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**Datasheet for the decision
of 6 November 2007**

Case Number: T 1326/05 - 3.2.02

Application Number: 95926559.6

Publication Number: 0776222

IPC: A61M 1/00

Language of the proceedings: EN

Title of invention:

Drip chamber head

Patentee:

Gambro Lundia AB

Opponent:

Fresenius Medical Care Deutschland GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Novelty and inventive step - (yes, after amendments)"

Decisions cited:

-

Catchword:

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Case Number: T 1326/05 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 6 November 2007

Appellant: Fresenius Medical Care Deutschland GmbH
(Opponent) Else-Kröner-Strasse 1
D-61352 Bad Homburg (DE)

Representative: Dreyhsig, Jörg
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Respondent: Gambro Lundia AB
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Representative: Roberts, Mark Peter
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 10 August 2005
rejecting the opposition filed against European
patent No. 0776222 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: T. Kriner
Members: D. Valle
M. Vogel

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal on 6 October 2005 against the decision of the opposition division posted on 10 August 2005 rejecting the opposition against the European patent 0 776 222. The fee for the appeal was paid simultaneously and the statement setting out the grounds for appeal was received on 14 December 2005.

II. Oral proceedings took place on 6 November 2007.

The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patentee) requested that the patent be maintained on the basis of the following documents:

- Claims 1 to 6 as filed during the oral proceedings;
- Description Columns 1 to 5 as filed during the oral proceedings;
- Drawings Figures 1 to 4 as granted.

III. Claim 1 reads as follows:

"A combination of a dialysis machine, a drip chamber, and a drip chamber head, said dialysis machine having a pressure sensor positioned on the front thereof, wherein said drip chamber head is attached to the upper region of the vertically arranged drip chamber (3), said head comprising a first connection (19-21) adapted for communication with a drip member (17) arranged in the drip chamber for supply of blood thereto, whereby blood may be supplied to the drip chamber up to an

adjustable level above which there is an air-filled region; a second connection (16) adapted for communication with said upper air-filled region of the drip chamber for sensing air pressure therein; further possible connections (23;24) for further purposes; characterized by a filter (8) adapted in said drip chamber head between said second connection (16) and said upper air-filled region, said filter being air permeable and positioned above said adjustable level, whereby the second connection (16) communicates with said air-filled upper region of the drip chamber via said filter for sensing the pressure in said upper region; wherein the drip chamber head has a lower portion (4, 5, 6) and a cap (7) which closes off an upper surface of the lower portion, whereby said filter (8) is arranged adjacent said cap; wherein the cap (7) is provided with a sidewardly extending connection nipple (16) which forms said second connection and is adapted for cooperation with said pressure sensor; and wherein the connection nipple (16) is connected to the pressure sensor."

IV. The following documents have been cited by the appellant with respect to the present claims:

- D1 = DE - A - 31 15 299
- D7 = US - A - 3 756 233
- D8 = EP - A - 0 106 026.

V. The appellant argued as follows:

The new claim 1 did not comply with Article 123 (2) EPC, since the feature that the connection nipple (16)

is connected to the pressure sensor was not originally disclosed.

The subject-matter of claim 1 did not imply an inventive step having regard to the teaching of D8 in combination with D1 (see in particular page 5) or D7 (see column 7, lines 49 to 55), both disclosing a blood filter. The features which were not suggested by these documents were merely the result of a workshop activity.

- VI. The respondent (patentee) contested the arguments of the appellant and stated in particular that the amendments to the claims had a basis in the published application, in particular on page 4, lines 30, 31 of WO - A1 - 9604944.

Neither D1 nor D2 could suggest introducing a filter into the device according to D8 in order to protect the pressure sensor. D7 was completely irrelevant, since it was concerned with parenteral fluid and not with blood. Therefore the subject-matter of claim 1 involved an inventive step.

Reasons for the Decision

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

The new claim 1 is based on the granted claims 1 to 3 and on the original disclosure as published in WO - A1 - 9604944, page 1, lines 1 to 10, and page 4,

lines 30, 31. Claims 2 to 6 are the same as the granted claims 4 to 8. The description has been adapted to the new filed claims.

Therefore the amended version of the patent in suit meets the requirements of Article 123(2),(3) EPC.

3. *Novelty and inventive step*

D8, which is considered as well by the parties as by the board to represent the closest state of the art, discloses a combination of a dialysis machine (1), a drip chamber (23), and a drip chamber head (see Figures 2 to 5), said dialysis machine having a pressure sensor positioned on the front thereof (see page 5, lines 27, 28), wherein said drip chamber head is attached to the upper region of the vertically arranged drip chamber, said head comprising a first connection (23a) adapted for communication with a drip member (32) arranged in the drip chamber for supply of blood thereto, whereby blood may be supplied to the drip chamber up to an adjustable level above which there is an air-filled region; a second connection (36) adapted for communication with said upper air-filled region of the drip chamber for sensing air pressure therein (see page 5, lines 25, 26), and further possible connections (33,35,37) for further purposes.

However, D8 does not disclose any of the characterizing features of claim 1.

Starting from D8 the object underlying the present invention has to be seen in improving the known combination, in particular the arrangement for

monitoring the air pressure in the drip chamber. According to claim 1 this object is achieved by a filter adapted in said drip chamber head between said second connection and said upper air-filled region, said filter being air permeable and positioned above said adjustable level, whereby the second connection communicates with said air-filled upper region of the drip chamber via said filter for sensing the pressure in said upper region; wherein the drip chamber head has a lower portion and a cap which closes off an upper surface of the lower portion, whereby said filter is arranged adjacent said cap; wherein the cap is provided with a sidewardly extending connection nipple which forms said second connection and is adapted for cooperation with said pressure sensor; and wherein the connection nipple is connected to the pressure sensor.

Neither D1 nor D7 refers to a two-part drip chamber head consisting of a lower portion and a cap, wherein the blood filter is arranged adjacent said cap. Each of these documents can at best suggest to provide a filter between an air-filled region of a drip chamber and a connection suitable for connecting this region with a pressure sensor. However this is not sufficient to lead the skilled person in an obvious way to the claimed combination. Moreover, the provision of the particular drip chamber head as defined in claim 1 in combination with the further features of the claim cannot be considered as the result of a workshop activity, since it contributes to a design of the drip chamber head which is compact and functionally efficient.

Consequently, the subject-matter of the claim 1 involves an 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 with the order to maintain the patent on the basis of the following documents:
 - Claims: 1 to 6 as filed during the oral proceedings;
 - Description: Column 1 to 5 as filed during the oral proceedings;
 - Drawings: Figures 1 to 4 as granted.

The Registrar:

The Chairman:

V. Commare

T. Kriner