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**Datasheet for the decision  
of 5 May 2011**

**Case Number:** T 2255/09 - 3.2.02

**Application Number:** 05026584.2

**Publication Number:** 1637175

**IPC:** A61M 16/06

**Language of the proceedings:** EN

**Title of invention:**

Mask and headgear with connector

**Applicant:**

ResMed Ltd.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 76(1)

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

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**Keyword:**

"Support in the earlier application (yes, after amendments)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 2255/09 - 3.2.02

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.02  
of 5 May 2011

**Appellant:** ResMed Ltd.  
97 Waterloo Road  
North Ryde, NSW 2133 (AU)

**Representative:** Vossius & Partner  
P.O. Box 86 07 67  
D-81634 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 7 July 2009  
refusing European patent application  
No. 05026584.2 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** D. Valle  
**Members:** P. L. P. Weber  
M. J. Vogel

## Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal on 7 September 2009 against the decision of the examining division posted on 7 July 2009 to refuse the application on the basis of Article 76(1) EPC. The fee for the appeal was paid the same day and the statement setting out the grounds for appeal was received on 16 November 2009.
- II. The decision under appeal refused the application because it did not contain the feature that the first connector portion was rigidly secured to the mask frame. It was found that this did not comply with Article 76(1) EPC.
- III. Oral proceedings were held on 5 May 2011 on request of the appellant.
- IV. The appellant requested that the decision under appeal be set aside and that a patent be granted with the following version:
- claims: 1 to 10 filed during the oral proceedings;
  - description: pages 1, 2, 4 to 8 as originally filed, page 3, filed during the oral proceedings;
  - drawings: Figures 1 to 7b as originally filed.
- V. Claim 1 reads as follows:
- "A respiratory mask and headgear combination comprising a respiratory mask having a rigid mask frame (400), adjustable headgear for securing said mask on a patient, said headgear including at least one

attachment strap, whereby said has a female connector portion (470), made of a rigid material and rigidly attached to the mask frame, and a male connector portion (600) adapted for releasable mating with said female connector portion (470), said male connector portion (600) having a cross bar forming a loop through which the attachment strap can be passed and adjusted for proper fit, wherein said male connector portion (600) is at least partially insertable into the female connector portion (470) to form a snap-fit locked connection between the female and male connector portions, and wherein the male connector portion includes a press-release mechanism having at least one depressible portion to allow single-handed disengagement by the patient in use."

- VI. The appellant argued that the amendments submitted brought the patent application in compliance with the EPC. In particular the amendment to claim 1 consisting of specifying that the female connector was rigidly attached to the mask frame overcame the objection raised by the examining division.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Amendments

The amendment introduced into claim 1 consists of specifying that the female connector is "rigidly" attached to the mask frame. The amendment is supported

by claim 12 and page 3, line 16 of the original disclosure.

Dependent claims have been renumbered. The description has been adapted to the new claims.

Accordingly, the application complies with Article 123(2) EPC.

3. Article 76(1) EPC

The amendment introduced into claim 1 is supported by the parent application WO-00/78383, see claim 1 and page 8, line 1 of the description. Furthermore, the amendment meets the objection raised in the decision under appeal. The Board is in particular of the view that the feature newly introduced in claim 1 defining that the female connector is rigidly attached to the mask frame is suitable to overcome the objection raised since it is disclosed in the parent application. The new feature represents also a restriction of the protection sought in comparison with the feature contained in claim 1 as originally filed in the parent application.

Accordingly, the application complies with Article 76(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 with the order to continue the procedure on the basis of the following version:
  - claims: 1 to 10 filed during the oral proceedings;
  - description: pages 1, 2, 4 to 8 as originally filed, page 3, filed during the oral proceedings;
  - drawings: Figures 1 to 7b as originally filed.

The Registrar:

The Chairman:

D. Sauter

D. Valle