

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 14 September 2007**

Case Number: T 0782/06 - 3.2.02

Application Number: 00610015.0

Publication Number: 1120088

IPC: A61B 17/12

Language of the proceedings: EN

Title of invention:

An embolization device introducer

Appellant (Applicant):

WILLIAM COOK EUROPE ApS, et al

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step (yes, after amendments)"

Decisions cited:

-

Catchword:

-



Case Number: T 0782/06 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 14 September 2007

Appellant: WILLIAM COOK EUROPE ApS, et al
Sandet 6
DK-4632 Bjaeverskov (DK)

Representative: Indahl, Peter Jensen
Internationalt Patent-Bureau A/S
Rigensgade 11
DK-1316 Copenhagen K (DK)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 4 October 2005
refusing European application No. 00610015.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: D. Valle
E. Dufrasne

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal on 1st December 2005 against the decision of the examining division posted on 4 October 2005 refusing the European patent application 00610015.0. The fee for the appeal was paid simultaneously and the statement setting out the grounds for appeal was received on 1 February 2006.

II. The examining division held that the subject-matter of the main request and of the auxiliary requests 2 and 3 then on file did not meet the requirements of Articles 52 and 56 EPC (lack of inventive step) having the regard to the teaching of

D1 = US - A - 5 725 534 and

D2 = US - A - 5 984 877.

Additionally the examining division held that the claims of all three requests did not meet the requirements of Article 84 EPC and that the subject-matter of the auxiliary request 2 did not meet the requirements of Article 83 EPC.

III. Oral proceedings took place on 14 September 2007.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of:

- Claims:

1 to 14;

- Description:

pages 1, 1a, 2, 2a, 3 to 16

as submitted during oral proceedings; and

- Drawings:

Figures 1 to 11 as published.

IV. Claim 1 reads as follows:

"An embolization device introducer comprising an elongated delivery member (1) suitable for introduction through a catheter, said delivery member having a proximal section and a distal section (3), the distal section having a connection means for detachably mounting of an embolization device, characterized in that the delivery member (1) comprises a helical winding of a multifilar row (A) of wires (14) extending from the connection means at the distal section to the proximal section of the delivery member in which the wires (14) in the row (A) are located in contact with each other so as to keep the individual wire in a permanent helical shape without any further restraints than the remaining wires in the row."

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

Claim 1 is based on claim 1, on the figures and on page 4, lines 3 to 7, page 11, lines 9 to 13 of the description as originally filed. Claims 2 and 3 are based on the paragraph bridging pages 10 and 11 of the description. Claim 4 is based on the originally filed claim 2, claims 5 to 12 are based on the originally filed claims 5 to 12 respectively, and claims 13 and 14 are based on originally filed claims 16 and 17, respectively.

The description has been adapted to the new filed claims.

Consequently the amendments made are allowable with respect to Article 123(2) EPC.

3. *Article 84 EPC*

The examining division held that in all three requests underlying their decision, the phrase "whereby torque caused by ... site of deployment" was not clear, since an applied torque could not be transmitted into an identical rotational movement.

Since this phrase is no longer contained in claim 1 of the present request and since the remaining features of the present claims are clear, there is no objection under Article 84 EPC.

4. *Article 83 EPC*

With respect to the feature according to which the wires have an ultimate tensile strength in the range from 1800 to 2700 N/mm² contained in the auxiliary request 2 underlying the contested decision, the examining division held that any "special specification" of the stainless steel used for the wires of the claimed device in order to achieve surprisingly high annealed ultimate tensile strength lacked support in the description.

Since claim 1 of the present request neither refers to stainless steel, nor to any tensile strength, this objection is not anymore relevant with regard to this claim. Moreover, since the present claim 2, which inter alia refers to stainless steel and the present claim 3, which refers to the tensile strength in the range cited above, are independent of each other, this objection is also not relevant with respect to the present dependent claims. Therefore the board is of the opinion that the claimed invention is described in a manner sufficiently clear to be carried out by a person skilled in the art.

5. *Novelty*

D1 discloses an embolization device introducer comprising an elongated delivery member (8) suitable for introduction through a catheter, said delivery member having a proximal section and a distal section (6), the distal section having a connection means (10-13) for detachably mounting of an embolization device whereby the delivery member comprises a helical winding of a wire.

However, D1 does not disclose that the delivery member (1) comprises a helical winding of a multifilar row of wires extending from the connection means at the distal section to the proximal section of the delivery member in which the wires in the row are located in contact with each other so as to keep the individual wire in a permanent helical shape without any further restraints than the remaining wires in the row.

Therefore, the subject-matter of claim 1 is novel.

6. *Inventive step*

Starting from D1, which is considered (also by the appellant) to represent the closest prior art, the object underlying the present application has to be seen in improving access and placement of the embolization coil (see description, page 2, first paragraph) and simplifying the design of the device.

No document of the available prior art gives any hint in the direction of the achievement of this object as defined in the characterising portion of the present claim 1. Therefore, the subject-matter of claim 1 cannot be regarded as being obvious.

D2, in particular, does not disclose that the individual wire is kept in a permanent helical shape without any further restraints than the remaining wires in the row. D2 - like D1 - requires a core wire (52, Figure 3) in order to perform this function.

With respect to the above findings, the subject-matter of the independent claim 1 also 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 grant a patent on the basis of:

- Claims:

1 to 14

- Description:

pages 1, 1a, 2, 2a, 3 to 16

as submitted during oral proceedings; and

- Drawings:

Figures 1 to 11 as published.

The Registrar:

The Chairman:

V. Commare

T. Kriner