

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen

D E C I S I O N
of 9 September 1994

Case Number: T 0023/94 - 3.2.2

Application Number: 88202885.5

Publication Number: 0313175

IPC: A61F 5/448

Language of the proceedings: EN

Title of invention:
Ostomy coupling

Patentee:
E.R. Squibb & Sons, Inc.

Opponent:
Laboratoires Merck-Clevenot

Headword:
-

Relevant legal norms:
EPC Art. 54, 56

Keyword:
"Novelty (yes)"
"Inventive step (no)"

Decisions cited:
T 0176/84, T 0560/89, T 0039/82

Catchword:



Case Number: T 0023/94 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 9 September 1994

Appellant: E.R. Squibb & Sons, Inc.
(Proprietor of the patent) Lawrenceville-Princeton Road
Princeton, N.J. 08540-4000 (US)

Representative: Cook, Anthony John
D. YOUNG & CO.
21 New Fetter Lane
London EC4A 1DA (GB)

Respondent: Laboratoires Merck-Clevenot
(Opponent) 5-9, rue Anquetil
F-94736 Nogent sur Marne Cédex (FR)

Representative: Epstein, Henri
74 bis rue de Paris
F-95680 Montlignon (FR)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office dated 15 November 1993
revoking European patent No. 0 313 175 pursuant to
Article 102(1) EPC.

Composition of the Board:

Chairman: H. Seidenschwarz
Members: P. Dropmann
J. Van Moer

Summary of Facts and Submissions

I. A Notice of Appeal was filed against the decision of the Opposition Division dated 15 November 1993 revoking patent No. 0 313 175. The patent is based on divisional application No. 88 202 885.5 which was divided out from the parent application No. 87 306 595.7 (patent No. 0 255 310, appeal No. T 0469/92).

The Opposition Division held that the subject-matter of Claim 1 filed with the letter of 17 September 1993 lacked novelty in the light of document JP-U-62-11610 (D8).

During the proceedings, in particular the following documents were considered:

D2: EP-A-0 286 501,
D5: GB-A-2 121 902, and the French translations of
D8: JP-U-62-11610 "Kubo",
D10: JP-U-57-11390 "Kurata", and
D11: JP-U-55-181089 "Tomioka".

II. Oral proceedings were held on 9 September 1994.

III. The Appellant (Proprietor of the patent) requested that the decision under appeal be set aside and the patent maintained as amended with letter of 17 September 1993 (**main request**) or as amended with letter of 7 January 1994 (**first and second auxiliary requests**).

IV. The Respondent (Opponent) requested that the appeal be dismissed.

V. Claim 1 according to the **main request** reads as follows:

"A three-part ostomy coupling of a flat design for attachment to the body of a wearer, in which rotation of a cam ring to one position prevents the disengagement of two parts of the coupling and to another position allows the parts to be sprung apart manually."

The single claim according to the **first auxiliary request** reads as follows (reference numeral "12" has been replaced by "10"):

"A three-part ostomy coupling for attachment to the body of a wearer, in which one of the parts (10) of the coupling is provided with spaced projections (20) thereon, and in which rotation of a cam ring (14) to one position prevents the projections (20) from being forced radially outwardly and hence prevents the disengagement of two parts (10,12) of the coupling, and to another position allows the said two parts to be sprung apart manually."

The single claim according to the **second auxiliary request** reads as follows:

"A three-part ostomy coupling for attachment to the body of a wearer, the three parts being a body-side coupling part (10), a bag side coupling part (12), and a cam ring (14) which is mounted on the body-side coupling part (10), in which rotation of the cam ring (14) to one position prevents the disengagement of the body side and bag side coupling parts (10,12) of the coupling and to another position allows the said parts to be sprung apart manually."

VI. The Appellant essentially argued as follows:

The subject-matter of the claims according to the main and auxiliary requests was novel over the state of the art known from document D8 "Kubo" on which the Opposition Division based its decision to revoke the patent. Ring 12 (plus catches 14) depicted in Figures 1 and 3 of D8 was not a true cam ring, because no part of it exerted any camming action on any other part of the ostomy coupling known from D8, the essence of a cam being a direct transformation of rotational motion into translational motion. In contrast to this, the cam ring 14 of the ostomy coupling according to the claims of the main and auxiliary requests exerted a true camming action in operation, if the projections 20 of coupling part 10 took up a bent-outwardly position.

The claimed ostomy coupling furthermore involved an inventive step. It was true that documents D10 "Kurata" and D11 "Tomioka" disclosed couplings comprising true cam rings. However, the state of the art known from these documents belonged to remote fields which the skilled person would not consider when faced with the problem of improving security of attachment of the elements of ostomy couplings.

VII. The Respondent essentially argued that the claimed subject-matter lacked novelty in view of document D8 and inventiveness in the light of documents D5 and D10.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments*

The feature of Claim 1 according to the main request that, in a three-part ostomy coupling, rotation of a cam ring to one position prevents the disengagement of two parts of the coupling and to another position allows the parts to be sprung apart manually, is disclosed in Claim 1 of the divisional application as originally filed and in Claim 2 of the originally filed parent application. The further features of Claim 1 have their basis in the figures and the corresponding parts of the description as filed.

These claims, figures and parts of the description of the original application also serve as a clear basis for the features of the claims according to the first and second auxiliary requests.

The requirements of Article 123(2) EPC are therefore met.

A Comparison of the amended claims and Claim 1 as granted shows that, by adding features relating to the design of the coupling, its parts, its use and its function, the protection conferred by the patent as granted has not been extended.

The amendments thus do not offend against the provisions of Article 123(3) EPC either.

3. *Novelty*

3.1 The question as to whether or not the cam ring (14) of the claimed ostomy coupling exerts a true camming action in operation, as contended by the Appellant, can be left undecided. The Board takes the view that there is no basis in the patent specification for the Appellant's assertion that the projections (20) may "take up a bent-outwardly position" (cf. points 6 and 7 of the appeal dated 7 January 1994), which has to be overcome by rotating the ring 14 such that its cam surfaces (30) "push the projections (20) radially inwardly", thus exerting a true camming action, in order to obtain a securely fastened coupling. According to the original disclosure (cf. column 2, lines 23 to 27 of the patent specification), the cam surfaces (30) just prevent the projections (20) from being forced radially outwardly.

3.2 In the Board's judgment, the ostomy coupling according to Claim 1 of the main request is novel over the state of the art known from document D8 "Kubo" for the following reasons:

The feature of Claim 1 that rotation of the cam ring to one position prevents the disengagement of the two coupling parts (thus engagement has to have taken place beforehand) and to another position allows the parts to be sprung apart manually (thus disengagement can only take place after rotation of the ring to the other position), has to be construed in the light of the statements in the patent specification, column 2, lines 19 to 42. In this light, firm attachment of the two coupling parts by a snap-fit (cf. lines 39 to 42 and Claim 1) is carried out before locking can take place by rotating the ring into its locking position. Similarly, the two parts of the coupling can only be separated from each other after the ring has been rotated into the

unlocking position. Hence, in the claimed coupling, the locking ring just serves to provide a locking effect. It does not provide the firm attachment together of the two coupling parts.

In contrast to this, ring 12 together with catches 14 of the coupling known from document D8 serve both to attach the two coupling parts 11 and 5 together (the catches 14 penetrate the orifices 15 in part 11 and engage in the groove 6 of part 5) and, simultaneously, to lock them in this position.

3.3 Since the claims according to the auxiliary requests contain the same feature on which novelty over document D8 of the coupling according to Claim 1 of the main request is based (cf. point 3.2 above), the couplings according to the auxiliary requests are also novel over D8.

3.4 None of the other documents mentioned during the proceedings discloses all the features of the claims according to the main and auxiliary requests. Document D2 claiming the priority date of 10 April 1987 does not form state of the art in accordance with Article 54(3) EPC. Indeed, the priority claimed from the application GB 8618693 filed on 31 July 1986 can be accorded to the contested patent, because all of the features of the amended claims are clearly derivable from the GB application (cf. in particular page 1, fourth paragraph and the figures).

3.5 Novelty can accordingly be recognised.

4. *Inventive step*

4.1 As agreed by the parties, document D5 represents the state of the art which is closest to the subject-matter

of the claims according to the main and auxiliary requests. This document discloses a two-part ostomy coupling of a flat design for attachment to the body of a wearer.

- 4.2 In the light of this state of the art, the technical problem underlying the subject-matter of the contested patent can be seen as providing a positive assurance that the parts of the coupling cannot be separated except when desired by the wearer (cf. column 2, lines 52 to 56 of the patent specification).
- 4.3 The technical problem is solved in accordance with Claim 1 of the main request by adding a cam ring to the known two-part ostomy coupling such that rotation of the cam ring to one position prevents the disengagement of the two parts of the coupling and to another position allows the parts to be sprung apart manually. This solution provides assurance for the user of the ostomy coupling that the coupling parts will not become accidentally uncoupled.
- 4.4 According to the established case law of the Boards of Appeal (T 176/84, OJ EPO 1986, 50; T 560/89, OJ EPO 1992, 725), the state of the art in the specific field of the invention as well as the state of any relevant art in neighbouring and/or broader general fields in which the same problem or one similar to it arises and of which the person skilled in the art of the specific field must be expected to be aware, has to be considered when assessing the existence of any inventive step.
- 4.5 In the present case, the inventor sought to provide assurance that the two parts of the snap-fit ostomy coupling known from D5 cannot be separated except when desired by the wearer. The problem of avoiding undesired uncoupling of two coupling parts also arises in the

general field of engineering elements (classified in F16 of the International Patent Classification), in particular in field F16L "Pipes, joints or fittings for pipes" and especially in F16L 37/00 "Couplings of the quick-acting type" and F16L 37/08 "Couplings of the quick-acting type in which the connection is maintained by locking members". The skilled person faced with the problem underlying the present invention must be expected to be aware of this general field of engineering elements. Indeed, the Respondent has shown by citing documents EP-A-0 461 007 and US-A-4 460 363 that searches for ostomy couplings are often carried out in field F16L.

- 4.6 Document D10 "Kurata" classified in F16L 37/12 deals with the problem of increasing the reliability of couplings for flexible tubes and avoiding separation of the coupling parts during use (cf. French translation of D10, page 2, left column, lines 10 and 11 and right column, lines 6 to 8; page 3, left column, lines 29, 30, 41 and 42; and page 4, left column, lines 10 and 11).

In view of the similarity of the problems underlying the invention and document D10 and the general field in which this document is classified, the Board cannot accept the Respondent's argument that this document is irrelevant to the invention and remote and unhelpful to an ostomy appliance designer. Rather, following the established case law, the state of the art according to document D10 has to be considered when examining whether the subject-matter involves an inventive step.

- 4.7 Document D10 discloses a snap-fit coupling for a flexible tube. The object of avoiding separation of the coupling parts during use is achieved by providing a sleeve or ring 9 which, in one rotational position, exerts a locking function between rim 2 and lugs 5,6 and

thus prevents the disengagement of the two coupling parts and, in another portion, allows the parts to be sprung apart manually. The sleeve or ring has, as admitted by the parties, the same function and structural features as the cam ring mentioned in Claim 1 of the main request (cf. D10, in particular Figures 4 and 6 and page 2, right column and page 3, left column).

4.8 As the skilled person is expected to take into account material taken from the broader general field where he can expect to find a solution to his problem, document D10 does belong to such broader field, and the problems are similar, the Board is convinced that it is obvious to a skilled person to solve the problem he is confronted with by transferring to the ostomy coupling known from D5 the principle of locking a coupling by using a cam ring as known from document D10.

The Board does not accept the Respondent's argument that, due to the substantial force needed to couple and uncouple the coupling according to document D10, the skilled person would have been deterred from applying the principle of locking taught by D10 in the field of ostomy couplings. The asserted substantial coupling force, if it is really needed, is due rather to the particular form of the coupling than to the principle of locking by means of a cam ring. It is pointed out in D5, page 2, lines 101 to 105 that connecting the ostomy coupling parts according to document D5, from which the invention starts, does not require a substantial force.

Furthermore, the Board does not accept the Respondent's argument that the skilled person would not consider D10 because axial movement of the locking ring would be necessary before the ring can be rotated. First, Figure 11 of D10 shows an embodiment in which ring 9 is not movable axially as is the case in Figure 6.

Secondly, an axial movement is not excluded in the contested patent.

Decision T 39/82 (OJ EPO 1982, 419) to which the Appellant referred deals with the question of whether the application of a measure known in the **same** specialist field is obvious. It does not relate to the problem of another specialist field. It has, therefore, only minor relevance to the present case.

4.9 It is apparent from the preceding points that the subject-matter of Claim 1 according to the main request does not involve an inventive step (Article 56 EPC) and is thus not patentable under Article 52(1) EPC.

4.10 The objection raised in points 4.3 to 4.9 above against Claim 1 of the main request also applies to the claims according to the first and second auxiliary requests.

In fact, the claims of the auxiliary requests differ from Claim 1 of the main request only in that they contain additional features which are either known from document D5, from which the invention started, or are obvious in the light of document D10.

Order

For these reasons it is decided that:

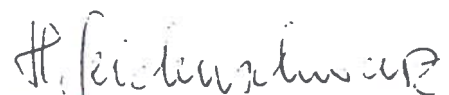
The appeal is dismissed.

The Registrar:



S. Fabiani

The Chairman:



H. Seidenschwarz