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**Datasheet for the decision  
of 14 September 2006**

**Case Number:** T 0730/04 - 3.2.02

**Application Number:** 96943601.3

**Publication Number:** 0873150

**IPC:** A61M 16/00

**Language of the proceedings:** EN

**Title of invention:**  
Ventilator control system and method

**Applicant:**  
CARDIOPULMONARY CORPORATION

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
"Added subject-matter (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0730/04 - 3.2.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.02  
of 14 September 2006

**Appellant:** CARDIOPULMONARY CORPORATION  
200 Cascade Boulevard  
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**Representative:** Kirkham, Nicholas Andrew  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 7 January 2004  
refusing European application No. 96943601.3  
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 7 January 2004 to refuse European patent application No. 96 943 601.3.

The grounds of refusal were that the claims then on file infringed Articles 52(4), 54, 82 and 123(2) EPC. The principal objections were that the method claims concerned therapy, the independent claims were not in unity, and the subject-matter of claim 1 lacked novelty.

On 4 March 2004 the appellant (applicant) lodged an appeal against the decision and paid the prescribed fee on the same day. On 13 May 2004 a statement of grounds of appeal was filed.

II. Oral proceedings were held on 14 September 2006. The appellant requested that the decision under appeal be set aside and that the application be granted on the basis of claims 1 to 5 of the main request filed at the oral proceedings, which request was to replace all requests previously on file.

III. Independent claim 1 of the main request reads as follows:

"1. A ventilator control system (10) for controlling a ventilator pneumatic system (18) comprising:  
a) a display controller (12) comprising:  
a display (24);  
a user interface (26) for receiving input values from a user for setting one or more breath parameters within a set of breath parameters;

a memory electrically coupled to the user interface (26) for storing the set of breath parameters; and  
a first processor (22) having a database (214) which includes a plurality of patient protocols, each patient protocol comprising a set of breath parameters and patient data; and wherein the user interface (26) is arranged to be able to select a patient protocol; and the first processor (22) is arranged to receive the selected patient protocol; and  
b) an another controller (14) comprising:  
a second processor (30) arranged to simultaneously output signals for adjusting a plurality of controls within the ventilator pneumatic system (18) in response to the selected patient protocol."

Claims 2 to 5 are dependent claims.

IV. The appellant argued as follows:

The support for the main request as filed at the oral proceedings was to be found in original claims 1 and 29, and in the paragraph linking pages 4 and 5 together with that on page 7, lines 15 to 22. Page 4, line 30 onwards presented various features of the invention, so that it was legitimate to add the feature of the database to the basic features of the invention as recited in the paragraph linking pages 4 and 5.

## Reasons for the Decision

1. The appeal is admissible.
2. Article 123(2) EPC
  - 2.1 According to the appellant claim 1 of the solitary request now on file is based on the combination of claims 1 and 29 of the application as originally filed (WO-A-97/20592). This corresponds to the paragraph linking pages 4 and 5 together with page 7, lines 15 to 22. This application included fourteen independent claims defining respective inventions, including those of claims 1 and 29.

However, the application did not state that the features of claims 1 and 29 may be combined to define a new invention, nor did the application disclose the combination of these features alone. Notwithstanding, the features of claims 1 and 29 have now been combined to define a new invention. However, these features have been taken from respective specific contexts and combined together, while leaving out other features which also belong to the context. This is not allowable for the reasons set out below.

Present claim 1 defines a ventilator control system comprising inter alia a display controller, a first processor, a database including a plurality of patient protocols, and another (i.e. second) controller arranged to simultaneously output signals for adjusting a plurality of controls within the ventilator pneumatic system.

Such a ventilator control system is described on page 27, line 10 onwards, with reference to Figure 11 and in connection with a simulator. This is the only context disclosed for an invention including the combination of features set out in the previous paragraph. This context includes, apart from the simulator, inter alia two processors which exchange a "breath control structure".

No invention was originally disclosed, which comprised a database but not a simulator and two processors. Therefore, the claim contains an intermediate generalisation which is not allowable.

2.2 Moreover, the feature first processor having a database, in claim 1, was also not originally disclosed. The description with reference to Figure 11 discloses a first processor connected to, as opposed to having, a database.

2.3 Therefore, claim 1 is objectionable under Article 123(2) EPC, and the appellant's solitary request is not allowable.

**Order**

**For these reasons, it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

V. Commare

T. K. H. Kriner