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**Datasheet for the decision  
of 11 September 2012**

**Case Number:** T 0030/11 - 3.2.08

**Application Number:** 05731781.0

**Publication Number:** 1776069

**IPC:** A61F 5/00

**Language of the proceedings:** EN

**Title of invention:**

Glans-stripper apparatus to hold the tucked up foreskin at the root of the erect penis

**Applicant:**

Driessen, Maarten Willem

**Headword:**

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**Relevant legal provisions:**

EPC Art. 108

EPC R. 99(2), 101(1)

**Keyword:**

"Admissibility of appeal - no"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0030/11 - 3.2.08

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.08  
of 11 September 2012

**Appellant:** Driessen, Maarten Willem  
(Applicant) Orteliusstraat 135-1  
NL-1057 AW Amsterdam (NL)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 20 August 2010  
refusing European patent application  
No. 05731781.0 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** T. Kriner  
**Members:** M. Alvazzi Delfrate  
A. Pignatelli

## Summary of Facts and Submissions

- I. By decision posted on 20 August 2010 the examining division refused the European Patent application No. 05 731 781.0.
- II. The decision stated that the application did not meet the requirements of Article 84 EPC for the following reasons (see point 1 of the "Reasons for the decision").

Claims 9 and 10, although drafted as dependent claims, were in fact independent. Hence, the application comprised too many independent claims in the same category, contrary to the requirements of Article 84 and Rule 43(2) EPC (see point 2 of the "Reasons for the decision").

Moreover, the formulation of the subject-matter of independent claims 8-10 was totally unclear per se. The applicant sought to define the subject-matter of the claims by means of features of the use (reference is made to claim 8, lines 10-15, claim 9, lines 2-ff.; claim 9, lines 4-ff.), and the wording of the claims posed an undue burden on the reader, by the fact that it was extremely difficult to identify the subject-matter of the claims with any embodiment shown in the figures or disclosed in the description (see point 3 of the "Reasons for the decision").

Finally, claim 1, defining a do-it-yourself kit, and claims 2-7 dependent on it had not been searched by the International search authority (see point 4 of the "Reasons for the decision").

III. The appellant (applicant) lodged an appeal against this decision on 20 October 2010. The appeal fee was paid on 8 October 2010 and a statement of grounds of appeal was filed on 20 December 2010.

IV. According to the notice of appeal of 20 October 2010 the grounds for the decision under appeal could all be overcome by sending a new set of amended claims.

Said amended claims were filed together with the statement of grounds of appeal, which consisted in a letter wherein the appellant indicated that claims 5 and 7 underlying the decision under appeal had been deleted and one claim had been drafted from claims 8, 9 and 10. The appellant further stated that a search for prior art could be conducted on these claims. No further submissions were contained in said letter.

V. By communications dated 3 February 2012 and 15 May 2012 the Board informed the appellant that the appeal appeared to be inadmissible and summoned him to oral proceedings to be held on 11 September 2012.

VI. By letter of 14 August 2012 the appellant announced that he would not attend the oral proceedings. He further stated that his invention was new and functioning and that the claims were based on the description as originally filed, without addressing the issue of the clarity of the claims. In said letter, and indeed during the whole procedure, the appellant did not provide any argument in respect of the admissibility of the appeal.

VII. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the claims filed with the statement of grounds of appeal.

### **Reasons for the Decision**

#### Admissibility of the appeal

1. According to Article 108 EPC, a statement setting out the grounds of appeal shall be filed within four months of notification of the appealed decision. In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based (Rule 99(2) EPC). If these requirements are not complied with and this deficiency is not remedied before expiry of the relevant period under Article 108 EPC, i.e. within four months of notification of the appealed decision, the appeal has to be rejected as inadmissible (Rule 101(1) EPC).
  
2. Hence, for an appeal to be admissible, the grounds for appeal should specify the legal or factual reasons on which the case for setting aside the decision is based. Said reasons have to be clearly and concisely presented to enable the board to understand immediately why the decision is to be set aside, and on what facts the appellant based his arguments, without first having to make investigations of its own. When the decision under appeal concerns the refusal of a patent application

said arguments should address all the objections on which the decision is based.

3. In the present case, the arguments provided in the submissions dated 20 December 2010 and 20 October 2010, do not specify the reasons why the objection raised under point 3 of the "Reasons for the decision" should be overcome.

Nor do the offered amendments self-evidently overcome this objection, since the references to the features of use criticised in the decision under appeal are still present in the claims.

Therefore, the appellant failed to indicate the reasons for setting aside the decision impugned within four months of notification of the appealed decision.

## **Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

V. Commare

T. Kriner