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D E C I S I O N
of 25 January 2002

Case Number: T 0605/98 - 3.2.2

Application Number: 92923520.8

Publication Number: 0610404

IPC: A61B 19/00

Language of the proceedings: EN

Title of invention:

Acoustic administration of remedies process and device

Applicant:

KELLY, Michael P.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 83

EPC R. 27(1)(c)

Keyword:

"Technical problem and solution (yes)"

"Sufficiency of disclosure (yes)"

Decisions cited:

T 0757/98

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0605/98 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 25 January 2002

Appellant: KELLY, Michael P.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 11 February 1998
refusing European patent application
No. 92 923 520.8 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. D. Weiß
Members: M. G. Nöel
J. C. M. De Preter

Summary of Facts and Submissions

- I. European patent application No. 92 923 520.8 (PCT publication No. WO 93/08759) was refused by decision of the Examining Division issued on 11 February 1998 on the grounds that the application did not meet the requirements of Rule 27(1)(c) EPC (absence of a technical problem) nor those of Article 83 EPC (invention insufficiently disclosed to be carried out).

The Examining Division found, in particular, that the description did not provide any evidence in support of a healing effect of the sound waves. Also the tests reported by Donald E. Soli did not convincingly verify the alleged effect. Therefore, a technical and reproducible correlation between the sound waves and their healing effect was not proved. In this respect, reference was made to the guidelines for examination C.II.4.11.

- II. The appellant lodged an appeal against this decision on 20 April 1998. Its statement of grounds, received on 5 June 1998, was accompanied by amended sets of claims according to a main and two auxiliary requests. Oral proceedings was also requested, along with reimbursement of the appeal fee on the grounds that the first instance's objections were not adequately based on the Convention and that the refusal to postpone the date for oral proceedings deprived the appellant from its right to be heard.
- III. In a communication of the Board dated 9 October 2001 the appellant was informed that the claim according to the main request seemed to be acceptable provided that some amendments indicated on a copy enclosed be made to

the claims, with the view to avoid objections in relation to Article 52(4) EPC (steps of a method for treatment by therapy) and to features related to homeopathic substances without connection with the apparatus as such. Should the proposed amendments be accepted, oral proceedings could then be dispensed with and the case remitted to the Examining Division for further prosecution.

IV. The appellant replied favourably by letter dated 14 December 2001 and filed new claims 1 to 6 properly amended. Continuation of the procedure in the way as previously suggested was also accepted.

V. Independent claims 1 and 6 read as follows:

"1. Apparatus for the treatment of disease comprising:
means for receiving electro-magnetic oscillations produced by a remedy for a disease;

means for converting the electro-magnetic oscillations of the remedy into an electronic signal which corresponds to the electro-magnetic oscillations both in frequency and in amplitude;

means for transmitting the electronic signal to a speaker thereby driving the speaker to produce sound waves which correspond to the electronic signal both in frequency and in amplitude; and

means for contacting a patient having the disease with the sound waves at a homeopathic treatment intensity"

"6. Apparatus for the treatment of disease comprising:
means for receiving the electro-magnetic oscillations produced by a homeopathic remedy for herpes,

means for converting the electromagnetic oscillations of the homeopathic remedy into an electronic signal which corresponds to the electromagnetic oscillations both in frequency and, in amplitude;

means for filtering the electronic signal to eliminate selected frequencies;

means for recording the electronic signal on a magnetic audio tape;

means for recreating the electronic signal from the magnetic audio tape; and

means for transmitting the electronic signal to a speaker thereby driving the speaker to produce sound waves which correspond to the electronic signal both in frequency and in amplitude."

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

The amendments made to the claims were proposed by the Board. It follows that the Board makes no formal objections. All the features are clear and fairly supported by the application as filed, in accordance with Articles 84 and 123(2) EPC.

3. *Considerations in relation to Rule 27(1)(c) EPC*

The invention relates to an apparatus for acoustic administration of homeopathic remedies, that is for generating and transmitting sound waves to a patient.

Electro-magnetic oscillations or waves given off by a homeopathic remedy are received and converted into an electronic signal, which in turn is converted into an acoustic signal (sound waves) having the same frequency and amplitude as the oscillations from which it originates. The sound waves are transmitted to the patient by means of a speaker. Therefore, by "means for contacting a patient" (claim 1) an indirect, physical contact is to be understood, since sound waves are transmitted through the air.

The phenomena involved and the apparatus used are known, e.g. from several references referred to in the application as filed (cf. page 2, lines 7 to 28 and page 4, lines 12 to 22). In particular, the following reports are of relevance for a comprehensive analysis:

- "The Phenomenon of Medicine Testing in Electroacupuncture According to Voll" (EAV) by R. Voll, Am. J. Acupuncture, vol. 8, No. 2, April-June 1980, pages 97 to 104.
- "Mora-Therapy Unit (Occidental Institute Research Foundation)", 1985 (cited in the International Search Report).
- "The Mora concept", 1990 (filed by the appellant with its letter of 3 July 1997).

More specifically, it appears from the introductory part of the application that means for receiving electro-magnetic oscillations produced by a remedy and means for converting them into an electronic signal are well known. The disadvantages of the conventional EAV equipments are, besides their cost and the fact that

the patient has to visit a practitioner, that they require the patient to be in electrical contact with the equipment (cf. page 3, lines 3 to 7). In this case, a direct, physical contact is meant since the electronic signal is amplified, filtered or processed in any other way and then returned to the patient (cf. e.g. Mora-Therapy-Unit, page 5).

The problem underlying the present application is therefore, to avoid such direct, physical contact between the output of the apparatus and the patient. This problem is of technical nature.

The solution to this problem, also technical, is according to claim 1 which defines the invention in its most general way, to convert said electronic signal into an acoustic signal to be transmitted to the patient by means of a speaker, the function of which is to produce sound waves at a suitable intensity. In claim 6, an intermediate step of recording the electronic signal on a magnetic audio tape is provided. A great advantage of the invention is, in that case, that the electronic signal supposedly having healing properties can be stored on a recording medium and subsequently played back at the patient convenience on a conventional playback device, which also allows for easy transportation (cf. page 3, lines 25 to 29 and from page 4, line 32 to page 5, line 4).

Therefore, in accordance with Rule 27(1)(c) EPC, the description clearly discloses the invention as claimed in such terms that the technical problem and its solution can be understood and states advantageous effects of the invention over the background. Nothing more is requested by the provisions of said rule. The

present case is close and can be compared to case T 757/98, 27 September 2000, not published.

4. *Considerations in relation to Article 83 EPC*

The provisions of Article 83 EPC according to which the application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, are also met in the present situation.

Since the present invention is actually confined to simply convert an electronic signal into an acoustic signal by means of a speaker or to record said electronic signal on a magnetic audio tape for subsequent listening, the skilled person will not be confronted with insurmountable difficulties when carrying out the invention on the basis of the instructions set out in the description and of its technical general knowledge. Consequently, the two examples of insufficiency of disclosure referred to in the Guidelines for examination under C.II.4.11 do not apply in the present circumstances, the construction of the present apparatus being not dependent on chance and also not contrary to well-established physical laws.

Further, since apparatus claims are concerned, the subject-matter of which is principally drafted in terms of structural and/or functional features, the requirements imposed on the appellant by the Examining Division to file additional evidence in order to prove effectiveness of the healing effect produced by the sound waves was not founded. The technical effect to be considered is not the efficiency of a method for treatment, using sound waves, but only the production

of said sound waves by the technical means making up the device as claimed. It is sufficient that this result exists. A more ambitious result, e.g. that the sound waves produced would be effective in treating disease is not requested by the Convention and is going out of the frame of a formal examination of the claims.

5. *Remittal*

The requirements of the Convention being satisfied on the points contested in the decision under appeal the Board takes the view to remit the case to the first instance for further prosecution on the substantive issues, on the basis of claims 1 to 6 submitted with letter of 14 December 2001 and the prior art documents referred to in the search report and in point 3 above.

6. *Appeal fees*

The Board could not find any procedural violation, much less a substantial violation as is a prerequisite for reimbursement of appeal fees under Rule 67 EPC. The grounds and arguments of the first instance do not become a procedural violation for the only reason that they are disputed by the appellant. Nor does an error of judgement constitute such violation. Further, after maintenance of the date for oral proceedings by the Examining Division, the appellant stated by letter of 27 January 1998 that it would not be present at the oral proceedings and requested a decision in the state of the file at this date, while submitting still additional comments. Its right to be heard conferred by Article 113(1) EPC was, therefore, guaranteed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution (see point 5).

The Registrar:

The Chairman:

V. Commare

W. D. Weiß