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Datasheet for the decision of 26 February 2020

Case Number: T 0394/15 - 3.2.02

Application Number: 08848709.5

Publication Number: 2219710

IPC: A61M5/20, A61M5/32

Language of the proceedings: EN

Title of invention:
AUTO INJECTOR WITH AUTOMATIC NEEDLE RETRACTION

Patent Proprietor:
Medicom Innovation Partner a/s

Opponent:
Sanofi-Aventis Deutschland GmbH

Headword:

Relevant legal provisions:
EPC Art. 54(1), 54(2), 56, 100(a), 100(b), 104(1)
EPC R. 100(1), 115(2)
RPBA Art. 12(4)
RPBA 2020 Art. 12(2), 15(3), 25(2)

Keyword:

Summons to oral proceedings - non-attendance of parties
Late-filed evidence - submitted with the statement of grounds of appeal - admitted (yes)
Apportionment of costs - (no)
Novelty - main request (no) - first auxiliary request (yes)
Inventive step - first auxiliary request (yes)
Grounds for opposition - insufficiency of disclosure (no)

Decisions cited:

T 0963/07

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0394/15 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 26 February 2020

Appellant: (Patent Proprietor)	Medicom Innovation Partner a/s Gimsinglundvej 20 7600 Struer (DK)
Representative:	Zacco Denmark A/S Arne Jacobsens Allé 15 2300 Copenhagen S (DK)
Appellant: (Opponent)	Sanofi-Aventis Deutschland GmbH Industriepark Höchst Bldg. K801 65926 Frankfurt am Main (DE)
Representative:	Schmidt, Christian ZSP Patentanwälte PartG mbB Hansastraße 32 80686 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 22 December 2014 concerning the maintenance of European Patent No. 2219710 in amended form**

Composition of the Board:

Chairman	M. Alvazzi Delfrate
Members:	D. Ceccarelli
	Y. Podbielski

Summary of Facts and Submissions

I. The patent proprietor and the opponent have appealed against the Opposition Division's decision, posted on 22 December 2014, that, account being taken of the amendments according to the third auxiliary request then on file, European patent No. 2 219 710 and the invention to which it related met the requirements of the EPC. The patent was opposed on the grounds of insufficient disclosure, lack of novelty and lack of inventive step.

II. With its statement of grounds, the appellant/opponent ("the opponent") filed new documents

D12: WO-A-01/17593
D13: EP-A-1 518 575
D14: EP-B-0 996 473
D15: US-A-6,159,181
D16: US-A-3,880,163
D17: WO-A-2008/113198
D18: US-B-6,575,939
D19: US-A-2008/0262438

and argued inter alia against novelty of the subject-matter of claim 1 of the present first auxiliary request (corresponding to auxiliary request 3 underlying the appealed decision) on the basis of D12 and D13.

III. The Board summoned the parties to oral proceedings and provided its preliminary opinion in a communication dated 2 December 2019. In the communication the Board pointed out the following:

"*The opponent raised novelty objections in view of D12*

and D13 against the first auxiliary request. Given that claim 1 of the main request is broader than claim 1 of the first auxiliary request, the objections appear to also apply to claim 1 of the main request. The parties should be prepared to discuss this at the oral proceedings."

IV. Oral proceedings took place on 26 February 2020 in the absence of the parties.

The appellant/patent proprietor ("the proprietor") had requested in writing that the decision under appeal be set aside and the patent be maintained as granted or on the basis of one of the first to sixth auxiliary requests filed with letter dated 20 November 2015.

The proprietor had also requested that documents D12 to D19 not be admitted into the proceedings, that the objection based on an allegedly invalid claim to priority not be admitted into the proceedings, and apportionment of costs in favour of the proprietor.

The opponent had requested in writing that the decision under appeal be set aside and that the patent be revoked.

V. The following document is also mentioned in the present decision:

D5: WO-A-2007/033638

VI. **Claim 1 of the patent as granted** reads as follows:

"An auto injector (10) with a housing (12) for accommodation of a syringe (18) with a needle (20), the

syringe (18) being movably positioned in the housing (12) between a first position in which position the needle (20) is accommodated inside the housing (12) and a second position in which position the needle (20) protrudes outside the housing (12),
a driver (22) configured for applying a force to the syringe (18) thereby moving the syringe (18) from the first position to the second position,
characterized in that
the driver (22) is also configured for applying a force to the syringe (18) thereby moving the syringe (18) from the second position to a retracted position upon user operation of a release member (42)."

