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Datasheet for the decision of 29 October 2020

Case Number: T 0612/17 - 3.2.08

Application Number: 05766902.0

Publication Number: 1763324

IPC: A61C8/00

Language of the proceedings: EN

Title of invention:
INTERNAL CONNECTION DENTAL IMPLANT

Patent Proprietor:
Keystone Dental, Inc.

Former Opponent:
Nobel Biocare AB

Relevant legal provisions:
EPC Art. 84

Keyword:
Claims - clarity - main request (yes)

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Case Number: T 0612/17 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 29 October 2020

Appellant: (Patent Proprietor)	Keystone Dental, Inc. 144 Middlesex Turnpike Burlington, MA 01803 (US)
Representative:	Peterreins Schley Patent- und Rechtsanwälte PartG mbB Hermann-Sack-Strasse 3 80331 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 4 January 2017 concerning maintenance of the European Patent No. 1763324 in amended form.**

Composition of the Board:

Chairwoman	P. Acton
Members:	G. Buchmann
	P. Schmitz

Summary of Facts and Submissions

I. The opposition division decided that, taking into account the amendments made during the opposition proceedings, in particular the then valid auxiliary request 2, the patent fulfilled the requirements of the EPC.

II. The opposition division had come to the conclusion that the main request and auxiliary request 1 contravened Article 84 EPC due to an inconsistency between the claim, the description and the figures.

The claims of the main request and the auxiliary requests are identical. The requests differ in the text of the description only.

III. The patent proprietor and the opponent filed an appeal against this decision. With a letter dated 10 October 2017 the opponent withdrew its opposition.

IV. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request filed with a letter of 15 May 2015, which was already the main request in the opposition proceedings.

V. Claim 1 of the main request reads as follows.

(The underlined passage shows one of the amendments made during the opposition proceedings. The present decision refers to this passage.)

"The combination of a dental implant (11) and an abutment (12) connectable to said implant (11);

said dental implant comprising:
- a body (13) having a longitudinal axis, a proximal end (16) and a distal end (15);
- implant retaining means (18) provided on an external portion of said body (13);
- an internal bore provided within a portion of said body (13), said internal bore having a proximal end at the proximal end (16) of said body (13) and a distal end;
- an internally facing frustoconical surface (35) having a proximal end and a distal end (33), said surface extending from near the proximal end of said internal bore toward the distal end of said internal bore, said surface being beveled inwardly toward its distal end (33) at an angle of 8° to 40° relative to said longitudinal axis;
- an internally facing drive region (31) positioned within said internal bore between the distal end (33) of said internally facing surface (35) and the distal end of said internal bore, said drive region (31) including a plurality of concave lobes (38) and a plurality of convex lobes (39) alternating with said concave lobes (38), the radially outermost points of each of said concave lobes (38) lying on a circle defining a major diameter (40) and the radially innermost points of each of said convex lobes (39) lying on a circle defining a minor diameter (41), wherein at least a portion of both of said concave and convex lobes (38, 39) have either a circular or elliptical configuration;
- an accommodation region (44) positioned within said internal bore and between the distal end (42) of said drive region (31) and the proximal end of an internally threaded portion (32);
wherein the internally threaded portion (32) is positioned within said internal bore and between said

accommodation region (44) and the distal end (15) of said body (13), said threaded portion (32) having a diameter less than said minor diameter (41);

said abutment (12) has a proximal end (20) and a distal end (19) and comprises:
- a first abutment (12) surface engaging said internally facing surface (35) when said dental implant (11) and said abutment (12) are connected, wherein said first abutment surface (52) is a beveled, frustoconical surface;
- a second abutment surface corresponding to and adjacent to said drive region (31) when said dental implant (11) and said abutment (12) are connected, wherein the second abutment surface comprises convex lobes (46) and concave lobes (48), and wherein the length of the second abutment surface lobes (46, 48) between their proximal end (49) and their distal end (50) is slightly shorter than the length of the lobes (38, 39) of the internally facing drive region (31);
- a prosthesis mounting portion;
- a central bore (17) extending through at least a portion of said prosthesis mounting portion and to the distal end (19) of said abutment (12);
- and an abutment screw (14) extending through said central bore (17) and into said internally threaded bore when said dental implant (11) and said abutment (12) are connected;

wherein when the abutment is assembled within the implant, the first abutment surface (52) and the internally facing surface (35) engage one another in a friction fit engagement providing a tapered locking engagement between these two surfaces for providing stability between the abutment (12) and the implant (11) to preclude or reduce any rocking or micromotion

between the abutment (12) and the implant (11)."

VI. The arguments of the appellant can be summarised as follows.

The objection under Article 84 EPC was not admissible in view of G 1/14. Even if it was, the claim and the description of the main request met the requirements of Article 84 EPC because the description, paragraph [0023], clearly described that the lobes shown in Figure 7 were "convex and concave lobes which are formed as portions of ellipses". According to the appellant, such a technical definition must be accepted by all involved parties.

Reasons for the Decision

1. According to the opposition division, the main request contravened Article 84 EPC because an abutment which would fit into the implant shown in Figure 7 (described in paragraph [0023]) would not fall under the definition of claim 1, according to which the second abutment surface comprises convex lobes (46) and concave lobes (48). An abutment fitting into the implant of Figure 7 had only convex lobes because the lobes (38a, 39a) of the internally facing drive region (31) of the implant were concave only. At the same time the implant shown in Figure 7 was said to form part of the claimed invention. This resulted in an inconsistency between the claim, the description and Figure 7, which contravened Article 84 EPC.

2. The description of Figure 7 reads as follows (paragraph [0023] of the patent):

"Although the preferred lobe configuration comprises a plurality of concave lobes 38 and complimentary convex lobes 39 formed of portions of substantially equal radii, certain advantages of the present invention can also be achieved by lobed configurations which are formed of circles with unequal radii or formed of configurations other than circles. For example, convex and concave lobes which are formed as portions of ellipses are also contemplated. Such a configuration is shown in Figure 7 in which the outwardly extending concave lobes 38a and the inwardly extending convex lobes 39a are defined by portions of ellipses."

3. The reader of this description would interpret Figure 7 in a way that the lobes 38a and 39a are intended to be drawn as elliptic. It is true that the ellipses in Figure 7 are not perfectly drawn. However, figures in patent documents are often drawn in a schematic way. In view of the text of the description, there is no room for the interpretation that Figure 7 shows anything other than alternating convex and concave elliptic lobes.

Therefore, on the one hand, in terms of a matching geometry of the implant and the abutment, there is perfect agreement between the claim and the description. On the other hand, there is no evidence that Figure 7 disclosed anything other than what is described.

4. Therefore, there is no inconsistency between the claim, the description and the drawings which justifies an objection under Article 84 EPC.

5. In the present case, it is not necessary to decide whether objections under Article 84 EPC should be

examined or not, because the objection based on this article was not convincing.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the opposition division with the order to maintain the patent in the following version:

Description:	Pages 1-10	filed by letter of 15 May 2015, designated as "Description according to the Main Request and Auxiliary Request 1"
Claims:	Claim 1	filed by letter of 15 May 2015, designated as "Main Request"
Drawings:	Sheets 1/7-7/7	filed during the oral proceedings on 14 February 2012

The Registrar: The Chairwoman:

D. Magliano P. Acton

Decision electronically authenticated