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Datasheet for the decision of 9 October 2008

Case Number: T 0301/06 - 3.2.02

Application Number: 01850162.7

Publication Number: 1295564

IPC: A61B 17/132

Language of the proceedings: EN

Title of invention:
Adjustable radial artery compressor

Applicant:
RADI MEDICAL SYSTEMS AB

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 84

Relevant legal provisions (EPC 1973):
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Keyword:
"Clarity (yes, after amendments)"
"Novelty and inventive step (yes, after amendments)"

Decisions cited:
T 0455/92

Catchword:
-

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Case Number: T 0301/06 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 9 October 2008

Appellant: RADI MEDICAL SYSTEMS AB
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Representative: Lindgren, Anders
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 13 October 2005 refusing European application No. 01850162.7 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: T. Kriner
Members: D. Valle
M. J. Vogel

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal on 12 December 2005 against the decision of the examining division posted on 13 October 2005 to refuse the application. The fee for the appeal was paid simultaneously and the statement setting out the grounds foe appeal was received on 10 February 2006.

II. The patent application was refused on the basis of Article 54 EPC (lack of novelty) and 84 EPC (lack of clarity).

III. The following documents are relevant for the present decision:

D1 = US - A - 5 569 297
D2 = DE - A - 0 219 012.

IV. Oral proceedings have been held on 9 October 2008.

At the end of the oral proceedings the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following:

- Claims:
  claim 1 as filed during the oral proceedings
  claims 2 to 14 as filed on 13 March 2008
- Description:
  pages 1, 2, 4-9 as originally filed
  page 3 as filed during the oral proceedings

Drawings:
Figures 1 - 11 as originally filed.

V. Claim 1 reads as follows:

"Adjustable radial artery compressor (1) for stopping the flow of blood through the puncture wound in the radial artery following a catheterisation procedure, comprising a support arm (2) provided with a support pad (5), and a compression arm (3) connected to the support arm (2) and provided with a compression pad (6); pressure adjusting means (7, 9, 10) for adjusting the distance between the support pad (5) and the compression pad (6), the support pad (5) and the compression pad (6) being adapted to press against well-defined, contact surfaces at the underside and upside of the forearm, respectively; characterized in that the support pad (5) is substantially longer than it is wide, the long dimensions of the support pad (5) extends in a direction transverse to the support arm (2), and the small dimension of the support pad (5) has a width less than the width of a radius bone."

VI. The appellant argued essentially as follows.

Claim 1 was clear. The reference to the radius bone for defining the dimension of the compression pad was meaningful and sufficiently clear for a skilled person, since the definition of the claimed compressor could only be expressed in terms relating to its intended use.

Starting from D1, which was considered as representing the closest state of the art, the subject-matter of claim 1 was novel, because it was distinguished from the device according to D1 by the features of the

characterizing portion of the claim. It also involved an inventive activity, since the available prior art did not contain any hint leading in an obvious way to the claimed invention.

Reasons for the Decision

1. The appeal is admissible.

2. *Clarity*

The only non-structural feature of claim 1 which could jeopardize the clarity is the one according to which the small dimension of the support pad has a width less than the width of the radius bone. The case is therefore similar to that dealt with in decision T 455/92 (see in particular point 2 of the decision), where a definition of the dimension of the claimed object (Bedeckung, cover) by its use on another object (Ballen, bales) has bean dealt with.

There the board found that the reference to the use of the cover resulted in a definite choice of the order of magnitude (Größenordnung) of its dimensions, in consideration of the conventional dimensions of the bales (übliche Ballengrößen). Similarly, in the present case, limiting the width of the support pad to the width of the radius bone on which is used is meaningful, because the lower limit of the width of the human radius bone certainly varies below an order of magnitude and within a sufficient narrow range to result in a clear practical technical teaching for the skilled person in the field.

The board went on stating that even if the so given definition of the dimension was quite broad, it was nevertheless necessary and therefore the claim was concise enough. Similarly in the present case the feature is considered indispensable, since

i) it cannot be eliminated, or
ii) substituted by a more precise expression

without detriment for the scope of the invention.

An elimination of the feature would in fact result in taking out of the claims the gist of the invention. It is essential for the invention that the width of the support pad is less than the width of the radius bone in order to achieve that the pressure on an artery within the forearm can be maintained on a constant level, independently of the movement of the forearm, and in order to avoid compressing more veins than necessary on the upside of the forearm.

Moreover, in the light of these effects a limitation of the width of the support pad by reference to a specific value would result in an unjustified restriction of the scope of the invention.

Therefore the present claim 1 meets requirements of Article 84 EPC.

3. *Amendments*

Claim 1 is supported by the original claim 1, Figures 6, 7 and 10 and the corresponding passages in the description.

Claims 2 to 14 remain as originally filed. The description has been adapted to the new main claim.

Hence the present version of the application does not violate Article 123(2) EPC.

4. *Novelty*

D1 discloses an adjustable radial artery compressor suitable for stopping the flow of blood through the puncture wound in the radial artery following a catheterisation procedure, comprising a support arm provided with a support pad (14), and a compression arm (16) connected to the support arm and provided with a compression pad (34); pressure adjusting means (18A) for adjusting the distance between the support pad and the compression pad, the support pad and the compression pad being adapted to press against well-defined contact surfaces at the underside and upside of the forearm respectively.

However, D1 does not disclose that the support pad is substantially longer than it is wide, the long dimension of the support pad extends in a direction transverse to the support arm, and the small dimension of the support pad has a width less than the width of a radius bone.

Accordingly, the subject-matter of claim 1 is novel over D1.

D2 is less relevant than D1.

5. *Inventive step*

Starting from D1, the object to be achieved by the present invention has to be seen in providing a radial artery compressor with which the compression pressure is essentially constant irrespective of any movement of the forearm and which minimizes the risk of vein stasis in the superficial veins at the upside of the forearm (see EP-A-1295564, Sections 0010 and 0011).

This object is achieved by the features of the characterizing portion of claim 1. A support pad having its long dimension transverse to the support arm and its small dimension less broad than that of the radius bone allows to maintain a pressure on the artery largely independent of the movement of the ulnar bone relative to the radial bone, and to limit the pressure of the support pad to a limited area above the radius bone thereby not affecting most part of the superficial veins at the upside of the forearm.

Since there is no suggestion in the state of the art for the provision of a support pad as defined in claim 1, the subject-matter of this claim also 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 on the basis of the following documents:

- Claims:
  claim 1 as filed during the oral proceedings
  claims 2 to 14 as filed on 13 March 2008
- Description:
  pages 1, 2, 4-9 as originally filed
  page 3 as filed during the oral proceedings

Drawings:
Figures 1 - 11 as originally filed.

The Registrar: The Chairman:

V. Commare T. Kriner