

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 9 January 2017**

**Case Number:** T 1515/12 - 3.2.02

**Application Number:** 05805833.0

**Publication Number:** 1879502

**IPC:** A61B8/13, A61N7/02

**Language of the proceedings:** EN

**Title of invention:**

METHOD AND SYSTEM FOR COSMETIC ENHANCEMENT

**Applicant:**

Guided Therapy Systems, L.L.C.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2), 111(1)

**Keyword:**

Added subject-matter (no)  
Remittal for further prosecution

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 1515/12 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 9 January 2017**

**Appellant:** Guided Therapy Systems, L.L.C.  
(Applicant) 33 South Sycamore Street  
Mesa, Arizona 85202-1150 (US)

**Representative:** Maiwald Patentanwalts GmbH  
Elisenhof  
Elisenstrasse 3  
80335 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 8 February 2012  
refusing European patent application No.  
05805833.0 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** E. Dufrasne  
**Members:** M. Stern  
D. Ceccarelli

## Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the Examining Division, dispatched on 8 February 2012, refusing European patent application No. 05 805 833.0.
- II. In the appealed decision it was held that claim 1 of all requests then on file contained subject-matter which extended beyond the content of the application as filed, published as WO-A-2006/042 163, contrary to Article 123(2) EPC.
- III. Notice of appeal was filed on 17 April 2012 and the appeal fee was paid the same day. A statement setting out the grounds of appeal was filed on 18 June 2012.
- IV. The appellant requested that the appealed decision be set aside and that a patent be granted on the basis of an amended set of claims filed with the statement of grounds of appeal.
- V. Claim 1 reads as follows:

"An ultrasound treatment system for cosmetic enhancement comprising

    a control system (102) configured for control of the ultrasound treatment system;

    a transducer probe (104) for imaging and therapy, the transducer probe (104) comprising a transducer (600) for providing ultrasound energy to a region of interest;

    a display system (108);

    characterized in that the transducer comprises:

        a) an electronic focusing array (604) comprising an array of electronic apertures operated by a variety of

phases via variable time delays for delivering energy to the region of interest; in combination with

b) concave transduction elements (606) configured to deliver focused energy for treatment of the region of interest."

VI. The appellant's arguments relevant for the decision are summarised as follows:

The sole request provided with the appeal was directed to the disclosure of Figure 6A, which had been previously identified as being patentable. Support for claim 1 was given on page 7, lines 14 to 19 and on page 22, lines 1 to 14 referring to Figure 6A.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Article 123(2) EPC*
  - 2.1 The subject-matter defined in claim 1 is an ultrasound transducer system which is directly and unambiguously derivable from the system described in general terms in the original application (WO-A-2006/042163) on page 7, lines 14 to 32 referring to Figure 1 in combination with the description of the transducer embodiment of Figure 6A on page 21, line 33 to page 22, line 14.
  - 2.2 More specifically, on page 7, lines 14 to 18 it is disclosed that the invention concerns an ultrasound transducer system for cosmetic enhancement treatment, which, according to page 7, lines 30 to 32, may include such treatments as mastopexy (breast lift), treatment of cellulite, treatment of blood vessel disorders and

treatment of stretch marks. In the original application, a separate independent device claim is formulated for each of these four examples of cosmetic enhancement treatments (original independent claims 1, 8, 14 and 22). Therefore, condensing these different original independent claims into one independent claim "for cosmetic enhancement" appears to be appropriately supported and clear.

- 2.3 According to the passage on page 7, lines 14 to 18, the system should comprise a control system (102), an imaging/therapy probe (104) and a display system (108). On page 7, lines 26 to 28 it is explained that the probe 104 may be configured as a dual-mode imaging/therapy transducer. The description goes on to describe different transducer embodiments (identified by reference numbers 400, 500, 600, etc.). For the transducer embodiment of Figure 6A, the passage from page 21, line 33 to page 22, line 14 indicates that the transducer (600) comprises an electronic focusing phased array (604) for delivering energy to the region of interest (page 22, lines 4 to 9) and concave transduction elements (606) for delivering focused energy to treatment of the region of interest (page 22, lines 12 to 14).

By defining the transducer as comprising concave transduction elements for delivering focused energy to treatment of the region of interest, claim 1 also contains those features which the Examining Division considered to be missing in the definition of claim 1 (point 5.3 of the impugned decision). There is nothing further shown in Figure 6A which needs to be included in the claim, in particular not the "geometric arrangement and beam shapes ... shown in the figure" mentioned under point 5.3 of the decision. In fact,

this arrangement is only schematically depicted in the figure, whereby it would not be evident to extract any further feature from the figure without contravening Article 123(2) EPC.

- 2.4 The Board therefore comes to the conclusion that the features recited in claim 1 are directly and unambiguously derivable from the original application, so that claim 1 fulfills the requirements of Article 123(2) EPC.
3. The appealed decision is based only on the ground that claim 1 of the different requests then on file did not satisfy the requirements of Article 123(2) EPC.
4. In an obiter dictum of the decision, the Examining Division noted that "all requests lack clarity (Art. 84) ... as pointed out in the summons to oral proceedings", that the embodiment of Figure 6A "seemed" to be inventive and that the description was not in conformity with the claims.  
  
Regarding this statement, the Board notes, firstly, that the clarity objection raised by the Examining Division in its summons to oral proceedings (paragraph 5) relates to features which are no longer contained in current claim 1. Secondly, the question of inventive step concerning the specific subject-matter which is now defined in claim 1 has not been conclusively assessed by the Examining Division. Thereafter the adaptation of the description to the claimed subject-matter mentioned in the obiter dictum will have to be carried out.
5. As a consequence, the Board considers it appropriate to remit the case to the Examining Division for

continuation of the examination proceedings on the basis of the present request (Article 111(1) EPC).

## 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