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**Datasheet for the decision
of 17 September 2013**

Case Number: T 1911/11 - 3.2.08

Application Number: 03702076.5

Publication Number: 1467674

IPC: A61C8/00

Language of the proceedings: EN

Title of invention:
DENTAL IMPLANT SYSTEM

Patent Proprietor:
Nobel Biocare Services AG

Opponent:
Dentsply IH AB

Headword:

Relevant legal provisions:
EPC Art. 100(c)

Keyword:
Added subject-matter (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1911/11 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 17 September 2013

Appellant: Nobel Biocare Services AG
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 27 June 2011
revoking European patent No. 1467674 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. By decision dated 27 June 2011 the Opposition Division revoked European patent No. 1 467 674.

The Opposition Division found that the patent as granted (Main Request) did not comply with the provision enshrined in Article 100(c) EPC. The Auxiliary Requests were found to either contravene the requirements of Articles 123(2), 123(3) and 84 EPC (Auxiliary Requests 1 to 4) or were not admitted into the proceedings (Auxiliary Requests 5 to 19).

- II. The appellant (patent proprietor) lodged an appeal against this decision on 23 August 2011, paying the appeal fee on the same day. The statement of grounds of appeal was filed on 27 October 2011

- III. Oral proceedings before the Board of Appeal were held on 17 September 2013.

- IV. The appellant requested that the decision under appeal be set aside and that the case be remitted to the Opposition Division for the examination of the remaining grounds of opposition under Article 100(a) and (b) EPC (Main Request) or, in the alternative, that the decision under appeal be set aside with a finding that one of the Auxiliary Requests 1 to 20 on file satisfies the requirements of Articles 123(2) and (3) and 84 EPC, and the case be remitted to the Opposition Division for the examination of the remaining grounds of opposition.

The respondent (opponent) requested that the appeal be dismissed.

V. Claim 1 as granted, i.e. of the **Main Request** (the sole request which plays a role in the present decision), reads as follows:

"A dental implant assembly for supporting a dental prosthesis, the assembly comprising:

a dental implant (10) comprising an implant body (12) located at a distal end of the dental implant, the implant body (12) configured to lie at least substantially below a crest of a patient's jawbone, a collar (16) located at a proximal end of the dental implant, the collar (16) includes a top surface (26), which defines an outer edge (28) that has at least one peak (30) and valley (38) to match the contours of a patient's soft tissue; a central bore (40) that extends through the collar (16) and into the implant body (12) , the central bore (40) including a threaded section (42) and a post-receiving section (44), and

an abutment (52) comprising an upper portion (64), and a lower portion (54) configured to fit within the post-receiving section (44) of the central bore (40);

characterized by

a final restoration (66) configured to fit over the upper portion (64) of the abutment (52) and having an implant mating surface (68) that is configured to mate with the top surface (26) of the collar (26)."

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

The terms "implant body portion" and "collar portion", used in originally filed claim 1, had been replaced in claim 1 as granted by the terms "implant body" and

"collar". However, this amendment was merely a change in the wording which did not alter the substance of the claimed invention. In particular, according to the specification there was no difference between the implant body, which was merely a part of the claimed implant, and the implant body portion. This was also made clear by Figures 1a to 1d, which showed that the implant comprised an implant body 12 and a collar 16.

The feature according to which a final restoration had an implant mating surface configured to mate with the top surface of the collar was disclosed in paragraph [0048] of the application as originally filed. It was true that this paragraph specified also that the mating surface was a lower surface of the final restoration. However, this was also an inherent, albeit not explicitly defined, feature of claim 1 as granted.

Hence, claim 1 as granted did not comprise subject-matter which extended beyond the content of the application as originally filed.

