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**Datasheet for the decision  
of 8 March 2019**

**Case Number:** T 0386/16 - 3.2.08

**Application Number:** 08020837.4

**Publication Number:** 2191785

**IPC:** A61C1/08

**Language of the proceedings:** EN

**Title of invention:**

Fixation pin

**Patent Proprietor:**

Straumann Holding AG

**Opponent:**

Nobel Biocare Services AG

**Headword:**

**Relevant legal provisions:**

EPC Art. 54

EPC R. 115(2)

**Keyword:**

Novelty - (no)

Summons to oral proceedings - continuation of proceedings  
without duly summoned party

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0386/16 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 8 March 2019**

**Appellant:** Nobel Biocare Services AG  
(Opponent) Balz-Zimmermann-Str. 7  
8302 Kloten (CH)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Respondent:** Straumann Holding AG  
(Patent Proprietor) Peter Merian-Weg 12  
4002 Basel (CH)

**Representative:** Schaad, Balass, Menzl & Partner AG  
Dufourstrasse 101  
Postfach  
8034 Zürich (CH)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
12 November 2015 concerning maintenance of the  
European Patent No. 2191785 in amended form.**

**Composition of the Board:**

**Chairwoman** P. Acton  
**Members:** M. Foulger  
P. Schmitz

### **Summary of Facts and Submissions**

- I. With the decision posted on 12 November 2015, the opposition division decided that, based on the main request, the patent could be maintained in amended form.
- II. The appellant (opponent) filed an appeal against this decision.
- III. With the summons dated 4 December 2018, the Board summoned the parties to oral proceedings and with the communication dated 18 December 2018 set out the Board's preliminary opinion.
- IV. Oral proceedings took place before the Board on 8 February 2019. As announced with the letter dated 1 February 2019, the respondent (patent proprietor) did not attend the oral proceedings. In accordance with Rule 115(2) EPC, the proceedings took place in their absence.
- V. The requests were as follows:  
  
The appellant requested that the decision under appeal be set aside and the patent be revoked.  
  
The respondent requested that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form according to one of auxiliary requests 1 - 6 filed with the reply to the grounds of appeal (letter dated 22 September 2016).
- VI. The following document is mentioned in this decision:

D5: Catalogue "NobelReplaceTN", printed in 2005

VII. a) Main request

Claim 1 reads:

"Fixation pin for fixing a dental drill template, the fixation pin (1) having a head (5) which has a bearing surface (10) intended to bear at least partially on the drill template or a sleeve comprised in the drill template, a rod (15) having a shape of an essentially circular cylinder and extending from the bearing surface (10) of the head (5) at an essentially right angle, the rod (15) intended to be inserted into the drill template or the sleeve comprised in the drill template, wherein the head (5) has a circumventing indentation and wherein the rod (15) does not have a screw thread."

b) Auxiliary requests 1 and 2

Claim 1 of the main request remains unchanged in these requests.

c) Auxiliary request 3

Claim 1 reads (deletions compared with main request struck through):

"Fixation pin for fixing a dental drill template, the fixation pin (1) having a head (5) which has a bearing surface (10) intended to bear at least partially on the drill template or a sleeve comprised in the drill template, a rod (15) having a shape of an essentially circular cylinder and extending from the bearing surface (10) of the head (5) at an ~~essentially~~ right

angle, the rod (15) intended to be inserted into the drill template or the sleeve comprised in the drill template, wherein the head (5) has a circumventing indentation and wherein the rod (15) does not have a screw thread."

d) Auxiliary request 4

This request comprises two independent claims - claims 1 and 4. Claim 1 has the following added to claim 1 of the main request;

"and its diameter is constant throughout the length of the rod."

Claim 4 comprises the following features added to claim 1 of the main request:

"wherein the rod has a first portion extending from the bearing surface of the head, and a subsequent second portion, wherein the second portion has a diameter which is smaller than the diameter of the first portion."

e) Auxiliary request 5

The sole independent claim of this request corresponds to claim 4 of auxiliary request 4.

f) Auxiliary request 6

Claim 1 reads (additions compared with main request underlined):

"Fixation pin for fixing a dental drill template, the fixation pin (1) having a head (5) which has a bearing

surface (10) intended to bear at least partially on the drill template or a drill sleeve comprised in the drill template, a rod (15) having a shape of an essentially circular cylinder and extending from the bearing surface (10) of the head (5) at an essentially right angle, the rod (15) intended to be inserted into the drill template or the drill sleeve comprised in the drill template, wherein the head (5) has a circumventing indentation and wherein the rod (15) does not have a screw thread."

