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**Datasheet for the decision  
of 27 February 2024**

**Case Number:** T 1338/20 - 3.5.04

**Application Number:** 12748944.1

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**Language of the proceedings:** EN

**Title of invention:**  
METHOD AND APPARATUS FOR ISOLATING A POTENTIAL ANOMALY IN  
IMAGING DATA AND ITS APPLICATION TO MEDICAL IMAGERY

**Applicant:**  
Cadens Medical Imaging Inc.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 108  
EPC R. 99(1)(c), 101(1)  
RPBA 2020 Art. 12(6)

**Keyword:**

Admissibility of appeal (yes)

Explicit statement or request (yes)

Admittance of the appellant's sole request (no)

**Decisions cited:**

T 0620/13, J 0010/20

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1338/20 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 27 February 2024**

**Appellant:** Cadens Medical Imaging Inc.  
(Applicant) 4200 boul. Saint-Laurent,  
bureau 803  
Montréal (Québec) H2W 2R2 (CA)

**Representative:** Germain Maureau  
12, rue Boileau  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 28 January 2020  
refusing European patent application  
No. 12748944.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** B. Willems  
**Members:** B. Le Guen  
G. Decker

## Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 12 748 944.1.
- II. The decision was based on the grounds that claim 1 of the sole request then on file did not meet the requirements of Article 84 or Article 123(2) EPC.
- III. The applicant (appellant) filed a letter dated 19 March 2020 ("the appeal letter") stating "*We hereby pay the fee for appeal of EUR 2 255. Our Statement of Grounds of Appeal will follow in due time*", and referred to the examining division's decision dated 28 January 2020. On 26 May 2020, the appellant filed its statement setting out the grounds of appeal together with amended claims of its sole request.
- IV. The appellant was summoned to oral proceedings. In a communication under Article 15(1) RPBA (OJ EPO 2024, A15), the board provided the following preliminary opinion:
  - The appeal letter did not contain anything that could be regarded as a request within the meaning of Rule 99(1)(c) EPC. In the absence of any such request and in accordance with decision T 620/13, point 5 of the Reasons, it appeared that the appeal would have to be rejected as inadmissible.
  - Assuming *arguendo* that the appeal was admissible, the board, exercising its discretion under either Article 12(4) RPBA or Article 12(6) RPBA, would be

minded not to admit the appellant's sole request into the appeal proceedings.

V. The appellant did not reply in substance to the board's communication. In a letter dated 14 February 2024, the appellant stated that it would not be attending the oral proceedings.

VI. The board held the oral proceedings in the appellant's absence. The board noted that it followed from the file that the appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the sole request as filed with the statement of grounds of appeal. At the end of the oral proceedings, the chair announced the board's decision.

VII. Claim 1 of the appellant's sole request reads as follows (with features added to claim 1 of the request on which the decision under appeal was based being underlined and features deleted being ~~crossed out~~):

"A computer-implemented method for isolating a potential anomaly in medical imagery comprising imaging data, the method comprising:

providing a set of at least one given anomaly property representative of a given anomaly, wherein the set of at least one given anomaly property comprises at least a coherent ~~concentration of denser tissues.~~information of at least one uncertain region to highlight physiological properties,

providing an anomaly property identifier for identifying each of the at least one given anomaly property; wherein the anomaly property identifier

comprises a density gradient determination, at least one of a gradient property and a higher order derivative property of at least one of tissue intensity profile and surface and volume distribution analyses,

in the imaging data, isolating a first zone having a first property and a group of at least one other zone, each of the at least one other zone having a corresponding property different than the first property using a ~~definition of certainties masks that encompass thick regions around an organ border,~~ provision of different certainties masks representing different zone or regions with different certainties in terms of their belonging to a physical object of interest;

providing the at least ~~an~~one uncertain region resulting from the isolation of ~~a~~the first zone and ~~a~~the group of at least one other zone,

selecting a transition zone from a group consisting of:

an uncertain region corresponding to a closed zone separating the first zone and the group of at least one other zone; and

an uncertain region corresponding to a closed zone encircled by one of the first zone and the group of at least one other zone;

applying the anomaly property identifier for identifying each of the at least one given anomaly property on at least the transition zone for providing a computed indication for a selected zone, the selected zone being at least the transition zone;

determining if the computed indication for the selected zone is concurring with each of the at least one given anomaly property; and

if the computed indication for the selected zone is concurring, assigning an indication of potential anomaly candidate zone to the selected zone to thereby isolate said potential anomaly."

