

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 13 November 2008**

Case Number: T 1647/07 - 3.2.02

Application Number: 98932867.9

Publication Number: 0930845

IPC: A61B 17/10

Language of the proceedings: EN

Title of invention:

Method and apparatus for circulatory valve repair

Applicant:

The Trustees of Columbia University in the City of New York

Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

-

Keyword:

"Inventive step (yes, after amendments)"



Case Number: T 1647/07 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 13 November 2008

Appellant:
(Applicant)

The Trustees of Columbia University in the
City of New York
West 116th Street and Broadway
New York
New York 10027 (US)

Representative:

Maiwald Patentanwalts GmbH
Elisenhof
Elisenstrasse 3
D-80335 München (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 5 April 2007
refusing European application No. 98932867.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: D. Valle
C. Vallet

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal on 11 June 2007 against the decision of the examining division posted on 5 April 2007 to reject the application. The fee for the appeal was paid simultaneously and the statement setting out the grounds for appeal was received on 10 August 2007.

II. The application was rejected for lack of inventive step having regard to documents:

D4 = US - A - 5 049 153.

D8 = WO - A - 96/21489 and

D9 = WO - A - 96/26672.

Additionally the following documents have been cited in the decision under appeal:

D1 = US - A - 5 571 215

D2 = US - A - 5 571 137

D3 = US - A - 5 403 326

D5 = US - A - 4 809 695

D6 = US - A - 5 542 949

D7 = US - A - 3 378 010.

III. Oral proceedings took place on 13 November 2008.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 5 as filed during the oral proceedings.

IV. Claim 1 reads as follows:

"An apparatus, which can be inserted percutaneously, for the repair of a cardiovascular valve having leaflets, comprising a grasper capable of grabbing and coapting the leaflets of the valve, a deployable fastening device integrally attached to the grasper, means for operating the fastening device independently of the grasper means and at least one control wire capable of actuating the grasper."

Claims 2 to 5 are dependent on claim 1.

Reasons for the Decision

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

Claim 1 is based on claims 1 and 13, on the paragraph bridging pages 11 and 12 and on Figures 8 to 20 according to WO-A-99/00059. Claim 2 is based on claim 14 and on the description on page 9, lines 21 to 29, and claims 3 to 5 on the disclosure on page 15, last paragraph of the published application.

3. *Inventive step*

D4 discloses (see in particular Figures 16 to 19) an apparatus, which can be inserted percutaneously, and which is suitable for the repair of a cardiovascular valve having leaflets, comprising a grasper 158, 160 capable of grabbing and coapting the leaflets of the

valve, a deployable fastening device 170, 172 integrally attached to the grasper, and at least one control wire 142 capable of actuating the grasper.

Starting from D4, the object underlying the present invention has to be seen in the provision of an apparatus for the repair of a cardiovascular valve having leaflets which after an initial grabbing allows a re-grabbing of the leaflets in a different location before the leaflets are fastened together (see description, paragraph bridging pages 3 and 4).

According to claim 1, this object is achieved by the provision of means for operating the fastening device independently of the grasper means.

Such means are not known or suggested by the available prior art.

D1 concerns a device for an intracardiac procedure (removing the mitral valve) and it does not address an apparatus having independently operating grasping and fastening devices.

D2 discloses an endoscopic instrument with a grasper. However, the instrument does not comprise a fastening device.

D3 relates to a method for performing a gastric wrap of the esophagus.

D5 concerns a suturing assembly having a fastening device. However, the assembly does not comprise a grasper.

D6 discloses a clip applier instrument which can be used for grasping and manipulating tissue when no clips are placed in the jaws. It does not disclose, however, that the means for operating the fastening device operates independently of the grasper means.

D7 relates to a surgical clip which is not suitable to be operated percutaneously.

D8 discloses a grasper 71 (Figure 5) and a fastener 77 (Figure 7). However, the fastener and the grasper are independent tools and not combined in a single apparatus.

D9 concerns a biopsy catheter.

With respect to the above findings, the subject-matter of the sole request on file 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:

Claims: 1 to 5 filed during the oral proceedings, and a description and drawings to be adapted to these claims.

The Registrar:

The Chairman:

V. Commare

T. Kriner