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**D E C I S I O N**  
**of 26 July 2004**

**Case Number:** T 1171/02 - 3.2.2

**Application Number:** 95202755.5

**Publication Number:** 0707864

**IPC:** A61M 25/10

**Language of the proceedings:** EN

**Title of invention:**  
Balloon catheter with several balloons

**Applicant:**  
CORDIS EUROPA N.V., et al

**Opponent:**  
-

**Headword:**  
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**Relevant legal provisions:**  
EPC Art. 54, 84

**Keyword:**  
"Clarity (yes, after amendments)"  
"Novelty (yes, after amendments)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1171/02 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 26 July 2004

**Appellant:** CORDIS EUROPA N.V.  
Oosteinde 8  
NL-9301 LJ Roden (NL)

**Representative:** 't Jong, Bastiaan Jacob  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 5 July 2002  
refusing European application No. 95202755.5  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** T. Kriner  
**Members:** D. Valle  
R. T. Menapace

## Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal on 4 September 2002, against the decision of the examining division, posted on 5 July 2002, and refusing the European patent application No. 95202755.5. The fee for appeal was paid simultaneously and the statement setting out the grounds of appeal was received on 15 November 2002.

II. The Examining Division held that the application did not meet the requirements of Article 123(2) EPC (main request), Article 54(1) and (2) EPC (first auxiliary request) and Article 84 EPC (second and third auxiliary requests).

Novelty has been contested on the basis of document:

D1 = EP - A - 345 051.

III. The following further documents cited during the examining procedure have been considered for the present decision:

D2 = US - A - 5 226 889

D3 = EP - A - 0 260 107.

IV. The appellant requested with his letter of 3 March 2004 that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of the claims of the second auxiliary request as filed during the oral

proceedings in the examining proceedings on 26 June 2002.

V. Claim 1 of this request reads as follows:

"Catheter comprising a tube-like basic body with a proximal and a distal end, at least two balloon members arranged close to the distal end which are connected with connecting members at the proximal end via lumens in the basic body, wherein the relatively proximal balloon member carries a compressed stent, characterized in that, the relatively distal balloon member is more pliable than the relatively proximal balloon member carrying the stent."

VI. The appellant argued that the claims were clear. The term "pliable" in the expression "the relatively distal balloon member is more pliable than the relatively proximal balloon member" was clear on the basis of the common and technical meaning of the term. Furthermore, with respect to the description (see in particular page 1, line 35 to page 2, line 3) the application left no doubts about the meaning of this term.

### **Reasons for the Decision**

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

The examining division was of the opinion that the expression "the relatively distal balloon member is more pliable than the relatively proximal balloon

member carrying the stent" had a vague and relative meaning, because the pliability of a balloon member was a function of various parameters which included not only the technical features of the balloon member, but also the circumstances under which the pliability of the balloon member was to be assessed, such as for example the state of inflation of the balloon member.

According to the description (see page 1, line 35, to page 2, line 3, and page 4, from line 25 to 28) the purpose of the relatively better pliability of the distal balloon member is that the wall of this balloon member is better capable to conform to the interior of the blood vessel, thereby eliminating peaks of pressure. In contrast thereto, the wall of the stent carrying balloon has to be more self-supporting, or in other words less pliable, in order to expand the stent without entering its interstices. It follows from this explanation that the state of inflation of the balloon members is not relevant for assessing the pliability in the present case. On the contrary, in the light of the description it is clear for the skilled person that the expression "the relatively distal balloon member is more pliable than the relatively proximal balloon member carrying the stent" means that the technical features of the balloon members (for example the material of the balloon members or the thickness of this material) have to be selected in such a way, that the distal balloon member has a better pliability than the proximal balloon member. Furthermore, it is not likely that a skilled person would compare the pliability of the balloon members in different states of inflation.

For these reasons claim 1 of the second auxiliary request meets the requirements of clarity.

3. *Novelty*

Exercising its powers under Article 111 EPC, the board also examined the novelty of the subject-matter of claim 1.

Document D1 discloses a catheter comprising a tube-like basic body (56, Figure 11) with a proximal and a distal end (58), at least two balloon members arranged close to the distal end (see Figure 11, dilatation balloon 62 and locating balloon 60) which are connected with connecting members at the proximal end via lumens in the basic body, the relatively distal balloon member being more pliable than the relatively proximal balloon member (see column 6, lines 47 to 50, and column 7, lines 46 to 50).

However, D1 does not disclose that the relatively proximal balloon member carries a compressed stent.

Document D2 discloses a catheter similar to the invention having the proximal balloon member carrying a stent, and document D3 discloses a further catheter comprising two balloon members (16, 20, 26, 22; see in particular Figure 12).

However, D2 and D3 do not disclose that the distal balloon member is more pliable than the relatively proximal balloon member.

For these reasons the subject-matter of claim 1 is novel.

4. Since the examining division dealt exclusively with the question of clarity of the subject-matter of the second auxiliary request (now the only request), in the board's view it is appropriate to remit the case to the examining division for examination of the outstanding issues, in particular of inventive step.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the claims of the (then second auxiliary) request filed on 26 June 2002.

The Registrar:

The Chairman:

G. Magouliotis

T. Kriner