

**Internal distribution code:**

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

**Datasheet for the decision  
of 5 July 2010**

**Case Number:** T 1901/07 - 3.5.02

**Application Number:** 03749357.4

**Publication Number:** 1535291

**IPC:** H01B 7/00

**Language of the proceedings:** EN

**Title of invention:**  
An EKG wiring system

**Applicant:**  
Draeger Medical Systems, Inc.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 111(1)

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

**Keyword:**  
"Remittal for further prosecution (yes)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1901/07 - 3.5.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.02  
of 5 July 2010

**Appellant:** Draeger Medical Systems, Inc.  
16 Electronics Avenue  
Danvers, MA 01923 (US)

**Representative:** Landry, Felix  
Uexküll & Stolberg  
Patentanwälte  
Beselerstrasse 4  
D-22607 Hamburg (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 4 May 2007  
refusing European patent application  
No. 03749357.4 pursuant to Article 97(1) EPC  
1973.

**Composition of the Board:**

**Chairman:** M. Ruggiu  
**Members:** J.-M. Cannard  
E. Lachacinski

## Summary of Facts and Submissions

- I. The appellant contests the decision of the examining division to refuse European patent application N° 03 749 357.4. The reason for the refusal was that the subject-matter of claim 1 of the main, first and second auxiliary requests then on file lacked an inventive step (Article 56 EPC).
- II. With the statement of grounds of appeal filed with a letter dated 13 September 2007, the appellant filed a new main request and seven auxiliary requests I to VII.
- III. With a communication dated 9 April 2010 annexed to summons to oral proceedings, the Board informed the appellant that claim 1 of the main request seemed to lack an inventive step having regard to document D (W002/03395) considered in the first instance taken in combination with document D2 (Mc Graw-Hill Encyclopedia of Science & Technology, 7th Edition, McGraw-Hill, Inc., New York, 1992; vol. 4, pages 82 and 83), or document D3 (US-A-4 552 989), both of which were introduced into the proceedings by the Board. Moreover, the appellant was told that the Board considered appropriate to remit the case to the department of first instance for further prosecution because the subject-matter of claim 1 of auxiliary request I had not been discussed during the first instance proceedings.
- IV. With a letter of reply dated 2 June 2010, the appellant withdrew the main request and auxiliary request II filed with the statement of grounds of appeal and informed the Board that auxiliary request V filed with said statement constituted the new main request and that the remaining

auxiliary requests on file should be examined in the following order:

Auxiliary request VI,  
Auxiliary request III,  
Auxiliary request IV,  
Auxiliary request I,  
Auxiliary request VII.

The appellant further requested that the Board decides to cancel the oral proceedings and to remit the case to the department of first instance for further prosecution.

V. Claim 1 of the present main request reads as follows:

"A wiring harness (10) for conveying signals representing measurements made at a first location to a measuring instrument remotely located from said first location, said harness comprising:

a first cable having an outer sheath (13) with a first diameter;

characterized by a plurality of coaxial cables (14), each of said coaxial cables having an outer shield with a diameter substantially smaller than said first diameter and a corresponding inner conductor, said coaxial cables being arranged within said outer sheath of said first cable; and a plurality of first contacts (20) arranged on said outer sheath of said first cable, each of said contacts being electrically connected to the inner conductor of a respective one of said plurality of coaxial cables,

wherein the plurality of coaxial cables run from one end of the first cable to the other end of the first cable, and wherein the inner conductor and the outer shield of each of the plurality of coaxial cables are cut at the location of the associated first contact into a first portion and a second portion electrically isolated from each other, wherein the inner conductor of the first portion is connected to the associated first contact."

- VI. The oral proceedings were cancelled and the appeal proceedings continued in writing.
  
- VII. The appellant requested that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution, subsidiarily that the oral proceedings before the Board be maintained.
  
- VIII. The appellant essentially argued as follows:

According to the communication annexed to summons to oral proceedings, the case should be remitted to the department of first instance for further prosecution because claim 1 of auxiliary request I filed with the statement of grounds of appeal had not been discussed during the first instance proceedings. Since the same consideration applied to claim 1 of the current main request, remittance of the case to the department of first instance for further prosecution would also be appropriate.

## Reasons for the Decision

1. The appeal is admissible.
  
2. Claim 1 of the present main request is based on the combination of the features contained in claims 1, 17 and 18 as originally filed. Claim 1 of the present main request thus includes substantial amendments. In the first instance proceedings, the features contained in dependent claims 17 and 18 were only objected in paragraph 3 of a communication of the examining division dated 23 February 2006. According to said communication, the features disclosed in dependent claims 2 to 19 were considered as a whole as not inventive, "because they concerned constructional details coming within the scope of the customary practice followed by a person skilled in the art and also disclosed explicitly in document D" (W002/03395). However, the features included in claim 1 of the present main request are not "disclosed explicitly in document D" and require a specific substantive examination. In such circumstances, the Board finds it appropriate to remit the case to the department of first instance for further prosecution (Article 111(1)EPC).

**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 for further prosecution.

The Registrar:

The Chairman:

P. Cremona

M. Ruggiu