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D E C I S I O N
of 19 February 2002

Case Number: T 0754/98 - 3.2.2

Application Number: 93907828.3

Publication Number: 0593702

IPC: A61B 5/20

Language of the proceedings: EN

Title of invention:

Urinary flow classification system and method

Patentee:

MEDIDENTA B.V., et al

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 84, 123(2)

EPC R. 88

Keyword:

"Clarity and adequate support (yes, after amendments)"

"Correction of error - obvious omission of a drawing"

Decisions cited:

-

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0754/98 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 19 February 2002

Appellant:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 13 March 1998
refusing European patent application
No. 93 907 828.3 pursuant to Article 97(1) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. European application No 93 907 828.3 (publication No. WO 93/16638) was refused by decision of the Examining Division issued on 13 March 1998 on the grounds that the subject-matter of claim 1 lacked clarity (Article 84 EPC) and extended beyond the content of the application as filed (Article 123(2) EPC).
- II. The appellant (applicant) lodged an appeal against this decision on 7 May 1998 and filed a first statement of grounds on 13 July 1998. In consequence of a change of the appellant's representative a replacement statement of grounds was filed on 23 July 1998 along with four new sets of claims. Oral proceedings were also requested.
- III. In a communication of the Board dated 9 October 2001 sent following a summons to attend oral proceedings, the clarity and the support of the new claims were further contested. As a consequence, the appellant was requested to submit an amended set of claims, following the same terminology as that used in the original application.
- IV. In response, the appellant filed successively on 5 and 6 February 2002 a new set of claims 1 to 7 in replacement of its preceding requests and a description adapted correspondingly (pages 1 to 3). A new set of drawings (sheets 1 to 9) was also filed as a final copy in order to replace the rough sketches (sheets 1 to 14) originally filed.
- V. Oral proceedings were held on 19 February 2002, in the

presence of the inventor, during which the invention was discussed and the application was further amended.

The appellant finally requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 8 submitted at the oral proceedings and the description and drawings as amended during the oral proceedings.

VI. Claim 1 reads as follows:

" System for measuring urine flow data from a person comprising:

- a flow transducer for measuring the urinary flow rate during micturition of the bladder and for generating an output signal proportional to said flow rate,
- an electronic circuit for receiving said output signal and providing digital flow rate samples at predetermined time intervals,
- a digital processor for calculating at least one predetermined variable from said flow rate samples,
- comparison means for comparing said calculated variable with standard or normal data,

characterized in that the system comprises further:

- storage means for storing normal data comprising variable values derived from earlier measurements carried out for a large number of persons which

persons have been measured a number of times at different voided volumes, each of said variable values being stored in combination with the voided bladder volume, whereby based on statistical analysis, accounting for the voided bladder volume, the intra- and inter-subject variability, a classification of Healthy, Borderline or Diseased is added to each variable value resulting in a two dimensional array (variable versus volume) divided in a Healthy area, a Borderline area and Diseased area,

- said comparison means plotting the combination of calculated variable value and corresponding volume in said two dimensional array and determining if said variable belongs to the healthy area, the Borderline area or the Diseased area."

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments*
 - 2.1 Claims

The expressions objected by the Examining Division have been removed from claim 1 in its present wording. Moreover, the terminology of the application as filed was restored in all the claims. In addition to features or part of them taken directly from claim 1 as originally filed, the remaining, most functional features of the present claim 1 find a support in

various parts of the description.

In particular, a support of the storage means for storing normal data, comprising variable values derived (generated) from measurements made on a number of persons at different voided volumes, is to be found on page 6, lines 9 to 18 and page 8, lines 10 to 16, in connection with figure 2.

Further, the features according to which each of said variable values is stored in combination with the voided bladder volume, whereby based on statistical analysis, accounting for the voided bladder volume, the intra- and inter-subject variability, a classification of healthy, borderline or diseased is added to each variable value resulting in a two dimensional array (variable versus volume) divided in a healthy area, a borderline area and a diseased area, are fairly supported by the following passages of the description in connection with Figure 3; page 8, lines 18 to 30; page 9, lines 27 to 32 and page 10, line 14 to 19.

The comparison means for plotting the combination of calculated variable value and corresponding volume in said two dimensional array and for determining if said variable belongs to the healthy area, the borderline area or the diseased area, are derived from page 14, lines 7 to 13 and page 16, lines 1 to 21.

Claim 2, which refers to the maximum flow rate Q_{max} , is supported by page 6, line 27 and page 9, lines 7 to 11 and 27 to 29.

Claim 3 is supported by page 7, lines 1 to 11;
claim 4 is supported by page 6, line 28;

claim 5 is supported by page 7, lines 13 to 15;
claims 6 and 7 are supported by page 7, lines 17 to 34;
claim 8 is supported by page 10, lines 20 to 23.

Therefore, on formal aspects, the subject-matter of all the claims is clear and does not extend beyond the content of the application as filed in agreement with the requirements of Article 84 and 123(2) EPC.

2.2 Description

The following amendments to the description were accepted by the appellant during the oral proceedings and should be considered by the Examining Division for the subsequent proceedings:

page 6, lines 13 to 14: read " flow variables 13 and flow measurements from healthy reference subjects 11 " in conformity with Figure 2.

Page 11, line 5: read "normalized values 17"

page 13, line 21: delete " Under the control of the control unit 18"

page 14, line 35 read "represented by numerals 99 and 103"

page 15, line 8: read "minimum value 99"

page 17, line 6: read "Figure 7"

Examination of description pages 1 to 3 filed on 5 and 6 February 2002, respectively, were left aside by the Board, since further amendments are likely to be

made by the first instance with respect to the delimitation of claim 1 and in the introductory part of the description, as a result of the substantive examination.

2.3 Drawings

For the sake of clarity the Board admitted to replace the original drawing sheets 1 to 14 by the drawing sheets 1 to 9 of the corresponding US patent published under the number 5 377 101, and submitted by the appellant on 5 February 2002, provided that the reference sign 18 be deleted in Figures 1 and 7.

With respect to the drawings as filed a Figure 9 was also added and accepted by the Board, since this figure was originally presented on page 5 and described in details on page 17 of the application as filed. Therefore, the omission of said Figure 9 in the filing pieces of document could only originate from an obvious error, that is accessible to a correction under Rule 88 EPC.

3. *Remittal*

Since the refusal by the Examining Division was principally based on formal deficiencies under Articles 84 and 123(2) EPC, now removed, and considering that the claims have been further modified by the appellant, the Board considers it appropriate to remit the case to the first instance for further prosecution on the substantive issues, the more since the appellant has not yet commented on the patentability of the now claimed subject-matter vis-à-vis the prior art as well in the statement of grounds

as in its subsequent written submissions.

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.

The Registrar:

The Chairman:

V. Commare

W. D. Weiß