the requirements of clarity of Article 84 EPC.

3. *Novelty*

Novelty has not been challenged in the decision under appeal. The board has no objection in this respect either.

4. *Inventive step*

Starting from document D1, Figure 1, - as suggested by the decision under appeal - this closest prior art discloses a frame (4) for the support of supine persons comprising a rigid rectangular frame carrying a plurality of parallel rods forming two groups located in the position of the cervical and thoracic-lumbar regions of the body, such groups of rods located in the cervical, thoracic and lumbar regions carry a pair of support members on each rod spaced equidistantly about the longitudinal axis of the frame and extending upwardly above the edges of the frame, the rods and support members being mounted so that the upper surfaces of the support members are raised above the sides of the frame.

The subject-matter of claim 1 differs therefrom by the features that:

- the rods are attached to and crossing the space between the two longer sides of the frame and
- form four groups located in the position of the cervical, thoracic, lumbar and pelvic regions of the body,
- the support members are barrel shaped or spherical and rigidly fixed to or integral with the rod, and
- each pair of support members is arranged with a spacing of 30 - 75 mm between the centres of the support members.

Instead, document D1 discloses rods attached to additional frames on the supporting frame 4, the pelvic region being essentially not supported, but to be located between the two oscillating frames 4 and 5, the support members having a wheel-like form and being pivotally connected to the frame (claim 3), and the distance between the support members is not defined, but clearly designed to be larger than that of the invention, because the apparatus of D1 is designed to massage the muscles of the back, which lie in the average faver away from the spine.

The main purpose of the invention is to enable the spine to rest in a relaxed state with no pressure on the vertebrae, see page 3 of the description of the patent application, from line 22. To this purpose, the spine is made to rest on two lateral supports which leave the central spinal process fully suspended in a strain-free manner.

Document D3 discloses a device for manipulating the ailing spine by reproducing a manual massage. In the preferred embodiment illustrated in the figures the manipulation is done by means of three pairs of thruster members (toroid rollers) 201, 202, 203, which travel from a retracted to an extended position, as exemplarily shown for the cervical region in Figures 5a and 5b, thereby massaging the part of the spine covered along the way. As disclosed in column 8, lines 49 to 60 of the description, each pair of thruster members is spaced 1,5 to 2 inches (38,1 to 50,8 mm); such range of values covers most of the claimed range of 30 to 75 mm for the support members of the invention. However the board does not see any compelling reason to conclude on

this basis that the skilled person could combine the teaching of D1 and D3 in an obvious way in the form of claim 1. Neither D1 nor D3 know the purpose of the invention (see above). Furthermore they do not disclose all the distinguishing features either.

The consideration of document D4 cannot lead to a different conclusion. D4 discloses a device to align the spine, when one or more vertebrae of the spine are misaligned, see column 1, line 15 to 18, column 2, lines 1 to 18, and Figures 5 to 7. It is true that D4 discloses two lateral supports for the spine in the form of ridges 13, 15 which, according to column 2, lines 46 to 51, are located apart from one another at a distance more than the normal thickness of the spinous processes and less than the normal width of the vertebrae, however D4 does not disclose the purpose of the invention nor its further distinguishing features.

Also starting from document D4, which belongs to a field close to the invention, the subject-matter of claim 1 appears to involve an inventive step. As stated above, document D4 discloses two lateral supports for the spine in the form of ridges. The purpose of the device according to D4 is the ailing of the spine having misaligned vertebrae. There is no reason why the skilled person in the field should substitute the two ridges with the system of rods and support members according to the invention.

The further documents of the available prior art appear to be farther away from the invention.

**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 with the order to grant a patent on the basis of claims 1 to 6 as submitted at the oral proceedings and description and figures still to be adapted.

The Registrar:

The Chairman:

V. Commare

W. D. Weiß