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**Datasheet for the decision
of 8 September 2006**

Case Number: T 0009/04 - 3.2.02

Application Number: 95307833.4

Publication Number: 0712606

IPC: A61B 5/055

Language of the proceedings: EN

Title of invention:

Medical diagnostic imaging systems and methods

Applicant:

KONINKLIJKE PHILIPS ELECTRONICS N.V.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 52(4)

Keyword:

"Method excluded by Article 52(4) EPC (10)"

Decisions cited:

G 0001/04, T 0182/90, T 0383/03

Catchword:

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Case Number: T 0009/04 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 8 September 2006

Appellant: Koninklijke Philips Electronics N.V.
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Representative: van de Veer, Johannes Leendert
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 25 July 2003
refusing European application No. 95307833.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: S. Chowdhury
A. Pignatelli

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division dated 25 July 2003 to refuse European patent application No. 95 307 833.4.

The ground of refusal was that the subject-matter of claim 11 of the main request was not patentable under Article 52(4) EPC. The decision further stated that the auxiliary request, which did not include a method claim, met the requirements of the EPC.

- II. On 18 September 2003 the appellant (applicant) lodged an appeal against the decision and paid the prescribed fee on the same day. On 25 November 2003 a statement of grounds of appeal was filed.

The appellant requests that the decision under appeal be set aside and that the application be remitted to the first instance to resume examination thereof on the basis of the main request, comprising claims 1 to 11, or on the basis of the auxiliary request, comprising claims 1 to 10, both submitted with the grounds of appeal.

By letter dated 31 January 2006 the appellant stated that it withdrew the application on condition that any fee is refunded.

- III. Independent claim 11 of the main request reads as follows:

"A method of diagnostic imaging an object (72) using first and second diagnostic imaging equipments (104,

108), said first and second imaging equipments (104, 108) having respective first and second imaging spaces (126, 128), said method comprising: disposing the object (22) on a movable object handling system (112) having a table (26) disposed over a base (24); docking the object handling system (112) relative to the first imaging space (126); producing diagnostic images of said object with the first imaging equipment (104); undocking the object handling system (112); moving the object handling system (112), with the object (22) disposed thereon, to the second imaging equipment (108); docking the object handling system (112) relative to the second imaging space (128); producing diagnostic images of said object (22) with said second imaging equipment (108); entering object identification data into a data storage means disposed on the object handling system (112) prior to producing diagnostic images of said object (22) with one of the first imaging equipment (104) and the second imaging equipment (108); connecting said data storage means to said one of the first imaging equipment (104) and second imaging equipment (108) prior to producing diagnostic images therewith; and associating said data with the images of said object (22) produced by said one of the first and second imaging equipments (104, 108)".

The auxiliary request has device claims only, claim 11 has been cancelled therefrom.

- IV. The examining division argued, in its decision and during the examination procedure, that the employment of angiography and nuclear medicine involved positioning a catheter in a patient and then

introducing a pharmaceutical into the patient via the catheter, and the injection of a contrast medium, respectively. Moreover, the method may involve a CT scan which was also an invasive diagnostic method, and the use of X-rays posed risks for the patient since it may alter the structure of the body at the cell level. Therefore, the method of claim 11 had an invasive nature and implied steps of a surgical nature, and was implicitly carried out under the responsibility of a medical doctor. The method was not allowable under Article 52(4) EPC, accordingly.

Reasons for the Decision

1. The appeal is admissible.
2. The withdrawal of the application has no legal effect since it is conditional. Procedural steps cannot be dependent on conditions.
3. The decision under appeal is based solely on Article 52(4) EPC. Therefore, although it appears from the file that the examining division did examine the application as to the substantive requirements for patentability, if the appeal is allowed it would be appropriate pursuant to Article 111(1) EPC to remit the case to the examining division for further prosecution, so that the examining division may press these and other objections or waive them.

4. *The application*

The application is based on the technical problem of how to organise exchange of an object (patient) identification data when different images need to be taken of the patient (see EP-A-0 712 606, column 2, line 36 to column 3, line 11).

The solution as defined in claim 11 comprises a method in which the patient handling system is moveable between different diagnostic imaging equipments and has data storage means for storing object identification data and imaging data from the different equipments such that the object identification data and the imaging data are available to both equipments for subsequent correlation of the object with the diagnostic images.

The method involves producing diagnostic images of the patient with each of the first imaging and second equipments. The latter may be a CT scanner, or MRI, X-ray, nuclear medicine cameras, or it may be an angio type x-ray equipment and a CT equipment, whose use involves positioning a catheter in a patient using an angio equipment and then introducing a pharmaceutical into the patient via the catheter while the patient is being imaged by a CT system (column 9, lines 4 to 12).

5. *Diagnostic method*

5.1 The opinion G 1/04 of the Enlarged Board of Appeal states, *inter alia*, as follows:

1. In order that the subject-matter of a claim relating to a diagnostic method practised on the human or animal body falls under the prohibition of Article 52(4) EPC, the claim is to include the features relating to:

(i) the diagnosis for curative purposes *stricto sensu* representing the deductive medical or veterinary decision phase as a purely intellectual exercise, and

(ii) the preceding steps which are constitutive for making that diagnosis.

5.2 The presently claimed method may be performed on a human body, but the information which it yields provides only intermediate results (an image). It includes neither the comparison of this image with a standard, nor the finding of any significant deviation (a symptom) during the comparison (see (ii) above). The claimed method also does not include any features relating to the diagnosis for curative purposes *stricto sensu* representing the deductive medical or veterinary decision phase as a purely intellectual exercise (see (i) above).

5.3 For these reasons the claimed method is not to be considered a diagnostic method practised on the human or animal body which is excluded from patentability by Article 52(4) EPC.

6. *Surgical method*

The examining division's fear, that the claimed method is an invasive method which involves the use of X-rays, and poses risks for the patient, is unfounded. It is true that according to the jurisprudence of the boards of appeal a single surgical step in a method for treatment of the human or animal body confers surgical character to the method (see T 182/90, OJ EPO 1994, 641).

The question, therefore, arises whether the method according to claim 11 is a method for the treatment of the human or animal body, i.e. a method which is suitable or potentially suitable for maintaining or restoring the health, the physical integrity, or the physical well-being of a human being or animal, or to prevent diseases (see T 383/03, OJ EPO 2005, 159, points 3.2 to 3.4).

With respect to this question the fact must be considered that the method according to claim 11 represents a technical method for exchanging a patient's identification data when different images of the patient are taken, and that claim 11 does not include or inevitably require any surgical steps which may be necessary for placing a catheter, etc.

The examining division's argument that the claimed method may involve the placement of a catheter, for example, and therefore has a surgical nature is not sound. The opinion G 1/04 instructs that medical method claims must be narrowly interpreted. Therefore, in the present case claim 1 must be interpreted as only

covering the production of diagnostic images and not any preliminary steps necessary for facilitating the image production.

Claim 11, therefore, is not concerned with a method of treatment of the human or animal body within the meaning of Article 52(4) EPC.

Order

For these reasons it is decided that:

The case is remitted to the department of the first instance to resume the examination on the basis of claims 1 to 11 filed with the grounds of appeal on 25 November 2003.

The Registrar:

The Chairman:

V. Commare

T. K. H. Kriner