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**Datasheet for the decision
of 29 March 2012**

Case Number: T 0039/10 - 3.2.08

Application Number: 03468008.2

Publication Number: 1447063

IPC: A61F 5/058, A61H 9/00

Language of the proceedings: EN

Title of invention:
Pressure therapy device with vacuum bag

Applicant:
Jelenc, Joze

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)
EPC R. 103(1), 115(2)
RPBA Art. 15(3)

Keyword:
"Allowability of amendments (no)"
"Reimbursement of the appeal fee (no)"

Decisions cited:
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Catchword:
-



Case Number: T 0039/10 - 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 29 March 2012

Appellant: Jelenc, Joze
(Applicant) Prezrenje 18
SL-4244 Podnart (SL)

Representative: Flak, Antonija
Patentni biro AF d.o.o.
Kotnikova 32 p.p. 2706
SL-1001 Ljubljana (SL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 10 August 2009
refusing European patent application
No. 03468008.2 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: R. Ries
E. Dufrasne

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the examining division dated 10 August 2009 to refuse European patent application No. 03468008.2. The examining division held that the subject-matter of claim 1 then on file was unclear in its meaning and therefore contravened the requirements of Article 84 EPC.

The appeal was received at the European Patent Office on 10 October 2009, and the appeal fee was paid on 9 October 2009. The statement setting out the grounds of appeal was received on 9 December 2009.

- II. In the written proceedings, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 filed on 20 February 2007 and claims 2 to 6 as originally filed.

Reimbursement of the appeal fee was also requested.

Moreover, oral proceedings were requested in the event that the Board was likely to decide differently.

- III. With a communication accompanying the summons to oral proceedings, the Board informed the appellant, among other things, that claim 1 contravened Article 123(2) EPC.

The appellant did not react to the Board's communication.

- IV. Despite of having been duly summoned, the appellant did not appear at the oral proceedings held on 29 March

2012. In accordance with Rule 115(2) EPC and Article 15(3) RPBA, the proceedings were continued without the party.

V. Claim 1 reads as follows:

"A device with vacuum bag for pressure therapy, consisting of a vacuum bag (5), a control and measuring unit, situated in a housing (1), and special liner clothing, characterized in that a control and measuring unit is equipped with a pressure gauge (2) and with vacuum pump connections (3), to which the suction tubes (4) for sucking the air from the bag (5) are attached; that the bag (5) has six evenly arranged connections (6) for suction tubes (4) and a measuring connection (7) for a measuring tube (8), which links the interior of the bag (5) with the pressure gauge (2), so that the under-pressure is measured directly in the bag (5); that special liner clothing is provided for the user, the liner clothing consisting of different pieces designed for different parts of the body and that the said clothing pieces are made of two layers of fabric sewn together with longitudinal seams to form the pockets, filled with granulated material; that permeability of material of liner clothing causes granulated material fits tight to the body because the air between the granules is also sucked out, when the air is sucked out of the vacuum bag (5); that the liner clothing pieces are bound together by means of hook and loop fasteners."

Reasons for the Decision

1. The appeal is admissible.
2. Amendments; Article 123(2) EPC
3. By the Board's preliminary assessment of the case, which was summarized in the official communication annexed to the summons to oral proceedings, the appellant was informed that the amendment to claim 1 (in italics) "*...that permeability of material of liner clothing causes granulated material fits tight...*" has no basis in the application as originally filed. In consequence thereof, the subject matter of claim 1 was rated not to meet the requirements of Article 123(2) EPC.

The appellant dispensed with presenting any counter-arguments or statements in response to the Board's provisional opinion.

Hence, the appellant's request to grant a patent on the basis of claim 1 filed on 20 February 2007 cannot be allowed.

4. Reimbursement of the appeal fee; Rule 103(1) EPC

The statement of the grounds of appeal includes a request for reimbursement of the appeal fee. However, no reasons justifying such a request are advanced in the grounds of appeal and the Board itself did not see any reasons either. For this reasons and since the appeal was not successful, the appeal fee cannot be reimbursed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner