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**Datasheet for the decision
of 10 November 2011**

Case Number: T 1204/09 - 3.4.01

Application Number: 01909277.4

Publication Number: 1257325

IPC: A61N 5/10, A61B 6/00, A61B 6/03

Language of the proceedings: EN

Title of invention:
Cone-beam computerized tomography with a flat-panel imager

Applicant:
William Beaumont Hospital

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 53(c)

Keyword:
"Method of treatment of therapy (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 1204/09 - 3.4.01

DECISION
of the Technical Board of Appeal 3.4.01
of 10 November 2011

Appellant:
(Applicant)

William Beaumont Hospital
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MI 48072-6769 (US)

Representative:

Frost, Alex John
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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 11 November 2008
refusing European patent application
No. 10909277.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: G. Assi
Members: H. Wolfrum
R. Moufang

Summary of Facts and Submissions

- I. European patent application 01 909 277.4 (publication No. WO 01/60236) was refused by a decision of the examining division dispatched on 11 November 2008, on the ground of added subject-matter (Article 123(2) EPC) for the main request and auxiliary request then on file.
- II. The applicant lodged an appeal against the decision and paid the prescribed fee on 19 January 2009. On 20 March 2009 a statement of grounds of appeal was filed together with a new set of claims according to the sole request.
- III. On 26 May 2011 the appellant was summoned to oral proceedings to take place on 10 November 2011.

In a communication annexed to the summons the board, apart from addressing problems of added subject-matter (Article 123(2) EPC) and inventive step (Articles 52(1) and 56 EPC 1973), raised an objection as to the exception to patentability (Article 53(c) EPC) for the subject-matter of claim 10 of the request on file.

- IV. The appellant did not respond to the board's communication but informed the board by a letter of 28 October 2011 that it would not attend the oral proceedings.
- V. Oral proceedings were held on 10 November 2011 in the absence of the appellant.

VI. The appellant has requested in writing that the decision under appeal be set aside and a patent be granted on the basis of the set of claims 1 to 10 as filed on 20 March 2009 with the statement setting out the grounds of appeal.

VII. Claim 10 of the appellant's request reads as follows:

"10. A method of radiation therapy comprising:

moving a radiation source about a path and directing a beam of radiation from the radiation source towards an object that is placed on a table;

emitting an x-ray beam in a cone-beam form from an x-ray source towards said object, immediately prior to or during the time that said beam of radiation is directed towards said object;

receiving x-rays after at least a portion of said x-ray beam has passed through said object at a flat-panel imager;

providing an on-line image from said object from said flat-panel imager, wherein said image contains three dimensional information from said object based on movement of said x-ray beam relative said object;

receiving said image from said object at a computer connected to said x-ray source and said flat-panel imager;

automatically localizing a target volume of said object based on said image, at the computer;

forming a signal to control a path of said beam of radiation through said object based on the localized target volume; and

moving said table based on said signal so as to control said path of said beam of radiation through said object."

Reasons for the Decision

1. In the light of the entry into force of the EPC 2000, reference is made to Article 7(1), 2nd sentence of the Revision Act of 29 November 2000 ("Act revising the Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973, last revised on 17 December 1991") and the transitional provisions for the amended and new provisions of the EPC (Decision of the Administrative Council of 28 June 2001), from which it may be derived which Articles of the EPC 1973 are still applicable and which Articles of the EPC 2000 shall apply.
2. The appeal complies with the requirements of Articles 106 to 108 and Rule 99 EPC and is, therefore, admissible.
3. In its aforementioned communication the board had expressed its preliminary view that claim 10 of the request on file concerned a method of treatment of a human or animal body by therapy so that the claimed subject-matter fell under the exception to patentability according to Article 53(c) EPC.

In fact, claim 10 is expressly directed to a "*method of radiation therapy*". Moreover, it comprises by the step "*moving a radiation source about a path and directing a beam of radiation from the radiation source towards an object that is placed on a table*" an express step of therapeutic treatment according to the standards of the established case law (cf for instance "Case Law of the Boards of Appeal of the European Patent Office", sixth edition 2010, chapter I.B.4.2.1).

4. Since the appellant neither replied to this objection nor filed any amendment to its request, the board has no reason to change its preliminary opinion.
5. For the above reason, the appellant's request on file contains subject-matter for which the provision of Article 53(c) EPC prohibits the granting of a patent.

In conclusion, the appellant's request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

R. Schumacher

G. Assi