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D E C I S I O N
of 18 May 2005

Case Number: T 1180/03 - 3.2.2

Application Number: 96200704.3

Publication Number: 0732086

IPC: A61F 2/06

Language of the proceedings: EN

Title of invention:
Catheter with light conductor

Applicant:
Cordis Europa N.V.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54(1)

Keyword:
"Novelty - no"

Decisions cited:
-

Catchword:
-



Case Number: T 1180/03 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 18 May 2005

Appellant: Cordis Europa N.V.
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Representative: 't Jong, Bastiaan Jacobus
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 10 July 2003
refusing European application No. 96200704.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: T. K H. Kriner
Members: M. G. Noël
A. Pignatelli

Summary of Facts and Submissions

- I. European patent application No. 96 200 704.3 was refused by decision of the examining division dated 10 July 2003 on the basis of Article 123(2) EPC.
- II. The appellant (applicant) lodged an appeal against this decision, by notice received on 15 August 2003, and filed a statement setting out the grounds of appeal, received on 18 November 2003. The appeal fee was paid within the prescribed time-limit.
- III. In consequence of a communication of the Board, dated 10 August 2004, the appellant, by letter dated 8 December 2004, submitted a new set of claims 1 to 5 in replacement of its previous submissions, and auxiliary requested oral proceedings.
- IV. Following a preliminary opinion of the Board, dated 24 January 2005, objecting, among others, lack of novelty of the subject-matter of claim 1 vis-à-vis the closest prior art document D2: EP-A-0 311 458, the appellant informed the Board by letter dated 3 May 2005, that he would not attend the oral proceedings and requested, instead, a decision in the state of the file.
- V. Claim 1 in suit reads as follows:
- "Catheter (20) comprising a tube-like basic body (21) with a distal end and a proximal end, and a balloon member (22) at the distal end surrounding an end-section of the basic body, a light conductor (25) extending from the proximal to the distal end, and having close to the distal end a light-emitting

end-section (27), situated inside the balloon member (22), said light emitting end-section (27) being fixed to the basic body (21), wherein the light conductor (25) extends through a lumen (24) of the basic body (21), bounded by an outer wall, **characterized** in that a part of the outer wall of the lumen (24) of the basic body (21) that is surrounded by the balloon member (22) has at least partially been removed, so as to expose said end-section (27) of the light conductor (25)".

- VI. In its letter of 8 December 2004 the appellant argued that in document D2 the optical fibre tip was loosely connected to the catheter, such that there was still a risk that the tip might come off. The light emitting section was attached to parts of the tip, not to the basic body. Moreover, in the catheter as claimed, the outer wall of the basic body was partially removed, but that part of the basic body which was surrounded by the balloon, remained. This feature was not disclosed by the prior art documents.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*
 - 2.1 Document D2 discloses (see figures 2 and 3) a catheter comprising a tube-like basic body 10 with a distal end and a proximal end, and a balloon member 30 at the distal end surrounding an end-section of the basic body. A light conductor 32 extending from the proximal to the distal end has, close to the distal end, a light

emitting end-section 24 situated inside the balloon member 30. The light conductor 32 extends through a lumen 23 of the basic body 10, bounded by an outer wall, and the light-emitting end-section 24 being fixed (bounded at 38a) to a central shaft 26, which is a prolongation of the basic body 10. It does not matter that the basic body is made of two parts, since claim 1 does not refer to a one-piece basic body.

Further, as clearly shown in figures 2 and 3, a part of the outer wall of the lumen 23 of the basic body 10 that is surrounded by the balloon member, has at least partially been removed, so as to expose said end-section 24 of the light conductor 32.

Therefore, all the features recited in claim 1 are known from document D2. As a result, the subject-matter of claim 1 lacks novelty within the meaning of Article 54(1) EPC.

2.2 The arguments put forward by the appellant are irrelevant, since they all refer to features or differences which are not claimed and, therefore, are of no consequence on the requirement of novelty.

Thus, although the tapered end-portion 36 of the optical fibre 32 is embedded in transparent epoxy resin 40, the optical fibre tip assembly 24 is nevertheless bounded to shaft 26, with cyanoacrylate at junction 38a, which shaft in its turn is coupled to the basic body 10. Therefore, the light-emitting end-section is not loosely but securely fixed to the basic body, such that the optical fibre tip cannot come off.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner