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**Datasheet for the decision
of 20 September 2013**

Case Number: T 1250/09 - 3.4.02

Application Number: 98923538.7

Publication Number: 983515

IPC: G01N35/10

Language of the proceedings: EN

Title of invention:
METHOD OF HANDLING A FLUID

Applicant:
ABBOTT LABORATORIES

Headword:

Relevant legal provisions:
EPC Art. 84

Keyword:
Oral proceedings - non-attendance of party
Claims - clarity (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1250/09 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 20 September 2013

Appellant: ABBOTT LABORATORIES
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 26 January 2009 refusing European patent application No. 98923538.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: A. Klein
Members: A. Hornung
B. Müller

Summary of Facts and Submissions

I. The applicant (appellant) appealed against the decision of the examining division refusing European patent application number 98923538.7. The set of claims according to the main request then on file was refused on the basis of Articles 83, 84 and 56 EPC. The sets of claims according to the first and second auxiliary request then on file were refused on the basis of Articles 123(2), 83 and 84 EPC.

II. The appellant requested that a patent be granted on the basis of a main request or two auxiliary requests. The present main request and the present second auxiliary request are identical to the main request and the first auxiliary request refused by the examining division, respectively. The present first auxiliary request is a new request, though largely based on the first auxiliary request refused by the examining division.

As a precaution, the appellant requested oral proceedings.

III. In a communication annexed to the summons to oral proceedings, the board informed the appellant about its provisional and non-binding view on the patentability of the claimed subject-matter.

The board's objections were worded as follows:

"5. Main request

5.1 [...]

5.2 The subject-matter of claim 1 appears to lack clarity (Article 84 EPC) at least for the following reasons.

Step (d): It is obscure how the threshold is determined. The guidance of merely "using" the average pressure is too vague.

Step (h): A threshold based on an average pressure (i.e. an instantaneous pressure value) and an integrated pressure (i.e. instantaneous pressure value multiplied by time) have different physical dimensions. It is obscure how they are compared. Moreover, the criteria of "movement of the second fluid was correctly performed" is ambiguous.

5.3 The assessment of patentability of the claimed method can only be carried out once the above clarity objections have been overcome. Nevertheless, the board notes already the apparently high technical relevance of document D2 for the present application.

6. Auxiliary requests

6.1 It appears that the added step of calculating an integrated pressure ratio has no sufficient basis in the original application documents in this generality (Art. 123(2) EPC).

6.2 At least the above clarity objections are also valid for claim 1 of the first and the second auxiliary request. Moreover, the definition of the "integrated pressure ratio" is obscure in both auxiliary requests (Article 84 EPC).

7. In view of the above objections, the appeal seems unlikely to succeed."

IV. In response to the summons to oral proceedings, the appellant informed the board with a letter dated 5 September 2013 that he would not attend the oral proceedings. The letter

contained no comments concerning the board's preliminary view as annexed to the summons.

V. Independent claim 1 of the main request reads as follows:

1. A method of handling a fluid, the method comprising the steps of:
(a) energizing a pump (18) fluidly associated with a nozzle (12) to move a first fluid into or out of the nozzle (12);
(b) substantially continuously monitoring pressure fluidly associated with the nozzle (12) with a pressure transducer (22) fluidly associated with the nozzle (12) during movement of the first fluid of step (a) at a known substantially constant flow rate;
(c) calculating an average of the pressure substantially continuously monitored during step (b);
(d) using the average calculated in step (c) to determine a threshold;
(e) energizing the pump (18) fluidly associated with the nozzle (12) to move a second fluid into or out of the nozzle (12);
(f) substantially continuously monitoring pressure fluidly associated with the nozzle (12) with the pressure transducer (22) fluidly associated with the nozzle (12) during movement of the second fluid of step (e);
(g) integrating the pressure substantially continuously monitored during step (f); and
(h) comparing the threshold of step (d) with the integrated pressure of step (g) to determine whether movement of the second fluid was correctly performed or incorrectly performed.

Independent claim 1 of the first auxiliary request reads as follows:

1. A method of handling a fluid, the method comprising the steps of:
(a) energizing a pump (18) fluidly associated with a nozzle (12) to move a first fluid into or out of the nozzle (12);
(b) substantially continuously monitoring pressure fluidly associated with the nozzle (12) with a pressure transducer (22)

fluidly associated with the nozzle (12) during movement of the first fluid of step (a) at a known substantially constant flow rate;

(c) calculating an average of the pressure substantially continuously monitored during step (b);

(d) using the average calculated in step (c) to determine a threshold;

(e) energizing the pump (18) fluidly associated with the nozzle (12) to move a second fluid into or out of the nozzle (12);

(f) substantially continuously monitoring pressure fluidly associated with the nozzle (12) with the pressure transducer (22) fluidly associated with the nozzle (12) during movement of the second fluid of step (e);

(g) integrating the pressure substantially continuously monitored during step (f) and, based on the integrated pressure, calculating an integrated pressure ratio; and

(h) comparing the threshold of step (d) with the integrated pressure ratio of step (g) to determine whether the movement of the second fluid was correctly performed or incorrectly performed.

Independent claim 1 of the second auxiliary request reads as follows:

1. A method of handling a fluid, the method comprising the steps of:

(a) energizing a pump (18) fluidly associated with a nozzle (12) to move a first fluid into or out of the nozzle (12);

(b) substantially continuously monitoring pressure fluidly associated with the nozzle (12) with a pressure transducer (22) fluidly associated with the nozzle (12) during movement of the first fluid of step (a) at a known substantially constant flow rate;

(c) calculating an average of the pressure substantially continuously monitored during step (b);

(d) using the average calculated in step (c) to determine a threshold;

(e) energizing the pump (18) fluidly associated with the nozzle (12) to move a second fluid into or out of the nozzle (12);

- (f) substantially continuously monitoring pressure fluidly associated with the nozzle (12) with the pressure transducer (22) fluidly associated with the nozzle (12) during movement of the second fluid of step (e);
- (g) integrating the pressure substantially continuously monitored during step (f) and, based on the integrated pressure, calculating an integrated pressure ratio based on the volume (V) of the aspiration of fluid and the value (W) of the pressure signal sensed prior to any fluid motion minus the pressure signal measured during a predetermined flow of the fluid through a conduit (16) and out the nozzle 12, the conduit (16) connecting the pump (18) and the nozzle (12); and
- (h) comparing the threshold of step (d) with the integrated pressure ratio of step (g) to determine whether the movement of the second fluid was correctly performed or incorrectly performed.

Reasons for the Decision

In the annex to the summons, the board expressed its view that claim 1 of all current requests seemed to infringe the requirements of Article 84 EPC (see above, point III.).

The appellant neither attempted to rebut the board's provisional opinion, nor submitted any new requests aiming at overcoming the objections. The board sees no reason to deviate from its preliminary opinion.

It follows that the present patent application does not meet the requirements of the EPC within the meaning of Article 97(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. Kiehl

A. Klein

Decision electronically authenticated