Claims 1 and 7 to 10 of the first auxiliary request read as follows (differences in claim 1 in respect of claim 1 as granted emphasised):

"1. An auto injector (10) with a housing (12) for accommodation of a syringe (18) with a needle (20), the syringe (18) being movably positioned in the housing (12) between a first position in which position the needle (20) is accommodated inside the housing (12) and a second position in which position the needle (20) protrudes outside the housing (12),
a driver (22) configured for applying a force to the syringe (18) thereby moving the syringe (18) from the first position to the second position,
a first injection lock configured in a locked state for preventing syringe movement from the first position to the second position and
an injection trigger member (16) configured for releasing the first injection lock to an unlocked state by user operation of the injection trigger member (16) in which unlocked state the first injection lock does not prevent the driver (22) from moving the syringe

(18) from the first position to the second position characterized in that
the driver (22) is also configured for applying a force to the syringe (18) thereby moving the syringe (18) from the second position to a retracted position upon user operation of a release member (42)."

"7. An auto injector (10) according to any of the preceding claims, wherein the first injection lock comprises a rotatable release shaft (34) configured for rotation between a first angular position in which position the shaft (34) prevents movement of the syringe (18) from the first position to the second position and a second angular position in which position the shaft (34) does not prevent movement of the syringe (18) from the first position to the second position."

"8. An auto injector (10) according to claim 7, wherein the rotatable release shaft (34) is positioned laterally in relation to the syringe (18)."

"9. An auto injector (10) according to claim 7 or 8, wherein the coil spring is arranged coaxially with the rotatable release shaft (34)."

"10. An auto injector (10) according to any of claims 7-9, wherein the release shaft (34) is further configured for rotation between a third angular position in which position movement of the syringe (18) from the second position to the retracted position is prevented and a fourth angular position in which position movement of the syringe (18) from the second position to the retracted position is not prevented."

VII. The opponent's arguments, where relevant to the present decision, may be summarised as follows:

Documents D12 to D19 had been filed with the grounds of appeal to overcome the Opposition Division's arguments in the impugned decision. They all belonged to the technical field of the patent and were prima facie highly relevant.

The subject-matter of claim 1 of the first auxiliary request was not novel over D12, which disclosed an auto injector with a syringe as claimed. In particular, the auto injector comprised a driver (plunger 38, Figure 3) configured for applying a force to the syringe and a first injection lock (electronic motor 42 with lead screw 40, Figure 3) configured in a locked state for preventing syringe movement from the first position to the second position. In the state of Figure 4 carpule housing 20, corresponding to the claimed syringe, could not advance as it was locked through plunger 38 to lead screw 40 and electronic motor 42, which did not rotate.

The subject-matter of claim 1 of the first auxiliary was not novel over D13 either. In particular, the auto injector of D13 comprised a syringe (8, Figure 2) and a first injection lock in the form of a motor (16, Figure 2) with a movable screw (15, Figure 2), as disclosed in paragraph [0026]. The motor with the movable screw were configured in a locked state for preventing syringe movement from the first position to the second position: as long as the motor did not rotate the syringe could not be advanced.

The subject-matter of claim 1 of the first auxiliary request lacked an inventive step when starting from D5, which disclosed an auto injector comprising all the

features of the preamble of the claim. In addition, the driver (Zugfeder 110, Figure 1A) of the auto injector of D5 was also configured for applying a force to the syringe (Ampulle 111, Figure 1A) thereby moving the syringe from the second position (Figure 5A) to a retracted position (Figure 6A).

The subject-matter of claim 1 of the first auxiliary request differed from the disclosure of D5 in that the driver was configured for applying the force to the syringe and cause the movement upon operation of a release member.

The problem to be solved by this distinguishing feature was to provide an auto injector adapted to perform a manually controlled sequence of steps.

D5 itself taught that it was desirable to give the user control over the injection sequence (page 3, lines 6 to 12). Claim 1, lines 22 to 26 of D5 rendered obvious that it was possible to give the user control to manually interrupt the injection sequence between, in particular, the injection stroke and the return stroke. Furthermore, providing a release member to allow the user to manually initiate movement of the syringe from the second position to a retracted position would have been particularly easy.

Moreover, if the introduction of a delay between injection and retraction of the syringe was considered to have the effects of allowing "precise dosages to be delivered, less leakage, increased pressure on the skin and a better dissolution of the medicament", as argued by the proprietor, D14 to D19 mentioned such effects. The skilled person would have turned to the teaching of these documents and provided the distinguishing feature

of the claim in the device of D5 in an obvious way, since this feature was disclosed in each of D14 to D19, which all belonged to the state of the art since the priority claim of the patent was not valid.

The subject-matter of claim 1 of the first auxiliary request lacked an inventive step when starting from D14.

The only distinguishing feature of the subject-matter of the claim over D14 was that it was one and the same driver that moved the syringe from the first position to the second position and from the second position to a retracted position.

Having only one driver allowed for simplifying the drive mechanism and reducing the number of springs thereby also reducing costs.

This problem was mentioned in D14 (paragraphs [0003] and [0004]), in relation to a prior art device with three springs. The solution offered in D14 was the provision of an injection device with two springs.

In order to further simplify the drive mechanism of D14 the skilled person would have considered further reducing the number of springs and applied only one spring as taught in D5. Such a simplification was to be considered as an obvious incremental improvement of an existing device, which was merely an extrapolation of previous solutions, as held by the board of appeal in decision T 963/07.

The subject-matter of claim 10 of the first auxiliary request was not sufficiently disclosed in the opposed patent. While the claim language was repeated in the

summary [paragraph [0037]) the description of the figures did not mention a third or a fourth angular position. Moreover, paragraph [0039] stated that the third angular position could be identical with the second angular position. It was therefore doubtful that the subject-matter of claim 10 differed from the subject-matter of claims 7 to 9 at all.

VIII. The proprietor's arguments, where relevant to the present decision, may be summarised as follows:

The opponent had filed eight additional documents, none of which were relevant. It had therefore put an excessive and unjustified additional burden on the proprietor. For this reason apportionment of costs was requested.

After first instance opposition proceedings the patent had been upheld in amended form. More specifically claim 1 had been amended to include claim 7 as granted. The subject-matter of the new claim was therefore well known to the opponent at the time of filing the opposition and there was no reason for searching for new documents and filing them in appeal. Moreover, D12 to D19 were not prima facie highly relevant and therefore they should be disregarded by the Board.

The subject-matter of claim 1 of the patent as granted was novel over D12 which disclosed an auto injector having a syringe movably positioned in a housing and a driver in the form of a motor. The plunger of the injector of D12 was not configured for applying a force. If anything, it could merely convey a force applied by the motor. Since the motor was not configured for applying a force to the syringe, the subject-matter of claim 1 of the patent as granted was

novel over D12.

The subject-matter of claim 1 of the first auxiliary request was novel over each of D12 and D13 because neither of these documents disclosed a first injection lock as claimed.

The subject-matter of claim 1 of the first auxiliary request was inventive when starting from D5. D5 did not disclose a driver also configured for applying a force to the syringe thereby moving the syringe from the second position to a retracted position upon user operation of a release member. According to this feature, if the release member was not operated, the driver was not configured for moving the syringe from the second position to a retracted position.

The technical effect of this distinguishing feature was to allow for a user interaction before the syringe was retracted. This could be advantageous for correct dosing of the medicament to be injected, in that the medicament could be allowed to settle and distribute in the tissue before the needle is retracted. Moreover, immediate needle retraction could result in medicament leaking from the tissue via the needle hole.

There was no disclosure in D5 that the sequence of insertion, injection and retraction should be interrupted. On the contrary, D5 explicitly stated that an identified problem of the prior art was that it did not provide for an automatic retraction of the needle (page 2, lines 6 to 7 and 15 to 16). Hence, it was not obvious to modify the auto injector of D5 and arrive at the subject-matter of claim 1 of the first auxiliary request in view of D5 alone.

Documents D14 to D19, referred to by the opponent, disclosed injection devices comprising different springs for insertion and injection of the medicament, and for needle retraction. Implementing parts of their disclosure to a single driver providing movements in opposite directions, as disclosed in D5, would result in a number of subsequent problems. Therefore, the combination of any of D14 to D19 with D5 was not obvious.

The subject-matter of claim 1 of the first auxiliary request was inventive also when starting from D14. More specifically, reducing from one spring to two springs was highly unlikely to simplify the drive mechanism of D14. Hence, the skilled person would not have done so in an obvious way.

The subject-matter of claim 10 of the first auxiliary request was sufficiently disclosed in view of paragraph [0037] of the patent.

Reasons for the Decision

1. Although having been duly summoned by communication dated 2 December 2019, the proprietor and the opponent were not present at the oral proceedings, as announced by letters dated 29 January 2020 and 8 January 2020 respectively. In accordance with Rule 115(2) EPC and Article 15(3) RPBA 2020, the proceedings were continued without the parties.

2. The invention

The invention relates to an auto injector (10) comprising a housing (12) for accommodation of a

syringe (18), as for example shown in Figure 2 of the patent, part of which is reproduced below.

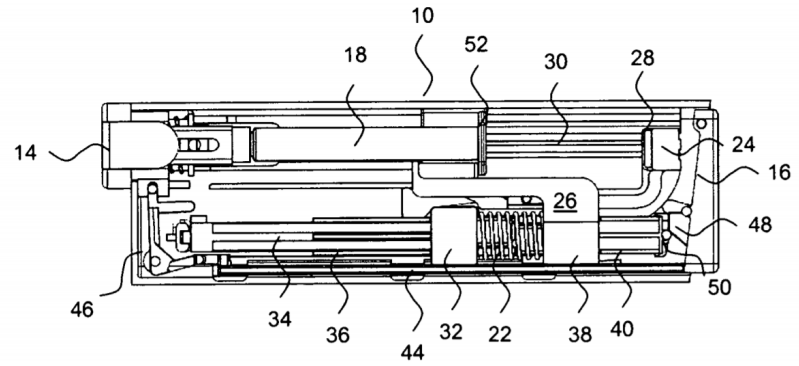

Figure 2

The syringe has a needle (20) and can be moved from a first position, in which the needle is within the housing, to a second position, as shown in Figure 6, reproduced below, in which the needle protrudes outside the housing for performing an injection.

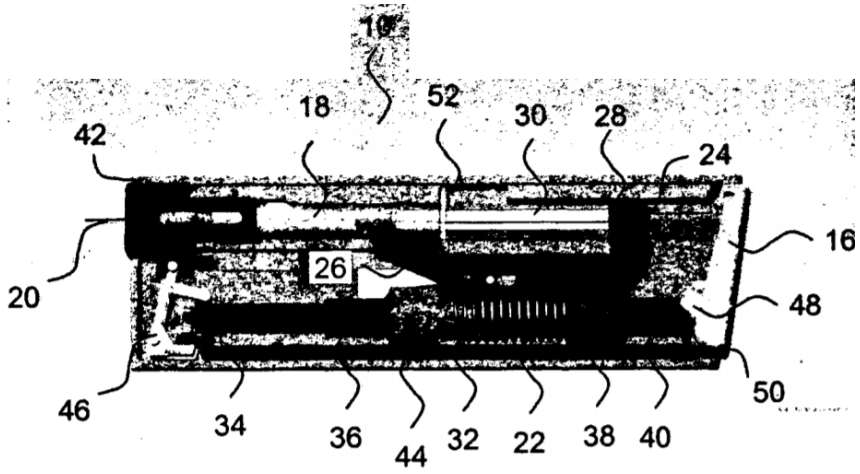

Figure 6

A driver (spring 22) provides the force responsible for this movement (acting on ring 32 connected to plunger arm 24 when it can extend towards the left in the figures). Upon user operation of a release member (skin contact button 42) the driver can also apply a force for moving the syringe from the second position to a

retracted position (acting on ring 38 connected to shoulder arm 26 when it can extend towards the right in the figures), for example to conceal the needle in order to avoid needle stick injuries. The operation of the skin contact button is explained in paragraphs [0057] and [0058] in relation to an embodiment.

According to claim 1 of the first auxiliary request, the auto injector further comprises a first injector lock configured in a locked state for preventing syringe movement from the first position to the second position and an injection trigger mechanism (trigger button 16) configured for releasing the first injection lock to an unlocked state in which the driver moves the syringe (by rotating release shaft 34).

Since the needle retraction is dependent on user operation of a release member, it is possible to better control the injection (in particular ensure that all the medicament is injected) compared with an injector performing needle retraction automatically after the injection.

3. Admission of documents D12 to D19

Since 1 January 2020 the revised RPBA ("RPBA 2020") apply (OJ 2019, A63). By virtue of the transitional provisions of Article 25(2) RPBA 2020, for the present case Article 12(4) RPBA 2007 applies.

D12 to D19 were submitted by the opponent in relation to the case under appeal at the earliest possible stage of the appeal proceedings, i.e. with the statement of grounds, in compliance with Article 12(3) RPBA 2020. Under Article 12(4) RPBA 2007 these documents are to be taken into account, although the Board retains the

power to hold them inadmissible if they could have been presented in the first instance proceedings.

The Board notes that the request allowed by the Opposition Division was filed for the first time one month before the oral proceedings at first instance. The filing of D12 to D19 to support objections against this request is considered to be a justified and timely reaction to the proprietor's filing of the request at that late stage of the first instance proceedings, even if claim 1 is a combination of granted claims 1 and 7, as the proprietor argued . Under these circumstances the Board, in exercising its discretion under Article 12(4) RPBA 2007, sees no need to consider the prima facie relevance of D12 to D19 and admits these documents into the appeal proceedings.

4. Request for apportionment of costs

The proprietor requested apportionment of costs because of the opponent's filing of D12 of D19.

According to Article 104(1) EPC in conjunction with Rule 100(1) EPC each party to opposition appeal proceedings has to bear the costs it has incurred, unless the Board, for reasons of equity, orders a different apportionment of costs.

As explained under point 3 above, the Board considers the opponent's filing of D12 to D19 as timely and justified. Hence, the proprietor's request for apportionment of costs is refused.

5. Patent as granted - Novelty over D12

The opponent argued that the subject-matter of claim 1

of the first auxiliary request was not novel, in particular over D12.

In the communication accompanying the summons to oral proceedings the Board noted that claim 1 of the patent as granted was broader than claim 1 of the first auxiliary request. Consequently, the objection of lack of novelty in view of D12, in particular, appeared to also apply to claim 1 of the patent as granted.

D12 discloses a motor-driven injector, in particular as depicted in Figures 4 and 5 reproduced below.

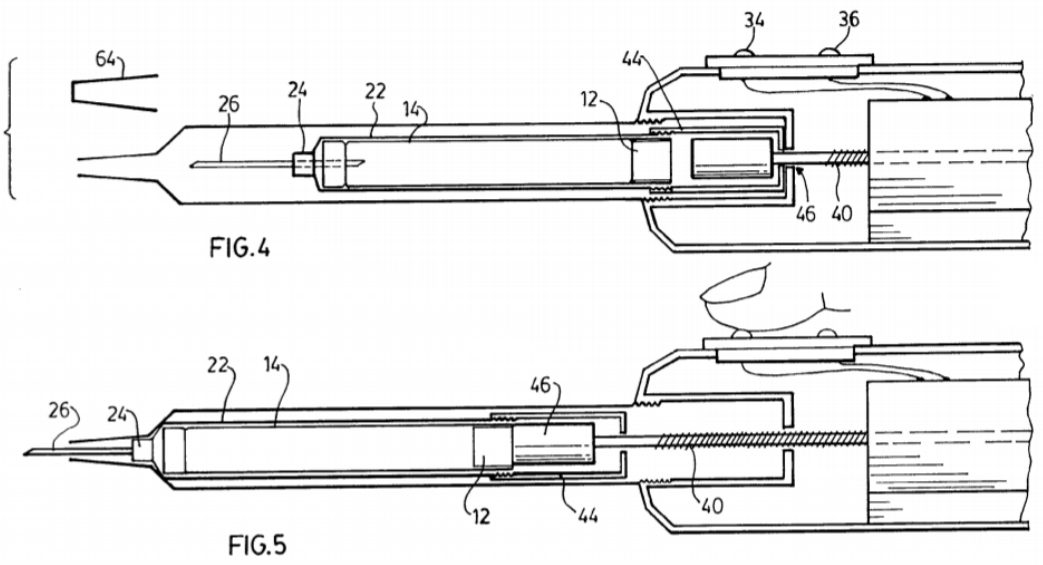

FIG.4

FIG.5

The motor-driven injector is an auto injector, since the injection is performed automatically, upon actuation of a switch (34 in the figures - page 7, lines 28 to 30) activating the motor. The auto injector comprises a housing, and a syringe with a needle (26). The syringe is movable from a first position (Figure 4) to a second position (Figure 5) as defined in claim 1. The auto injector also comprises a driver (either the plunger connected to lead screw 40 and abutting rubber stopper 12 or the motor itself), for applying a force

to the syringe thereby moving the syringe from the first to the second position (page 7, line 28, to page 8, line 8). The driver is also configured for applying a force to the syringe (through secondary housing 44) thereby moving the syringe from the second position to a retracted position (page 8, lines 12 to 15) upon user operation of a release member (reverse switch 36, as explained on page 8, lines 9 to 12).

The proprietor's argument that the plunger did not qualify as a driver because it could not apply a force to the syringe but only transfer a force from the motor is not convincing. In use, the plunger applies a force to the syringe (via stopper 12). Where the force is originally generated is not specified in the claim. The proprietor's argument that the motor was not configured for applying a force to the syringe is not convincing either. The claim does not specify that the force should be applied directly from the driver to the syringe. Moreover, even the driver of the embodiment of the patent as depicted in Figures 2 and 6 reproduced above applies a force to the syringe only indirectly, through the plunger arm and the shoulder arm.

It follows that D12 discloses all the features of claim 1 of the patent as granted. Hence, the ground for opposition under Article 100(a) EPC prejudices the maintenance of the patent as granted because of lack of novelty (Article 54(1) and (2) EPC) of the subject-matter of claim 1.

6. First auxiliary request - Novelty

The opponent argued that the subject-matter of claim 1 of the first auxiliary request was not novel over each of D12 and D13.

The Board notes that D12 and D13 disclose motor-driven injectors which are very similar as far as the movement of the syringe from the first position to the second position is concerned. These injectors employ a motor, i.e. an active actuator, for providing that movement.

In each of D12 and D13 actuation of a button (34 in Figure 4 of D12 and 17 in Figure 2 of D13) energises a motor for driving a respective member (the plunger in Figures 4 and 5 of D12 or cap 14 in Figure 2 of D13 as explained in paragraph [0027]) which causes the movement of the syringe.

The respective buttons which trigger the motors can be considered as injection trigger members.

However, neither D12 nor D13 discloses a first injection lock as defined in claim 1 of the first auxiliary request.

If the motor-driven member of D12 or D13 is considered as the driver within the meaning of the claim, the motor cannot be interpreted, from a technical point of view, as an injection lock which "does not prevent the driver from moving the syringe" when it is in an unlocked state: the motor plays an active part in that movement.

If the motor itself is considered as the driver within the meaning of the claim, then there is no injection lock either. The motor-driven member, in particular, locks nothing.

It is the Board's view that the injection lock as claimed presupposes a passive actuator as the driver,

because it is the nature of such an actuator, storing potential energy, which requires a lock to prevent energy release. This is in accordance with the embodiments of the invention as disclosed in the description and drawings of the patent in suit, which employ a driver in the form of a spring, i.e. a passive actuator.

In conclusion, the subject-matter of claim 1 of the first auxiliary request is novel (Article 54(1) and (2) EPC) over each of D12 and D13.

7. First auxiliary request - Inventive step

The opponent argued that the subject-matter of claim 1 of the first auxiliary request lacked an inventive step when starting from D5 or D14. The Board notes that neither D12 nor D13 qualify as a promising starting point towards the claimed invention in view of their different construction employing an active actuator for moving the syringe from the first position to the second position.

7.1 D5 relates to an automatic injector for two-chamber ampullae, depicted in Figures 1A and 1B reproduced below.

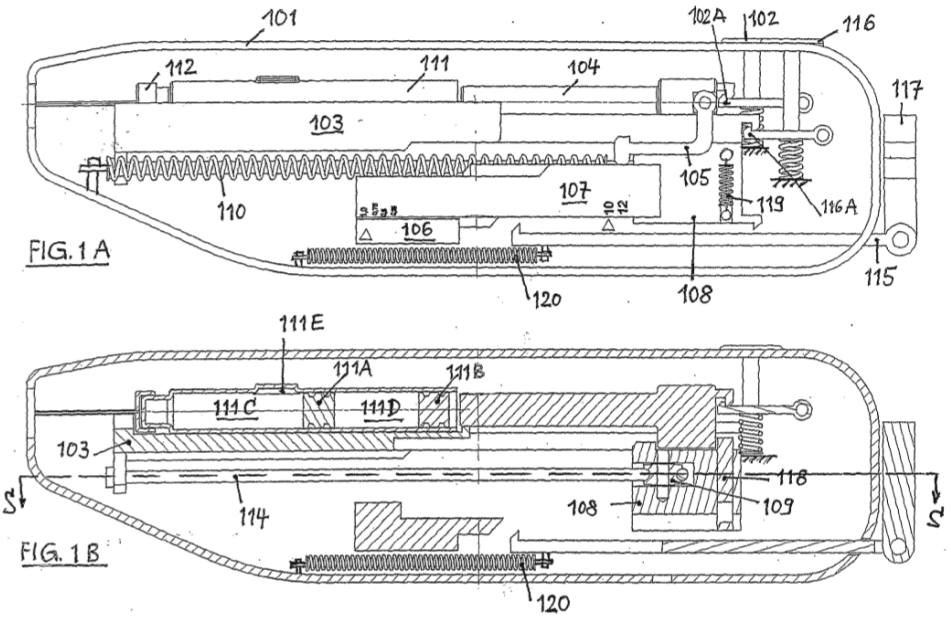

FIG. 1A

FIG. 1B

The injector is for performing the following procedure: mixing the content of the two chambers to obtain an injectable medicament, inserting the needle, injecting the medicament and retracting the needle. This application is contemplated also in the patent in suit (paragraph [0061]).

The object of the invention of D5 is to obtain an automatic procedure (page 2, lines 20 to 24) in order to increase comfort and safety of use. More particularly, the injector of D5 comprises a syringe (111), a driver (spring 110) and two actuation buttons (102 and 116). The actuation of the first button (102) causes the driver to mix the content of the two chambers (page 6, lines 14 to 28), and the actuation of the second button (116) causes the driver to perform the sequence of needle insertion, injection of medicament and needle retraction (page 6, line 30 to page 7, line 22).

It is common ground that D5 does not disclose a release

member upon operation of which the driver is configured for applying a force to the syringe thereby moving the syringe from the second position to a retracted position according to claim 1 of the first auxiliary request.

As submitted by the proprietor, the technical effect of this distinguishing feature is to allow for a user interaction before the syringe is retracted. This, in turn, makes it possible to allow the injected medicament to distribute in the tissue and avoid leakage from the needle hole which could take place in case of immediate syringe (and needle) retraction.

The objective technical problem to be solved is to better control the injection, thereby increasing the injection efficiency.

The problem formulated by the opponent, i.e. to provide an auto injector adapted to perform a manually controlled sequence of steps is not accepted, as it contains elements of the solution, namely the operation of the release member.

As already explained, D5 has as an object an automatic procedure, in order to increase comfort and safety of use. This teaches away from the distinguishing feature of claim 1 of the first auxiliary request, which presupposes a user intervention for triggering a step of the injection procedure.

The Board is aware that the procedure of D5 comprises two separate phases that are triggered by the user independently. However, according to page 3, lines 6 to 12, referred to by the opponent, these phases are a preparatory phase, involving the mixing of the

components in the ampulla, and the actual injection phase, comprising needle insertion, injection and needle retraction (page 3, lines 6 to 9). Claim 1, lines 22 to 26 of D5, also referred to by the opponent, simply mentions, in a fully general way, automatic and/or manually controllable arrangements for controlling the sequence of mixing, needle insertion, injection and needle retraction. Hence, there is no hint in D5 to provide a release member dedicated only to needle retraction.

