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**Datasheet for the decision
of 12 August 2013**

Case Number: T 0214/10 - 3.2.02

Application Number: 02018933.8

Publication Number: 1287789

IPC: A61C 7/28

Language of the proceedings: EN

Title of invention:
Orthodontic Bracket

Applicant:
Tomy Incorporated

Headword:
-

Relevant legal provisions:
EPC Art. 111(1)
EPC R. 137(3)

Keyword:
"Admissibility (yes)"
"Remittal (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0214/10 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 12 August 2013

Appellant: Tomy Incorporated
(Applicant) 818, Shinmachi
Ohkuma-machi
Futaba-gun
Fukushima 979-1305 (JP)

Representative: Grünecker, Kinkeldey
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 31 August 2009
refusing European patent application
No. 02018933.8 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: E. Dufrasne
Members: M. Stern
C. Körber

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the Examining Division dispatched on 31 August 2009 refusing European application No. 02 018 933.8.

II. During the examination proceedings, the Examining Division issued a communication under Rule 71(3) EPC dated 4 August 2008 intending to grant a patent based on a main request filed by the applicant during the oral proceedings held before the Examining Division on 12 June 2008. In the ensuing response, the appellant did not approve the text intended for grant, but filed instead three sets of amended claims as main and auxiliary requests 1 and 2.

The Examining Division refused the application on the grounds that the latter requests were not admissible under Rule 137(3) EPC, and that consequently there was no text of the application which had been agreed by the applicant and allowed by the Examining Division (Article 113(2) EPC).

III. The notice of appeal was received on 10 November 2009 and the appeal fee was paid on the same day. A statement setting out the grounds of appeal was received on 18 December 2009.

IV. In its notice of appeal, the applicant requested to set aside the decision and to grant a patent based on a main request, or, in the alternative, on one of auxiliary requests 1 to 3. The main and auxiliary requests 1 and 2 correspond, respectively, to the main and auxiliary requests 1 and 2 which the Examining

Division did not admit into the proceedings. The auxiliary request 3 corresponds to the previous main request on which the Examining Division intended to grant a patent according to the communication under Rule 71(3) EPC.

- V. In an annex to summons to oral proceedings issued under Articles 15(1) and 17(2) RPBA dated 6 June 2013, the Board expressed its provisional opinion that the main and auxiliary requests 1 and 2 did not seem to be admissible under Article 12(4) RPBA, and that the case may be remitted to the department of first instance for further prosecution on the basis of the claims of auxiliary request 3.
- VI. In a letter dated 30 July 2013, the appellant requested to change the succession of the requests filed with the appeal on 10 November 2009 in the following manner: auxiliary request 3 filed on 10 November 2009 should be the new main request; the main and auxiliary requests 1 and 2 filed on 10 November 2009 should be, respectively, the new first to third auxiliary requests. Whilst oral proceedings were requested as an auxiliary request, the appellant stated that the case could be remitted to the department of first instance for further prosecution on the basis of the claims of the new main request, on which the communication under Rule 71(3) EPC was based, without the need for oral proceedings.
- VII. Claim 1 of the main request reads as follows:

"An orthodontic bracket (10) comprising:
a base (11) firmly attachable directly or indirectly to
teeth surfaces;

a bracket main body (12) disposed on one side of the base (11) and having an occlusal tying;

a groove-shaped archwire slot (13) formed along a mesiodistal direction in the bracket main body (12), for holding an archwire (28) therein;

a clip (20) having a substantially belt shape and being curved substantially in a U-shape for covering at least a portion of the archwire slot (13), the clip (20) having a catching end portion (21) provided at an upper part thereof and a sliding-rotation supporter (22) provided at a lower part thereof;

a cover portion (15) supported by the bracket main body (12) at the opposite side of the occlusal tying compared to the archwire slot (13), under which the catching end portion (21) gets into and engages with;

and

a guide portion (14) formed in the bare facing side of the occlusal tying (38), and preferably also in the base (11) and along a tooth axial direction crossing with the archwire slot (13), for guiding the clip (20) in a guiding direction, the guide portion (14) having at its ceiling face (16) a front side part (16A), a bump portion (17) and an inner side part (16B), which are provided in order in the guiding direction, said ceiling face (16) inclining so that the inner side part comes nearer to the base than the front side part (16A),

wherein the sliding-rotation supporter (22) is capable of sliding on the ceiling face (16) and getting over the bump portion (17) of the ceiling face (16) from the front side part (16A) in the guiding direction to reach the inner side part (16B) of the ceiling face (16), and the clip (20) is capable of pressing down the archwire (28) toward a bottom of the archwire slot (13)."

Reasons for the Decision

1. The appeal is admissible.

2. The claims of the main request correspond to the claims on which basis the Examining Division had issued its communication under Rule 71(3) EPC (see points VI and IV above). Thereby, the main request overcomes the sole reason for refusal invoked in the decision under appeal, namely the non-admissibility under Rule 137(3) EPC of further amended sets of claims filed after the issue of the communication under Rule 71(3) EPC (see point II above).

3. The case is remitted to the Examining Division for continuation of the proceedings on the basis of the pending main request (Article 111(1) EPC). There is thus no need for the Board to address the auxiliary requests in the present decision.

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.

The Registrar:

The Chairman:

D. Hampe

E. Dufrasne