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Datasheet for the decision of 14 January 2019

Case Number: T 2212/14 - 3.2.02

Application Number: 07870159.6

Publication Number: 2059172

IPC: A61B8/00, G01S7/52, G01S15/89, A61B8/14, G01N29/26, G10K11/34

Language of the proceedings: EN

Title of invention:
TRANSDUCER ARRAY IMAGING SYSTEM

Applicant:
Siemens Medical Solutions USA, Inc.

Headword:

Relevant legal provisions:
RPBA Art. 12(4)

Keyword:
Admissibility of the request (no)

Decisions cited:
G 0010/93, T 1178/08, T 1802/12

Catchword:

Beschwerdekammern

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Case Number: T 2212/14 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 14 January 2019

Appellant: (Applicant)
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Representative:
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Decision under appeal:
Decision of the Examining Division of the European Patent Office posted on 3 July 2014 refusing European patent application No. 07870159.6 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman E. Dufrasne
Members: M. Stern
S. Böttcher

Summary of Facts and Submissions

I. The present appeal is against the decision of the Examining Division posted on 3 July 2014 refusing European patent application No. 07 870 159.6 pursuant to Article 97(2) EPC.

II. In the first-instance proceedings, the Examining Division summoned the applicant to oral proceedings. In response, the applicant announced that he would not attend the oral proceedings and requested a decision based on the documents then on file. The Examining Division issued the decision referring to the objections under Articles 123(2), 84 and 56 EPC raised in the communication attached to the summons to oral proceedings.

III. Notice of appeal was filed on 5 September 2014, and the fee for appeal was paid the same day. A statement setting out the grounds of appeal was received on 13 November 2014.

IV. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of an amended set of claims.

V. In a communication pursuant to Article 15(1) RPBA accompanying a summons to oral proceedings, dated 19 October 2018, the Board questioned the admissibility of the appellant's request under Article 12(4) RPBA.

VI. With a letter dated 18 December 2018, the appellant informed the Board that it would not attend the oral proceedings and requested a decision based on the current state of the file. No observations or comments were submitted in response to the Board's communication.

VII. With a communication dated 14 January 2019, oral proceedings were cancelled.

VIII. Independent claims 1 and 16 read as follows:

"1. A method for conducting ultrasound interrogation of a medium, comprising:

transmitting a non-beamformed ultrasound wave generated according to synthetic transmit focusing from a remote unit (100) of an ultrasound system into the medium;

receiving more than one echoed ultrasound wave from the medium at two locations of the remote unit (100) of the ultrasound system;

converting the received echoed ultrasound waves into digital data at the remote unit (100) of the ultrasound system;

transmitting the digital data to a main unit (130) of the ultrasound system; and

sensing movement of a transmitted ultrasound wave transmitter and/or the medium, and compensating for the movement by reducing a time interval for receiving the echoed ultrasound waves."

"16. A device for conducting ultrasound interrogation of a medium, the device being a remote unit (100) of an ultrasound system, comprising:

a first transducer element (102) for converting a first electrical energy into an ultrasound wave, wherein the ultrasound wave is generated according to a synthetic transmit focusing technique , and wherein a second transducer element (102) and a third transducer element (102) convert more than one echoed ultrasound wave into a second electrical energy;

analog-to-digital converters (218) in communication with the second and third transducer elements, wherein the analog-to-digital converters convert the electrical energy into digital data;

a transmitter (120) in communication with the analog-to—digital converters (218) for transmitting the digital data to a main unit (130) of the ultrasound system; and

a movement sensor that detects movement of the transducer elements and/or the medium, wherein the movement sensor compensates for the detected movement by reducing a time interval for receiving the echoed ultrasound waves."

Reasons for the Decision

1. The appeal is admissible.

2. *Admissibility of the claims filed with the statement of grounds of appeal (Article 12(4) RPBA)*

2.1 In the first-instance proceedings, the Examining Division summoned the applicant to oral proceedings raising objections under Articles 123(2), 84 and 56 EPC in a communication attached to the summons. The applicant declined its attendance to the oral proceedings and, without contesting the objections raised or filing any amendments, requested to obtain a decision based on the documents then on file.

2.2 With the statement of grounds of appeal, the appellant replaced the claims on which the decision was issued by a set of amended claims, of which independent claim 1 includes the features of original claim 31, and independent claim 16 includes the features of original claims 94 and 95.

However, as pointed out in the statement of grounds of appeal, the subject-matter of these claims (original claims 31, 94 and 95) had been eliminated from the application upon entering the examination phase and was consequently not examined by the Examining Division. What is more, the subject-matter of these claims had not even been searched during the European phase. As stated in the supplementary European search report, the subject-matter of these claims belonged to a fourth non-unitary invention which was not covered by the search.

2.3 As was held in G 10/93 (point 4 of the Reasons), "[p]roceedings before the boards of appeal in ex-parte cases are primarily concerned with examining the contested decision". It is established jurisprudence (Case Law of the Boards of Appeal, 8th edition 2016, IV.E.4.3.3 b), in particular, the cited decisions T 1178/08 and T 1802/12) that appeal proceedings are not a continuation of examination at first instance or a second, parallel procedure for substantive examination.

Article 12(4) RPBA provides the Board with the discretionary power to hold inadmissible requests which could have been presented (or were not admitted) in the first-instance proceedings.

2.4 In the present case, the claims filed with the statement of grounds of appeal could and should have been submitted during the first-instance proceedings, as it is not for the Board to examine for the first time the submitted unsearched and non-examined subject-matter. The appellant ought to have had the Examining Division assess and then decide on the subject-matter for which it intended to seek protection, even if only on a subsidiary basis, before subjecting it for review to the Board. The fact mentioned by the appellant that the subject-matter had been considered by the USPTO in the International Preliminary Report on patentability under the PCT is not relevant in this respect.

2.5 The appellant remained silent regarding the objections raised by the Board in its communication concerning the admissibility of the claims filed with the statement of grounds of appeal.

2.6 Consequently, the Board does not admit the appellant's request under Article 12(4) RPBA. It follows that the decision under appeal cannot be set aside.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

D. Hampe

The Chairman:

E. Dufrasne

Decision electronically authenticated