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**Datasheet for the decision
of 16 July 2019**

Case Number: T 1965/14 - 3.2.02

Application Number: 10000149.4

Publication Number: 2343011

IPC: A61B5/103, A61B5/11

Language of the proceedings: EN

Title of invention:
Posture assessment and feedback device

Applicant:
Fischer, Peter

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 123(2)

Keyword:
Amendments - extension beyond the content of the application
as filed (no)
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 1965/14 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 16 July 2019

Appellant: Fischer, Peter
(Applicant) Christophstr. 2
72072 Tübingen (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 29 July 2014
refusing European patent application No.
10000149.4 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman E. Dufrasne
Members: S. Böttcher
D. Ceccarelli

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the Examining Division to refuse European patent application No. 10000149.4 because the subject-matter of claim 1 of the main request was found to lack novelty, and because the fourth auxiliary request, filed after the communication under Rule 71(3) EPC, was not admitted into the proceedings (Rule 137(3) EPC). The written decision was dispatched on 29 July 2014.

II. Notice of appeal and the statement setting out the grounds of appeal were received on 10 September 2014. The appeal fee was paid on the same day.

III. The following documents are referred to in the present decision:

D3: JP-A-2009 018158

D7: US-A-5 610 528

IV. Oral proceedings took place on 16 July 2019.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the new third auxiliary request filed during the oral proceedings.

V. Claim 1 of the new third auxiliary request reads as follows:

"A device for posture assessment of a user comprising:

a sensing means comprising a housing and a single capacitive sensor, wherein said single capacitive sensor

is situated just beneath the top of the housing, and wherein said single capacitive sensor has the proximity of the body of a user as input variable, said sensing means being therefore configured to provide an output in direct response to the distance between said housing and the body of a user wearing said sensing means; and means (2) to attach said sensing means to said user's body in such a manner that said distance varies in response to a defined posture change."

Claims 2 to 9 are dependent claims.

VI. The arguments of the applicant which are relevant for the present decision may be summarised as follows:

Claim 1 of the new third auxiliary request corresponded to claim 1 of auxiliary request 3, on which the communication under Rule 71(3) EPC issued by the Examining Division was based, with the only amendment that "attached to the bottom side of" was replaced with "situated just beneath". This amendment found support in the description of the application as originally filed on page 9, lines 1 to 3. Therefore, the amendment did not contravene Article 123(2) EPC.

Reasons for the Decision

1. The appeal is admissible.
2. The invention as defined in claim 1 of the new third auxiliary request relates to a posture assessment device comprising a single capacitive sensor situated just beneath the top of a housing, and means to attach the sensor to a location of the user's body (Figures 3 and 4). The sensor is configured to provide an output that varies in direct response to the distance between the sensor and the body of the user wearing the sensor.

When the housing with the sensor is strapped around the chest of a user, the housing is pressed against the xiphoid area. With an erect posture of the user, the distance between the top of the housing and the body tissue is wider than when the user slumps. Thus, the output of the capacitive sensor will vary accordingly (page 8, line 31, to page 9, line 3).

According to the application, the claimed apparatus provides for an accurate measurement of slumped posture, while its handling is convenient and user-friendly.

3. Basis in the original application - Article 123(2) EPC

The subject-matter of claim 1 of the new third auxiliary request is largely based on claim 1 of the application as originally filed.

The feature "a single capacitive sensor" can be derived from page 5, lines 3 to 5, of the description as originally filed.

As regards the features "a housing" and "wherein the

single capacitive sensor is situated just beneath the top of the housing", the Board notes that these amendments are based on page 9, lines 1 to 3, of the description as originally filed.

In addition, the feature "wherein said single capacitive sensor has the proximity of the body of a user as input variable" finds support on page 3, lines 6 to 7, of the description as originally filed.

For these reasons, the Board is satisfied that the subject-matter of claim 1 of the new third auxiliary request can be directly and unambiguously derived from the original application, thereby fulfilling the requirements of Article 123(2) EPC.

4. Novelty and inventive step

- 4.1 The Board considers D3 as the closest prior art. D3 relates to a device for assessing the posture of a user (paragraphs [0001] and [0002], Figures 1 and 8). The device comprises a sensing means comprising a sensor having the proximity of the body of a user as input variable (paragraphs [0015] and [0040]). The sensing means is therefore configured to provide an output in direct response to the distance between said sensor and the body of the user wearing said sensing means. The device further comprises means to attach said sensing means to said user's body in such a manner that said distance varies in response to a defined posture change (paragraphs [0015] and [0031], Figure 8).

D3 does not disclose that:

- the sensor is a single capacitive sensor;

- the single capacitive sensor is situated just beneath the top of a housing.

It follows that the subject-matter of claim 1 is novel over D3 (Article 54(1) and (2) EPC).

- 4.2 The use of a capacitive sensor which is situated just beneath the top of a housing has the technical effect of facilitating reliable assessment of slumped posture, while avoiding direct contact between the sensor and the skin of the user. Furthermore, the sensing means may be attached to different garments.

The objective technical problem solved by the distinguishing features is therefore to provide a convenient, user-friendly device for accurately assessing slumped posture.

The Board notes that from the documents cited in the European search report, only D7 discloses capacitive sensors for detecting a posture change. However, the sensors described in D7 detect the change in capacitance within each sensor as a result of a bending motion of the sensor (column 2, lines 45 to 55, Figures 1 to 3). Hence, the sensors of D7 are not adapted to measure the distance between them and the body of the user. Hence, a combination of the teachings of D3 and D7 would not lead to the subject-matter of claim 1.

For these reasons, the subject-matter of claim 1 involves an inventive step in view of the cited prior art (Article 56 EPC).

5. The description has been brought into conformity with the amended claims.

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 9 of the new third auxiliary request filed during the oral proceedings;
 - pages 2 to 10 of the adapted description filed during the oral proceedings; and
 - Figures 1A to 5B as originally filed.

The Registrar:

The Chairman:



D. Hampe

E. DufRASne

Decision electronically authenticated