

Internal distribution code:

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

D E C I S I O N
of 13 May 1996

Case Number: T 0628/95 - 3.4.1

Application Number: 88119506.9

Publication Number: 0317985

IPC: A61N 1/365

Language of the proceedings: EN

Title of invention:
Body activity controlled heart pacer

Patentee:
Pacesetter AB

Opponent:
BIOTRONIK Mess- und Therapiegeräte GmbH & Co Ingenieurbüro
Berlin

Headword:
Decision without oral proceedings

Relevant legal provisions:
EPC Art. 116
EPC R. 67

Keyword:
"Request for oral proceedings before Opposition Division by
opponent"
"Decision to reject opposition issued without oral proceedings"
"Decision null and void"
"Case remitted to first instance for further prosecution before
different Opposition Division"

Decisions cited:
-

Catchword:
-



Europäisches
Patentamt

European
Patent Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0628/95 - 3.4.1

D E C I S I O N
of the Technical Board of Appeal 3.4.1
of 13 May 1996

Appellant:
(Opponent)

BIOTRONIK
Mess- und Therapiegeräte GmbH & Co
Ingenieurbüro Berlin
Woermannkehre 1
D-12359 Berlin (DE)

Representative:

Christiansen, Henning, Dipl.-Ing.
Patentanwalt
Pacelliallee 43/45
D-14195 Berlin (DE)

Respondent:
(Proprietor of the patent)

Pacesetter AB
Röntgenvägen 2
S-171 95 Solna (SE)

Representative:

Lettström, Richard Wilhelm
H. Albihs Patentbyrå AB
Box 3137
S-103 62 Stockholm (SE)

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office dated 16 May 1995 rejecting
the opposition filed against European patent
No. 0 317 985 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: G. D. Paterson
Members: H. J. Reich
Y. J. F. van Henden

Summary of Facts and Submissions

- I. An opposition was filed on 10 August 1994 against European patent No. 0 317 985, and the grounds were contested by the proprietor in a letter dated 12 January 1995. The opponent filed a letter on 13 April 1995 in reply, in which inter alia oral proceedings were requested if his request for revocation of the patent was not to be granted on the basis of the written submissions ("on an auxiliary basis").
- II. The Opposition Division issued a decision dated 16 May 1995, in which the opposition was rejected. Oral proceedings were not appointed prior to the issue of this decision.
- III. The opponent duly filed an appeal against the decision of the Opposition Division. In the Statement of Grounds of Appeal, the opponent requested inter alia that the decision be set aside as null and void because of the failure of the Opposition Division to appoint oral proceedings as requested in the letter filed on 13 April 1995, before issuing the decision dated 16 May 1995. The opponent also requested refund of the appeal fee under Rule 67 EPC.

In a communication issued on 12 February 1996 on behalf of the Board of Appeal, the Board suggested that the correct course in the above circumstances was to remit the case to the Opposition Division, and the proprietor agreed to this course in a letter filed on 4 March 1996.

Reasons for the Decision

1. Oral proceedings under Article 116 EPC were requested by the opponent on an auxiliary basis in a letter filed on 13 April 1995, but the Opposition Division did not appoint oral proceedings prior to issuing its decision dated 16 May 1995 in which the opposition was rejected. In these circumstances the decision of the Opposition Division must be set aside as null and void and the case is remitted to the Opposition Division for further prosecution before a different composition of the Opposition Division. The Opposition Division had no power to issue a decision in the circumstances set out in paragraphs I and II above without first appointing oral proceedings.

2. Furthermore, the failure to appoint oral proceedings in accordance with the opponent's request constituted a substantial procedural violation which justifies reimbursement of the appeal fee under Rule 67 EPC.

Order

For these reasons it is decided that:

1. The decision of the Opposition Division is set aside, and the appeal is allowed.
2. The case is remitted to the Opposition Division for examination by a different composition.
3. The appeal fee is to be reimbursed to the opponent.

The Registrar:

The Chairman:

M. Beer

G. D. Paterson