VIII. The respondent argued essentially:

a) Main request

The anchor pin of D5 comprised neither a surface that was intended to bear against a template or a sleeve, i.e. it did not comprise a bearing surface, nor a surface from which the rod extended at essentially a right angle. All surfaces of the anchor pin of D5 were conical transition portions between parts of different diameters and therefore could not be positioned perpendicular to the portion with the smaller diameter.

Thus the subject-matter of claim 1 was new

b) Auxiliary requests 1 and 2

As claim 1 was unamended the above arguments also applied to this request.

c) Auxiliary request 3

By deleting "essentially" it was clarified that the rod should extend at right angles and not merely approximately at a right angle from the bearing

surface.

d) Auxiliary request 4

Additionally to the arguments for the main request, D5 did not mention that the rod could be inserted directly into the drill template without using a sleeve. Furthermore, claim 1 specified that the diameter of the rod was constant throughout its length. This was not the case in D5 which showed a pin with a conically shaped tip.

The subject-matter of claim 1 was therefore new.

e) Auxiliary request 5

Additionally to the arguments brought forward above for the main request, claim 1 of this request required that the rod could be inserted directly into the drill template without using a sleeve. The rod of the anchor pin shown in D5 did not have a first portion extending from the bearing surface and a subsequent second portion having a diameter smaller than the diameter of the first portion. Moreover the pin of D5 had tapered portions for the insertion of the pin into the jaw; the second portion was therefore not cylindrical as required by the claim.

The subject-matter of claim 1 was therefore new.

f) Auxiliary request 6

The anchor pin of D5 was not suitable to be inserted into a drill sleeve because of its conical shape which meant that a stable fixation was not possible. The above arguments regarding the main request also applied



to this request.

Hence, the subject-matter of claim 1 was new.

IX. The appellant argued essentially:

a) Main request

The anchor pin according to D5 comprised a bearing surface since the suitability to bear against another object depended on the shape of the other object which was not part of the claimed pin.

Moreover, the feature whereby the rod extended at essentially a right angle was to be interpreted simply in that the rod was not arranged obliquely. This requirement was clearly fulfilled in the pin shown in D5. The remaining features of claim 1 were also shown in D5.

Hence, the subject-matter of claim 1 was not new.

b) Auxiliary requests 1 and 2

As claim 1 was unamended the above arguments also applied to this request.

c) Auxiliary request 3

The change in this request from "essentially right angle" to "right angle" did not change the conclusions above for the main request.

d) Auxiliary request 4

The feature added to claim 1 was also known from D5 and

thus the subject-matter of claim 1 was not new.

e) Auxiliary request 5

The pin of D5 could also be seen as having a head followed by a first, cylindrical portion and a further smaller diameter cylindrical portion. The bearing surface was the conical transition between the head and the first, cylindrical portion. The suitability of the conical transition to be used as a bearing surface was entirely dependent on what it should bear against which was not part of the claimed subject-matter.

Thus all features of claim 1 were known from D5.

f) Auxiliary request 6

The changes merely concerned the intended use of the fixation pin and hence did not change the scope of the claim. The subject-matter of claim 1 was consequently not new.

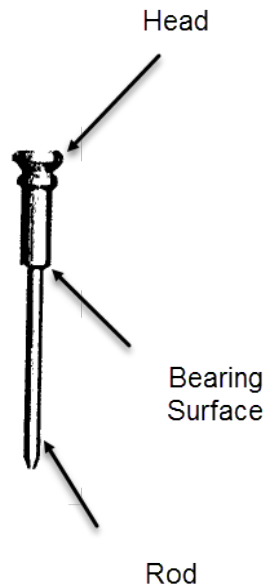
### **Reasons for the Decision**

1. Absence of the respondent at the oral proceedings

The duly summoned respondent did not attend the oral proceedings which were held in their absence in accordance with Rule 115(2) EPC. They were then treated as relying only on their written case (Article 15(3) RPBA).

