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**Datasheet for the decision
of 29 November 2007**

Case Number: T 0770/05 - 3.2.02

Application Number: 00919549.6

Publication Number: 1171049

IPC: A61B 17/70

Language of the proceedings: EN

Title of invention:
Adjustable spinal tether

Applicant:
SDGI Holdings, Inc.

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - (yes, after amendments)"

Decisions cited:
-

Catchword:
-



Case Number: T 0770/05 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 29 November 2007

Appellant: SDGI Holdings, Inc.
300 Delaware Avenue, Suite 508
Wilmington, DE 19801 (US)

Representative: Allman, Peter John
MARKS & CLERK,
Sussex House,
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 10 January 2005
refusing European application No. 00919549.6
pursuant to Article 97(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal on 21 March 2005 against the decision of the examining division posted on 10 January 2005 on the refusal of the European patent application 00919549.6. The fee for the appeal was paid simultaneously and the statement setting out the grounds for appeal was received on 20 May 2005.

II. The examining division held that the subject-matter of claim 1 did not meet the requirements of Article 56 EPC for lack of inventive step having regard to document

D1 = US - A - 4 966 600.

Additionally the following documents have been cited by the examining division:

D2: WO-A-96/17544

D3: WO-A-95/22294

D4: WO-A-95/26165

III. The appellant requested that the decision under appeal be set aside and that the patent be granted on the basis of the following version of the application:

- Claims:

1 to 6 as filed with letter of 17 October 2007
(main request);

7 to 35 as filed with letter dated 28 July 2007;

- Description:

pages 2 and 4 as filed with letter dated
2 April 2007;

page 5 as filed with letter dated 17 October 2007
(main request);
page 6 as filed with letter dated 7 June 2007;
pages 1, 3, and 7 to 23 as published WO - A3 -
00/64363;
- Drawings: Figures 1 to 22D as published WO - A3 -
00/64363.

IV. Claim 1 reads as follows:

"An adjustable spinal tether, comprising:
an artificial strand (11, 11b, 11c) having a first end
portion (13, 13b, 13c) and a second end portion (15),
said first end portion (13, 13b, 13c) defining an
aperture (29, 29b, 29c), said second end portion (15)
extending through said aperture (29, 29b, 29c) to form
a loop having an adjustable length; and
a crimp (50) having a bore (55) defined therethrough,
said crimp (50) being transitionable between a first
state and a second state, said first state permitting
said second end portion (15) to pass through said bore
(55), said second state preventing said second end
portion (15) from passing through said bore (55), a
portion (51) of said crimp (50) being configured to
prevent said crimp (50) from passing through said
aperture (29, 29b, 29c); and
characterized in that said crimp (50) has external
threading (52) and includes a nut (65) threadable along
said external threading (52) to transition said crimp
(50) between said first and second states."

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

Claim 1 is derived from claim 1 and 24 and from the Figures 1 to 9E as published in WO-A-00/64363. The replacement of the polymeric strand cited in the published claim 1 by an artificial strand is based on page 8, lines 8 to 13. The introduction of the term aperture in the first end portion (published claim 1: eyelet) is based on page 10, line 9 (opening).

Claim 2 to 14 are based on the published claims 3 to 15, claim 15 is based on page 9, line 29, to page 10, line 1 of WO-A-00/64363; claim 16 is based on the published Figures 7A to 7D; claim 17 on page 7, lines 16 to 20, and page 9, lines 28 to 30; claim 18 on page 8, lines 23 to 26; claim 19 on page 8, line 26; claim 20 on page 8, lines 17, 18; claim 21 on page 8, lines 29, 30; claim 22 on the paragraph bridging pages 8 and 9; claim 23 on page 10, line 21; claim 24 on page 10, lines 8 to 10, and page 19, lines 19 to 22; claim 25 on claim 3 as published; claim 26 on page 7, line 30; claim 27 on page 7, line 31; claim 28 on page 17, line 17 to 21; claim 29 on page 16, lines 20 to 28; claim 30 on page 19, lines 1 to 4; claim 31 on page 16, lines 29 to 31 and page 2, lines 22 to 25; claim 32 on page 17, lines 20 to 22; claim 33 on page 17, lines 1 to 3; claim 34 on page 17, lines 9 to 11; claim 35 on page 17, lines 14 to 16.

The description has been adapted to the new filed set of claims.

Hence, the amended documents meet the requirements of Article 123(2) EPC.

3. *Novelty and inventive step*

D1 which represents the most relevant state of the art discloses an adjustable spinal tether, comprising an artificial strand (30) having a first end portion and a second end portion (38), said first end portion defining an aperture, said second end portion extending through said aperture to form a loop having an adjustable length; and a crimp (28) having a bore defined therethrough, said crimp being transitionable between a first state and a second state, said first state (before the crimp is crimped) permitting said second end portion to pass through said passage, said second state (after the crimp is crimped) preventing said second end portion from passing through said passage, a portion (58) of said crimp being configured to prevent said crimp from passing through said aperture.

However D1 does not disclose the characterising features of claim 1, according to which said crimp has external threading and includes a nut threadable along said external threading to transition said crimp between said first and second states.

The object to be achieved by the present invention is therefore to be seen in providing an alternative spinal

tether which is easier to handle than those according to the state of the art.

None of the available documents of the prior art (D2, D3, D4) contains the characterizing features of the present claim 1 nor any hint which could lead the skilled person confronted with this object in an obvious way to the invention as defined in claim 1.

From the above considerations, it follows that the subject-matter of claim 1 is novel and involves an inventive step.

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 with the order to grant a patent in the following version:
 - Claims:
 - 1 to 6 as filed with letter of 17 October 2007;
 - 7 to 35 as filed with letter dated 28 July 2007;
 - Description:
 - pages 2 and 4 as filed with letter dated 2 April 2007;
 - page 5 as filed with letter dated 17 October 2007;
 - page 6 as filed with letter dated 7 June 2007;
 - pages 1, 3, and 7 to 23 as published WO - A3 - 00/64363;
 - Drawings: Figures 1 to 22D as published WO - A3 - 00/64363.

The Registrar:

The Chairman:

V. Commare

T. Kriner