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Datasheet for the decision of 12 April 2019

Case Number: T 1099/14 - 3.2.02

Application Number: 10153114.3

Publication Number: 2221081

IPC: A61M16/06, A61M16/08, A62B18/08

Language of the proceedings: EN

Title of invention:
Ergonomic and adjustable respiratory mask assembly with headgear assembly

Applicant:
ResMed Limited

Headword:

Relevant legal provisions:
EPC Art. 123(2), 76(1), 111(1)

Keyword:
Main request: amendments - extension beyond the content of the application as filed (yes)
Auxiliary request: extension beyond the content of the application as filed (no), extension beyond the content of the earlier application (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
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Beschwerdekammern

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Case Number: T 1099/14 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 12 April 2019

Appellant: (Applicant)	ResMed Limited 1 Elizabeth Macarthur Drive Bella Vista, NSW 2153 (AU)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 16 December 2013 refusing European patent application No. 10153114.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	E. Dufrasne
Members:	S. Böttcher
	M. Stern

Summary of Facts and Submissions

I. The applicant filed an appeal against the decision of the Examining Division to refuse European patent application No. 10153114.3 because claim 1 was found to include subject-matter extending beyond the content of the application as originally filed, contrary to the requirements of Articles 76(1) and 123(2) EPC.

II. The present application is a divisional application of European patent application No. 06018065.0 (parent) which itself is a divisional application of European patent application No. 03252555.2 (grandparent).

III. Notice of appeal was received on 5 February 2014. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 25 April 2014.

IV. In a letter dated 28 April 2014 the appellant filed an auxiliary request.

V. Oral proceedings took place on 12 April 2019.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the main request filed with letter dated 25 April 2014 and the auxiliary request filed with letter dated 28 April 2014.

VI. Claim 1 of the main request corresponds to claim 1 on which the impugned decision was based and reads as follows:

"A respiratory mask assembly for delivering gas to a person, the mask assembly comprising:

a frame having a main body and a side frame member provided on each lateral side of the main body, each side frame member including an integrally formed first connector portion; and

a headgear assembly removably attachable to the frame, the headgear assembly having a second connector portion arranged to be removably coupled with the first connector portion provided on the frame, the second connector portion being manually rotatable to a releasing position to detach the headgear assembly from the frame,

wherein the headgear assembly is rotationally adjustable with respect to the frame."

VII. Claim 1 of the auxiliary request corresponds to claim 1 as originally filed and reads as follows:

"A respiratory mask assembly for delivering gas to a person, the mask assembly comprising:

a frame having a main body and a side frame member provided on each lateral side of the main body, each side frame member including an integrally formed first connector portion; and

a headgear assembly removably attachable to the frame, the headgear assembly having a second connector portion arranged to be removably coupled with the first connector portion provided on the frame, the second connector portion being manually movable to a releasing position to detach the headgear assembly from the frame,

wherein the headgear assembly is rotationally adjustable with respect to the frame."

VIII. The arguments of the applicant may be summarised as follows:

Claim 1 of the main request fully corresponded with claim 1 as originally filed, except that the term "movable" has been replaced by the term "rotatable".

A frame (20) having a main body and side frame members on each lateral side was shown in Figure 5a of the application. In this embodiment, the frame had a clip engagement receiver assembly (34), as shown in Figure 10a, for connecting to a locking clip (82) (Figures 10b to 10d). Via the locking clip (82) the frame could be attached to the yoke (92) of the headgear assembly (Figure 10e). As described on page 16, lines 3 to 16, the locking clip shown in Figures 9a and 9b had two spring arms (114) each comprising a latch hook (116) for releasable engagement with respective recesses (71) in the receiving channels (38) of the frame (Figure 10a).

As shown in Figures 8 and 8a and described on page 15, lines 19 to 35, the yoke included a mounting flange (100) having two semi-annular flanges (102) separated from each other by slots (104) and a central bore (103) forming a keyhole (101). The locking clip had a retaining flange (118) with a central hub and two retaining tabs (120) matching with the keyhole (101) on the mounting flange (118) of the yoke. For coupling the yoke to the locking clip, the retaining tabs (120) were inserted into the keyhole, and, by rotating the clip along the direction of arrow A in Figure 10e, it was axially locked to the yoke. Due to the structure of the keyhole (101) and the retaining flange (118), there were two positions in which the clip could be removed from the yoke. These releasing positions could be reached by manual rotation of the second connector portion relative to the first connector portion of the frame as required in claim 1. Since the two releasing

positions were selected such that removal could not occur when the mask was in normal use (page 17, lines 25 to 29), the headgear assembly was also rotationally adjustable with respect to the frame without inadvertently detaching the headgear assembly from the frame, as required in the last feature of the claim.

On page 17, lines 4 to 6 of the description it was stated that the locking clip and the yoke could be formed in one piece, i.e. that the mechanism comprising the retaining flange and the keyhole could be omitted. Later, in lines 7 to 8, it was mentioned that conversely, the clip and the frame could be formed as an integral unit. The skilled person would have clearly understood this to mean that the connecting mechanism shown in Figure 10a could be omitted. In this case, the connection between the frame and the yoke would be provided by the keyhole/retaining flange mechanism. Hence, the retaining flange on the locking clip would be the first connector portion and the mounting flange with the keyhole on the yoke would be the second connector portion as defined in claim 1.

Contrary to the statement in the impugned decision, the sentence in lines 7 to 8 on page 17 did not relate to the inverse arrangement mentioned on page 16, lines 16 to 18, where the clip was formed on the frame and the channel was formed on the yoke. Since this inverse arrangement was already described sufficiently on page 16, lines 16 to 18, it would have been superfluous to refer to this arrangement again on page 17.

Moreover, in an alternative embodiment shown in Figures 33 to 36, the headgear assembly was magnetically coupled to the frame.

Claim 1 as originally filed included the word "movable" instead of "rotatable". In view of the general teaching of the application, the skilled person would have understood the originally disclosed movement to be a rotational movement. Hence the replacement of "movable" with "rotatable" in claim 1 did not introduce subject-matter extending beyond the content of the application as originally filed.

Reasons for the Decision

1. The appeal is admissible.

2. Main request - Article 123(2) EPC

Claim 1 as originally filed included the feature "the second connector portion being manually movable to a releasing position to detach the headgear assembly from the frame". In claim 1 of the main request the term "movable" in this feature has been replaced with "rotatable".

Claim 1 of the main request further defines a frame including an integrally formed first connector portion. In the embodiment shown in Figures 10a to 10g this first connector portion is provided by the locking clip receiver assembly (34) on the frame (20). Correspondingly, the second connector portion that is arranged to be removably coupled with the first connector portion, as defined in claim 1, is represented by the locking clip (82) of the headgear assembly (80) (page 12, line 36 to page 13, line 2; Figures 5c, 6a, 9a and 10a).

Hence, in this embodiment, the connection between the frame and the headgear is provided by a clip buckle mechanism comprising the locking clip receiver assembly and the locking clip. In detail, the locking clip has two spring arms (114) having latch hooks (116) attached to their free ends. These spring arms are inserted into channels (38) of the receiver assembly (34) for the engagement of the latch hooks (116) with corresponding locking flanges (39) (page 13, lines 6 to 9; page 16, lines 4 to 16; Figures 7, 9a, 9b and 10a). In order to disconnect the locking clip from the receiver, recesses (71) are provided on the channels (38) through which the flexing arms can be manually pressed together until the latch hooks (116) disengage from the locking flanges (39) (page 16, lines 24 to 28).

It is also described that the headgear assembly has a pair of front straps (84) each having a yoke (92) (page 13, lines 24 to 26 and 34 to 35; Figures 1 to 3). Each yoke has a mounting flange (100) to which the locking clip (82) is adjustably attached (page 15, lines 19 to 20 and page 16, line 3; Figure 8). The locking clip includes a retaining flange (118) having a central hub (119) and two transversely extending retaining tabs (120) (page 16, line 34 to page 17, line 2; Figures 9b and 10d). The retaining tabs and the central hub match with a keyhole (101) provided on the mounting flange (100) of the yoke such that the retaining flange can be inserted into the keyhole. By rotating the locking clip with respect to the yoke, the clip is axially locked. There are two rotational positions, spaced by 180°, which allow for the removal of the locking clip from the yoke (page 17, lines 10 to 30; Figures 10e to 10g).

These two releasing positions can be attained by manual

rotation of the locking clip (82) with respect to the yoke (92). However, by this mechanism, two parts which both belong to the headgear assembly, namely the yoke and the locking clip, can be released from one another. Hence, by this rotational movement, the headgear will not be detached from the frame.

In contrast to this, claim 1 requires the second connector portion to be manually rotatable to a releasing position to detach the headgear assembly from the frame. As explained above, such a detachment mechanism is not disclosed in the illustrated embodiment.

The appellant referred to the passage on page 17, lines 4 to 8. In the first sentence of this passage, it is stated that the locking clip and the yoke could be formed in one piece. This means that the keyhole/ retaining flange mechanism are omitted. In the next sentence, in lines 7 to 8, it is mentioned that, conversely, the clip and the frame could be formed as an integral unit. According to the appellant, this meant that the clip buckle mechanism including the spring arms and the receiving channels were omitted. In this case, only the keyhole/retaining flange mechanism remained in order to attach and detach the frame from the headgear assembly. This was therefore a disclosure of an embodiment as defined in claim 1.

The Board agrees with the appellant that according to the first sentence of the cited passage the keyhole/ retaining flange mechanism could be omitted if relative movement and/or detachment between the two was not required.

However, the Board does not concur with the appellant

that the subsequent sentence involves a direct and unambiguous disclosure of an embodiment wherein the clip buckle mechanism was omitted and the frame was connected to the headgear assembly by the specific keyhole/retaining flange mechanism that could be released by a rotational movement.

Due to the use of the term "conversely", this sentence could also refer to the inverse arrangement mentioned on page 16, lines 16 to 18. In this context, the sentence would relate to an embodiment in which the clip and the frame were integrally formed (by omitting the keyhole/retaining flange mechanism) and the spring arms of the clip were received in respective channels on the yoke.

The use of the term "clip portion" in the sentence supports this interpretation, which would otherwise be meaningless. Although this term is not mentioned anywhere else in the description, as observed correctly by the appellant, the skilled person would understand that only the portion of the locking clip with the flexing arms and the latch hooks is meant.

In any case, the term "clip portion" can not be considered to refer to the teeth (122) which are arranged on the locking clip to engage with corresponding teeth (108) on the mounting flange (100) of the yoke, as suggested by the appellant. These teeth (122) are mentioned for the first time in lines 32 to 33 of page 17, i.e. two paragraphs below the paragraph mentioning "the clip portion". Due to the use of the definite article "the", the term can only relate to something that has been mentioned before.

Moreover, even if the sentence is interpreted to mean

that the clip buckle mechanism was omitted, it can not be derived directly and unambiguously which specific mechanism the clip portion is connected to the yoke by. In particular, it is by no means clear that the mechanism described on page 17, lines 10 to 30 is meant, since in this embodiment the keyhole/retaining flange mechanism is used to connect the locking clip to the yoke. It is clearly mentioned in this paragraph (lines 25 to 29) that the releasing positions should not be reached during normal use of the mask. Hence, the skilled person understands that this mechanism should not be used to detach the headgear from the frame instead of the clip buckle mechanism including the spring arms and the receiving channels.

The appellant also referred to the embodiment shown in Figures 33 to 37 and described on page 20, line 27 to page 23, line 6. According to this embodiment, the headgear assembly can be magnetically coupled to the frame. For this purpose, the frame has a first connector portion including a retaining structure (418) with a magnet (419). The yoke (492) includes a second connector portion having a mounting flange (400) with a bore (403), in which a metal disk (412) is arranged. For connecting the frame to the yoke the first connector portion is engaged with the second connector portion such that the magnet is magnetically coupled to the metal disk (page 21, line 35 to page 22, line 1, Figures 36 and 37). The headgear assembly may be detached from the frame by applying a suitable disengagement force that is greater than the magnetic force of attraction between the magnet and the metal disk (page 23, lines 4 to 6). Thus, the headgear may not be detached by rotating the second connector portion to a releasing position, but by simply pulling it away from the first connector portion. Consequently,

this embodiment does not represent a disclosure of the subject-matter of amended claim 1 either.

In summary, the application as originally filed discloses an embodiment wherein the headgear assembly is connected to the frame by a clip buckle mechanism comprising a locking clip on the headgear and a receiver on the frame (Figures 1 to 10g). In this embodiment, the locking clip is coupled to the headgear assembly by a keyhole/retaining flange mechanism, such that the locking clip can be rotated to a releasing position to detach it from the headgear. This latter mechanism can be omitted (page 17, lines 4 to 6). In connection with this embodiment it is further disclosed that some or all of the sub-assemblies can be reversed (page 19, lines 9 to 13 and page 16, lines 16 to 18).

Furthermore, the application discloses an embodiment in which the headgear assembly is connected to the frame by a magnetic coupling (Figures 33 to 37). In this embodiment, the coupling can be released by overcoming the force of attraction of the magnet.

However, the application as originally filed does not directly and unambiguously disclose an embodiment as defined in amended claim 1, i.e. an embodiment in which the second connector portion is manually rotatable to a releasing position to detach the headgear assembly from the frame.

In the appellant's opinion, the skilled person would have understood the originally disclosed term "movable" to mean "rotatable", in line with the general teaching of the application.

The Board does not concur with this view. Claim 1 as

originally filed does not specify which movement of the second connector portion is meant or which position is considered to be the releasing position defined in the claim. In the embodiment of Figures 1 to 10g, there are two movements which lead to a detachment: the flexing of the spring arms towards each other to release the locking clip from the frame, and the rotational movement of the locking clip to detach the locking clip from the yoke (but not to detach the headgear from the frame). In the embodiment of Figures 33 to 37, the first connector portion and the second connector portion are moved apart for the detachment of the frame from the yoke, without, however, reaching a defined releasing position. Hence, regardless of how the skilled person would have understood the feature "movable to a releasing position to detach the headgear assembly from the frame" in claim 1 as originally filed, he would not have considered this movement to be a rotation.

Consequently, the Board concludes that the amendment made to claim 1 of the main request introduces subject-matter extending beyond the content of the application as originally filed, contrary to the requirements of Article 123(2) EPC.

3. Auxiliary request - Articles 123(2) and 76(1) EPC

Claim 1 of the auxiliary request corresponds to claim 1 as originally filed, to claim 3 of the parent application and to claim 1 of the grandparent application. The requirements of Articles 123(2) and 76(1) EPC are therefore fulfilled.

However, it has not yet been assessed by the Examining Division whether the dependent claims meet the

requirements of Article 76(1) EPC. Furthermore, the claims of the auxiliary request have not been examined with regard to the other requirements of the EPC. Therefore, the case is remitted to the Examining Division for further prosecution pursuant to 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

Decision electronically authenticated