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Datasheet for the decision of 24 June 2008

Case Number: T 0957/06 - 3.2.02

Application Number: 99964086.5

Publication Number: 1137451

IPC: A61M 11/00

Language of the proceedings: EN

Title of invention:
Implantable vascular access device

Applicant:
STD Manufacturing, Inc.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Novelty (yes)"
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0957/06 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 24 June 2008

Appellant: STD Manufacturing, Inc.
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Representative: Kierdorf, Theodor
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 15 December 2005 refusing European application No. 99964086.5 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 17 February 2006 against the decision of the examining division posted on 15 December 2005 refusing the European patent application 99964086.5. The fee for the appeal was paid simultaneously and the statement setting out the grounds of appeal was received on 25 April 2006.

II. The examining division held that the application did not meet the requirement of Articles 52(1) in conjunction with Article 54 EPC (lack of novelty) having regard to the teaching of:

D4 = WO - A - 97/01370.

The examining division went forth stating in the decision under appeal that in any case the subject-matter of claim 1 would not involve an inventive step having regard to the document D4.

III. Oral proceedings took place on 24 June 2008.

The appellant did not attend the oral proceedings as communicated with the letter of 6 June 2008.

The written requests of the appellant were that the decision under appeal be set aside and a patent be granted on the basis of a main or two auxiliary requests all filed with the letter of 25 April 2006.

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

"An implantable access port comprising a plastic housing member (12, 12') defining at least on fluid chamber (22) and being provided with an exit port (18), a permeable septum member (16A, 16B) attached to said housing member and defining the top of said fluid chamber (22), said permeable septum member having a tactile or visual location marker portion (26) on the outer surface thereof, characterized in that said housing member (12, 12') comprises a plastic port base with a metallic dish-shaped insert molded or bonded into the bottom of the reservoir."

Claim 1 of the first auxiliary request contains the additional feature that the insert is covering the bottom and a portion of said sidewall of said fluid chamber only to a point at or below said exit port of said fluid chamber.

With respect to the main request, claim 1 of the second auxiliary request contains the additional feature that the edges of the metallic dish have radius greater than 0.35".

V. In support of his requests, the appellant relied essentially on the following submissions made in the written proceedings:

The subject-matter of claim 1 of all present requests was novel over the access ports shown in D4. According to the first embodiment of D4 the fluid chamber was defined by a metallic cup shaped insert whereas, according to claim 1, the fluid chamber was defined by

the housing. According to the second embodiment of D4, the metallic insert was formed as a planar member and did not include a continuous sidewall.

Furthermore, the subject-matter of claim 1 of all present requests did also involve an inventive step. Starting from D4 it was an object of the present invention to provide an implantable vascular access device which was easy and inexpensive to manufacture, which in the first instance produced as little MRI artefacts as possible and which in the second instance had nevertheless a significantly needle-impenetrable housing. This object was achieved by the provision of a plastic port base with a metallic dish insert molded or bonded into the bottom of the reservoir. Although D4 showed in one of its embodiments a metallic dish insert molded or bonded into the reservoir, a skilled person would never had used such an insert instead of a planar insert as used in the other embodiment of D4.

The additional feature of claim 1 of the first auxiliary request had been added to more precisely distinguish the claimed subject-matter in view of D4, and the additional feature of the second auxiliary request served to prevent blood coagulation within the reservoir.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request*

2.1 Novelty

D4 (see Figure 13) discloses an implantable access port comprising a plastic housing member (120) defining at least one fluid chamber (140) and being provided with an exit port (on the left of the figure), a permeable septum member (122) attached to said housing member and defining the top of said fluid chamber, said permeable septum member having a tactile or visual location marker portion on the outer surface thereof (the whole part raising above the housing member), whereby said housing member comprises a plastic port base with a metallic (see claim 14 of D4) insert (230) bonded into the bottom of the reservoir (see page 10 line 34 to page 11, line 10).

However, since the embodiment shown in Figure 13 does not comprise a dish-shaped insert, the subject-matter of claim 1 of the main request is novel.

2.2 Inventive step

Contrary to the appellant's statement, the device according to Figure 13 of D4 is easy and inexpensive to manufacture, produces as little MRI artefacts as possible and, with respect to the metallic insert, has a sufficiently needle-impenetrable housing. Hence all objects cited by the appellant are already achieved by the most relevant state of the art.

Having regard to the only feature of claim 1 which is not disclosed in Figure 13 of D4, the object underlying

the present application is to reduce the risk of coagulation. This object is achieved by the provision of a dish-shaped insert which avoids sharp corners where blood can easily coagulate.

However, it is generally known that the velocity of blood coagulation increases when the velocity of the blood stream decreases. It is also generally known that the velocity of fluids decreases when the fluid meets sharp corners. It is therefore obvious that the risk of coagulation may be reduced by eliminating sharp corners. It is also obvious that the dish-shaped inserts shown in Figures 2, 3, 10 to 12 of D4 do not have sharp corners.

Contrary to the appellant's statement it was therefore obvious for the person skilled in the art faced with the object mentioned above to replace the insert shown in Figure 13 of D4 by a dish-shaped insert. Consequently the subject-matter of claim 1 of the main request does not involve an inventive step.

3. *First and second auxiliary request - inventive step*

The additional feature of the first auxiliary request that the insert is covering the bottom and a portion of said sidewall of said fluid chamber only to a point at or below said exit port of said fluid chamber is already shown in Figure 13 of D4. Hence the assessment in section 2.2 above applies also to claim 1 of the first auxiliary request.

The additional feature of the second auxiliary request that the edges of the metallic dish have radius greater

than 0,35" is based on an obvious selection. The person skilled in the art would certainly choose such a radius which is the best for avoiding coagulation. Furthermore the board wants to emphasize that the magnitude of the radius is also determined by the overall dimensions of the subcutaneous apparatus.

Accordingly the subject-matter of the claims 1 of the first and second auxiliary request does not involve an inventive step either.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

V. Commare T. Kriner