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D E C I S I O N
of 18 February 2005

Case Number: T 0144/04 - 3.2.2

Application Number: 95941995.3

Publication Number: 0799061

IPC: A61M 1/36

Language of the proceedings: EN

Title of invention:

Treatment for cardiovascular and related diseases

Applicant:

ARUBA INTERNATIONAL PTY. LTD.

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 54(2)

Keyword:

"Surgical method - no"

Decisions cited:

-

Catchword:

-



Case Number: T 0144/04 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 18 February 2005

Appellant: ARUBA INTERNATIONAL PTY. LTD.
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Representative: Dey, Michael, Dr.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 22 August 2003
refusing European application No. 95941995.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: T. K. H. Kriner
Members: D. Valle
U. J. Tronser

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal, on 24 October 2003, against the decision of the examining division posted on 22 August 2003 refusing the European patent application No. 95 941 995.3. The fee for appeal was paid simultaneously and the statement setting out the grounds of appeal was received on 17 December 2003.
- II. The examining division held that claim 1 of the request then on file did not meet the requirements of Article 52(4) EPC, and that the subject-matter of claim 25 was not novel.
- III. Oral proceedings took place on 18 February 2005.
- IV. The appellant requested that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution on the basis of claims 1 to 18 according to the request submitted during the oral proceedings.
- V. Claim 1 reads as follows:

"A method for the extracorporeal removal of lipids, selected from cholesterol, triglycerides and other lipids from animal plasma, serum or other suitable blood fractions, said method comprising: providing plasma, serum or other suitable blood fraction, mixing with an extraction solvent (mixture) which extracts the said lipids from the fraction, wherein the extraction solvent is removed from the delipidated fraction by mixing the delipidated fraction with an absorbent specific for the extraction solvent."

VI. In support of his request, the appellant relied essentially on the following submissions:

The method defined in the new claims complied with Article 52(4) EPC, since it did not refer to a treatment on the human or animal body, but to an extracorporeal treatment of blood. Therefore there was no reason for refusing a complete examination of these claims.

The novelty objection raised in the decision under appeal was overcome by the deletion of claim 25.

Reasons for the Decision

1. The appeal is admissible
2. *Amendments*

The present claim 1 differs from claim 1 published in WO-A-96/19250 in that the following features have been deleted:

- (a) the removal of lipids happens in a discontinuous flow system,
- (b) the method comprises the steps of
 - withdrawing blood from a subject
 - recombining the delipidated fraction with the blood cells, and
 - returning the recombined fraction to the subject,

(c) the solvent extraction step is carried out separately and remote from the subject,

and in that the following features have been added:

(d) the method is provided for extracorporeal removal of lipids,

(e) the method comprises the step of providing plasma, serum or other suitable blood fractions,

(f) the method comprises the step of removing the extraction solvent from the delipidated fraction by mixing the delipidated fraction with an absorbent specific for the extraction solvent.

According to the paragraph bridging pages 7 and 8 of WO-A-96/19250, it is an object of the present application to provide a method whereby a patient's plasma or serum can be treated remote from a patient, thus allowing either autologous or not autologous plasma or serum to be returned to the patient at a later date. In the light of this object, it is obvious that the features (a) and (b) cited above are no essential features for the claimed method for removal of lipids, since only the removal of lipids from a plasma or serum is essential. Moreover this object justifies the addition of feature (d), although the term "extracorporeal" as such is not cited in WO-A-96/19250. Since feature (d) is a clarification of feature (c), the replacement of feature (c) by feature (d) is clearly allowable. Feature e) is disclosed on page 10, lines 16 to 20 of WO-A-96/19250, and feature (f) is disclosed in the published claim 8.

The features of claim 3 to 12 are disclosed in the published claims 2 to 7, 9 to 12, and in the published description, page 8, line 16, to page 10, line 15. The features of claims 13 to 18 are disclosed in the paragraph bridging page 10 and 11 of WO-A-96/19250, and the features of claim 2 are disclosed at page 4, lines 10 to 33 of WO-A-96/19250.

Therefore, the present set of claims meets the requirements of Article 123(2) EPC.

3. *Article 52(4) EPC*

The present claims comply with Article 52(4) EPC, since they do not contain any step referring to a treatment of the human or animal body by any of the methods laid down in the above cited article.

Certainly, the blood fraction on which the claimed method is performed necessarily originates from an animal or human body and it is ultimately delivered to a human or animal body. However the claimed method is not performed on the human or animal body, but is an extracorporeal method performed on a blood fraction, which is an organic fluid and not a complete body. Moreover, the very purpose of the invention is to perform the treatment of the blood fraction spatially and temporally separated from the operation of extraction and delivery of the blood from and to the patient (see description of the patent application, page 7, lines 3 to 6; page 7, line 3 from the bottom, to page 8, line 2; page 18, lines 9 to 31).

4. Since the further requirements for patentability of the present claims have not yet been examined by the first instance, the board finds it appropriate to remit the case to the first instance for further prosecution (search and examination).

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 claims 1 to 18 according to the request submitted during the oral proceedings on 18 February 2005.

The Registrar:

The Chairman:

V. Commare

T. Kriner