

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 24 February 2006

Case Number: T 0316/04 - 3.4.01

Application Number: 94918028.5

Publication Number: 0699092

IPC: A61N 1/39

Language of the proceedings: EN

Title of invention:
Defibrillator with self-test features

Applicant:
Koninklijke Philips Electronics N.V.

Opponent:

-

Headword:
Defibrillator with self-test system and method for
automatically determining and indicating the operational
status of such a defibrillator

Relevant legal provisions:
EPC Art. 82, 123(2), 54(1)(2)

Keyword:
"Unity of invention (yes, after amendment)"
"Added subject-matter (no, after amendment)"
"Novelty (yes with respect to D1, after amendment)"

Decisions cited:

-

Catchword:

-



Case Number: T 0316/04 - 3.4.01

D E C I S I O N
of the Technical Board of Appeal 3.4.01
of 24 February 2006

Appellant: Koninklijke Philips Electronics N.V.
Groenewoudseweg 1
NL-5621 BA Eindhoven (NL)

Representative: van Iersel, Hannie
Philips
Intellectual Property & Standards
Prof. Holstlaan 6
NL-5656 AA Eindhoven (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 13 October 2003
refusing European application No. 94918028.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: B. Schachenmann
Members: H. Wolfrum
G. Assi

Summary of Facts and Submissions

- I. European patent application 94 918 028.5 (publication No. 0 699 092) corresponding to published international application WO-A-94/27674 was refused by a decision of the examining division dispatched on 13 October 2003, on the ground of an *a posteriori* lack of unity of the invention within the meaning of Article 82 EPC.

The examining division considered a defibrillator according to independent claim 1 then on file to lack novelty within the meaning of Articles 54(1) and (2) EPC with respect to the prior art according to document

D1: US-A-5 097 830.

The remainder of the claims was held to be directed to two separate groups of inventions, a defibrillator with a specific self-test system and a corresponding method of self-testing according to claims 1 to 27 and 34 to 41, on the one hand, and a defibrillator with a self-test system and a medical electrode system according to claims 1 and 28 to 33, on the other hand.

- II. The applicant lodged an appeal against the decision on 12 December 2003 and paid the prescribed fee. On 13 February 2004 a statement of grounds of appeal was filed. Grant of a patent was requested on the basis of the claims underlying the appealed decision (main request) or an amended set of claims 1 to 41 filed with the statement of grounds of appeal. A request for oral proceedings was made.

III. On 17 October 2005 the appellant was summoned to oral proceedings. In a communication dated 14 December 2005 the Board gave its preliminary view as to the issues of novelty and unity of invention and addressed questions arising under Articles 123(2) EPC (added subject-matter) and 84 EPC (clarity) for the requests on file.

IV. In response the appellant filed, by letter of 24 January 2006, amended independent claims 1 and 37 according to a second auxiliary request and claims 1 and 35 according to a third auxiliary request.

V. Oral proceedings were held on 24 February 2006.

As a result of the discussion, the appellant declared that the parts of the application documents concerning a medical electrode system, ie page 28, line 19 to page 37, line 14, Figures 9 to 18 and the corresponding claims of the published application were deleted from the present application.

Furthermore, the appellant replaced all former requests by the request that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of claims 1 and 35 as well as an amended page 6 of the description as filed in the oral proceedings, the remainder of the application documents to be adapted.

As regards the deleted subject-matter, the appellant reserved the right to file a divisional application.

VI. Independent claims 1 and 35 of the appellant's request read as follows:

"1. A defibrillator comprising:

- a power system including
 - an energy source (12, 32) providing power to
 - a power supply (46) for the defibrillator and
 - a high voltage delivery system (13, 36) to deliver a pulse of electrical energy to electrodes (40, 44, 45) attachable to said defibrillator;
- a controller (22, 34) controlling the operations of the high voltage delivery system (13, 36); and
- a self-test system (24; 42) comprising a defibrillator status indicator (28), characterized in that the self-test system further comprises a system monitor (42), which is separate from the controller (22, 34), has its own power supply (44) and includes a pre-programmed test initiation signal generator (26, 48) for automatically initiating and conducting self-tests on a periodic basis by periodically generating test initiation signals at pre-scheduled test times, wherein said test initiation signals command the defibrillator's power system to turn on and command said controller (22, 34) to issue an appropriate series of commands to perform the required tests."