2. Main request - Novelty

2.1 The pin according to D5 has a head with a circumventing indentation - see drawing below taken from D5, p. 27 with annotations added by the Board:



The head has a bearing surface intended to (or at least suitable to) bear at least partially on the drill template or a sleeve comprised in the drill template, a rod (see above) having a shape of an essentially circular cylinder and extending from the bearing surface of the head. The fact that the bearing surface is conical does not detract from its suitability to bear against another object because this suitability depends on the shape of the other object which is not part of the claimed pin. Thus, contrary to the respondent's submissions, a bearing surface is disclosed in D5.

2.2 How "at an essentially right angle" is to be interpreted in the context of the claim is disputed. The claim does not say that the bearing surface is arranged at or extends at right angles to the rod but

rather that the rod extends from the bearing surface at an essentially right angle. This means - as put forward by the appellant - that the rod cannot be obliquely arranged in relation to the head.

It is correct, as argued by the respondent, that the bearing surface of the pin in D5 is conical and that the rod shown in D5 is not perpendicular to the surface at any single point. However, the rod extends at right angles to the plane of the bearing surface i.e. coaxially with the head and is not arranged obliquely to the head.

2.3 The subject-matter of claim 1 is thus not new.

3. Auxiliary Requests 1 and 2

Claim 1 of auxiliary requests 1 and 2 is unamended compared to the main request. Its subject-matter is consequently also not new.

4. Auxiliary request 3

Claim 1 of this request 3 changes "essentially right angle" to simply "right angle". The above reasons for the main request apply equally to this request.

5. Auxiliary request 4

Auxiliary request 4 includes two independent claims 1 and 4. Independent claim 1 has the added feature that the rod diameter is constant throughout the length of the rod. D5 does indeed disclose a rod with a tapered end, i.e. not with a constant diameter throughout its length. The claim does not however exclude the presence of further elements beyond the second cylindrical

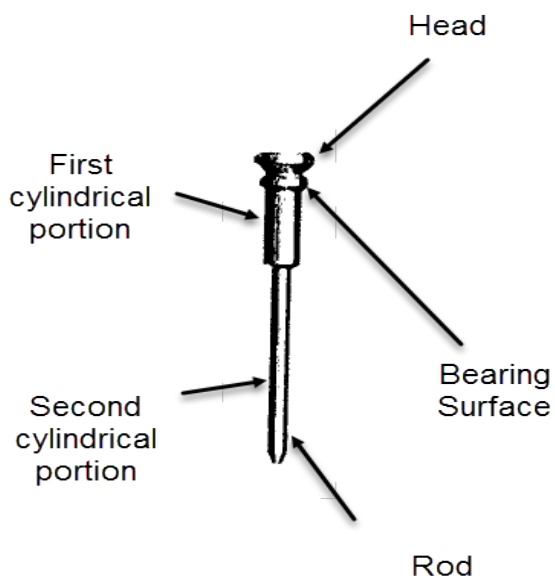
portion and the patent itself (see fig. 2) shows tapered portions at the end of the rod.

The subject-matter of claim 1 of this request is therefore not new.

6. Auxiliary request 5

The pin of D5 can either be seen as a pin with an elongated head or a stepped rod with a simple head. The first interpretation was used above regarding the main request but the second interpretation is also valid and is used here.

Drawing below taken from D5, p. 27 with annotations added by the Board:



The transition between the head and the stepped rod is a conical surface. As discussed above this may be regarded as a bearing surface because whether or not it actually bears on anything is entirely dependent on the other element which is not part of the claimed subject-matter.

The stepped rod extends from this surface at a right angle, i.e. it is not skewed.

It is correct as argued by the respondent that the end of the rod after the second cylindrical portion is tapered. The claim does not however exclude further elements beyond the second cylindrical portion and the patent itself shows tapered portions on the second cylindrical portion (see Fig. 4). The Board must therefore conclude that the claim does not exclude such portions.

Therefore, the subject-matter of claim 1 is not new with respect to the fixation pin disclosed in D5.

7. Auxiliary request 6

Claim 1 of this request specifies that the bearing surface is "intended to bear at least partially on the drill template or a drill sleeve comprised in the drill template" and that the rod is "intended to be inserted into the drill template or the drill sleeve comprised in the drill template". These features are not actually features of the pin itself but rather relate to its intended use. As the pin of D5 would also be suitable for the intended use these features are also known from D5.

The subject-matter of claim 1 is therefore not new.

**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



I. Aperribay

P. Acton

Decision electronically authenticated