

**Internal distribution code:**

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

**Datasheet for the decision  
of 5 August 2016**

**Case Number:** T 2561/12 - 3.2.02

**Application Number:** 07003323.8

**Publication Number:** 1779782

**IPC:** A61B6/00, A61B6/04

**Language of the proceedings:** EN

**Title of invention:**

C-arm holding apparatus and X-ray diagnostic apparatus

**Applicant:**

Toshiba Medical Systems Corporation

**Headword:**

**Relevant legal provisions:**

EPC Art. 54(1), 54(2), 76(1)

EPC R. 115(2)

RPBA Art. 15(3)

**Keyword:**

Oral proceedings - held in absence of appellant

Novelty - main and auxiliary requests (no)

Divisional application - subject-matter extends beyond content  
of earlier application - second and third auxiliary requests  
(yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 2561/12 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 5 August 2016**

**Appellant:** Toshiba Medical Systems Corporation  
(Applicant) 1385, Shimoishigami,  
Otawara-Shi, Tochigi-Ken 324-8550 (JP)

**Representative:** Kramer Barske Schmidtchen  
Patentanwälte PartG mbB  
European Patent Attorneys  
Landsberger Strasse 300  
80687 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 2 July 2012  
refusing European patent application  
No. 07003323.8 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** E. Dufrasne  
**Members:** D. Ceccarelli  
C. Körber

## **Summary of Facts and Submissions**

- I. The applicant has appealed the Examining Division's decision, dispatched on 2 July 2012, to refuse European patent application No. 07 003 323.8.
- II. The application is a divisional of parent application No. 06 001 869.4.
- III. The notice of appeal was received on 5 September 2012. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 12 November 2012.
- IV. The Board summoned the appellant to oral proceedings and set out its provisional opinion in a communication dated 25 May 2016. In particular, the Board noted that the subject-matter of claim 1 of the main and the two auxiliary requests appeared to lack novelty over the disclosure of the following document:  
  
D5: US-A-6,315,446.  
  
The Board further noted that, if novelty over D5 were established, it would have to be considered whether further requirements of the EPC were fulfilled.
- V. The appellant filed further submissions and new second and third auxiliary requests on 4 July 2016.  
  
The appellant then informed the Board that it would not be attending the oral proceedings.
- VI. The oral proceedings took place on 5 August 2016 in the appellant's absence.

The appellant had requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of one of the main request filed on 21 January 2009, the auxiliary request filed on 19 October 2010, and the second and third auxiliary requests filed on 4 July 2016.

VII. Claim 1 of the main request reads as follows:

"An X-ray diagnostic apparatus characterized by comprising:

a floor rotating arm (54) provided at one end on a floor surface so as to be rotatable around a first axis;

a stand portion (53) supported on the other end of the floor rotating arm (54) so as to be rotatable around a second axis;

an arm holder (52) provided on the stand portion (53);

a C-arm (51) provided on the arm holder (52), an X-ray generating unit (1) being provided on one end of the C-arm (51) and an X-ray detecting unit (2) being provided on the other end of the C-arm (51);

an operation unit (9) supplying command signals which are based on an operation by an operator; and

a moving mechanism driving unit (3) supplying driving signals which are based on the command signals supplied from the operation unit (9), so as to drive the floor rotating arm (54) to rotate around the first axis and the stand portion (53) to rotate around the second axis,

wherein the operation unit includes a means to select imaging system placement modes, and the moving mechanism driving unit (3) is adapted to move the C-arm (51) to a position corresponding to a selected mode."

VIII. Compared with claim 1 of the main request, claim 1 of the auxiliary request additionally requires that the X-ray diagnostic apparatus comprises:

"a bed having a table top (17) on which a subject is to be placed".

IX. Claim 1 of the second auxiliary request reads as follows (compared with claim 1 of the auxiliary request deletions are struck through and additions underlined by the Board):

"An X-ray diagnostic apparatus comprising:  
a bed having a table top (17) on which a subject is to be placed;  
a floor rotating arm (54) provided at one end on a floor surface so as to be rotatable around a first axis;  
a stand portion (53) supported on the other end of the floor rotating arm (54) so as to be rotatable around a second axis;  
an arm holder (52) provided on the stand portion (53);  
a C-arm (51) provided on the arm holder (52), an X-ray generating unit (1) being provided on one end of the C-arm (51) and an X-ray detecting unit (2) being provided on the other end of the C-arm (51);  
an operation unit (9) supplying command signals which are based on an operation by an operator, wherein the operation unit includes means for to selecting a mode for positioning the imaging system; and  
a moving mechanism driving unit (3) adapted to move the C-arm (51), the stand portion (53) and the floor rotating arm (54) to a position corresponding to the selected mode, for positioning the imaging system in the selected mode by supplying driving signals which

are based on the command signals supplied from the operation unit (9), ~~so as to~~ which drive the floor rotating arm (54) ~~to rotate~~ by rotating around the first axis and the stand portion (53) ~~to rotate~~ by rotating around the second axis, wherein

~~the operation unit includes a means to select imaging system placement modes, and the moving mechanism driving unit (3) is adapted to move the C-arm (51) to a position corresponding to a selected mode~~

the imaging system includes a head-first positioning mode in which the C-arm (51) is placed from a head direction of a subject, a lateral positioning mode in which the C-arm (51) is placed from a side of the subject, and a retraction mode,

wherein

in the head-first positioning mode the floor rotating arm (54) is positioned substantially perpendicular to a longitudinal direction of the table top (17) and the C-arm (51) is positioned substantially horizontal to the longitudinal direction of the table top (17),

in the lateral positioning mode the floor rotating arm (54) is positioned substantially parallel to a longitudinal direction of the table top (17) and the C-arm is positioned substantially perpendicular to the longitudinal direction of the table top (17), and

in the retraction mode the floor rotating arm (54) is positioned substantially horizontal to a longitudinal direction of the table top (17) and the C-arm is positioned substantially horizontal to the longitudinal direction of the table top (17).

- X. Compared with claim 1 of the second auxiliary request, in claim 1 of the third auxiliary request, in the definition of the floor rotating arm in the third paragraph the reference numeral "(59)" has been added

after the word "surface" and the wording "to move near the floor surface (59)" has been added after the word "axis". Moreover, in the definition of the retraction mode in the last paragraph of the claim the wording "and retracted above the floor rotating arm (54)" has been added at the end.

XI. As far as they are relevant for the present decision, the appellant's arguments may be summarised as follows:

In response to the Board's communication and opinion that the subject-matter of claim 1 of the main request and the auxiliary request lacked novelty over D5, the appellant presented no arguments as to why this would not be the case.

In claim 1 of the second and third auxiliary requests "a head-first", "a lateral" and "a retraction" positioning modes were specifically defined. A basis for the term "positioning mode" was provided on page 16, line 16 of the parent application as originally filed. The defined positioning modes were respectively illustrated in figures 4B, 4A and 5 of the parent application as originally filed.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The claimed invention

The claimed invention relates to an X-ray diagnostic apparatus typically used for angiographic examination procedures. It comprises an X-ray source and an X-ray detector positioned at opposite ends of a C-shaped arm,



intended to be translated and rotated around a subject lying on a bed, so as to conveniently reach any zone of interest. In the art such a C-arm is typically held on a support, which may be fixed on the floor (floor-type) or the ceiling (ceiling-type) of the examination room. The claimed invention focuses on the support of the C-arm, which is of the floor-type as it comprises a floor rotating arm and a stand portion respectively rotatable around a first and a second axis. An operation unit can be used to move the C-arm via the support according to different "placement" or "positioning" modes, e.g. a "head-first" mode, a "lateral " mode and a "retraction" mode, shown in figures 4B, 4A and 5 respectively. In claim 1 of the second and third auxiliary requests these modes are defined with respect to the direction of a table top on which a subject is to be placed. According to the description of the present application, the claimed arrangement of the support makes it possible to optimise the work space and reach a high degree of freedom of operation (paragraphs [0012] and [0013]).

3. Although having been duly summoned by communication dated 25 May 2016, the appellant was not present at the oral proceedings, as previously announced. In accordance with Rule 115(2) EPC and Article 15(3) RPBA, the Board decided to continue the proceedings without the appellant, who is treated as relying only on its written case.

4. Main and auxiliary request

D5 concerns an X-ray diagnostic apparatus of the floor-type (column 2, lines 14 to 18). More particularly, with reference to figures 3 to 5, it discloses an X-ray diagnostic apparatus comprising a

floor rotating arm (base 22) rotatable around a first axis (42) at one end of the arm, a stand portion (post 23) supported on the other end of the floor rotating arm and rotatable around a second axis (column 4, lines 28 to 34), an arm holder (bracket 26) provided on the stand portion, a C-arm (corresponding to arm 9 in figure 1 - column 4, lines 35 to 49) provided on the arm holder and comprising an X-ray generating unit and an X-ray detecting unit (column 3, lines 49 to 52), an operation unit and a moving mechanism driving unit (derivable from column 2, lines 56 to 57), for moving the C-arm according to a selected system placement mode (various movements of the C-arm with respect to the subject can be chosen by an operator, as is derivable from the positions shown in figures 3 to 5 and column 4, lines 1 to 8) as defined in claim 1 of the main request.

Additionally, D5 discloses a bed having a table top on which a subject is to be placed (table 35).

It follows that D5 anticipates the subject-matter of claim 1 of both the main and the auxiliary request, which, consequently, lack novelty (Article 54(1) and (2) EPC). Neither request is allowable in view of Article 52(1) EPC.

5. Second and third auxiliary requests

The second and the third auxiliary requests were filed in response to the preliminary opinion expressed by the Board in the communication accompanying the summons to oral proceedings. An important requirement of the EPC to be fulfilled by amended application documents is laid down in Article 76(1) EPC, namely that no subject-matter extending beyond the content of the

parent application as originally filed should be added. In the above-mentioned communication the Board expressly pointed out that, if novelty over D5 were established, it would consider at the oral proceedings whether further requirements of the EPC were fulfilled. Therefore the appellant could not be surprised that the Board would consider the requirements of Article 76(1) EPC in the oral proceedings and possibly come to a decision, in accordance with Article 15(3) RPBA. The appellant's choice not to attend can only be interpreted as a deliberate intention to rely only on the arguments previously provided in writing, in view of which the Board comes to its decision.

In claim 1 of the second and the third auxiliary requests, "head-first", "lateral" and "retraction" modes for positioning an imaging system are defined. More particularly, these modes are defined by reference to the position of the floor rotating arm and the C-arm with respect to the longitudinal direction of the table top.

The appellant argued that figures 4A, 4B and 5 of the parent application as originally filed illustrated the claimed modes. However, in these figures and the passages of the description relating to them the Board is unable to find a basis for example for the claimed wording that the floor rotating arm and/or the C-arm, in these modes, may be positioned "substantially horizontal" to the longitudinal direction of the table top. On page 15, line 2 to page 16, line 36 of the parent application as originally filed the floor rotating arm and/or the C-arm in the respective modes were described as being "substantially parallel" to the longitudinal direction of the table top. These

expressions are clearly not technically equivalent. It follows that the definition of the floor rotating arm and/or the C-arm as being "substantially horizontal" to the longitudinal direction of the table top in claim 1 of the second and the third auxiliary requests adds subject-matter extending beyond the content of the parent application as originally filed, contrary to the requirements of Article 76(1) EPC.

At least for this reason the second and third auxiliary requests cannot be allowed either.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



D. Hampe

E. Dufrasne

Decision electronically authenticated