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**Datasheet for the decision  
of 8 March 2016**

**Case Number:** T 0877/12 - 3.2.02

**Application Number:** 08158080.5

**Publication Number:** 2106740

**IPC:** A61B1/267

**Language of the proceedings:** EN

**Title of invention:**

Laryngoscope with means to restrict re-use of blades

**Applicant:**

Aircraft Medical Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 84, 56

**Keyword:**

Added subject-matter (no)  
Clarity and support in the description (yes)  
Inventive step (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0877/12 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 8 March 2016**

**Appellant:** Aircraft Medical Limited  
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**Representative:** Hindle, Alistair Andrew  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 9 November 2011  
refusing European patent application  
No. 08158080.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Dufrasne  
**Members:** M. Stern  
P. L. P. Weber

## **Summary of Facts and Submissions**

- I. The applicant lodged an appeal against the decision of the Examining Division refusing European application No. 08 158 080.5. The Examining Division found that the claims of the various requests then on file were not compliant with Articles 84 (lack of support in the description), 123(2) and/or 56 EPC.

The following documents were cited:

D1: US-A-4 406 280  
D2: US-A-4 930 495  
D3: US-A-5 879 304  
D4: WO-A-00/74 556.

- II. Notice of appeal was filed on 9 January 2012 and the appeal fee was paid the same day. A statement setting out the grounds of appeal was received on 19 March 2012.
- III. The Board set out its provisional opinion in a communication dated 12 November 2015.
- IV. Oral proceedings were held on 8 March 2016.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the second auxiliary request, filed during the oral proceedings, and the third to sixth auxiliary requests filed with letter dated 26 January 2016.

The main and the first auxiliary requests, filed with letter dated 26 January 2016, were withdrawn.

- V. Claim 1 of the second auxiliary request reads as follows:

"A laryngoscope (1) comprising a body portion (2) and a blade portion (3), the blade portion (3) being separable from the body portion (2), and the laryngoscope (1) being provided with a spoiling means, the spoiling means comprising a mother chip (4) provided in the body portion (2), for sending and receiving signals to and from a radio frequency tag (5) provided in the blade portion (3), the mother chip (4) being adapted, when the radio frequency tag (5) and the mother chip (4) are brought into contact, to electronically mark the radio frequency tag (5) so that it can be recognised as having been in contact with the said body portion (2), and the spoiling means being adapted to indicate if the blade portion has already been attached to the said body portion (2) or to another laryngoscope body portion comprising a mother chip (4) for sending and receiving signals to and from the radio frequency tag (5) in the blade portion (3), the mother chip (4) of the said another laryngoscope body portion being adapted, when the radio frequency tag (5) and the mother chip (4) are brought into contact, to electronically mark the radio frequency tag (5) so that it can be recognised as having been in contact with the said another body portion, previously."

Claims 2 to 11 are dependent claims.

VI. The arguments of the appellant relevant for the present decision are summarised as follows:

Claim 1 of the second auxiliary request was based on claims 1 and 4, on page 6, lines 25 to 28 (which referred to "another body") and page 7, lines 5 to 8 of the application as filed. There was moreover no clarity issue regarding the reference to a non-claimed element

(the "another body"), since claim 1 clearly defined the spoiling means as being adapted to indicate whether the blade had been attached previously to the body portion of the claimed laryngoscope or that of another laryngoscope.

The invention involved moreover an inventive step. It was based on realising that prior-art laryngoscopes could be improved for emergency situations by providing a spoiling means which permitted a blade which had already been detached from the body portion to be reliably re-attached to the body portion (i.e. reliably re-used) in an emergency situation. This would not have been obvious from any of D1 to D3, or from D4. Indeed, this feature was contrary to what was taught by D1 to D3, which were specifically designed to prevent reliable re-use of the blade. There would have been no motivation for the skilled person to specifically select the electrical element and the electrical element reader of D4 for use in the laryngoscope of any of D1 to D3. D4 provided moreover no disclosure of spoiling means which were adapted to indicate if an accessory portion had previously been attached to any of a plurality of optical probes.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Second auxiliary request - Articles 123(2) and 84 EPC*

The subject-matter claimed concerns a laryngoscope comprising, in essence, a body portion, a separable blade portion and so-called "spoiling means", which are

means for indicating if the blade portion has already been attached to the body portion of the claimed laryngoscope or to that of another laryngoscope (claim 1 and page 6, lines 25 to 28 of the original application). An object of the "spoiling means" is to ensure that the blade is not re-used (page 6, lines 8 to 10) so as to avoid cross-contamination between patients (page 6, lines 5 to 7).

The definition of the spoiling means in claim 1 as "comprising a mother chip (4) provided in the body portion (2), for sending and receiving signals to and from a radio frequency tag (5) provided in the blade portion (3), the mother chip (4) being adapted, when the radio frequency tag (5) and the mother chip (4) are brought into contact, to electronically mark the radio frequency tag (5)" finds a basis in dependent claim 4 and page 6, lines 12 to 28 of the original application. In particular, page 6, lines 25 to 28 discloses that the radio frequency tag on the blade portion is suitable to be electronically marked by the mother chip on the body portion of the laryngoscope, so that it can be recognised that the blade portion has been previously in contact with "another body". The "another body" is, in the language of claim 1, another body portion of another laryngoscope than the one claimed, i.e. "another laryngoscope body portion". The suitability of the blade chip to be electronically written on is also mentioned on page 7, lines 4 to 8, the aim being to indicate to the user whether the blade portion has previously been in contact with any body portion.

As a consequence, the subject-matter of claim 1 is directly and unambiguously derivable from the application as filed. The requirements of Article 123(2) EPC are therefore fulfilled.

The description of the application has been adapted to the claimed subject-matter. In view of the above, claim 1 is supported by the amended description.

Moreover, all clarity deficiencies raised in the course of the proceedings have been removed by clearly specifying that the radio frequency tag on the blade portion is suitable for being electronically marked by the mother chip on the body portion of the claimed laryngoscope or another laryngoscope.

Hence, the requirements of Article 84 EPC are likewise fulfilled.

3. *Second auxiliary request - Inventive step*

3.1 Any one of documents D1, D2 or D3 may be considered as the closest prior art. They all disclose a laryngoscope with (spoiling) means which are physically damaged to prevent re-use of the blade on the body of the laryngoscope.

In D1, when the blade is used once, a conductive foil (86) is sufficiently damaged to discourage anyone from using the blade a second time (column 6, lines 46 to 51; Figures 5 and 11).

In D2, frangible tabs (32) are provided on the blade which break when the blade is removed from the handle, preventing re-attachment of the blade (column 3, lines 38 to 45; column 1, lines 37 to 43; Figures 7 and 8).

In D3, the blade comprises frangible means (74) which break off upon disengagement of the blade from the body



of the laryngoscope, thereby discouraging re-use of the blade (column 5, lines 38 to 45; Figure 7).

3.2 The laryngoscope of claim 1 differs from any of these documents by the spoiling means as claimed. The spoiling means of claim 1 comprise, in particular, a mother chip in the body portion for sending and receiving signals to and from a radio frequency tag in the blade portion, the mother chip being adapted to electronically mark the radio frequency tag, whereby the spoiling means are adapted to indicate if the blade portion has already been attached to the body portion of the laryngoscope or to another laryngoscope body portion comprising a mother chip adapted to electronically mark the radio frequency tag.

3.3 The original application explains on page 7, lines 8 to 12 and 23 to 27 the technical effect which the aforementioned electronic spoiling means are designed to achieve. Whilst the spoiling means have the capability of preventing the re-use of a blade, there are situations in which the user may wish to re-use the blade, such as in emergencies where a paramedic is called to a scene with multiple casualties. In spite of the risk of contamination when re-using a blade, in emergency situations this may be a risk worth taking. To allow re-use, the mother chip can be programmed accordingly.

Hence, based on the aforementioned differentiating features of claim 1, and taking into consideration the technical effect attained as disclosed in the application as filed, the objective technical problem to be solved may be seen as allowing re-use of the blade.

3.4 As indicated above, in each of the closest prior-art documents D1, D2 and D3 the laryngoscope is provided with spoiling means which are expressly intended to prevent or discourage re-use of the blade. It would hence be at odds with the teaching of these documents for the skilled person to seek a modification of the laryngoscopes so as to *allow* re-use of the blade. This already constitutes very strong evidence that the skilled person starting from D1, D2 or D3 would not readily arrive at the claimed subject-matter.

3.5 Moreover, document D4 does not even disclose the differentiating features of claim 1. D4 is concerned with a *single-use* disposable accessory device attachable to a (re-usable) optical probe (page 3, lines 72 to 77 and 88 to 90; page 4, lines 114 to 119; claim 1). Single use of the accessory device is ensured, for example, by mechanical or electrical disabling elements (page 4, lines 114 to 117; page 12, lines 353 to 360; page 13, lines 407 to 414).

In one paragraph of D4 (page 15, lines 459-465) it is nevertheless mentioned that some of the disclosed electrical elements can be re-programmed with information which could also allow re-use of the (disposable) accessory device if another diagnostic test needs to be done with the same patient within a short time of the first test. For this purpose, the electrical element in the probe ("body") is configured as an encoding device to conveniently change or add information stored with the electrical element on the accessory device (page 15, lines 463-465). There is however no disclosure in D4 of attaching the accessory device to another probe (another "body"). Thus there is no disclosure in D4 that the electrical elements are

able to indicate whether the accessory device has already been attached to the body of another probe.

- 3.6 Hence, since there is no obvious reason for the skilled person to combine D1, D2 or D3 with D4, and the latter does not even disclose the differentiating features of claim 1, the Board finds that the laryngoscope claimed is not rendered obvious by the cited prior art.

Claim 1 of the second auxiliary request therefore satisfies the requirements of Article 56 EPC. This applies all the more to the preferred embodiments defined in the dependent claims 2 to 11.

## 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 with the order to grant a patent on the basis of:
  - claims 1 to 11 of the second auxiliary request;
  - adapted description pages 1 to 8; and
  - Figure 1,all filed during the oral proceedings.

The Registrar:

The Chairman:



D. Hampe

E. DufRASne

Decision electronically authenticated