"35. A method for automatically determining and indicating the operational status of the defibrillator according to claim 1, the method comprising the following steps:

generating a pre-programmed test initiation signal for automatically initiating and conducting self-tests on a periodic basis by periodically generating test initiation signals at pre-scheduled test times;

commanding the defibrillator's power system to turn on and commanding said controller (22, 34) to issue an appropriate series of commands to perform the required tests;

and indicating the status of the defibrillator based on a result of the required tests."

Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.

2. *Amendments (Article 123(2) EPC)*

Independent claims 1 and 35 are based on originally-filed claims 1 and 43, respectively, which are amended by definitions of the power system and the self-test system as disclosed by Figures 1 to 4 and the corresponding description on page 6, lines 6 to 20; page 7, lines 3 to 7; page 9, lines 18 to 22 and 30 to 35; page 10, lines 6 to 18; and page 12, lines 15 to 19 of the published international application.

The Board is thus satisfied that the claims on file comply with the requirement of Article 123(2) EPC.

3. *Unity of the invention (Article 82 EPC)*

With the declared deletion from the application documents of those matters which relate to a specific structure of a medical electrode system (see point V

supra), the ground of lack of unity, on which the contested decision was based, has ceased to exist.

4. *Novelty (Articles 52(1) and 54(1) and (2) EPC)*

4.1 Document D1 (see Figures 1, 2 and 10 to 13 with the corresponding description) refers to a defibrillator comprising a power system, a controller and a self-test system according to the preamble of claim 1. Following power-up, a number of self-tests are performed (see column 21, line 39 to column 22, line 11; column 23, lines 15 to 22). Moreover, on an ongoing basis during runtime of the defibrillator, self-tests are periodically performed at regular time intervals, eg every five milliseconds (see column 22, lines 12 to 38; column 23, lines 22 to 27).

4.2 However, document D1 does not disclose a self-test system of a defibrillator and a corresponding method for automatically determining and indicating the operational status of the defibrillator which, by means of a system monitor, that is separate from the defibrillator's controller, has its own power supply and includes a pre-programmed signal generator for automatically initiating and conducting self-tests by periodically generating test initiation signals at pre-scheduled test times, wherein the test initiation signals cause the defibrillator's power system to turn on and cause the controller to issue an appropriate series of commands to perform the required tests. Thus, in distinction to the self-test system in the defibrillator known from D1, the self-test system in the claimed defibrillator conducts self-tests on a periodic basis in an absolutely autonomous manner.

- 4.3 Therefore, the subject-matter of claims 1 and 35 on file is novel with respect to the teaching of document D1.
5. Since the objection of lack of unity has been resolved by the declared deletion of the subject-matter relating to the second invention and since no substantive examination has yet taken place, apart from the issue of novelty vis-à-vis document D1 in the context of the *a posteriori* lack of unity argument, the Board, in exercising the discretionary power conferred to it by Article 111(1) EPC, deems it appropriate to remit the case, in accordance with the appellant's request, to the examining division for further prosecution on the basis of independent claims 1 and 35 as well as amended page 6 of the description filed in the oral proceedings of 24 February 2006. In this context, the Board abstains from any comments as to possible further deficiencies of the independent claims and the application documents including in particular the dependent claims, so as not to unduly bind the examining division. Thus, the *ratio decidendi* of the Board's decision, to which the examining division shall be bound, exclusively extends to the issue of added subject-matter (Article 123(2) EPC) for independent claims 1 and 35 filed in the oral proceedings and the issue of novelty (Articles 54(1) and (2) EPC) of their subject-matter with respect to the teaching of document D1, both issues being resolved by amended claims 1 and 35 on file.
6. Further to the oral proceedings, the Board has become aware of an editorial inconsistency in the present text

of claim 1, in that the reference numerals "44" and "45" designating the "*electrodes (40, 44, 45)*" arise from subject-matter (see Figures 11, 12 and 14) which has been deleted from the present application. These reference numerals should thus be deleted as well.

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

R. Schumacher

B. Schachenmann