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**Datasheet for the decision  
of 21 September 2012**

**Case Number:** T 0807/10 - 3.5.03

**Application Number:** 00908849.3

**Publication Number:** 1166597

**IPC:** H04R 25/00, A61B 5/12

**Language of the proceedings:** EN

**Title of invention:**  
Tinnitus rehabilitation device and method

**Applicant:**  
Neuromonics Pty Ltd

**Opponent:**  
-

**Headword:**  
Tinnitus rehabilitation/NEUROMONICS

**Relevant legal provisions:**  
EPC Art. 84

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

**Keyword:**  
"Clarity (no)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0807/10 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 21 September 2012

**Appellant:** Neuromonics Pty Ltd  
(applicant) Unit 12  
56 Neridah Street  
Chatswood NSW (AU)

**Representative:** Nordic Patent Service A/S  
Højbro Plads 10  
DK-1200 Copenhagen K (DK)

**Decision under appeal:** Decision of the examining division of the  
European Patent Office posted 30 November 2009  
refusing European patent application  
No. 00908849.3 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** F. van der Voort  
R. Moufang

## Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 00908849.3 which was published as international application PCT/AU00/00207 with publication number WO 00/56120 A.

The refusal was based on Articles 53(c) and 84 EPC.

II. With the statement of grounds of appeal the appellant implicitly requested that the decision under appeal be set aside and that a patent be granted on the basis of claims of a main request or, failing that, on the basis of claims of any one of six auxiliary requests, all requests as specified in the statement of grounds of appeal. Oral proceedings were conditionally requested.

III. The appellant was summoned to oral proceedings. In a communication annexed to the summons to oral proceedings the board raised, without prejudice to its final decision, objections under, *inter alia*, Article 84 EPC.

IV. In response to the board's communication, the appellant filed claims of a main request and two auxiliary requests, replacing all requests on file, and presented arguments in support of these requests.

V. With a further letter filed one day before the oral proceedings the appellant filed claims of a new main request and two new auxiliary requests, replacing all requests on file.

VI. Oral proceedings were held on 21 September 2012 in the course of which the appellant withdrew all requests on file and requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 5(part) as filed at the oral proceedings and claims 5(part) and 6 to 9 of the previous main request as filed with the letter dated 20 September 2012 (main request) or, in the alternative, on the basis of claims 1 to 5(part) as filed at the oral proceedings and claims 5(part), 6 and 7 of the previous main request as filed with the letter dated 20 September 2012 (auxiliary request).

At the end of the oral proceedings, after deliberation, the board's decision was announced.

VII. Claims 1 of the main and auxiliary requests are identical and read as follows:

"A method of creating an audio signal for providing a stimulus to the auditory system of an individual having a known audiometric configuration and experiencing tinnitus or hyperacusis, the method comprising:

providing a music signal including peaks and troughs;  
characterized by

producing a predetermined masking algorithm designed to modify, based on said audiometric configuration of the individual at least a portion of the music audio signal at selected frequencies for providing intermittent masking of tinnitus and *[sic]*; and spectrally modifying the audio signal in accordance with the predetermined masking algorithm, and

verifying with the individual that, in use at a comfortable listening level, when the spectrally modified music signal is heard by the individual during the peaks, the tinnitus is substantially completely obscured and the individual perceives significant masking of the tinnitus, and during the troughs, the individual may occasionally perceive the tinnitus."

In view of the board's conclusion it is not necessary to give details of the remaining claims of the requests.

### **Reasons for the Decision**

1. *Article 84 EPC - clarity*

1.1 Claim 1 is directed a method of creating an audio signal, in which the method essentially includes the following four steps:

- i) providing a music signal;
- ii) producing a masking algorithm "designed to modify, based on said audiometric configuration of the individual at least a portion of the music audio signal at selected frequencies for providing intermittent masking of tinnitus";
- iii) spectrally modifying the music signal in accordance with the masking algorithm; and
- iv) verifying with the individual that under certain circumstances the tinnitus is obscured.

1.2 Apart from stating its purpose, namely providing intermittent masking of tinnitus (cf. step ii)), and a result which is to be achieved when using the algorithm (step iv)), the claim does not specify the actual masking algorithm.

In step ii), the wording "designed to modify, based on said audiometric configuration of the individual at least a portion of the music audio signal at selected frequencies" implies that, in use, the algorithm acts a frequency filter, in which the filter settings are, in some way that is not stated, affected by the audiometric configuration of the individual. However, this in itself does not imply the provision of technical features directly linked to the purpose of "providing intermittent masking of tinnitus" as further referred to in step ii). The appellant did not contest this, but argued that the purpose indicated in this step when taken together with the result to be achieved as defined in the last step implicitly defined the algorithm.

1.3 However, in the present case, the indication of the purpose of the algorithm and the specified result which is to be achieved when using the algorithm do not result in a clear definition of the technical subject-matter. More specifically, as noted above, it is unclear to what extent the audiometric configuration of the individual affects the envisaged modification(s) of the music audio signal. Further, in the last step, no technical features for objectively verifying whether or not the individual perceives "significant" masking of the tinnitus are specified. The claim thus embraces the case that the verification may be based on purely subjective criteria of the individual in question, in which these criteria

are unknown to anybody else, given that the result to be achieved as specified is itself not clearly defined, since the terms "comfortable" in "comfortable listening level", "substantially" in "substantially completely obscured", and "occasionally" in "may occasionally perceive the tinnitus" do not have a well-recognised meaning in the relevant art. Hence, it is unclear how the verification results implicitly define the algorithm.

1.4 In the absence of a clear definition of the algorithm, the steps of producing the predetermined masking algorithm and of spectrally modifying the music signal in accordance with the masking algorithm are unclear. Consequently, the claim does not clearly define the subject-matter for which protection is sought.

1.5 The board therefore concludes that, due to a lack of clarity, claim 1 of each request does not meet the requirements of Article 84 EPC. As claim 1 of each request is not allowable, the requests as a whole are not allowable.

2. In view of the foregoing, it has not proved necessary to consider any of the further objections set out in the communication annexed to the summons to oral proceedings.

3. There being no allowable request, it follows that the appeal must be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

G. Rauh

A. S. Clelland