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**Datasheet for the decision  
of 10 May 2016**

**Case Number:** T 1355/13 - 3.2.04

**Application Number:** 05742165.3

**Publication Number:** 1765064

**IPC:** A01K13/00, A01K15/00,  
A01K15/02, A01K27/00, A01K29/00

**Language of the proceedings:** EN

**Title of invention:**  
DEVICE FOR PREVENTING CRIBBING OR SUCKING IN HORSES

**Applicant:**  
Barclay, Richard

**Headword:**

**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
Amendments - allowable (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1355/13 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 10 May 2016**

**Appellant:** Barclay, Richard  
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**Representative:** Michalski, Stefan  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 25 January 2013 refusing European patent application No. 05742165.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** E. Frank  
C. Heath

## **Summary of Facts and Submissions**

- I. On 25 March 2013 the appellant (applicant) lodged an appeal against the examining division's decision of 25 January 2013 refusing the European patent application No. 05742165.3 and paid the prescribed fee at the same time. The statement of grounds of appeal was received on 3 June 2013.
- II. The examining division held that the subject matter of independent claim 1 filed on 30 November 2011 lacked novelty over US 5,722,352 (=D2).
- III. The appellant requests that the decision under appeal be set aside and a patent be granted based on the main or first auxiliary requests, both filed with its grounds of appeal, or, alternatively, that oral proceedings be held.
- IV. The Board summoned the appellant to attend oral proceedings and, in a communication dated 4 March 2016, expressed its preliminary opinion that inter alia the amendments of claim 1 of the main and first auxiliary requests filed with the grounds of appeal would appear to contravene the requirements of Article 123(2) EPC. The appellant did not reply to the Board's communication and the oral proceedings were duly held on 10 May 2016. As announced with letter dated 4 February 2016, no one was present on behalf of the appellant. At the oral proceedings, the Board took account of the written submissions as on file, and saw no need to reconsider its previous position as to the allowability of the main and first auxiliary requests.
- V. The independent claim 1 reads as follows:

Main request:

"An electric shock device (100) for use on horses or other equine animals to discourage wind-sucking behaviour, said device including:

an attachment (83, 97, 98) for locating the device on the neck of the animal, said attachment comprising a substantially rigid portion (81);

an electric charge source (90) operatively connected to said attachment, said electric charge source capable of delivering an electric pulse upon activation;

electrode means (95) electrically connected to said electric charge source for applying an electric pulse from said electric charge source to the animal; and

activation means (84) activated in response to the performance by the animal of said wind-sucking behaviour alone,

characterised in that:

said rigid portion is U-shaped and comprises a base (82) and a pair of diverging flexible arms (83) extending from said base to accommodate different sized animals and to reduce the danger of snagging; and

said activation means is configured to translate the localised expansion of muscles and structures associated with the larynx and tongue or the omohyoideus muscle or the sternothyrohyoideus muscle into travel of a free end of said activation means

towards said base to activate said electric charge source."

First Auxiliary request:

"An electric shock device (100) for use on horses or other equine animals to discourage wind-sucking behaviour, said device including:

an attachment (83, 97, 98) for locating the device on the neck of the animal, said attachment comprising a substantially rigid portion (81);

an electric charge source (90) operatively connected to said attachment, said electric charge source capable of delivering an electric pulse upon activation;

electrode means (95) electrically connected to said electric charge source for applying an electric pulse from said electric charge source to the animal; and

activation means (84) activated in response to the performance by the animal of said wind-sucking behaviour alone,

characterised in that:

said activation means includes a piezoelectric device (90);

said rigid portion is U-shaped and comprises a base (82) and a pair of diverging flexible arms (83) extending from said base to accommodate different sized animals and reduce the danger of snagging; and

said activation means is configured to translate the localised expansion of muscles and structures associated with the larynx and tongue or the omohyoideus muscle or the sternothyrohyoideus muscle into travel of a free end of said activation means towards said base to activate said electric charge source."

### **Reasons for the Decision**

1. The appeal is admissible.
2. Amendments - Main request
  - 2.1 With respect to claim 1 as originally filed, claim 1 of the main request now specifies in its preamble that "said attachment" comprises a "substantially rigid portion (81)". In the characterising portion, it has now been added that "said rigid portion is U-shaped and comprises a base (82) and a pair of diverging flexible arms (83)".

However, this newly added combination of features is not directly and unambiguously derivable from the original application documents:

Based on the application as filed, a "collar" may comprise a rigid U-shaped portion with arms capable of limited flexion, see description, page 5, lines 11,12 (as published). Alternatively, a "U-shaped bracket" with a base and a pair of extending diverging arms integrally attached to the base is foreseen, see description, page 11, lines 11-13 (as published).

Otherwise, if the "attachment" should comprise any form (depending on the part of the animal on which it is

located, in present claim 1 on the neck), the description as filed requires "a substantially rigid portion and a flexible adjustable portion to adapt the attachment to different sized animals". See description, page 5, lines 10-11 (as published).

- 2.2 Furthermore, it has now been added in the characterising part of claim 1 that "said rigid portion is U-shaped ... and to reduce the danger of snagging".

However, it is not the u-shape, which serves to reduce the danger of snagging, but the fact that the collar presents a smooth surface, see description, page 11, line 7 (as published).

- 2.3 Finally, it has now also been added in the characterising part of claim 1 that "said activation means is configured to translate the localised expansion of muscles and structures associated with the larynx and tongue or omohyoideus muscle or the sternothyrohyoideus muscle into travel of a free end of said activation means towards said base to activate said electric charge source." This is apparently based on claims 8 and 9 as filed.

However, the further, added feature: "into travel of a free end of said activation means ... towards said base...", see description, page 13, lines 24-26, and page 13, line 4 (as published), is clearly based on the figure 5A and 5B embodiment. There the arms that are neither diverging nor flexible as now required by claim 1 presently on file.

Apart from that, the "translation into travel" to activate the charge source as now claimed is only disclosed in context with a lever member adapted to



translate the movement of the animal into a small movement of sufficient force to activate a piezoelectric device, cf. claims 8 and 9 as filed, and the corresponding description on page 6, lines 11-13 (as published). However, both the lever and the piezoelectric device are missing from present claim 1.

2.4 As follows from the above, the Board cannot but conclude that the amendments to claim 1 of the main request have been taken in isolation out of the (structural and functional) context in which they appear originally in the application as filed, and thus have no firm basis in the original disclosure, contrary to the requirements of Article 123(2) EPC.

3. Amendments - First Auxiliary request

As for the amendments of claim 1 with respect to the content of the application as originally filed, the above considerations apply mutatis mutandis.

4. Since none of the appellant's requests can be considered allowable by the Board, the appeal therefore must fail.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated