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**Datasheet for the decision  
of 4 May 2017**

**Case Number:** T 2125/15 - 3.2.02

**Application Number:** 08450087.5

**Publication Number:** 2002817

**IPC:** A61H31/00

**Language of the proceedings:** EN

**Title of invention:**  
Cardiopulmonary resuscitation sensor

**Applicants:**  
Board of Regents, The University of Texas System  
Laerdal Medical AS

**Headword:**

**Relevant legal provisions:**

EPC Art. 84, 123(2)  
EPC R. 103(1) (a)

**Keyword:**

Clarity (no)  
Added subject-matter (yes)  
Reimbursement of the appeal fee (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2125/15 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 4 May 2017**

**Appellant:** Board of Regents, The University of Texas System  
(Applicants) 201 West Seventh Street  
Austin, TX 78701 (US)

Laerdal Medical AS  
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**Representative:** Sonn & Partner Patentanwälte  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 9 June 2015  
refusing European patent application No.  
08450087.5 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 applicants lodged an appeal against the decision of the Examining Division, dispatched on 9 June 2015, refusing European patent application No. 08 450 087.5. The application was refused on the ground that claim 1 then on file contravened Article 84 EPC.

II. Notice of appeal was filed on 7 August 2015 and the fee for appeal was paid the same day. A statement setting out the grounds of appeal was received on 16 October 2015.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 30 filed with letter dated 16 October 2015. It was also requested that the appeal fee be reimbursed in full.

III. The appellant was summoned on 13 January 2017 to attend oral proceedings. In a communication annexed to the summons the Board presented its provisional opinion concerning, *inter alia*, objections regarding added subject-matter and lack of clarity (Articles 123(2) and 84 EPC).

IV. In a letter dated 28 March 2017, the appellant announced that it would not be attending the oral proceedings. The objections raised in the Board's communication were not addressed.

V. Oral proceedings took place on 4 May 2017 in the absence of the appellant (in accordance with Rule 115(2) EPC and Article 15(3) RPBA).

VI. Claim 1 reads as follows:

"1. A self-contained cardiopulmonary resuscitation (CPR) feedback device (100, 300, 400, 600) having a thin and substantially flat substrate (102, 406), one or more sensor arrays (104, 302) disposed on the substrate (102, 406) that measure one or more compression characteristics, a processor (304, 414) or an analog circuit disposed on the substrate (102, 406) and connected to the one or more sensor arrays (104, 302) and a power source (106) disposed on the substrate (102, 406) and connected to the one or more sensor arrays (104, 302) and the processor (304, 414) or the analog circuit, characterized in an improvement comprising:

an output interface (108, 418) disposed on the substrate (102, 406) and connected to processor (304, 414) and the power source (106) that provides a feedback to a user;

wherein the output interface (108, 418) comprises a visual display, a speaker, a multi-tone generator or a combination thereof;

wherein the processor (304, 414) or the analog circuit determines whether one or more operational parameters are within one or more predefined values based on the measured compression characteristics and provides the feedback to the user regarding whether the operational parameters are within the predefined values via the output interface (108, 418); and

wherein the self-contained cardiopulmonary resuscitation (CPR) feedback device (100, 300, 400, 600) is thin and substantially flat like a card."

VII. The arguments presented by the appellant which are relevant for the present decision are summarised as follows:

The shape of the claimed device was defined more precisely to be "thin and substantially flat like a card". The specification as filed disclosed that "the feedback device 600 is shaped as a card" (page 13, paragraph 3, line 4). The amendments were therefore allowable within the meaning of Article 123(2) EPC. The term "card" and various forms thereof were referred to on page 13, paragraph 3 to page 14, paragraph 1, which should be used to interpret the claimed shape of the device.

The refusal of the application by the Examining Division, based on lack of conciseness (Article 84 EPC), violated Article 113(1) EPC because the ground had been brought up for the first time in the reasons for the decision. The appeal fee should therefore be reimbursed in full due to a substantial procedural violation (Rule 103(1) (a) EPC).

### **Reasons for the Decision**

1. The appeal is admissible.
2. The application concerns a cardiopulmonary resuscitation (CPR) feedback device comprising, in essence, a sensor array that measures chest compression characteristics (such as force, frequency or acceleration), a power source, an output interface and a processor or analog circuit, all of which being disposed on a thin, flat, flexible substrate (page 2, last paragraph).

3. *Articles 123(2) and 84 EPC*

Claim 1 defines not only that the cardiopulmonary resuscitation (CPR) device comprises a thin and substantially flat substrate on which the sensor arrays, the processor or analog circuit and power source are disposed, but also that the CPR device itself is *"thin and substantially flat like a card"* (last paragraph of claim 1). The Board considers that the latter feature is not allowable under Articles 123(2) and 84 EPC for the following reasons.

- 3.1 Firstly, the feature is not directly and unambiguously derivable from the application as filed. According to page 13, paragraph 3, second sentence, which was cited by the appellant as a basis for the mentioned feature, the CPR device "is shaped as a card both in area and thickness" (emphasis added by the Board). In contrast, the wording of claim 1 stating that the CPR device is *"thin and substantially flat like a card"* unallowably generalises the originally disclosed shape limitation by no longer restricting the CPR device to have the area of a card and by defining the thickness of the CPR device to be that of an object which is merely similar to or "like" a card.

Therefore, the subject-matter defined in claim 1 extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

- 3.2 Moreover, the definition of the thickness and the ("substantial") flatness of the claimed device as those of a "card" is ambiguous, since a "card" is not an object having a standardised thickness and flatness. A "card" - and, a fortiori, an object which is merely similar to or "like" a card - includes diverse objects,

such as credit and debit cards, identification cards, playing cards, business cards, postcards, etc., whose thickness and flatness differ considerably. For example, business or playing cards will be generally much thinner and flatter than embossed credit cards. Hence, the claimed thickness and flatness is ill-defined.

The appellant argued that a "card" should be interpreted based on the examples given in the description on page 13, paragraph 3, second sentence (credit card, debit card, membership card, driving licence or identification card). The argument appears to imply that the claims of the application (even if unclear) should be understood to be limited by the examples of the description. The Board does not accept this view since, following Article 84 EPC, the claims should define the matter for which protection is sought in a clear way.

Consequently, claim 1 does not fulfill the requirement of clarity of Article 84 EPC.

4. For the aforementioned reasons alone the appeal is not allowable.
5. The appellant requested reimbursement of the appeal fee due to an alleged substantial procedural violation.

According to Rule 103(1)(a) EPC, however, such a reimbursement is contingent on the appeal being allowable. As this is not the case for the reasons given above, the request for reimbursement is refused.



**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



D. Hampe

E. Dufrasne

Decision electronically authenticated