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Datasheet for the decision of 18 March 2015

Case Number: T 1848/11 - 3.2.02

Application Number: 09160176.5

Publication Number: 2095784

IPC: A61B18/14

Language of the proceedings: EN

Title of invention:
Apparatus and methods for mapping and ablation in electrophysiology procedures

Applicant:
Boston Scientific Scimed, Inc.

Headword:

Relevant legal provisions:
EPC Art. 76(1), 111(1), 123(2)

Keyword:
Divisional application - added subject-matter (no) - after amendment
Remittal to the department of first instance - (yes)

Decisions cited:

Catchword:

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Case Number: T 1848/11 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 18 March 2015

Appellant: (Applicant)	Boston Scientific Scimed, Inc. One Scimed Place Maple Grove, MN 55311-1566 (US)
Representative:	Oppermann, Tim Pfenning, Meinig & Partner GbR Joachimstaler Strasse 12 10719 Berlin (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 15 April 2011 refusing European patent application No. 09160176.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	E. Dufrasne
Members:	P. L. P. Weber
	D. Ceccarelli

Summary of Facts and Submissions

I. The appeal of the applicant is against the decision of the Examining Division posted on 15 April 2011 to refuse the application because of non-compliance with Article 123(2) EPC.

In its decision the Examining Division essentially considered that in all requests on file, which concentrate on the embodiment shown in Figures 16A, 16B, 16C and the corresponding description part, the subject-matter of claim 1 was an intermediate generalisation, because not all essential features of this embodiment (in particular the way the braided conductive member is attached or anchored to the shafts) were present. The Examining Division considered that in this embodiment the teaching was to use anchor bands for clamping the braided member to the corresponding shaft (point 2.1 of the reasons) and that no more general teaching was present in the application as filed (point 2.3 of the reasons).

II. Notice of appeal was filed on 14 June 2011 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was filed on 15 August 2011.

III. In a communication dated 19 December 2014 sent to the appellant, the Board expressed its provisional opinion.

IV. With its letter dated 18 February 2015, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the (new) main request or, in the alternative, on the basis of one of the (new) first to third auxiliary requests, all filed with letter of 18 February 2015.

V. Claim 1 of the (new) main request reads as follows.

"1. A medical device comprising:
a catheter (10) having a distal end and a catheter shaft (12);
a braided conductive member (28) comprising a plurality of filaments (34), the braided conductive member disposed at the distal end of the catheter;
wherein:
a first end of the braided conductive member is anchored to an open distal end of the catheter shaft and characterized in that a second end of the braided conductive member within the catheter shaft is anchored to an activating shaft (26) wherein when the shaft (26) is moved distally the braided conductive member is caused to emerge from the catheter shaft into a deployed configuration in which the braided conductive member forms an annular tissue contact zone."

Reasons for the Decision

1. The appeal is admissible.

2. The application in suit was filed on 13 May 2009 as a divisional application of EP-A-1284670. The mention of the grant of the parent application was published on 3 June 2009, so the divisional application was filed in time. The divisional application as filed has the same description and drawings as the parent application as filed. In the following the Board will refer to the divisional application as published (EP-A-2095784).

3. The invention is about a catheter equipped with a braided conductive member for mapping and ablation procedures in heart surgery e.g. to deal with cardiac

arrhythmia. The braided conductive member can be deployed at the site where it has to be used. In the description and drawings several embodiments are shown and described. The claims of the divisional application in suit are directed to the embodiment of Figures 16A, 16B and 16C.

3.1 Paragraph [0066] of the divisional application describes Figures 16A to 16C. In these figures a particular construction of a braided conductive member and catheter is shown, in which the braided structure is inside a catheter shaft, one end of the braided member being attached to the distal end of the catheter shaft and the other end being attached to the distal end of an additional shaft within the catheter shaft, whereby the distal end of the additional shaft is proximal to the distal end of the catheter shaft, so that when the additional shaft is moved distally inside the catheter shaft, the braided conductive member is caused to emerge from the catheter shaft.