VII. The respondent's arguments can be summarised as follows:

According to claim 1 as originally filed the claimed implant comprised a body portion and a collar portion. By contrast, the implant defined in claim 1 as granted comprised an implant body and a collar. However, an "implant body" was not the same as a "body portion" of an implant, but rather consisted of the whole implant. This was also made clear in paragraph [0034], which stated that the implant body preferably included a lower portion and a collar. As a consequence, the meaning of claim 1 was changed and the claim now comprised subject-matter which was not originally

disclosed. For instance, as a consequence of that change of meaning, the claimed implant could comprise an additional collar, belonging to the implant body, in addition to that explicitly mentioned in the claim. Hence, the patent had been amended in such a way that it contained subject-matter which extended beyond the content of the application as filed.

Moreover, the feature according to which a final restoration had an implant mating surface configured to mate with the top surface of the collar was disclosed in the application as originally filed solely for a mating surface which was the lower surface of the final restoration. However, the latter feature was not comprised in claim 1 as granted. Hence, present claim 1 allowed the possibility of a mating surface intermediate between the uppermost and lowest surfaces of the final restoration, an arrangement which was not disclosed in the application as filed. Therefore, that claim comprised an intermediate generalisation which extended beyond the content of the application as filed.

For these reasons the revocation of the patent as granted on the basis of Article 100(c) EPC was justified.

Reasons for the Decision

1. The appeal is admissible.
2. Main Request - Article 100(c) EPC
 - 2.1 According to claim 1 as originally filed the implant comprises a "body portion", a "collar portion" and a

central bore. In claim 1 as granted this wording has been changed to stipulate that the implant comprises an "implant body", a "collar" and a central bore.

Contrary to the respondent's view, this amendment is of a purely editorial nature and does not change the meaning of the claim. In particular, it is already clear from the wording of present claim 1, according to which the implant "comprises" the implant body and further elements, that the implant body is not the same as the whole implant, but merely a portion of it. Also the passage in paragraph [0034] according to which "the implant 10 comprises an implant body 12, which preferably includes a lower portion 14 and a collar 16" fails to convince to the contrary, because this passage, like claim 1, stipulates that the implant "comprises" an implant body, and not that the implant consists of an implant body. Indeed, Figures 1a to 1d, to which this passage refers, clearly show that the collar is separated from the implant body 12 by interface 22. In the light of these Figures it is clear that the passage of paragraph [0034] has to be understood in such a way that the implant comprises an implant body and a collar, wherein the implant body preferably includes a lower portion, and not in the way as suggested by the respondent.

Accordingly, the change of wording from "body portion" and "collar portion" to "implant body" and "collar" does not change the meaning of the claim. Therefore, this amendment cannot result in an extension of the subject-matter beyond the content of the application as filed.

- 2.2 Claim 1 as granted specifies that the final restoration has an implant mating surface configured to mate with

the top surface of the collar, whereas claim 1 as originally filed merely stipulates that the final restoration is configured to mate with the mating surface of the dental implant, without defining which surface the mating surface is.

However, according to paragraph [0048] the final restoration preferably includes a lower surface which is configured to mate with the top surface of the implant. Hence, this passage discloses that the mating surface of the implant is the top surface of the implant and, as a consequence, the top surface of the collar.

Moreover, it is inherent in the claim's wording that the top surface of the collar mates with a surface which is lower than the uppermost surface of the final restoration, i.e. with a lower surface of the final restoration. It is true, as submitted by the respondent, that that surface may also be an intermediate surface. However, this was not excluded by the wording of paragraph [0048] which merely disclosed it as "a lower surface" and not as the lowest surface. Indeed the same wording "a lower surface" is used in the case of mating with the healing cap to designate a surface which is not the lowest one (see paragraph [0052] and Figure 5d).

Accordingly, this amendment does not constitute an unallowable intermediate generalisation and does not introduce subject-matter which extends beyond the content of the application as filed either.

3. For the reasons above, the ground of oppositions under Article 100(c) does not justify the revocation of the patent as granted. Under these circumstances the Board

deems it appropriate , exercising its powers under Article 111(1) EPC, to remit the case to the opposition division for further prosecution to decide on the grounds of opposition under Article 100(a) and (b) EPC, which were also raised during the opposition proceedings and are not dealt with in the decision under appeal.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division for further prosecution.

The Registrar:

The Chairman:



V. Commare

T. Kriner

Decision electronically authenticated