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Datasheet for the decision of 10 July 2008

Case Number: T 1719/06 - 3.2.02

Application Number: 97941377.0

Publication Number: 1006894

IPC: A61F 9/00

Language of the proceedings: EN

Title of invention:
Numeric keypad simulated on touchscreen

Applicant:
BAUSCH & LOMB SURGICAL, INC.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 52(1), 56

Relevant legal provisions (EPC 1973):
EPC R. 86(4)

Keyword:
"Inventive step (main request, no)"
"Admissibility (first auxiliary request, yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1719/06 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 10 July 2008

Appellant: BAUSCH LOMB SURGICAL, INC.
555 West Arrow Highway
Claremont
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Representative: Vossius & Partner
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 26 May 2006 refusing European application No. 97941377.0 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: T. Kriner
Members: S. Chowdhury
C. Vallet

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division dated 26 May 2006 to refuse European patent application No. 97 941 377.0.

The application was refused on the grounds that the subject-matter of claims 1 and 2 of the main and fourth to seventh auxiliary requests lacked an inventive step having regard to:

D1: WO-A-96/13216
D2: EP-A-0 246 021 and
D3: US-A-4 725 694,

and the first to third auxiliary requests were not admissible because they included features which were not searched and the claims did not combine with the originally claimed invention to form a single general inventive concept.

II. On 4 August 2006 the appellant lodged an appeal against the decision and paid the prescribed fee on the same day. On 5 October 2006 a statement of grounds of appeal was filed, together with the first to seventh auxiliary requests filed in the first instance proceedings.

Oral proceedings were held on 10 July 2008.

The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or the first to seventh auxiliary requests filed with the grounds of appeal.

III. Independent claims 1 and 2 of the main request read as follows:

"1. A system for controlling a plurality of ophthalmic microsurgical instruments connected thereto, said microsurgical instruments for use by a user such as a surgeon in performing ophthalmic surgical procedures, said system comprising:
a data communications bus;
a user interface connected to the data communications bus, said user interface providing information to the user and receiving information from the user which information is representative of operating parameters of the microsurgical instruments;
a first surgical module connected to and controlling one of the microsurgical instruments as a function of at least one of the operating parameters, said first surgical module being connected to the data communications bus;
a second surgical module connected to and controlling another one of the microsurgical instruments as a function of at least one of the operating parameters, said second surgical module being connected to the data communications bus;
wherein the data communications bus provides communication of data representative of the operating parameters between the user interface and the first and second surgical modules;
a touch-responsive screen having a display responsive to the user interface for displaying information to the user; and
wherein the display includes a representation of a numeric keypad and wherein the user interface is

responsive to information provided by the user via the numeric keypad for changing the operating parameters of the microsurgical instruments.

2. A system for controlling a plurality of ophthalmic microsurgical instruments connected thereto, said microsurgical instruments for use by a user such as a surgeon in performing ophthalmic surgical procedures, said system comprising:
a data communications bus;
a user interface connected to the data communications bus, said user interface providing information to the user and receiving information from the user which information is representative of operating parameters;
a surgical module connected to and controlling one of the microsurgical instruments as a function of at least one of the operating parameters, said surgical module being connected to the data communications bus;
a remote control circuit connected to and controlling a remote control unit as a function of at least one of the operating parameters, said remote control circuit being connected to the data communications bus, said remote control unit operating to change the operating parameters of the microsurgical instruments during performance of the surgical procedures;
wherein the data communications bus provides communication of data representative of the operating parameters between the user interface and the surgical module and the remote control circuit;
a touch-responsive screen having a display responsive to the user interface for displaying information to the user; and
wherein the display includes a representation of a numeric keypad and wherein the user interface is

responsive to information provided by the user via the numeric keypad for changing the operating parameters".

Claims 1 and 2 of the first auxiliary request are based on the above claims 1 and 2, respectively, and include further features pertaining to a control circuit of a foot control assembly and a calculator function interface which is disabled during operation of the foot control assembly.

There are no dependent claims.

IV. The appellant argued as follows:

Only with hindsight was it possible to argue that it was a simple matter to replace the bargraph system of D1 with the keypad of D2 or D3. D1 (page 3, last paragraph and page 13, last paragraph) taught away from the invention, i.e. from using a numerical keypad for manually changing the settings. D1 dealt with the problem of matching the microsurgical instrument to the modules used to drive the instruments and gave specific information that time consuming and expensive procedures should be avoided and that the need for a support person to know and manually change the machine settings before or during an operation should be eliminated. D1 clearly did not suggest the concept of providing the user with a possibility of quickly and easily changing the settings. D2 and D3 were not relevant to the field of ophthalmic surgery.

Reasons for the Decision

1. The appeal is admissible.

2. *Inventive step - main request*

2.1 Document D1 discloses (see in particular Figures 1(a) and 2):

A system 10 for controlling a plurality of ophthalmic microsurgical instruments connected thereto (page 4, lines 15 to 23), said microsurgical instruments for use by a user such as a surgeon in performing ophthalmic surgical procedures, said system comprising: a data communications bus (page 12, line 31 to page 13, line 3);
a user interface (19) connected to the data communications bus, said user interface providing information to the user and receiving information from the user which information is representative of operating parameters of the microsurgical instruments;
a first surgical module (20, 30, 50, 60) connected to and controlling one of the microsurgical instruments (20', 40', 50', 60') as a function of at least one of the operating parameters, said first surgical module being connected to the data communications bus;
a second surgical module connected to and controlling another one of the microsurgical instruments (20', 40', 50', 60') as a function of at least one of the operating parameters, said second surgical module (20, 30, 50, 60) being connected to the data communications bus;
wherein the data communications bus provides communication of data representative of the operating

parameters between the user interface and the first and second surgical modules;
a touch-responsive screen having a display responsive to the user interface for displaying information (Figure 1(a): 32 to 34) to the user; and
wherein the user interface is responsive to information provided by the user for changing the operating parameters of the microsurgical instruments (see Figure 1(a) and page 14, line 13 to page 15, line 17).

2.2 The system of claim 1 differs from that of D1 only in that the display of claim 1 includes a representation of a numeric keypad instead of the bargraphs and keys 32-34 of D1. The appellant did not dispute this analysis.

2.3 It is self-evident that by using a finger to touch the bargraphs in D1 a setting cannot be adjusted accurately and that some fine control is necessary. For this reason the arrows 33 are provided in D1. This involves a two-step process for accurately adjusting a setting.

In the interest of simplifying the adjustment of a setting, which is the objective problem derivable from the foregoing considerations, the person skilled in the art would look for a simpler method of accurately entering the values of a setting.

The person skilled in the art knows that numerical keypads were in use to accurately input settings (including decimal points), and that this is a one-step process, as exemplified by D2 (see abstract) and D3. Thus, guided by the problem which emerges upon comparing claim 1 with D1, the person skilled in the

art finds incentive for substituting the bargraphs and arrows of D1 with the keypad of D2 or D3, without exercising inventive activity.

2.4 Therefore, claim 1 does not involve an inventive step.

2.5 The above considerations are based on the "problem-and-solution approach", which involves the definition of the objective problem solved and the ascertainment of the solutions available in the prior art to the skilled person. The appellant's accusation that hindsight is involved in invoking D2 and D3 is, therefore, not justified.

The appellant's argument that D1 teaches away from the use of a keypad is also not valid since nowhere in the cited passages is there a clear statement to this effect, this is merely an interpretation given by the appellant.

2.6 Claim 2 of the main request includes the further feature that a remote control circuit is connected to and controls a remote control unit as a function of at least one of the operating parameters, said remote control circuit being connected to the data communications bus, said remote control unit operating to change the operating parameters of the microsurgical instruments during performance of the surgical procedures.

These features are also disclosed in D1 (Figure 1(c): 13 and page 12, lines 16-17) and do not change the situation as regards a problem-and-solution analysis because the characterising features of claim 2 are the

same as for claim 1. This claim also does not involve an inventive step.

3. *First auxiliary request – admissibility*

The examining division did not admit the first auxiliary request under Rule 86(4) EPC 1973.

Claim 1 of the first auxiliary request comprises all the features of claim 1 of the main request and adds further features pertaining to a control circuit of a foot control assembly and a calculator function interface which is disabled during operation of the foot control assembly. Since claim 1 of the first auxiliary request merely includes further features, it cannot be said that it does not combine with originally claimed invention (the main request) to form a single general inventive concept. The same applies to claim 2 of the first auxiliary request. No objection to these claims can arise under Rule 86(4) EPC, accordingly, and this request is allowable.

However, the claims of this request have not been searched, for which reason the case should be remitted to the department of 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 department of the first instance for further prosecution on the basis of the first auxiliary request filed with the grounds of appeal.

The Registrar The Chairman

G. Magouliotis T. Kriner