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**Datasheet for the decision
of 26 March 2013**

Case Number: T 1010/09 - 3.2.02

Application Number: 01927021.4

Publication Number: 1379301

IPC: A61M 5/46, A61M 5/32

Language of the proceedings: EN

Title of invention:
Intradermal needle

Applicant:
Becton Dickinson and Company

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2), 84, 111(1)

Keyword:
"Added subject-matter (no)"
"Clarity (yes)"
"Remittal (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 1010/09 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 26 March 2013

Appellant:
(Applicant)

Becton Dickinson and Company
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 31 October 2008
refusing European patent application
No. 01927021.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: E. Dufrasne
Members: M. Stern
P. L. P. Weber

Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the Examining Division, dispatched on 31 October 2008, refusing European application No. 01 927 021.4.
- II. The application had been refused on the grounds that claim 1 did not satisfy the requirements of Article 123(2) EPC, and that claim 1 was in contradiction with two dependent claims, contrary to the requirements of Article 84 EPC.
- III. The notice of appeal and the statement setting out the grounds of appeal were received on 23 December 2008, and the appeal fee was paid on the same day.
- IV. In a communication dated 18 January 2013, the Board presented its provisional opinion regarding the compliance with Articles 123(2) and 84 EPC of the claims objected to in the impugned decision.
- V. In a letter dated 28 February 2013, the appellant withdrew the previous requests and replaced them by a new main and auxiliary request, on which basis the grant of a patent or remittal to the Examining Division was requested.
- VI. Claim 1 of the main request reads as follows:
- "An intradermal needle assembly (10, 310, 410) for use with a prefillable container (20) having a reservoir (21) capable of storing a substance for injection into the skin of a human, the needle assembly (10, 310, 410); comprising:

a hub portion (14) being attachable to the prefillable container (20) storing the substance, said hub portion (14) including a throat (18) for receiving the prefillable container (20);

a needle cannula (36) supported by said hub portion (14) and having a forward tip (42) extending away from said hub portion (14), said needle cannula (36) being fixedly attached to said hub portion (14); and

a limiter portion (12, 112, 314, 414) surrounding said hub portion (14) and said needle cannula (36), said limiter portion extending away from said hub portion (14) toward said forward tip (42) of said needle cannula (36) and including a flat skin engaging surface (46, 146, 318) extending in a plane perpendicular to an axis of said needle cannula (36) and adapted to be received against the skin of the human to administer an intradermal injection of the substance,

characterized in that

said limiter portion (12, 112, 314, 414) includes an abutment (30) engaging a corresponding structure (32) on said hub portion (14) thereby limiting the distance which the needle forward tip (42) extends beyond said skin engaging surface (46, 146, 318) to a distance from 0.5 mm to 3.0 mm whereby said limiter portion (12, 112, 314, 414) is rendered capable of limiting penetration of the needle cannula into the dermis layer of the skin of the human for injecting the substance into the dermis layer of the human,

said limiter portion (12, 112, 314, 414) includes a plurality of snaps (24) engaging said hub portion (14) whereby said hub portion (14) is fixedly attached to said limiter portion (12, 112, 314, 414)."

Reasons for the Decision

1. The appeal is admissible.

2. The subject-matter of claim 1 of the main request has a direct and unambiguous basis in original independent claim 27, dependent claims 31, 32 and 35, as well as page 10, lines 23 to 24, page 12, lines 1 to 2, and page 14, lines 15 to 19. Contrary to what is stated in the impugned decision (last paragraph of section II of the Reasons), original dependent claim 33, and page 12, line 30 to page 13, line 2 of the description, make it clear that an adhesive is merely an optional means for providing a fixed attachment of the needle cannula to the hub portion.

Consequently, claim 1 of the main request satisfies the requirements of Article 123(2) EPC.

3. The clarity objections stemming from two dependent claims which were mentioned in the impugned decision have been dealt with by deleting those claims.

4. As far as the Board understands the reasoning presented in the impugned decision, the decision did not go further than deciding on the compliance of claim 1 with Article 123(2) EPC and the contradiction of claim 1 with two dependent claims which are no longer included in the set of claims according to the main request.

The Board therefore finds it appropriate to remit the case to the Examining Division for continuation of the examination proceedings on the basis of the main

request filed with letter dated 28 February 2013
(Article 111(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:

D. Hampe

E. Dufrasne