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**Datasheet for the decision
of 16 November 2017**

Case Number: T 1838/14 - 3.4.03

Application Number: 09710718.9

Publication Number: 2255351

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Language of the proceedings: EN

Title of invention:

APPARATUS FOR DIDACTIC DENTISTRY OPERATIONS

Applicant:

SARATOGA SpA

Headword:

Relevant legal provisions:

EPC 1973 Art. 56
EPC Art. 52(1)
RPBA Art. 13(3), 15(1)

Keyword:

Inventive step - (no)

Decisions cited:

Catchword:



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Case Number: T 1838/14 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 16 November 2017

Appellant: SARATOGA SpA
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 11 March 2014 refusing European patent application No. 09710718.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Eliasson
Members: S. Ward
C. Heath

Summary of Facts and Submissions

- I. The appeal is against the decision of the Examining Division refusing European patent application No. 09 710 718 on the ground that the claimed subject-matter did not involve an inventive step within the meaning of Article 56 EPC.
- II. At the end of the oral proceedings held before the Board the appellant requested that the decision under appeal be set aside and that a patent be granted based on claims 1-10 of the main request, or alternatively on auxiliary request 1 filed with the statement of grounds of appeal or auxiliary request 2 filed at oral proceedings before the Board.
- III. The following document is referred to:
- D5: DE 31 27 614
- IV. (a) Claim 1 of the main request reads as follows:
- "Apparatus for didactic dentistry operations comprising at least a base structure (11) conformed so as to define at least a supporting plane (13) raised from the floor, the supporting plane (13) being usable as the top of a didactic table and allowing the user to sit and insert the legs freely under the supporting plane (13), and a dentistry simulation apparatus (12) pivoted to said supporting plane (13), so as to be able to rotate with respect to the latter at least between a first operating position, in which it extends laterally from the bulk of said supporting plane (13), and a second inactive position in which it is substantially comprised in the bulk of said supporting plane (13),*

characterized in that said simulation apparatus (12) is pivoted to said supporting plane (13) in correspondence with a median zone of the latter, said supporting plane (13) comprising a housing seating (22) made inside the thickness of the supporting plane (13) in correspondence with said median zone, and able to completely accommodate said simulation apparatus (12) in its inactive position."

(b) Claim 1 of the first auxiliary request comprises all features of claim 1 of the main request plus the following additional features:

"in that said base structure (11) comprises at least two supporting columns (15) disposed as a lateral support to said supporting plane (13), so as to define a central compartment (16) below said supporting plane (13), and in that each of said supporting columns (15) comprises at least a technical compartment (26), inside which at least some of the dentistry equipment is disposed in a removable condition, in order to effect said didactic dentistry operations."

(c) Claim 1 of the second auxiliary request filed in oral proceedings before the Board comprises all features of claim 1 of the main request plus the following additional features:

"in that said base structure (11) comprises at least two supporting columns (15) disposed as a lateral support to said supporting plane (13), so as to define a central compartment (16) below said supporting plane (13), and in that each of said supporting columns (15) comprises, on its height, at least a technical compartment (26), open toward the front of the base structure (11), inside which an equipment holder (27)

for at least some of the dentistry equipment is disposed in a selectively removable condition by means of an arm pivoted inside the technical compartment (26), in order to effect said didactic dentistry operations."

- V. The appellant's arguments, insofar as they are relevant to the present decision, may be summarised as follows:

The only issue was inventive step in view of the document D5, a document already known to the Applicant and mentioned in a Search Report issued by the Austrian Patent Office in relation to the priority application of the present application, where it was not considered relevant for the patentability of the (original, broader) independent claim. D5 was also mentioned by the USPTO during the corresponding examination procedure in the USA, which led to the grant of a patent with an independent claim very close to claim 1 of the Second Auxiliary Request filed with the statement of grounds of appeal.

Claim 1 of the main request differed from D5 at least in that the manikin was disposed in a central (median) position of the operative desk or plane, which represented a solution to the problem simulating four-handed dental operations. In D5 the manikin was always located on one side of the plane.

Four-handed dentistry was a practice involving a dentist and a dental assistant (or a so-called expanded functions dental assistant) working together on either side of the patient to perform an operation. This practice was essentially unknown in the era of document D5 (the early 1980s), when dental operations were generally performed by a single dentist. At the filing

date of the application, four-handed dentistry had become commonplace due to its greater efficiency. Many practices had adapted to it by employing both dentists and dental assistants or expanded functions dental assistants (and possibly also dental hygienists and dental technicians). As a result, the teaching of four-handed dentistry had become mandatory in dental schools.

The arrangement of Fig. 2 of D5 would be unsuitable for teaching four-handed dentistry. While students at two adjacent desks could, in theory, work together on a single manikin, this would be wasteful in terms of the number of desks. In addition, in the arrangement of D5 every set of tools would normally comprise those suitable for a dentist, whereas in four-handed surgery the second set of tools would generally be a set suitable for a dental assistant.

Starting from D5, it would not be obvious to the skilled person to place the manikin in a central position, thereby allowing two persons to work simultaneously at either side. Nor would it be obvious to provide two integrated side columns each with a technical compartment containing dentistry equipment, as defined in claim 1 of the first auxiliary request.

Secondary indicia also pointed to the presence of an inventive step.

The present invention had drastically modified a long-standing way to produce didactic apparatuses for dentistry and had been considered by the practitioners a response to a need felt for a long time and never satisfied by the traditional apparatuses found in the field.

In addition, the apparatus of the present invention had been a huge commercial success, confirmed by the evidence of sales data supplied. Whilst this, taken alone, was not decisive, the Examining Division had not given any reason for neglecting the data of sales provided by Applicant, which was in fact a highly relevant indicia for the presence of inventive step.

Reasons for the Decision

1. The appeal is admissible.
2. *Inventive Step: Main Request*
 - 2.1 The sole point at issue in the contested decision was whether the claimed subject-matter involved an inventive step starting from document D5 as the closest prior art. The Board also sees this as the sole issue to be decided in the present appeal.
 - 2.2 In the oral proceedings, the appellant took Fig. 1 of D5 to be the closest prior art for the subject-matter of claim 1 of the main request, and the Board has no objection to this choice.
 - 2.3 In its communication pursuant to Article 15(1) RPBA the Board indicated its preliminary view that the subject-matter of claim 1 of the main request differed from D5 only in that the simulation apparatus (manikin) was arranged in a median zone. The appellant did not contest this analysis in the oral proceedings.

2.4 It is therefore necessary to identify precisely which problem is solved by this feature. The suggestion in the description that the invention would enable the performance of "simulation operations even with four hands" cannot be seen as the basis of a suitable technical problem for this request, as merely modifying the position of the manikin would not, by itself, allow four-handed dentistry to be simulated.

It is clear from both the application itself and from the submissions of the appellant that the term "four-handed dental operation" implies not just two practitioners located either side of the patient, but the provision of two sets of dentistry tools, one for each practitioner. Claim 1 of the main request does not define such a feature (indeed, it is entirely silent on the provision of dentistry equipment), and it cannot therefore be seen as a solution to the problem of simulating four-handed dentistry.

To reach the claimed subject-matter starting from the arrangement of Fig. 1 of D5, a skilled person could, for example, add a further tabletop section 16 on the left-hand side, so that the manikin would thereby be located in a median zone. But what would such a modification achieve, or what problem would it solve? Simply enlarging the area of a table-top, while possibly useful, can hardly be considered to involve an inventive step.

2.5 The Board therefore concludes that the subject-matter of claim 1 of the main request does not involve an inventive step within the meaning of Article 52(1) EPC and Article 56 EPC 1973.

3. *First auxiliary request: Inventive step*

- 3.1 In the oral proceedings before the Board, the appellant was of the opinion that the embodiment of Fig. 2 of D5 was the closest prior art for the subject-matter of claim 1 of the first auxiliary request, and the Board agrees.
- 3.2 In addition to the features of claim 1 of the main request, claim 1 of the first auxiliary request comprises the additional features recited under point IV(b), above. It is therefore necessary to determine the further differences over D5 arising from the additional features.
- 3.3 The Board does not accept the argument that the arrangement of Fig. 2 of D5 does not disclose "columns". The claimed columns are not defined to have any particular shape, but rather to provide a particular function: to provide lateral support to said supporting plane. The left and right supports shown in Fig. 2 of D5 provide precisely this function, and may be described as supporting columns, which define a compartment below said supporting plane.
- 3.4 Hence, in addition to the distinguishing feature of the main request, the subject-matter of claim 1 of the first auxiliary request differs from the arrangement of Fig. 2 of D5 in that each supporting column comprises a technical compartment for removable dentistry equipment.
- 3.5 On the right hand side of each of the desks in Fig. 2 of D5 there is a technical compartment containing removable dentistry equipment. It was stated in the communication pursuant to Article 15(1) RPBA that this compartment was depicted as being attached either to

the underside of the table-top or to the inside of the side support ("column"). In a practical implementation, no inventive step would be involved in selecting either option. In the case of attachment to the side surface of the support, the Board would find it perfectly reasonable to describe the arrangement on the right-hand side as a supporting column comprising "a technical compartment ... inside which at least some of the dentistry equipment is disposed in a removable condition".

3.6 Hence, the essential differences between claim 1 of the main request and the embodiment of Fig. 2 of D5 is that in the claimed arrangement, *each* of the lateral supporting columns comprises a technical compartment for dentistry tools, with the simulation apparatus (manikin) being arranged in a median zone.

3.7 The problem solved may be seen as providing an effective apparatus for the teaching of four-handed dental surgery.

3.8 Although four-handed dental operations are nowhere mentioned in D5, the skilled person would realise that such operations would be theoretically possible using both of the desks (and the two sets of tools) shown in the arrangement of Fig. 2. It would also be apparent to the skilled person that such an arrangement would be unsatisfactory for a number of reasons. Firstly, in a four-handed arrangement, each pair of students would be occupying two desks and leaving one of the manikins unused, which would be an inefficient use of resources. Secondly, since the arrangements of D5 are mainly concerned with teaching one student per desk, the sets of tools provided with each desk would presumably be identical, which would be inappropriate for four-handed

practice. The skilled person would therefore have ample motivation to seek a more effective solution.

3.9 The Board notes that the present application is concerned with an apparatus designed to allow students entering the dental profession to practice the professional skills which they are acquiring in a simulated environment. It is a very obvious requirement of such an apparatus that it must allow the student to carry out simulated dental procedures which reflect, as accurately as possible, the real procedures which are undertaken in modern dental surgeries.

3.10 For that reason it is entirely unsurprising that D5 makes no mention of simulated four-handed procedures, and that the tables disclosed therein are clearly intended for use by a single student only. This equipment, and the teaching practice which it enabled, reflects the prevailing practice in the dental profession in the early 1980s (when D5 was filed), as confirmed by the appellant.

It was also confirmed by the appellant that, by the priority date of the present application, four-handed procedures had become common in the profession, and teaching such procedures in dental schools had become mandatory. It would be well-known to the skilled person that the real-world practice of four-handed dental surgery involves a dentist and a dental assistant at either side of the patient, each provided with a (generally different) set of tools. It would therefore be obvious to the skilled person that the simulation apparatus must reflect this practice as accurately as possible.

In seeking to modify the older apparatus as reflected in document D5 to the new reality of four-handed practice, the Board fails to see why it would not be an obvious measure to provide a second set of tools per table on the other side of the manikin, which would merely reflect the arrangement in a real dental surgery equipped for four-handed operations.

Since D5 already provides a first tool compartment on the right hand side of the table, an obvious way to provide such a second tool set would be to re-configure the left-hand side of the table to be a mirror image of the right-hand side, with the manikin then being situated in the middle, where it would be easily accessible to both students. This modification would lead to all of the distinguishing features apart from the technical compartments being *comprised* in the supporting columns, which would be obvious for the reasons given under point 3.5, above.

- 3.11 The Board does not dispute the appellant's contention that the product has been commercially successful. Such success, however, can only be a secondary indicator, and cannot replace an analysis of the invention as claimed with respect to the prior art.

In any event, the Board does not believe that it has been demonstrated that this success has been due to the features currently claimed. In the product as shown in the figures both sets of tools have electrical (and possibly water and/or suction) supply lines, and there is provided a lamp 19, a video camera 21 and a monitor 20. The shape of the apparatus, which allows effective use of floor space, as shown in Fig. 5, also appears to be important. Merely providing evidence of commercial success does not establish whether that success is due

to the claimed features, to the non-claimed features or to other considerations, for example the price and the quality of materials and assembly.

3.12 For the above reasons, the Board judges that the subject-matter of claim 1 of the first auxiliary request would be obvious to a skilled person seeking to adapt the apparatus of D5 to modern four-handed dental practice. Consequently it does not involve an inventive step within the meaning of Article 52(1) EPC and Article 56 EPC 1973.

4. *Second auxiliary request*

4.1 The second auxiliary request was filed by the appellant during oral proceedings before the Board. No reason for filing this request so late in the proceedings was given, other than that the appellant was confident of succeeding with the other requests.

4.2 In the communication pursuant to Article 15(1) RPBA the Board stated the following:

"The appellant is reminded of the provisions of Articles 13(1), 13(3) and 15 of the Rules of Procedure of the Boards of Appeal. Further written submissions, if any, should reach the Board at least one month before the date of the oral proceedings."

Article 13(3) RPBA states the following:

"Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings."

4.3 Claim 1 of the new second auxiliary request includes *inter alia* features such as the equipment holder 27 and the pivoted arm 29. These features were not included in any originally filed claim, and, in the Board's judgement, it is unlikely that they have been the subject of a search. Admission of this request would therefore require adjournment of the oral proceedings and remission of the case to the department of first instance pursuant to Article 111(1) EPC 1973 for further prosecution including an additional search.

It follows, therefore, from Article 13(3) RPBA that this request is not admitted into the proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Eliasson

Decision electronically authenticated