In relation to this embodiment, the way the braided conductive member is fixed to the shaft and catheter is described as follows: "*One end of braided conductive member 28 is anchored to catheter shaft 12 using an anchor band 90 that clamps the end 32 of braided conductive member 28 to catheter shaft 12. The other end of braided conductive member 28 is clamped to an activating shaft such as shaft 26 using another anchor band 92.*"

The Examining Division considered that a more general teaching was not disclosed.

3.2 However, in relation to Figure 2, which shows a catheter with a braided conductive member on an inside

sheath 26 but forming the outside surface of the catheter, it is indicated in paragraph [0028] that "*Also concentrically disposed about inner member 22 is a braided conductive member 28 anchored at respective ends 30 and 32 to the first sheath 24 and the second sheath 26, respectively.*" No specific way of anchoring is mentioned in relation to this embodiment.

Also, in relation to Figure 14 showing an embodiment with three braided conductive members it is stated in paragraph [0064]: "*As shown in Fig. 14, three braided conductive members 28A, 28B, and 28C are provided at the distal end of catheter 10.*" No specific way of providing them at the distal end of the catheter is mentioned.

In relation to Figure 17 showing a braided conductive member composed of one or several large wires, it is mentioned at the end of paragraph [0067]: "*In addition, the connections between the ends of the large wire and the control shafts may be simplified.*" Again, no specific way of fixing the wire to the shaft is mentioned.

The application as filed thus discloses a number of embodiments with a braided member, in relation to which the way the braided member is anchored to the catheter is not further defined and not presented as essential.

3.3 In the opinion of the Board, there is also no reason to believe that the way the braided member is said to be anchored to the catheter and to the additional shaft in the embodiment of Figures 16A to 16C is anyhow necessary for this embodiment. The teaching of Figures 16A to 16C and of the corresponding description parts is that the braided member can be

arranged and deployed from inside the catheter, instead of being arranged on the outside of a shaft as in the other embodiments. The way the ends of the braided conductive member are anchored to the inner shaft 26 and to the catheter is not essential for the functioning of the embodiment. In this respect it is noted that in relation to the embodiment of Figures 16A to 16C no specific advantage or importance of the clamping with anchor bands is indicated. There seems also to be no obvious technical reason why in this particular embodiment it would be important to clamp the ends of the braided conductive member with anchor bands. In other words, there is no functional link between the way the braided conductive member is deployed and the way the ends of the braided conductive member are anchored. That the way the braided member is anchored to the shafts is not the essential teaching of the application is also confirmed indirectly by the application as a whole because, as the other passages mentioned above show, for none of the other embodiments is a precise way of anchoring the ends of the braided conductive member described.

3.4 Therefore, in the opinion of the Board, there is no need to take over into claim 1 the feature that the ends of the braided conductive member are anchored to the shafts using an anchor band that clamps the ends of the braided conductive member in order to satisfy the requirements of Article 123(2) or 76(1) EPC.

3.5 In paragraphs [0066] and [0028] the word “anchored” is used to designate the attachment of the ends of the braided conductive member. The same word is used in claim 1 of the main request.

3.6 The fact that in the embodiment according to Figures 16A to 16C the activation shaft 26 is disposed movably inside the catheter (as explicitly stated in claim 1 according to (new) auxiliary request 3) is already clear from the wording of claim 1 according to the (new) main request, as it is indicated that "*a second end of the braided conductive member within the catheter shaft is anchored to an activating shaft (26)*"(emphasis added). Since the second end of the braided conductive member is within the catheter shaft, and since the said second end is anchored to the activating shaft, this can only mean that the activating shaft is within the catheter shaft.

4. Therefore claim 1 according to the (new) main request fulfils the requirements of Articles 123(2) and 76(1) EPC.

5. Since the impugned decision only dealt with Article 123(2) EPC the Board finds it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the department of first instance for further prosecution.

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

Decision electronically authenticated