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D E C I S I O N
of 13 December 2004

Case Number: T 0786/04 - 3.2.2

Application Number: 96942057.9

Publication Number: 0955986

IPC: A61H 31/00

Language of the proceedings: EN

Title of invention:
Chest compression apparatus for cardiac arrest

Applicant:
Deca-Medics, Inc.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54

Keyword:
"Novelty (yes, after amendments)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0786/04 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 13 December 2004

Appellant: Deca-Medics, Inc.
2427 Tremont Road
Columbus, OH 43221 (US)

Representative: Goodenough, Nigel
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London WC1V 7LE (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 16 January 2004 refusing European application No. 96942057.9 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: T. K. H. Kriner
Members: D. Valle
E. J. Dufrasne

Summary of Facts and Submissions

I. The appellant (applicant)lodged an appeal, on 15 March 2004, against the decision of the examining division posted on 16 January 2004 refusing the European patent application No. 96942057.9. The fee for appeal was paid simultaneously and the statement setting the grounds of appeal was received on 26 May 2004.

II. The examining division held that the application did not meet the requirements of Article 54 EPC, having regard to the document:

D1 = US - A - 2 754 817.

III. The appellant requested that the decision under appeal be set aside and that for the purpose of the appeal the following version of the application be considered:

Claims: 1 to 25 as filed with letter of 26 May 2004

Description: pages 1, 5 and 6 filed with letter of 26 May 2004
pages 2 to 4, 7 to 28 as published in WO - 97/22327

Drawings: Figures 1 to 17 as published in WO - 97/22327.

IV. Claim 1 reads as follows:

"Cardiopulmonary resuscitation apparatus (10) for effecting both thoracic and cardiac pumping of a patient suffering from cardiac arrest, the apparatus including a base (14) contoured to seat near a central region of the patient's chest, an actuator (30, 32), and a substantially inelastic belt (40) having first and second sections (88 and 90) for wrapping around the chest, wherein the actuator comprises: two manually graspable handles (30, 32), the handles being manually movable from a start position which they adopt when the apparatus is applied to a patient to a finish position which they adopt at the end of each compression stroke of the apparatus; and a force converter (16, 18) mounted on the base, connected to the handles, and having belt connectors (34, 36) for connecting to the first and second sections of the belt, the force converter being effective in all possible positions of the handles to convert a force manually applied to the handles and directed inwardly toward the chest into (a) a chest compressing resultant directed through the base toward the chest and (b) a belt tightening resultant applied to the belt connectors directed tangential to the chest, whereby repeated movement of the handles from the start position to the finish position resulting from the repeated application to the handles of a force directed inwardly toward the chest of a patient will automatically produce repeated inwardly and tangentially directed forces on the chest of the patient to increase blood flow in the patient in the natural direction."

V. In support of his request, the appellant relied essentially on the following submissions:

D1 did not refer to a cardiopulmonary resuscitation apparatus, but to an exercising device. Furthermore, the subject-matter of claim 1 additionally differed from D1 by the fact that the force converter was effective in all possible positions of the handles to convert a force manually applied to the handles and directed inwardly toward the chest into (a) a chest compressing resultant directed through the base toward the chest and (b) a belt tightening resultant applied to the belt connectors directed tangentially to the chest. Accordingly the subject-matter of claim 1 was novel against D1.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

The features of claim 1 are disclosed in claims 1 and 2, Figure 1 and the corresponding description of WO - A - 97/22327. Claims 2 to 5 are based on published claims 3 to 6; claim 6 is based on claims 7 and 8; claims 7 and 8 are based on claims 9 and 10; claim 9 is based on claims 11 and 12; claims 10 to 13 are based on claims 15, 16, 32 and 33; claim 14 is based on claims 13 and 14; claims 15 to 21 are based on claims 26 and 17 to 22; claim 22 is based on claims 34 to 36; claim 23 is based on claims 37 to 39, and claims 24 an 25 are based on claims 40 and 31, in

conjunction with the description of WO - A - 97/22327, respectively. The description has been adapted to the newly filed claims.

Therefore, the present documents meet the requirements of Article 123(2) EPC.

3. *Novelty*

D1 discloses an apparatus including a base (4) contoured to seat on a person's body, an actuator (16) and a belt having first and second sections (1, 2) and suitable for wrapping around the chest, wherein the actuator comprises: two manually graspable handles (17), the handles being manually movable from a start position which they adopt when the apparatus is applied to a person to a finish position which they adopt at the end of each compression stroke of the apparatus; and a force converter mounted on the base, connected to the handles, and having belt connectors (11, 14) for connecting to the first and second sections of the belt, the force converter being effective in all possible positions of the handles to convert a force manually applied to the handles into a belt tightening resultant applied to the belt connectors directed tangential to the chest, whereby repeated movement of the handles from the start position to the finish position resulting from the repeated application to the handles of a force will automatically produce repeated tangentially directed forces on the chest of the person, whereby the blood flow of the person is increased (see column 1, lines 33 to 36).

However, D1 does not refer to a cardiopulmonary resuscitation apparatus for effecting both thoracic and cardiac pumping of a patient suffering from cardiac arrest, but to an exercising device.

It has also been noticed that the device according to the invention is designed to be operated by a second person while the patient lies on his back, whereas the device according to D1 is designed to be operated by the subject himself, preferably staying upright (see Figure 1).

Moreover, D1 does not disclose that:

- the apparatus includes a base contoured to seat near a central region of the patient's chest,

- the belt is a substantially inelastic belt,

- the force applied to the handles is directed inwardly toward the chest,

- the force converter being effective in all possible positions of the handles to convert the force applied to the handles both into a chest compressing resultant directed through the base toward the chest and into a belt tightening resultant applied to the belt connectors directed tangential to the chest.

There is no teaching in D1 that the shield (4) is a base contoured to seat near a central region of the patient's chest. According to column 3, lines 28 and 29, the belt is made of a flexible material.

Furthermore, the handles (17) are not designed to be operated by pushing towards the body. The force to be applied to the handles (17) in D1 is normally directed tangentially with respect to the body (see Figure 1), and the force converter is exclusively designed to convert the force applied to the handles into a belt tightening resultant directed tangential to the chest (see column 3, line 49, to column 4, line 12).

Accordingly the subject-matter of claim 1 is novel.

4. Since the further requirements for patentability, in particular the inventive step, have not yet been examined by the first instance, the board finds it appropriate to remit the case to the first instance for further prosecution.

5. As for the assessment of inventive step of the subject-matter of claim 1, according to the case law of the boards of appeal, fourth edition, I. D. 3.1, the closest prior art for assessing inventive step is normally a prior art document disclosing subject-matter conceived for the same purpose or aiming at the same objective as the claimed invention. In the present case, the board is of the opinion that D1 is not apt to be taken as the closest state of the art, since the device disclosed therein belongs to a completely different technical field than that of the present invention. D1 is namely concerned with an exercising device, whereas the outstanding invention is concerned with a CPR (cardiopulmonary resuscitation) device.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance for further prosecution on the basis of the following documents:

   Claims: 1 to 25 as filed with letter of 26 May 2004

   Description: pages 1, 5 and 6 filed with letter of 26 May 2004
   pages 2 to 4, 7 to 28 as published in WO - 97/22327

   Drawings: Figures 1 to 17 as published in WO - 97/22327.

The Registrar: The Chairman:

V. Commare T. Kriner