Since D5 is considered to teach away from an interruption of the injection phase the proprietor's argument according to which the provision of a release member as claimed was technically easy is of no relevance.

In conclusion, the person skilled in the art would not have arrived at the subject-matter of claim 1 of the first auxiliary request in an obvious way on the basis of D5 alone.

7.2 The opponent also argued that the combination of D5 with any of D14 to D19 rendered obvious the subject-matter of claim 1 of the first auxiliary request.

Even if the opponent's argument that D14 to D19 taught the effects of allowing "precise dosages to be delivered, less leakage, increased pressure on the skin and a better dissolution of the medicament" in conjunction with the distinguishing feature of claim 1 of the first auxiliary request were accepted, the Board notes that each of D14 to D19 discloses an automatic injector in which the syringe is moved from the first position to the second position by a spring and from the second position to a retracted position by a

different spring. This was argued by the proprietor and was not contested by the opponent.

If one had wanted to combine the teaching of any of D14 to D19 to the automatic injector disclosed in D5, he or she would have had to ignore the teaching of D5 concerning the provision of a fully automatic injection first, and then, in any case, would have had to provide two different springs for the two claimed syringe movements, as taught in D14 to D19.

It follows that the skilled person, starting from D5 in view of D14 to D19, would not have arrived at the subject-matter of claim 1 of the first auxiliary request in an obvious way.

In view of this conclusion there is no need for the Board to consider the validity of the priority claim of the patent in order to establish whether D17 and D19 belong to the state of the art.

7.3 The opponent also argued against inventive step of the subject-matter of claim 1 of the first auxiliary request starting from D14.

It is common ground that D14 discloses an auto injector which does not comprise a single driver for moving the syringe from the first position to the second position and then from the second position to a retracted position. These movements are performed by two different springs (respectively 13 and 12 in the figures).

Even accepting the opponent's formulation of the objective technical problem, i.e. simplifying the drive mechanism of D14, the Board does not see how the person

skilled in the art would have addressed precisely the presence of the two springs in D14 in an obvious way. Providing a single spring would have implied a complete re-design of the auto injector. Moreover, it cannot be affirmed that the drive mechanism of D5, which involves not only one drive spring but a number of other springs and elements, is technically simpler than that of D14. Hence, it cannot be said that the combination of D5 with D14 is a simplification to be considered an obvious incremental improvement of the device of D14. It follows that the opponent's reference to decision T 963/07 is irrelevant for the present case.

7.4 In conclusion, the subject-matter of claim 1 of the first auxiliary request is inventive (Article 56 EPC) over the cited documents.

8. First auxiliary request - Sufficiency of disclosure

The opponent argued that the subject-matter of claim 10 of the first auxiliary request was not sufficiently disclosed. More specifically, it argued that a third and a fourth angular position were not disclosed in the patent.

As also explained by the Opposition Division in the impugned decision, however, paragraphs [0037] and [0061] of the patent provide a sufficient disclosure of the subject-matter of claim 10. More specifically, paragraph [0037] mentions a third and a fourth angular position, whereas paragraph [0061] provides the constructional details of the claimed release shaft for obtaining these angular positions:

"*the release shaft 34 in the illustrated embodiment may contain more than two sets of tongues to be aligned*

with corresponding grooves in the respective rings 32, 38 at respective different angular positions of the release shaft 34 thereby allowing one of the rings 32, 38 to be displaced a predetermined distance when the release shaft 34 has a specific angular position."

The fact that according to paragraph [0039] of the patent the third angular position may be identical to the second angular position is not problematic, since it is not excluded that these angular positions are indeed different, and since the additional features recited in the dependent claims are optional features of the invention.

It follows that the subject-matter of claim 10 of the first auxiliary request is sufficiently disclosed. Hence, the ground for opposition under Article 100(b) EPC does not prejudice the maintenance of the patent according to the first auxiliary request.

9. Since, on the basis of the first auxiliary request, the patent and the invention to which it relates meet the requirements of the EPC, the impugned decision was correct. There is no need for the Board to consider the lower ranking second to sixth auxiliary requests.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar: The Chairman:

D. Hampe M. Alvazzi Delfrate

Decision electronically authenticated