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**Datasheet for the decision
of 15 February 2013**

Case Number: T 0607/09 - 3.2.02

Application Number: 02710103.9

Publication Number: 1357965

IPC: A61M 15/00

Language of the proceedings: EN

Title of invention:
Dispenser for medicament

Applicant:
Clinical Designs Limited

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2), 54, 111(1)

Keyword:
"Novelty (yes)"
"Remittal to the Examining Division (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0607/09 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 15 February 2013

Appellant: Clinical Designs Limited
(Applicant) Cambridge Science Park
Milton Road
Cambridge CB4 0AB (GB)

Representative: Gordon, Kirsteen Helen
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Cambridge CB2 1LA (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 12 June 2008
refusing European patent application
No. 02710103.9 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: E. Dufrasne
Members: M. Stern
P. L. P. Weber

Summary of Facts and Submissions

- I. The applicant lodged an appeal, received on 6 August 2008, against the decision of the Examining Division dispatched on 12 June 2008 refusing application No. 02 710 103.9. The fee for appeal was paid on 7 August 2008. A statement setting out the grounds of appeal was received on 21 October 2008.
- II. In its decision, the Examining Division refused the application for lack of novelty of the device of independent claim 23 over document

D1: US-A-5 794 612,

and indicated in an obiter dictum that the device of independent claim 1 also lacked novelty over D1.
- III. With the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the application in the form of a main request and auxiliary requests I and II, which no longer contained the aforementioned independent device claim 23, be remitted to the Examining Division, or alternatively be granted.
- IV. In a communication dated 13 December 2012, the Board presented its provisional opinion indicating that whilst claim 1 of the main request (based on original claims 1 and 14) did not seem to be allowable for lack of novelty over document D1, the amended claims 1 of the auxiliary requests defined novel subject-matter regarding D1. The Board also expressed its inclination

to remit the case to the Examining Division for further prosecution on the basis of the auxiliary requests.

V. In a letter dated 6 February 2013, the appellant withdrew the previous main request and requested that the application be remitted to the Examining Division on the basis of a new main request which was identical to the auxiliary request I filed with the statement of grounds of appeal. Three auxiliary requests were also included.

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

"A dispenser (1) for a medicament to be inhaled as successive doses, the dispenser (1) comprising:

- a dispenser body (201) having an inhalation passage leading to a mouthpiece (202);
 - a pressurised source of the medicament arranged at an up-stream end of the inhalation passage wherein said source is a metered dose can (211) having a metering chamber;
 - a junction (217) in the body for receiving a stem (221) of the pressurised source and directing the pressurised medicament for inhalation;
 - means for controlling release of doses (228) from the pressurised source;
 - a transducer (105, 106) for detecting gaseous flow within the dispenser (1) associated with release of a dose for inhalation;
 - a counter (101) arranged to be incremented or decremented in accordance with each flow detection by the transducer (105, 106)
- characterised in that:

- the dose release controlling means is a breath actuated release mechanism (228) downstream of the junction (217), the dose being released from the mechanism on inhalation;
- the junction (217) includes a connection from the can (211) to the breath actuated release mechanism (228), the dose being released on depression of the can (211) in the body; and
- the transducer (105, 106) is arranged to detect inhalation gas flow within the body (201)."

Claims 2 to 14 of the main request are dependent claims.

Reasons for the Decision

1. The appeal is admissible.
2. Claim 1 of the main request is based on original claims 1 and 7, whereby the requirements of Article 123(2) EPC are fulfilled.
3. It is undisputed that document D1 discloses a dispenser comprising the features according to the preamble of claim 1. In particular, D1 discloses a dispenser for a medicament to be inhaled comprising, inter alia, means for controlling release of doses from a pressurised metered dose can (sentence bridging columns 2 and 3), a transducer (ultrasound transducer 6) for detecting gaseous flow, in particular inhalation gas flow, within the dispenser (column 3, lines 7 to 26), and a counter (display panel 5) which is incremented or decremented

in accordance with each flow detection by the transducer (column 4, lines 34 to 36).

Hence, D1 discloses a dispenser comprising the features recited in the preamble and the last two lines of claim 1.

The dispenser defined in claim 1 differs from that of D1 in that the dose release controlling means is a breath actuated release mechanism downstream of the junction, the dose being released from the mechanism on inhalation, and the junction includes a connection from the can to the breath actuated release mechanism, the dose being released on depression of the can in the body.

Consequently, the subject-matter of claim 1 is novel over D1 (Article 54 EPC).

4. The Reasons for the decision under appeal, as well as the obiter dictum contained in the decision, concern the question of lack of novelty over D1 of subject-matter which is no longer claimed.

The patentability requirements regarding the presently claimed subject-matter have not been addressed in the impugned decision apart from a general statement without further reasoning given under point I of the Facts and Submissions asserting lack of inventiveness of, *inter alia*, the present subject-matter.

Consequently, following the appellant's request and in order to allow the case to be examined at two levels of jurisdiction, the Board finds it appropriate to remit

the case to the Examining Division for continuation of the examination proceedings on the basis of the pending main request (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 department of first instance for further prosecution on the basis of the main request filed with the letter dated 6 February 2013.

The Registrar:

The Chairman:

D. Hampe

E. Dufrasne