## **Reasons for the Decision**

### **A. Appellant's non-attendance at the oral proceedings**

1. Although the duly summoned appellant did not attend the oral proceedings, this did not prevent the board from continuing them (Rule 115(2) EPC) as scheduled. In accordance with Article 15(3) RPBA, the board relied on the appellant's written submissions for its decision. The case was ready for decision at the end of the oral proceedings (Article 15(5) and (6) RPBA) and the voluntary absence of the appellant was not considered a reason for delaying the decision (Article 15(3) RPBA).

### **B. Admissibility of the appeal**

2. In its communication under Article 15(1) RPBA, the board pointed to the fact that the appeal letter did not contain a request defining the subject of the appeal under Rule 99(1)(c) EPC. The board concluded that the appeal appeared to be inadmissible for this reason (see section IV., first bullet point, above).
3. Pursuant to Rule 101(1) EPC, the board must reject the appeal as inadmissible if it does not comply with

Rule 99(1)(c) EPC, *inter alia* – unless this deficiency has been remedied before the time limit under Article 108, first sentence, EPC has expired.

4. In the case at hand, the impugned decision was notified on 28 January 2020. In normal circumstances, the two-month time limit under Article 108, first sentence, EPC for filing the notice of appeal would therefore have expired on 7 April 2020 (Rule 126(2) EPC as valid from 1 April 2015 to 31 October 2023). However, the notices of the EPO concerning disruptions due to the COVID-19 outbreak, dated 16 April 2020 (OJ EPO 2020, A43) and 1 May 2020 (OJ EPO 2020, A60), come into play here. With these notices, the EPO announced that time limits expiring on or after 15 March 2020 were extended for all parties first to 4 May 2020 and then to 2 June 2020 under Rule 134(2) EPC. As per J 10/20, even if there had been no "*general dislocation in the delivery or transmission of mail*" within the meaning of Rule 134(2) EPC, users could still rely on these publications without suffering any disadvantages.
5. In the statement of grounds of appeal dated 26 May 2020 (i.e. before the expiry of the extended time limit under Rule 134(2) EPC), the appellant stated that it was writing "*further to the notice of appeal dated March 19, 2020, relative to the decision dated January 28, 2020, to refuse the above-referenced patent application*".
6. The requirement in Rule 99(1)(c) EPC is duly met where the notice of appeal states that "an appeal is filed", see Case Law of the Boards of Appeal, 10th ed., 2022, V.A.2.5.2 c). The board holds that the statement reproduced in point 5. above is sufficient in this regard. The appeal is therefore admissible.



**C. Admittance of the appellant's sole request into the appeal proceedings**

7. The statement of grounds of appeal was filed after 1 January 2020, the date of entry into force of the revised version of the RPBA (see Article 24(1) RPBA). Thus, all provisions of Article 12 RPBA apply (see Article 25(1) RPBA).

**C.1 Article 12(4) RPBA**

8. Since the appellant's request did not form the basis of the decision under appeal, it represents an amendment under Article 12(4), first paragraph, RPBA which may be admitted only at the board's discretion.

9. According to Article 12(4), second paragraph, RPBA, "*[t]he party shall ... provide reasons for submitting [the amendment] in the appeal proceedings*", i.e. reasons for not submitting it until the appeal proceedings (see the explanatory remarks regarding Article 12(4) RPBA in Supplementary Publication 2, OJ EPO 2020, 17).

10. In the case at hand, the appellant stated that the amended claims were intended to overcome the objections raised in the decision (see the statement of grounds of appeal, page 1, second paragraph) but it did not provide its reasons for not submitting these claims until the appeal proceedings.

11. According to Article 12(4), third paragraph, RPBA, "*[t]he Board shall exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues*

*which led to the decision under appeal, and the need for procedural economy".*

12. The board notes that features such as "*concentration of denser tissues*" and "*a density gradient determination*", which were specified in the independent claims of the request on which the decision under appeal was based, have been replaced by other features ("*information of at least one uncertain region to highlight physiological properties*"; "*one of a gradient property and a higher order derivative property of at least one of tissue intensity profile and surface and volume distribution analyses*"; see section VII. above).
  
13. It is not immediately evident to the board that the amendments comply with the requirements of Articles 84 and 123 EPC. The new features identified in the previous point *prima facie* give rise to new questions as to the nature of the anomaly property and the anomaly property identified (Article 84 EPC). Moreover, at first glance, they are not directly and unambiguously derivable from the passages of the application as filed indicated by the appellant in point 1 of its statement of grounds of appeal (Article 123(2) EPC). These passages mention neither a given anomaly property (to be identified by an identifier) comprising coherent information of at least one uncertain region nor an anomaly property identifier comprising a gradient property or a higher order derivative property of at least one of tissue intensity profile.
  
14. Thus, if the board admitted the appellant's request into the appeal proceedings it would have to deal with substantially reworded claims which *prima facie* give rise to new objections and complex discussions. This

approach would clearly run counter to the need for procedural economy.

**C.2 Article 12(6) RPBA**

15. Article 12(6), second paragraph, RPBA stipulates that "*[t]he Board shall not admit requests ... which should have been submitted ... in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance*".
16. In the case at hand, the request on which the decision under appeal was based corresponds to the "main request" filed by the appellant at 11:27 hrs during the oral proceedings before the examining division (see the first sentence on page 2 of the minutes of the oral proceedings). This request replaced all of the requests then on file (see the fifth sentence from the bottom of page 1 of the minutes of the oral proceedings). For the first time in the examination proceedings, the claims specified that the anomaly property identifier comprised "*a density gradient determination*". At the first-instance oral proceedings, the examining division objected that this feature was not disclosed in the application as filed (see the penultimate paragraph on page 2 of the minutes of the oral proceedings).
17. Since the appellant (then the applicant) had added the feature "*a density gradient determination*" into the claims for the first time in the proceedings, it cannot have been surprised by the examining division's objection under Article 123(2) EPC. If the appellant considered the objection justified - which appears to be the case since it did not maintain the aforementioned request on appeal - it should have tried to overcome that objection at the first-instance oral

proceedings. Deleting a feature objected to under Article 123(2) EPC or replacing it with other features is an obvious way of addressing such an objection. Thus, the appellant should have submitted the request in question during the first-instance oral proceedings in order to obtain an appealable decision thereon. The appeal proceedings are not a continuation of the first-instance proceedings; their primary object is to review the decision under appeal in a judicial manner (see G 10/93, OJ EPO 1995, 172, point 4 of the Reasons, and Article 12(2) RPBA).

### **C.3 Exercise of discretion**

18. The comments made in sections C.1 and C.2 above, which had already been set out in the board's communication under Article 15(1) RPBA, speak against admitting the appellant's sole request into the appeal proceedings. Moreover, the board cannot identify any circumstances of the appeal case justifying the admittance of the request. The appellant did not identify any such circumstances in its statement of grounds of appeal either, and did not reply in substance to the board's communication. Therefore, the board exercised its discretion under Article 12(4) and (6) RPBA by not admitting the appellant's sole request into the appeal proceedings.

### **D. Conclusion**

19. Since the appellant's sole request is not admitted into the appeal proceedings, the appeal must be dismissed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated