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**Datasheet for the decision
of 22 September 2016**

Case Number: T 1908/14 - 3.3.10

Application Number: 10181309.5

Publication Number: 2275148

IPC: A61L17/04, A61L31/04, A61F2/08

Language of the proceedings: EN

Title of invention:
High-strength suture

Applicant:
Teleflex Medical Incorporated

Headword:

Relevant legal provisions:
EPC Art. 84

Keyword:
Claims - clarity (no)

Decisions cited:
T 0337/95

Catchword:



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Case Number: T 1908/14 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 22 September 2016

Appellant: Teleflex Medical Incorporated
(Applicant) 155 South Limerick Road
Limerick, PA 19468 (US)

Representative: Hedges, Martin Nicholas
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London EC4M 7NG (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 March 2014
refusing European patent application
No. 10181309.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman P. Gryczka
Members: R. Pérez Carlón
T. Bokor

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the examining division to refuse European patent application No. 10 181 309.5.
- II. The documents forming part of the examination proceedings included the following:
- D1: US 5,628,756
- III. The examining division concluded that claim 1 of the sole request then pending was not clear, and that the surgical suture according to said claim was not novel over the surgical cable of D1.
- IV. With the statement setting out the grounds of appeal, the appellant filed a main request, whose claim 1 reads as follows:

"A surgical suture (10) comprising an elongate woven braid of fibers (12) including ultrahigh molecular weight polyethylene fibers, said braid of fibers being hollow and defining an elongate, longitudinally-extending open central (14) chamber without a core material extending therein,

characterised in that said suture (10) has a circular cross sectional configuration, said chamber being sufficiently large to enable a cross-sectional shape of said braid of fibers to collapse in response to pressures experienced when the suture is knotted, in that at least 75% of said fibers of said braid are said ultra-high molecular weight polyethylene fibers (16), and that said braid (12) has a diameter from 0.100 mm

to 0.999 mm (USP size 5-0 to USP size 7)."

V. In a communication annexed to the summons to oral proceedings, the board informed the appellant that it should be prepared to discuss *inter alia* the clarity of the feature *"said chamber being sufficiently large to enable a cross-sectional shape of said braid of fibers to collapse in response to pressures experienced when the suture is knotted"*.

VI. With a letter dated 12 of May 2016, the appellant filed auxiliary requests 1 and 2. Claim 1 of these requests contains all the features of the main request. In addition, claim 1 of auxiliary request 1 contains the feature

"said braid of fibers has 12, 16, 24 or 32 fibers",

and claim 1 of auxiliary request 2 requires that

"said braid of fibers has 16, 24 or 32 fibers".

VII. The arguments of the appellant relevant for the present decision were the following:

The feature *"said chamber being sufficiently large to enable a cross-sectional shape of said braid of fibers to collapse in response to pressures experienced when the suture is knotted"* clearly defined the subject-matter for which protection was sought. It merely required the claimed surgical suture to have a significant central opening (in the sense of "void" or "bore"), capable of collapsing. It further argued that an opening such as that of the surgical cable of D1, which had the width of a fibre, could allow a deformation reducing at the most by one third the

cross-section of the cable, but that could not be considered "collapsing" in the sense of claim 1.

Claim 1 of the auxiliary requests required that the braid was formed by a large number of fibres, which necessarily defined a broad open central chamber and solved any clarity issue which could arise with respect to claim 1 of the main request.

- VIII. Oral proceedings before the board of appeal took place on 22 September 2016.
- IX. The final requests of the appellant were that the decision under appeal be set aside and that a patent be granted on the basis of the main request, filed with the grounds of appeal, or, subsidiarily, on the basis of auxiliary requests 1 and 2, filed with a letter dated 12 May 2016.
- X. At the end of the oral proceedings, the decision was announced.

Reasons for the Decision

1. The appeal is admissible.

Clarity

2. Claim 1 of the main request contains the feature
"said chamber being sufficiently large to enable a cross-sectional shape of said braid of fibers to collapse in response to pressures experienced when the suture is knotted".

3. Article 84 in conjunction with Rule 43(1) EPC stipulates that the claims must be clear, and define the matter for which protection is sought in terms of the technical features of the invention. These requirements serve the purpose of ensuring that the public is not left in doubt as to which subject-matter is covered by a particular claim and which is not (see T 337/95, OJ EPO 1996, 628, Reasons 2.2 to 2.5).

It needs to be examined whether the verb "to collapse" in the context of claim 1 can clearly define the subject-matter for which protection is sought.

According to the declaration signed by Dr. Olson and filed by the appellant with a letter dated 8 July 2014, the term "collapse" in the context of the claimed invention meant (point 7) that a suture was essentially altered and reduced in size.

On the other hand, this declaration further states that a slight deformation of the cross-sectional shape of a suture, such as that of the surgical cable of D1 when it was knotted, could not be considered as a "collapse".

During the oral proceedings before the board, the appellant argued that the hollow cavity of the cable of D1 could have, at most, the width of a fibre. Completely closing such a hollow cavity, for example when it was knotted, would reduce the diameter of the cable by only one third of its original width. Such a small diameter reduction did not represent "collapsing" in the sense of claim 1, even if in that case the hollow cavity is completely closed.

The appellant thus considers that collapsing does not

mean the complete closing of the open central chamber but merely an "essential" or "significant" reduction in size of the suture. Therefore, according to the appellant, the closing of the open central chamber of a suture is not always sufficient to define a "collapse", and a reduction of one third of the size of a central open chamber does not always represent a "collapse" either. The distinction is also not solved by requiring an "essential" or "substantial" reduction.

Since it is not clear to what extent a cross-sectional shape of the braid of fibres has to be altered to be considered as "collapsing", the skilled reader, confronted with a suture having an open central chamber whose opening could be modified, would not be able to identify whether or not that suture is an embodiment of claim 1, with the consequence that claim 1 is not clear as required by Article 84 EPC.

4. Claim 1 of auxiliary requests 1 and 2 requires the claimed suture to have a specific number of fibres.

The appellant argued that, by requiring a large number of fibres, the central opening was bound to be larger, as could be seen in figures 1 to 3. Thus the skilled person would have no difficulty in determining whether or not it would "collapse" as required by claim 1.

However, claim 1 does not exclude a 2-ply, 8-strand suture, as disclosed in D1, which would have 16 fibres but would not necessarily, as alleged, have a wider central core opening. For this reason, the lack of clarity explained in the previous point affects in the same manner the feature "to collapse" in the context of auxiliary requests 1 and 2.

5. For these reasons, none of the requests on file is clear as required by Article 84 EPC, with the consequence that none of them is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated