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**Datasheet for the decision
of 13 December 2012**

Case Number: T 0734/11 - 3.2.08

Application Number: 05786112.2

Publication Number: 1878411

IPC: A61F 9/00, G02C 7/04

Language of the proceedings: EN

Title of invention:

Therapeutic contact lens for pseudoaphakic eyes and/or eyes
undergoing a neurodegenerative process

Applicant:

UNIVERSIDAD COMPLUTENSE DE MADRID

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 54(1)(2), 84

Keyword:

"Novelty (no)"

"Clarity (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0734/11 - 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 13 December 2012

Appellant:
(Applicant)

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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 15 November 2010
refusing European patent application
No. 05786112.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: T. Kriner
Members: M. Alvazzi Delfrate
D. T. Keeling

Summary of Facts and Submissions

- I. By decision posted on 15 November 2010 the examining division refused the European Patent application No. 05 786 112.2 on the grounds that the subject-matter of claim 1 of each of the main and the auxiliary request lacks novelty in view of each of the documents
- D1: WO -A- 98/44380; and
- D2: WO -A- 91/04717.
- II. The appellant lodged an appeal against this decision on 30 December 2010, paying the appeal fee on the following day. In the statement setting out the grounds for appeal, filed on 15 March 2011, the appellant requested that the decision under appeal be set aside and that a patent be granted, providing arguments in support of the novelty and inventive step of the claimed invention. Oral proceedings were requested as a precautionary measure.
- III. The Board of Appeal summoned the appellant to oral proceedings to be held on 13 December 2012 with notification of 4 June 2012. In the annex to that notification the Board set out its provisional opinion according to which the subject-matter of claim 1 of both the main and the auxiliary requests lacked novelty in view of each of D1 and D2 and claim 1 of each of those requests lacked clarity.
- IV. By letter of 7 December 2012 the appellant informed the Board that it would not attend the oral proceedings but that it was interested in the continuation of the

appeal proceedings on the basis of the arguments provided with the statement of grounds of appeal. No further substantive arguments were submitted.

V. The oral proceedings were cancelled with notification of 12 December 2012.

VI. Claim 1 of the **main request** reads as follows:

"A Contact lens formed by the body of the lens, that covers the iris area and the pupil area, for treating pseudo-aphakic eyes or eyes undergoing retinal neurodegenerative process, said contact lens consisting of:

- a standard contact lens and
- a yellow tinted filter covering the whole area of the lens, characterized in that said yellow tinted filter comprises a yellow pigment or dye that absorbs short wavelength radiations in the range of 350–500 nm."

Claim 1 of the **auxiliary request** reads as follows:

"A contact lens for treating pseudo – aphakic eyes or eyes undergoing retinal neurodegenerative process, said contact lens consisting of the combination of:

- (i) a standard contact lens compatible with the use in the human eye, said standard contact formed by the body of the lens, the iris area and the pupil area;
- (ii) an applied filter with a yellow pigment or dye, which is compatible with the lens and innocuous for the human eye;

wherein said yellow filter absorbs short wavelengths from 350 to 500 nm across the whole area of the lens, said whole area including the body of the lens, the

iris area and the pupil area, and resulting in a yellow colored contact lens in said whole area."

VII. The arguments provided by the appellant in respect of the issues dealt with by the present decision can be summarised as follows:

Novelty in respect of D1

In the claimed invention the yellow tinted filter covered uniformly the whole area of the lens. This implied an overall constant absorption over the whole area of the lens, in accordance with the single embodiment of the invention. This feature provided the optical effect shown in Figure 1. By contrast Figure 2 showed the optical effect of the refractory power of the contact lens of D1, which had a gradation of tint, as shown in Figure 19 and disclosed on page 28, lines 14 to 18 of that document.

Furthermore, the claimed invention differed from D1 in the range of wavelength radiations absorbed. The yellow filter disclosed in the present application only absorbed short wavelength radiations in the range of 350-500 nm, but allowed the medium and long wavelengths to pass. By contrast, the colorant or colorants of the lens of D1 imparted zero transmittance of radiation in the range of 200-500 nm and a variable and wavelength-dependent transmittance of radiation in the range of 500-700 nm.

Consequently, claim 1 was novel over D1.

Novelty in respect of D2

The claimed invention differed from D2 in the amount of colorants used in the contact lens. The tinted filter of the contact lens disclosed in the present patent application comprised only one pigment or dye. This was clear from the wording of the claim according to which the lens consisted of a standard lens and "a" yellow tinted filter, since in the original Spanish language the term "a" was equivalent to the term "one". Moreover, the example of the application disclosed the lens with only one yellow dye. The contact lens of D2, contrary to the claimed one, comprised more than two colorants.

Moreover, the claimed lens differed from that of D2 by the range of wavelength radiations absorbed. The lens of the present application only absorbed short wavelength radiations in the range of 350-500 nm, while the colorants of the lens of D2 filtered the light from 425 to 650 nm.

Therefore, claim 1 was also novel over D2.

Reasons for the Decision

1. The appeal is admissible.

2. Main request

2.1 Clarity

Claim 1 does not define what is to be understood as a "standard" contact lens and this wording does not have a generally accepted meaning. Accordingly, claim 1 lacks clarity. This finding was not disputed by the appellant.

2.2 Novelty

2.2.1 D1 discloses a contact lens formed by the body of the lens, which covers the iris area and the pupil area (see page 8, lines 10 to 14 for hard lenses or page 2, lines 27 to 29 for soft lenses). The contact lens is suitable for treating pseudo-aphakic eyes or eyes undergoing retinal neurodegenerative process (see page 1, lines 2-13).

A yellow tinted filter is applied on the lens (see for instance page 11, lines 8 to 10 for hard lenses, or page 17, line 3 for soft lenses). Accordingly, since present claim 1 does not define what is to be understood as a standard lens, the lens of D1 can be regarded as a standard lens with a yellow tinted filter.

The appellant submitted that D1 did not disclose an overall constant absorption over the whole area of the

lens, since its lens had a gradation of tint. However, novelty is to be assessed on the basis of the text of the claims and not of the disclosure of the preferred embodiments. Present claim 1 does not stipulate whether the filter covers the whole area of the lens in a uniform or in a non-uniform manner, but merely requires that the filter covers the whole area of the lens, a feature disclosed by D1 (see page 8, lines 14 to 18 for hard lenses or page 15, lines 27 to 28 for soft lenses).

Present claim 1 stipulates that the filter comprises a yellow pigment or dye that absorbs short wavelength radiations in the range of 350–500 nm. However, the absorption or partial absorption of light with other wavelengths is not excluded by the wording of the claim. Hence, the yellow tinted filter disclosed in D1, which contains yellow dyes that absorb all the light from 200 nm to 500 nm and partially absorbs the light from 550 nm to 800 nm (see examples 1 and 4), is in accordance with claim 1.

Accordingly, the subject-matter of claim 1 of the main request lacks novelty in view of D1.

2.2.2 D2 discloses a contact lens (see for instance examples 1 and 2) formed by the body of the lens, that covers the iris area and the pupil area (see page 20, lines 6 to 11), for treating pseudo-aphakic eyes or eyes undergoing retinal neurodegenerative process (see page 8, lines 9 to 16). The lens of example 2 comprises yellow dyes.

The appellant submitted that, since the wording of the claim referred to "a" filter and the term "a" in Spanish was equivalent to "one", the lens of D2, which comprised more than two colorants, did not fall within the claimed scope. However, present claim 1 is drafted in English and merely stipulates that the contact lens consists of a standard contact lens and a yellow tinted filter. Since this wording does not exclude that the standard contact lens may comprise further colorants, the lens of example 2 of D2, consisting of a number of components and yellow dyes, is in accordance with present claim 1.

Moreover, in the lens according to example 2 the filter covers the whole area of the lens and absorbs short wavelength radiations in the visible range, for instance up to about 520 nm. Hence, here again, the filter of D2 is in accordance with present claim 1 which requires it to absorb short wavelength radiations in the range of 350-500 nm.

Therefore, the subject-matter of claim 1 lacks novelty in view of D2.

3. Auxiliary request

3.1 Clarity

In addition to the objection detailed for the main request in claim 1 of the main request it is not clear what is meant by a "standard contact" (formed by the body of the lens, the iris area and the pupil area). Therefore, claim 1 of the auxiliary request lacks

clarity. This finding has not been disputed by the appellant.

3.2 Novelty

For the reasons given above each of D1 and D2 discloses a contact lens for treating pseudo - aphakic eyes or eyes undergoing retinal neurodegenerative process, said contact lens consisting of the combination of:

(i) a standard contact lens compatible with the use in the human eye, said standard contact formed by the body of the lens, the iris area and the pupil area;

(ii) an applied filter with a yellow pigment or dye,

wherein said yellow filter absorbs short wavelengths from 350 to 500 nm across the whole area of the lens, said whole area including the body of the lens, the iris area and the pupil area, and resulting in a yellow colored contact lens in said whole area.

Moreover, given their use it is implicit that the filters disclosed in D1 and D2 are compatible with the lens and innocuous for the human eye. Hence, the subject-matter of claim 1 of the auxiliary request lacks novelty in view of each of D1 and D2.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner