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D E C I S I O N
of 22 November 2005

Case Number: T 0683/04 - 3.2.02

Application Number: 95912072.6

Publication Number: 0754067

IPC: A61M 5/158

Language of the proceedings: EN

Title of invention:
Protection assembly

Patentee:
NOBLE HOUSE GROUP PTY.LTD.

Opponent:
DSU Medical Corporation

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes) "

Decisions cited:
-

Catchword:
-



Case Number: T 0683/04 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 22 November 2005

Appellant: DSU Medical Corporation
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Respondent: NOBLE HOUSE GROUP PTY.LTD.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
25 March 2004 concerning maintenance of
European patent No. 0754067 in amended form.

Composition of the Board:

Chairman: T. Kriner
Members: D. Valle
E. Dufrasne

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal on 14 May 2004 against the decision of the opposition division posted on 25 March 2004 to maintain the European patent EP-B-754 067 in amended form. The fee for the appeal was paid on 19 May 2004 and the statement setting out the grounds for appeal was received on 20 July 2004.

II. The opposition division held that the patent in amended form met the requirements of the EPC, and in particular that the ground for opposition mentioned in Article 100(a) EPC of lack of inventive step cited by the opponent did not prejudice the maintenance of the patent as amended.

III. The following documents have been cited during the opposition proceedings:

D1: US-A-5 069 341

D2: WO-A-90/03196 (family member of US-A-5 112 311 cited in the patent specification)

D3: EP-A-0 499 077

D4: US-A-3 572 334

D5: US-A-4 941 881.

IV. Oral proceedings took place on 22 November 2005.

The appellant requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent (patentee) requested that the appeal be dismissed, or that the patent be maintained on the basis of two auxiliary requests.

- V. Claim 1 as filed on 16 March 2004 and maintained by the decision under appeal reads as follows:

"A protection assembly (22) for use with a wing catheter (10) having a forwardly and longitudinally extending needle (12) connected to a rearwardly extending tube (16) by means of a needle holder (14), wherein: the protection assembly (22) includes a pair of longitudinally extending sub-members (26, 28) adapted to be assembled about the wing catheter (10) to form a sleeve member (24), said sub-members and said sleeve member each having front and rear end portions, said sleeve member (24) is adapted for longitudinal displacement from a rear needle exposed position to a forward needle protected position relative to the wing catheter, and fixing means for fixing the sleeve member with respect to the wing catheter (10) when the sleeve member (24) is in the needle protected position, and locking means (42, 44) for locking the rear end portions of the sub-members together, characterized in that the protection assembly can be assembled on the tube (16) of the wing catheter after manufacture of the wing catheter, is slidable upon the tube (16), and once locked together the sub-members form a unitary rear end portion of the sleeve member (24) and a pair of open-ended longitudinally extending slots (33) between the front end portions of the sub-members, said slots (33) being adapted to slidably receive the wings (18, 20) of the catheter (10) when the sleeve member (24) is

displaced from said needle exposed position to said needle protected position."

VI. In support of his request the appellant relied on the following submissions.

The subject-matter of claim 1 of all three requests did not imply an inventive step having regard to a combination of the teaching of D1 and D2 or D3, or - alternatively - of D2 and D5 or D1.

Starting from D1, the problem underlying the invention was to provide a protection assembly capable to be locked over the tube when the catheter was in use. The solution provided by the invention of a protector consisting of two parts which could be locked together was suggested by D2 (see page 4, lines 9 to 18; page 8, lines 1 to 5; Figures 15 to 17) or by D3 (see column 5, lines 32 to 39; Figure 8).

Also a combination of the teaching of D2 and D5 or D1 would make claim 1 obvious, since the skilled person would have taken from D1 or D5 the idea to modify the protector of D2 by opening the slots at the front end, in particular since D2 itself disclosed the possibility of having slots open at the front end (see page 11, lines 1 to 3).

VII. The respondent disputed the views of the appellant and maintained that the subject-matter of claim 1 of the main request implied an inventive step. None of the protectors described in D1 to D5 were designed to be assembled while the catheter was in use, i.e. when the needle was inserted into the patient.

Reasons for the Decision

1. The appeal is admissible.
2. *Inventive step (main request)*
 - 2.1 D1 and D2 or D3

D1 discloses a protection assembly (5) for use with a wing catheter having a forwardly and longitudinally extending needle (11) connected to a rearwardly extending tube (2) by means of a needle holder (10), wherein the protection assembly includes a sleeve member having a front and a rear end portion adapted for longitudinal displacement from a rear needle exposed position to a forward needle protected position relative to the wing catheter, and fixing means (9) for fixing the sleeve member with respect to the wing catheter when the sleeve member is in the needle protected position, the protection assembly being slidable upon the tube, and having a pair of open-ended longitudinally extending slots (6), said slots being adapted to slidably receive the wings (4) of the catheter when the sleeve member is displaced from said needle exposed position to said needle protected position.

However, D1 does not disclose that the protection assembly includes a pair of longitudinally extending sub-members adapted to be assembled about the wing catheter to form the sleeve member, said sub-members each having front and rear end portions, and locking means for locking the rear end portions of the sub-

members together, wherein the protection assembly can be assembled on the tube of the wing catheter after manufacture of the wing catheter, and once locked together the sub-members form a unitary rear end portion of the sleeve member and said pair of open-ended longitudinally extending slots.

Starting from D1, the object underlying the present application has therefore to be seen in providing a protector assembly which can be easily assembled on the tube whilst the catheter is in use (see description of the patent in suit, sections 0006, 0007 and 0012). The catheter is considered to be in use in this context when the needle is inserted into the patient (see description, section 0029).

D2, and in particular the embodiment of Figures 15 to 17, does not disclose a protector assembly which can be easily assembled on the tube of the wing catheter when the catheter is in use, since the protector has to be placed on the wings. This is not possible or highly impractical when the needle is inserted into the patient. Therefore, the skilled person would not have considered D2 when dealing with the object cited above.

Furthermore the two sub-members do not form open-ended longitudinally extending slots when locked together.

The same considerations apply to D3 (see in particular Figures 8 and 9).

Certainly, as the appellant pointed out, D2 discloses also that the slots may be formed by cutting through either one of the guard 1's ends (see page 11, lines 1

to 3 and Figures 2, 3 and 9, 10). However such embodiment does not disclose either that once locked together the sub-members form a unitary rear end portion of the sleeve member and a pair of open-ended longitudinally extending slots between the front end portions of the sub-members. On the contrary, in the embodiment of D2, the slots are always situated in each sub-member and not formed by locking the sub-members like in the claimed invention. Furthermore, the open slots of D2 are designed to be closed during use either by snapping their ends 1k in a receptacle of the guard 1 as in the embodiment of Figures 2 and 3, or by means of an elastic band as in the embodiment of Figures 9, 10.

2.2 D2 and D5 or D1

D2 (see in particular Figures 1 and 15 to 17) discloses a protection assembly (100) for use with a wing catheter having a forwardly and longitudinally extending needle (5) connected to a rearwardly extending tube (7) by means of a needle holder (3) wherein the protection assembly includes a pair of longitudinally extending sub-members (140, 141) adapted to be assembled about the wing catheter to form a sleeve member, said sub-members and said sleeve member each having front and rear end portions, said sleeve member is adapted for longitudinal displacement from a rear needle exposed position to a forward needle protected position relative to the wing catheter, fixing means (107, 108) for fixing the sleeve member with respect to the wing catheter when the sleeve member is in the needle protected position, and locking means (110, 112, 114, 116, 118, 120) for locking the

sub-members (140, 141) together, wherein the protection assembly can be assembled on the tube of the wing catheter after manufacture of the wing catheter (see for example page 8, lines 1 to 3) and is slidable upon the tube. Furthermore, this protector assembly comprises slots (105, 106) which are adapted to slidably receive the wings of the catheter when the sleeve member is displaced from said needle exposed position to said needle protected position.

However, D2 does not disclose that once locked together the sub-members form a unitary rear end portion of the sleeve member and a pair of open-ended longitudinally extending slots between the front end portions of the sub-members.

Starting from D2, the object underlying the present application has therefore also to be seen in providing a protector assembly which can be easily assembled on the tube whilst the catheter is in use.

Neither D5 nor D1 address the problem of the invention. D5 discloses namely a protector assembly which is engaged on a connector (56) of an infusion device before and during use of this device. Similarly, the protector assembly of D1 is put in place on the wing catheter (1, 2, 3, 4, 10, 11) before the connector (1) is fixed to the tube (2). Furthermore, neither D5 nor D1 disclose those features of the invention according to which once locked together the sub-members form a unitary rear end portion of the sleeve member and a pair of open-ended longitudinally extending slots between the front end portions of the sub-members. On the contrary, both documents disclose a one-piece

protector having a pair of open-ended longitudinally extending slots.

3. *Conclusions*

From the above considerations, it follows that the subject-matter of claim 1 of the main request involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner