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**Datasheet for the decision  
of 1 February 2010**

**Case Number:** T 1224/06 - 3.2.02

**Application Number:** 98946826.9

**Publication Number:** 0936932

**IPC:** A61M 1/36

**Language of the proceedings:** EN

**Title of invention:**

Extracorporeal blood processing apparatus

**Applicant:**

CaridianBCT, Inc.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 52(4)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Surgical method step (no, after amendment)"

**Decisions cited:**

G 0001/04, T 0383/03

**Catchword:**

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Case Number: T 1224/06 - 3.2.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.02  
of 1 February 2010

**Appellant:** CaridianBCT, Inc.  
10811 West Collins Avenue  
Lakewood, CO 80215 (US)

**Representative:** Roberts, Mark Peter  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 3 April 2006  
refusing European patent application  
No. 98946826.9 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Noel  
**Members:** S. Chowdhury  
A. Pignatelli

## Summary of Facts and Submissions

- I. This appeal is against the decision of the Examining Division dated 3 April 2006 to refuse European patent application No. 98 946 826.9.

The ground of refusal was that claim 1 then on file relates to a method of surgical treatment practised on the human body, which falls under the exclusion of Article 52 (4) EPC.

- II. On 8 May 2006 the appellant (applicant) lodged an appeal against the decision and paid the prescribed fee on the same day. On 3 July 2006 a statement of grounds of appeal was filed.

The appellant requests that the decision under appeal be set aside and that the application be remitted to the examining division for further prosecution on the basis of claims 1 to 27 of the main request or according to the claims of the first to fifth auxiliary requests filed with the grounds of appeal.

The appellant argued essentially that the method of the present invention was one of separating blood components and clearly fell outside the ratio legis of Article 52(4) EPC.

- III. Independent claim 1 of the main request reads as follows:

"A method of extracorporeal blood processing for collection of blood components from blood from a donor, said method comprising: providing a blood processing

vessel (352) containing blood; separating platelets from said blood within said blood processing vessel; collecting at least a portion of said platelets in a platelet collection reservoir (84) separate from said blood processing vessel; separating red blood cells from said blood within said blood processing vessel; collecting at least a portion of said separated red blood cells in a red blood cell collection reservoir (954) separate from said blood processing vessel, wherein said platelet separation and collection steps are completed separate from said red blood cell separation and collection steps."

Claims 2 to 17 are dependent method claims and claims 18 to 27 are apparatus claims.

### **Reasons for the Decision**

1. The appeal is admissible.

Main request

2. Amendments

Claim 1 as originally filed has been amended by replacing the words "flowing blood into a blood processing vessel" in original claim 1 by the words "providing a blood processing vessel (352) containing blood" in new claim 1. This amendment was effected in order to remove the step of flowing blood into a blood processing vessel which the examining division considered to be a surgical step.

The gist of the invention is in the separate collection of red blood cells and platelets from blood within a blood processing vessel. The entire process is performed outside of the body, as is made clear by the word "extracorporeal" in claim 1, and the manner in which blood is supplied to a blood processing vessel in order to carry out the claimed method is irrelevant to the invention. Therefore, the step of flowing blood into the blood processing vessel is not an essential feature of the invention and the amendment does not require any modification of the other steps.

The amendment is not objectionable under Article 123 (2) EPC, accordingly.

3. Article 52 (4) EPC

Since claim 1 now clearly does not contain the step of flowing blood into a blood processing vessel, the examining division's objection, that this step inevitably involves removing blood from a donor via a needle and is therefore a surgical step, no longer applies. The remainder of the claim defines only technical steps applied to the blood within the vessel, in order to solve a technical problem, so that the claim is free from objection under Article 52 (4) EPC.

4. The decision under appeal is based solely on Article 52(4) EPC, and since the appeal is allowed, it is appropriate pursuant to Article 111(1) EPC to remit the case to the examining division 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 department of the first instance to resume the examination on the basis of claims 1 to 27 of the main request filed with the grounds of appeal on 3 July 2006.

The Registrar

The Chairman

D. Sauter

M. Noël