

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 26 November 2013**

Case Number: T 2361/10 - 3.2.08

Application Number: 02768778.9

Publication Number: 1432369

IPC: A61F2/24

Language of the proceedings: EN

Title of invention:
APPARATUS FOR VALVE REPAIR

Patent Proprietor:
Mitral Interventions

Opponent:
Medtentia AB

Headword:

Relevant legal provisions:

EPC R. 115(2)
EPC Art. 123(2)

Keyword:
Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2361/10 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 26 November 2013

Appellant:
(Opponent)

Medtentia AB
Ole Römers väg 12
223 70 Lund (SE)

Representative:

Krahbichler, Erik
Krahbichler
Intellectual Property Advisors AB - KIPA
P.O. Box 1065
251 10 Helsingborg (SE)

Respondent:
(Patent Proprietor)

Mitral Interventions
399 Mindanao Drive
Redwood City, CA 94065 (US)

Representative:

Turner, James Arthur
D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 4 October 2010
rejecting the opposition filed against European
patent No. 1432369 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman: T. Kriner
Members: P. Acton
D. T. Keeling

Summary of Facts and Submissions

I. The appellant filed a notice of appeal which was received at the EPO on 2 December 2010, against the opposition division's decision posted on 4 October 2010 rejecting the opposition filed against European patent No. EP 1 432 369. The appeal fee was paid simultaneously and the statement of grounds was received on 14 February 2011.

II. Oral proceedings took place before the board of appeal on 26 November 2013.

The respondent (patent proprietor), although duly summoned with letter dated 16 April 2013, was not represented. In accordance with the provisions of Rule 115(2) EPC, the proceedings were continued without the respondent.

III. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent implicitly requested in the written proceedings that the patent be maintained as granted ("The Applicant wishes to maintain the patent in Germany and the United Kingdom.", see letter of 19 February 2013).

IV. Independent claim 1 as granted reads:

"A tissue connecting device for use with an elongate delivery device on tissue at a target site, the device comprising:

an elongate member (10) deliverable to the target site via the elongate delivery device (20) said elongate

member assuming a first substantially linear configuration while engaged with said delivery device and a second substantially circular configuration defining a first support ring (12) and a second support ring (14) when removed from the delivery device; wherein the elongate member has a first support ring radial thickness different from a second support ring radial thickness, said first support ring configured to abut against one side of the target tissue and said second support ring configured to abut against an opposite side of the target tissue to thereby capture a portion of the target tissue therebetween; at least one suture (60) coupled to the elongate member; and wherein said delivery device comprises a catheter (20, 230, 250, 252)."

Claim 25 as granted reads:

"The device of claim 1, wherein said delivery device comprises a straightening mandrel (30)".

Claim 26 as granted reads:

"The device of claim 1, wherein said elongate member contains a lumen (32) therein for engaging a straightening mandrel".

V. The appellant's arguments can be summarised as follows:

Claims 25 and 26 as granted, which stipulate that the delivery device comprises a straightening mandrel, were based on claims 26 and 27 as originally filed. These referred back exclusively to independent claim 2, which required only that the tissue connecting device should be suitable to be delivered to the target via an elongated delivery device, without specifying its type.

Claims 25 and 26 as granted depended on claim 1 which specified that the delivery device comprised a catheter. Therefore these claims define a tissue connecting device which is suitable to be inserted with a straightening mandrel as well as with a catheter.

Since no embodiment describing such a device was disclosed in the application as filed, the subject-matter of claims 25 and 26 extended beyond the content of the application as originally filed.

VI. The respondent did not submit any arguments as to the substance of the appeal.

Reasons for the Decision

1. The appeal is admissible
2. Allowability of the amendments
 - 2.1 Claims 25 and 26 as granted, which define the delivery device through which the elongated member is to be delivered to the target site as a mandrel, refer back to claim 1. The latter defines the delivery device as a catheter.

Therefore, claims 25 and 26 define a tissue connecting device which is suitable to be delivered to the target site both with a delivery device comprising a catheter and with a delivery device comprising a straightening mandrel.

- 2.2 Claims 25 and 26 are derived from claims 26 and 27 as originally filed. These refer back to independent

claim 2, which did not specify any kind of delivery device and hence no catheter. Therefore, no support for claims 25 and 26 as granted can be found in the claims as originally filed.

2.3 The description and the drawings disclose either embodiments where the elongate member is introduced via a catheter (see Figures 2 to 5) or embodiments where it is introduced via a mandrel (see Figure 6). However, no embodiment discloses an elongated member which is intended for use with both delivery devices. It is true that the skilled person might assume that a tissue connecting device suitable for deployment with a mandrel might in practice also be suitable to be delivered with a catheter. However, that is not part of the original disclosure of the patent in suit since no direct and unambiguous disclosure of a tissue connecting device suitable to be used with either delivery device is present in the application as filed.

2.4 Therefore, the subject-matter of claims 25 and 26 as granted extends beyond the content of the application as filed and the patent does not comply with the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



V. Commare

T. Kriner

Decision electronically authenticated