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**Datasheet for the ancillary decision  
of 27 June 2024**

**Case Number:** T 0118/20 - 3.2.02

**Application Number:** 08781983.5

**Publication Number:** 2180915

**IPC:** A61M39/02

**Language of the proceedings:** EN

**Title of invention:**

VENOUS ACCESS PORT ASSEMBLY WITH X-RAY DISCERNABLE INDICIA

**Patent Proprietor:**

Medical Components, Inc.

**Opponent:**

BAUER WAGNER PRIESMEYER

**Headword:**

**Relevant legal provisions:**

EPC R. 124(1)  
RPBA 2020 Art. 6(4)

**Keyword:**

Correction of the minutes - (no)

**Decisions cited:**

T 1891/20

**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 0118/20 - 3.2.02

**A N C I L L A R Y   D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 27 June 2024**

**Appellant:** BAUER WAGNER PRIESMEYER  
(Opponent) Grüner Weg 1  
52070 Aachen (DE)

**Respondent:** Medical Components, Inc.  
(Patent Proprietor) 1499 Delp Drive  
Harleysville, PA 19438 (US)

**Representative:** Mewburn Ellis LLP  
Aurora Building  
Counterslip  
Bristol BS1 6BX (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
2 December 2019 concerning maintenance of the  
European Patent No. 2180915 in amended form.**

**Composition of the Board:**

**Chairman** M. Alvazzi Delfrate  
**Members:** S. Böttcher  
C. Schmidt

## **Summary of Facts and Submissions**

- I. In terms of substance, the case concerned an appeal by the appellant (opponent) against the interlocutory decision of the opposition division to maintain European patent No. 2 180 915 in amended form according to the then pending auxiliary request 3. Oral proceedings before the board were held on 11 January 2024.
- II. During these oral proceedings the appellant argued that to satisfy the requirements of Article 84 EPC, the access port of Figure 10, which did not fall within the scope of the amended claims according to auxiliary request 5, should be expressly referred to in the description as an "unclaimed example".

The respondent considered such amendment of the description not to be necessary because, in the description, the access port of Figure 10 was not referred to as an embodiment of the invention.

The board did not accept the appellant's argument and decided that the description "AMENDED DESCRIPTION AR 5 - AR 10", filed with the respondent's letter dated 17 March 2023, met the requirements of Article 84 EPC. The patent was maintained on the basis of claims 1 to 5 filed as auxiliary request 5 on 13 March 2023 and the aforementioned description.

- III. With regard to the discussion of the adaptation of the description, the minutes of the oral proceedings include the following sentence:

"With reference to the description, the appellant requested that it should be adapted so that Figure 10 did not represent an embodiment of the patent."

- IV. With its letter dated 25 January 2024 the appellant filed a request for correction of the minutes, in which it requested that the text reproduced above be replaced by:

"With reference to the description, the appellant requested that it should be amended so that Figure 10 was explicitly referred to as an unclaimed example.

The respondent (patent proprietor) stated that the amendment was not necessary because Figure 10 was not described as an embodiment."

- V. In the facts and submissions of its written decision issued on 17 April 2024, the board referred to the parties' statements as quoted under point II above. Under point 12 of the Reasons for the Decision the board noted that, as pointed out by the respondent, the embodiment of Figure 10 was not referred to as an embodiment of the invention and that, therefore, it was not necessary to amend the description.

- VI. With its letter dated 23 May 2024 the appellant replaced its request for correction of the minutes. It now requested correction of the minutes of the oral proceedings held on 11 January 2024 with the replacement of the sentence:

"With reference to the description, the appellant requested that it should be adapted so that Figure 10 did not represent an embodiment of the patent."

by:

"With reference to the description, the appellant stated that the description should be amended to refer to the access port of Figure 10 as an 'unclaimed example'.

The respondent stated that the embodiment of Figure 10 was not referred to as an embodiment of the invention in the description and it was not necessary to amend the description."

VII. The appellant argued that the requested new amendment was in line with the - correct - reproduction of the parties' submissions in the board's written decision.

The current text of the minutes was unfortunate for the appellant because it could be construed to imply that the appellant thought that there was a causal link between adapting the description and Figure 10 being an embodiment of the patent. This, however, was not the case and contradicted the appellant's other submissions on file. Such misleading statements recorded in the minutes could influence proceedings before national courts and, therefore, should be avoided. In this respect the appellant pointed to the fact that the minutes of oral proceedings before the boards of appeal as such could become the subject of a citation in (national) infringement proceedings. It argued that the content of the minutes could, in this way, be of even greater relevance to a decision concerning a claimed scope of protection, because the minutes, unlike the decision itself, were open to review.

- VIII. The respondent was of the opinion that there was no need for a correction of the minutes.
- IX. At the appellant's request, the board held oral proceedings on 27 June 2024 to address the request for correction of the minutes. As previously announced in writing, the respondent did not attend these proceedings. At the end of the oral proceedings the Chair announced the decision that the request for correction of the minutes was rejected.

### **Reasons for the Decision**

The request for correction of the minutes is admissible but has to be rejected.

1. Pursuant to Rule 124(1) EPC, minutes of oral proceedings are to be drawn up, containing the essential points of the oral proceedings and the relevant statements made by the parties.
2. Under Article 6(4) RPBA, the minutes of oral proceedings are to be drawn up by a member of the deciding board or the registrar, as designated by the Chair. According to the travaux préparatoires to this provision, "the minutes drawn up by the board record the essential procedural acts, for example the parties' requests and the submission of documents during the oral proceedings. However, arguments presented by the parties during the oral proceedings are not generally included in the minutes, although they may form part of the board's written decision" (CA/3/19, page 22).

3. As explained in T 1891/20, Reasons 2.3, it is at the discretion of the minute-taker what to consider "essential" or "relevant". Moreover, the board is responsible for deciding what needs to be recorded in the minutes, not the parties.
  
4. The request for correction actually concerns two different amendments. On the one hand, (a) it requests that the record of the submissions of the appellant be amended (to state that "With reference to the description, the appellant stated that the description should be amended to refer to the access port of Figure 10 as an 'unclaimed example'."). On the other hand, (b) the appellant requested the addition of a paragraph relating to the respondent's submissions (to state that "The respondent stated that the embodiment of Figure 10 was not referred to as an embodiment of the invention in the description and it was not necessary to amend the description.").
  
- 4.1 The text of the first requested amendment (a) expresses in essence, albeit with different wording, the same idea as already expressed by the original text of the minutes. Said original text ("With reference to the description, the appellant requested that it should be adapted so that Figure 10 did not represent an embodiment of the patent.") cannot be understood, in the framework of a discussion of the adaptation of the description, to necessitate an amendment of the technical features of Figure 10 but only to request a clarification that said embodiment is not part of the claimed invention. The question of whether said clarification takes the specific form of the wording "unclaimed embodiment" is not considered by the board to be an essential point. Hence, the board considers



that the first requested amendment (a) is not necessary.

- 4.2 With regard to the second requested amendment (b), the board considers that the particular view held by the respondent was not essential for the decision to be taken. It is more important that the board itself came to the conclusion that a further clarification of the description was not necessary, since the embodiment of Figure 10 was not referred to as an embodiment of the invention in the description. As pointed out above, the arguments presented by the parties are not generally included in the minutes. Hence, the second requested amendment (b) is not necessary either.
5. The board recognises that the appellant has a legitimate interest in establishing that the respondent does not actually claim the embodiment of Figure 10 to be an embodiment of the patent as maintained by the board but explicitly declared that it was not. However, the board has taken this interest into account by reproducing the relevant details in the facts and submissions of its decision.
6. The board is not convinced by the appellant's arguments regarding the significance of the minutes for possible infringement proceedings. According to Rule 124(1) EPC and Article 6(4) RPBA, the minutes need to contain only the essential points of the oral proceedings and the relevant statements made by the parties. If the facts and submissions of the subsequently issued decision contain the parties' submissions in a more detailed way - as is usually the case and as is the case here - it is not to be expected that another court would consider the content of the minutes rather than that of the decision for its own assessment of a case.

**Order**

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

The request for correction of the minutes is rejected.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated