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**Datasheet for the decision
of 3 May 2007**

Case Number: T 0925/05 - 3.2.02

Application Number: 01928273.0

Publication Number: 1276523

IPC: A61M 5/158

Language of the proceedings: EN

Title of invention:

A cannula assembly

Applicant:

Teo, Keng, Siang, Richard

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 54

Keyword:

"Novelty - yes"

Decisions cited:

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Catchword:

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Case Number: T 0925/05 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 3 May 2007

Appellant: Teo, Keng, Siang, Richard
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Representative: Howe, Steven
Lloyd Wise
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 8 March 2005
refusing European application No. 01928273.0
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 6 May 2005, against the decision of the examining division posted on 8 March 2005 refusing the European patent application No. 01928273.0. The fee for appeal was paid simultaneously and the statement setting out the grounds of appeal was received on 6 July 2005.

II. The examining division held that claim 11 then on file did not meet the requirements of Article 52(4) EPC, and that the subject-matter of the claims 1 to 5 and 7 was not novel with respect to the document:

D2: EP-A-186 256.

III. Following a communication of the board the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the main request or of the first auxiliary request both filed with letter of 19 April 2007.

IV. Claim 1 of the main request reads as follows:

"A cannula assembly comprising an outer flexible cannula (10) and a separate inner cannula (12) receivable within said outer cannula (10) to form a liquid seal therewith, characterized in that the inner cannula (12) is made of flexible material and is arranged for transfer of liquid therethrough, the inner cannula (12) being replaceable with a like inner cannula (12) when the outer cannula (10) is inserted and secured to a blood vessel."

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

Since the set of claims according to the main request did not comprise a method claim the objection based on Article 52(4) EPC was no longer relevant.

The subject-matter of claim 1 was novel having regard to D2, since D2 was concerned with a rigid needle assembly for biopsies and not with a flexible intravenous cannula assembly.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*

D2 (see in particular Figure 11) discloses a needle assembly comprising an outer needle (21) and a separate inner cannula (28) receivable within said outer needle to form a liquid seal therewith.

However, D2 does not disclose a cannula assembly with a flexible outer cannula and an inner cannula made of flexible material and arranged for transfer of liquid therethrough, the inner cannula being replaceable with a like inner cannula when the outer cannula is inserted and secured to a blood vessel.

D2 is concerned with a biopsy needle set and - in contrast to the invention - stresses the need of having a good rigidity of the needle. The embodiment of D2

closer to the invention is represented in Figure 11 and shows an inner needle (28) with a close distal end and lateral aperture. This needle is not the same as the cannula of the invention, since the cannula is a tube having both ends open. Furthermore a needle is designed to pierce a tissue and therefore has a sharp end and a relatively rigid structure whereas a cannula is not necessarily provided with a piercing end and it is in the present invention flexible. Furthermore, since D2 refers to a biopsy needle set, there is no reason to assume that the inner needle is arranged for transfer of liquid therethrough and replaceable when the outer cannula is inserted and secured to a blood vessel.

Accordingly, the subject-matter of claim 1 of the main request is novel.

3. Since the first instance decision was based exclusively on Article 52(4) EPC (which is no longer relevant) and on Article 54 EPC, and in order to maintain the applicant's right to appeal to a second instance in case of a further negative decision, the board sees it as appropriate to remit the case to the first instance for further prosecution.

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 claims 1 to 11 according to the main request submitted with the letter of 19 April 2007.

The Registrar:

The Chairman:

V. Commare

T. Kriner