

Internal distribution code:

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

**Datasheet for the decision
of 7 July 2015**

Case Number: T 1910/14 - 3.5.03

Application Number: 09796520.6

Publication Number: 2364555

IPC: H04R25/00

Language of the proceedings: EN

Title of invention:
SKULL VIBRATIONAL UNIT

Applicant:
VIBRANT Med-El Hearing Technology GmbH

Headword:
Skull Vibrational Unit/VIBRANT

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

Keyword:
Claims - clarity (yes)
Remittal to the department of first instance - (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 1910/14 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 7 July 2015

Appellant: VIBRANT Med-El Hearing Technology GmbH
(Applicant) Fürstenweg 77
6020 Innsbruck (AT)

Representative: Downing, Michael Philip
Downing IP
Oak House
Oak End Way
Gerrards Cross
Buckinghamshire SL9 8BR (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 June 2014
refusing European patent application No.
09796520.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. van der Voort
Members: A. Madenach
P. Guntz

Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division refusing European patent application No. 09796520.6, published as WO 2010/068730 A1, on the ground that the claims are not clear (Article 84 EPC).

II. In the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the case be remitted for further prosecution.

III. Claim 1 reads as follows:

"An implantable hearing prosthesis (800) for a recipient patient, the prosthesis comprising:

a receiving coil (802) for transcutaneous receiving of an externally generated communication data signal;

an implantable signal processor (804) for converting the communication data signal from the receiving coil into an electrical stimulation signal;

an implantable transducer housing (806, 1106) forming a hermetically sealed can arrangement for fixed attachment to skull bone of the patient; and

an implantable electromagnetic drive coil (805, 1301) for applying to the transducer housing (806) a mechanical vibration signal based on the electrical stimulation signal from the signal processor (804) for audio perception by the patient;

wherein the electromagnetic drive coil (805, 1301) is removably engageable with the transducer housing (806)."

Claims 2 to 4 are dependent claims.

Reasons for the Decision

1. Clarity (Article 84 EPC)

- 1.1 The sole ground for refusing the present application was that claims 1 to 4 do not meet the requirements of Article 84 EPC due to a lack of clarity.

More specifically, the examining division held that in claim 1 the feature that the drive coil is "removably engageable" with the transducer housing was unclear due to the fact that it could be interpreted in two different ways, namely "as defining that the coil is merely detachable from the housing even if it requires disassembling another element such as e.g. a sealing, or that there are no additional elements between the coil and the transducer housing and that the coil can be removed from the transducer housing without involving any additional parts of the claimed prosthesis. In the latter case it is not known how such defined implantable prosthesis could function properly".

The examining division further held that, since claims 2 to 4 were dependent on claim 1, these claims also lacked clarity.

- 1.2 With respect to the examining division's first reason, the board notes that the fact that a feature can be interpreted broadly or implemented in several ways does not by itself necessarily render the feature in question unclear.

In the present case, the board notes that the examining division had apparently no problems in understanding the feature in question, since it was clear to them that this feature could be implemented such that the drive coil can be removed from the transducer housing by first removing other elements, for example a sealing, or such that the drive coil can be removed from the housing without the need to remove other elements. The board can only agree that these are examples of implementations of the feature in question.

- 1.3 With respect to the statement of the examining division that it would not be known how the implantable prosthesis could function properly if the feature in question was interpreted according to the second alternative, the board notes that this issue relates to the question of the sufficient disclosure of the patent application as required by Article 83 EPC and does not support the objection under Article 84 EPC in the present case.

In any case, the statement is not supported by any reasoning. The board is thus not in a position to understand why the examining division reached this conclusion. The board accepts in this respect the appellant's explanations in paragraph 2 of the statement of grounds of appeal, according to which the skilled person would appreciate that the drive coil would be held in place with respect to the transducer housing by the patient's flesh and skin once the hearing prosthesis is implanted.

- 1.4 The board thus concludes that the examining division's reasoning is not convincing.

1.5 The board sees no reason to raise any other objection concerning clarity, conciseness and support by the description of the claims and therefore concludes that claims 1 to 4 meet the requirements of Article 84 EPC.

1.6 The decision under appeal is therefore to be set aside.

2. *Remittal (Article 111(1) EPC)*

According to Article 111(1) EPC, the "Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution". Since the decision under appeal dealt solely with the question of clarity and no decision was taken with regard to the other requirements of the EPC, the board considers it appropriate to remit the case to the department of first instance, as requested by the appellant.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated