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**Datasheet for the decision
of 4 May 2021**

Case Number: T 1526/16 - 3.2.02

Application Number: 11156322.7

Publication Number: 2340864

IPC: A61M5/20, A61M5/315, A61M5/32,
A61M5/31

Language of the proceedings: EN

Title of invention:
Substance delivery device

Patent Proprietor:
Owen Mumford Limited

Opponent:
Ypsomed AG

Headword:

Relevant legal provisions:
RPBA Art. 12(4)
RPBA 2020 Art. 25(2)
EPC Art. 76(1), 83, 84, 56

Keyword:

Late-filed auxiliary requests
Amendments - intermediate generalisation
Inventive step

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1526/16 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 4 May 2021

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
28 April 2016 concerning maintenance of the
European Patent No. 2340864 in amended form.**

Composition of the Board:

Chairman	M. Alvazzi Delfrate
Members:	S. Dennler
	Y. Podbielski

Summary of Facts and Submissions

- I. The patent proprietor and the opponent both lodged an appeal against the Opposition Division's decision to maintain the contested patent in amended form.
- II. Oral proceedings before the Board were held by videoconference on 4 May 2021.
- III. The appellant-proprietor (hereinafter "the proprietor") requested that the decision under appeal be set aside and that the patent be maintained as granted, as a main request, or, as an auxiliary measure, in amended form on the basis of one of the following auxiliary requests:
 - auxiliary requests 1-5 filed with the statement of grounds of appeal,
 - auxiliary requests 6-7 filed with the reply dated 23 January 2017,
 - auxiliary requests 8-12 filed as auxiliary requests 1-5 with letter dated 9 February 2016, or
 - auxiliary request 13 filed with letter dated 30 September 2017.
- IV. The appellant-opponent (hereinafter "the opponent") requested that the decision under appeal be set aside and that the patent be revoked. The opponent also requested that auxiliary requests 2-4 and 6-12 not be admitted into the proceedings.
- V. Claim 1 of the **main request** (claim 1 as granted) reads as follows (feature numbering in bold as used by the parties):

"1. A substance delivery device for use with a container (24) or container holder (82) containing the substance, the device comprising:
1.1 a body (2) arranged to house the container or container holder;
1.2 means (70, 72, 80) for priming the container (24) or container holder (82),
1.2.1 the priming means comprising a movable portion which is arranged to be moved during the priming operation; and
1.3 means (72, 80, 200) for impeding or preventing a further operation from being carried out before the priming operation has been carried out,
1.4 wherein the further operation comprises delivery of the substance and/or adjustment of the dose of the substance to be delivered;
1.5 wherein carrying out the priming operation is arranged to move the container (24) or container holder (82) with respect to the body (2) in proximal direction of the substance delivery device."

- VI. Claim 1 of **auxiliary request 1** corresponds to claim 1 as granted in which the expressions "or container holder" and "and/or adjustment of the dose of the substance to be delivered" have been deleted.
- VII. Compared to claim 1 of auxiliary request 1, claim 1 of **auxiliary request 2** further includes the wording "wherein the container comprises a container carrier suitable for use with a container portion, and wherein carrying out the priming operation is arranged to pivot the container carrier about the axis of the container carrier".
- VIII. Compared to claim 1 of auxiliary request 2, claim 1 of **auxiliary request 3** further includes the wording

"wherein delivery of the substance is no longer impeded or prevented after the container carrier has pivoted".

IX. Compared to claim 1 of auxiliary request 3, claim 1 of **auxiliary request 4** further includes the wording "wherein the pivoting of the container carrier is achieved by a camming arrangement".

X. Claim 1 of **auxiliary request 5** reads as follows (amendments compared to claim 1 as granted highlighted by the Board):

"A substance delivery device for use with a container (24) ~~or container holder~~ (82) containing the substance, the device comprising:

a body (2) arranged to house the container, wherein the container comprises a container carrier (82) suitable for use with a container portion (24), wherein the body defines a window (18) ~~or container holder~~;

means (70, 72, 80) for priming the container (24) ~~or container holder~~ (82), the priming means comprising a movable portion which is arranged to be moved during the priming operation; wherein the movable portion comprises a priming button (70) provided in a distal portion of the body (2); wherein the priming button (70) can be slid parallel to the longitudinal axis of the device over the length of the window (18), and

means (72, 80, ~~200~~) for impeding or preventing a further operation from being carried out before the priming operation has been carried out, wherein the further operation comprises delivery of the substance ~~and/or adjustment of the dose of the substance to be delivered~~, wherein said means for impeding comprises a

projection (72) provided on a radially inner side of said priming button (70), and further comprises engagement formations (80) provided on the container carrier (82), wherein said engagement formations (80) engage with said projection (72) such that the container carrier (82) is locked against movement along the longitudinal axis of the device with respect to the priming button (70) before the priming operation has been carried out;

wherein the device further comprises a plunger portion (41);

wherein carrying out the priming operation is arranged to move the container carrier (82)~~(24)~~ or container holder (82) with respect to the body (2) in proximal direction of the substance delivery device,

wherein the container portion (24) comprises a bung (28), wherein the bung is pushed in distal direction with respect to the container portion (24) as the proximal end of the bung contacts the distal end of the plunger portion;

wherein first cam surfaces are provided at the proximal end of the container carrier and

wherein the device further comprises a corresponding second cam surface provided at the distal end of projections (90) provided on the inside of the body;
wherein contact between the first cam surfaces and the second cam surface is arranged to pivot the container carrier (82);

wherein the engagement formations (80) and the internal projection (72) are limited in circumferential

direction such that, wherein after the container has pivoted, the engagement formations (80) can move past the internal projection (72) so as not to impede or prevent delivery of the substance."

- XI. Claim 1 of **auxiliary request 6** corresponds to claim 1 of auxiliary request 5 with the following amendments: "(...) wherein the priming button (70) can be slid parallel to the longitudinal axis of the device over a distance determined by the length of the window (18) (...)" and "(...) in circumferential direction such that, ~~wherein~~ after the container has pivoted (...)".
- XII. The patent in suit has been granted from a divisional application from earlier European application No. 06820667.1, itself derived from an international application published as WO 2007/066152 A2 (hereinafter the "parent application").
- XIII. The following document is also relevant to the present decision:
D1: US 2002/0123718 A1
- XIV. The proprietor's arguments, as far as relevant for the present decision, can be summarised as follows:

(a) Admittance of auxiliary requests 2-4, 6-7

Auxiliary requests 2-4 addressed objections raised by the Opposition Division for the first time during the oral proceedings, or objections which had been presented as unlikely to succeed in the preliminary opinion of the Opposition Division.

Auxiliary requests 6-7 addressed objections raised by the opponent during the first instance oral proceedings. The Opposition Division had not agreed to those objections, so making these amendments earlier would have been unnecessary.

Moreover, none of the amendments was complex or raised issues which had not been discussed during the first instance proceedings. The auxiliary requests should therefore be admitted into the appeal proceedings.

(b) Main request - Added subject-matter

There was basis in the parent application, especially on page 8, third paragraph, for defining the step of moving the container in proximal direction during priming in claim 1 without defining the other steps of pivoting and unlocking the container for substance delivery. Priming the container by moving it in the proximal direction was described per se as making the device particularly easy to use (page 12, second paragraph). The last sentence of the first paragraph of page 9 stated that it was not essential that the syringe turns during priming, thereby underlining that the proximal movement of the syringe upon priming was not linked to the pivoting movement. The requirements of Article 76(1) EPC were therefore met.

(c) Auxiliary request 1 - Added subject-matter

The same considerations as for claim 1 as granted applied to claim 1 of auxiliary request 1.

(d) Auxiliary requests 2-4 - Added subject-matter

In auxiliary requests 2-4 claim 1 was increasingly limited by the addition of several features of the priming mechanism described on pages 8-9 of the parent application to overcome the objections under Article 76(1) EPC raised against the main request.

(e) Auxiliary request 5 - Added subject-matter

Claim 1 defined every single structural feature related to the priming mechanism and therefore met the requirements of Article 76(1) EPC.

The container carrier was not defined as being integrally part of the substance delivery device because the description explained in the third paragraph on page 12 that a range of syringe carriers with different bore diameters could be provided for use with the injection apparatus. Syringe carriers could indeed be manufactured and sold separately from the injection device.

The construction of the container carrier had nevertheless a limiting effect on the scope of claim 1 insofar as claim 1 was limited to a device for use with a container comprising a container carrier having the specific features required (such as first cam surfaces), thereby excluding devices which were not suitable for use with such a container.

The expression "over the length of the window (18)" defined in claim 1 had the same technical meaning as the original sentence "over a small distance determined by the length of the window" used in the parent application, requiring the priming button to be configured to slide from one side of the window to the other side of the window.

(f) Auxiliary request 6

In addition to the objection of added subject-matter there were additional objections under Articles 84, 83 and 56 EPC. These were addressed by the proprietor in support of auxiliary requests 5, 1 and 5 respectively, but are considered to apply to auxiliary request 6 as well.

Added subject-matter

The feature related to the sliding motion of the priming button had been brought in conformity with the original wording "over a distance determined by the length of the window" used in the parent application. Claim 1 therefore met the requirements of Article 76(1) EPC.

Lack of clarity

Even if the container carrier was not part of the substance delivery device defined in claim 1, the container carrier was defined in claim 1 in detail. The subject-matter of claim 1 was therefore clear.

Insufficiency of disclosure

In the context of the patent, delivery of the substance did not amount merely to expelling the substance out of the container. This also included bringing the substance to its intended location. That part of the description which related to the first embodiment gave a detailed example of how the claimed invention could be implemented, where the container was a syringe. The opponent had not provided evidence suggesting that the

person skilled in the art would have any difficulty in working the invention across the full scope of the claims.

Inventive step

The feature analysis of D1 made by the opponent was implausible. In particular, regarding the screw motion of the nozzle portion 12 as a sliding motion simply because it had a linear component was incorrect. The inventive step attack failed for that reason.

XV. The opponent's arguments, as far as relevant for the present decision, can be summarised as follows:

(a) Admittance of auxiliary requests 2-4, 6-7

These requests should not be admitted as being late filed. The objections addressed by auxiliary requests 2-4 had been known by the proprietor before the oral proceedings before the Opposition Division. The issues addressed by auxiliary requests 6-7 had been discussed during those oral proceedings. The Opposition Division had given the proprietor the opportunity to file amended claims during the oral proceedings and the proprietor had used that opportunity. Auxiliary requests 2-4, 6-7 could, and should, therefore have been filed during the first instance proceedings.

(b) Main request - Added subject-matter

Claim 1 as granted was based on claim 50 of the parent application as filed in which feature 1.5 had been incorporated from the description of the first embodiment. However, priming was only disclosed therein as an operation involving a specific mechanism with

certain components in certain engagements to function in a specific manner to enable priming such that delivery of the substance was prevented until priming had been carried out. Extraction of feature 1.5 alone and insertion into claim 50 presented the person skilled in the art with new information which was not directly and unambiguously disclosed in the parent application. Claim 1 was therefore based on an unallowable intermediate generalisation of the first embodiment which contravened Article 76(1) EPC.

(c) Auxiliary requests 1-4 - Added subject-matter

These requests did not meet the requirements of Article 76(1) EPC for the same reasons as the main request.

(d) Auxiliary request 5 - Added subject-matter

Claim 1 was based on several intermediate generalisations, all in breach of Article 76(1) EPC:

First, the expression "over the length of the window (18)" defined in claim 1 was not supported by the description of the parent application as filed. Disclosed therein was indeed that the priming button could be slid "over a small distance determined by the length of the window", which limited the maximum movement of the button to that small distance. Moreover, it was also required that the priming button should be prevented from moving in a distal direction as it contacted the distal end of the window. However, corresponding limitations were not defined in claim 1.

Second, some of the features essential for the priming mechanism were provided on the container carrier, such as the first cam surfaces which were inextricably

linked to the corresponding second cam surface formed on the delivery device to achieve the pivoting of the syringe carrier during priming. However, claim 1 did not include the container carrier and the first cam surfaces as limiting claim features, as claim 1 was directed only to the delivery device "for use" with a container comprising the container carrier.

Third, the separation between the container carrier and the container portion done in the feature "wherein the container comprises a container carrier (82) suitable for use with a container portion (24)" of claim 1 was not supported by the parent application. The passage on page 12, third paragraph of the description referred to another embodiment not in accordance with the claimed invention. This feature seemed rather to be based on claim 24 of the parent application which depended on claims 19 and 1. Claim 19 defined that the container was comprised in the device while claim 1 defined further features of the device, such as a plunger. However, none of these features were defined in claim 1 of auxiliary request 5.

(e) Auxiliary request 6

In addition to the objections of added subject-matter and lack of inventive step, there were additional objections under Articles 84 and 83 EPC. These were raised against auxiliary request 5 and the main request respectively, but are considered to apply to auxiliary request 6 as well.

Added subject-matter

The sliding motion of the priming button in claim 1 was not limited to a "small" distance as originally

disclosed in the parent application as filed. This constituted an unallowable intermediate generalisation.

Lack of clarity

Several of the essential features of the priming mechanism belonged to the container carrier which was not part of the substance delivery device defined in claim 1. The definition of the device by referring to external entities not part of the device rendered the subject-matter of claim 1 unclear.

Insufficiency of disclosure

The "means for impeding or preventing a further operation from being carried out before the priming operation has been carried out, wherein the further operation comprises delivery of the substance" were not sufficiently disclosed. Indeed, the disclosed mechanism based on the projections initially engaging only prevented the container from being moved in distal direction (so as to advance the injection needle in case of an auto-injector). However, this initial lock of the container did not prevent the plunger 40 to move in distal direction if the trigger button were activated, thereby moving bung 28 with respect to the (locked) container and thus expelling, i.e. "delivering", the substance out of the container. Moreover, the patent was not limited to containers requiring such a distal movement of the container (paragraph [0002]). However, the patent contained no guidance on how delivery of the substance could also be prevented for these other types of containers.

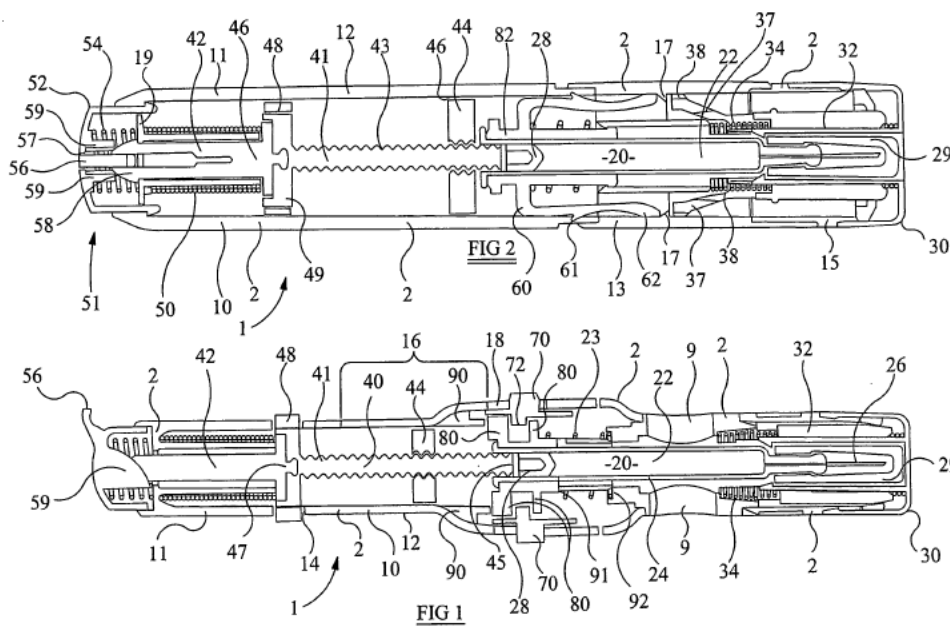
Inventive step

Claim 1 did not involve an inventive step starting from D1. D1 disclosed indeed a substance delivery device comprising most of the features of claim 1: in particular, container 57 could be primed by threading nozzle portion 12 into body portion 14 (Figures 2, 4; paragraph [0053]). Since a screw motion included a sliding motion having a longitudinal axial component, the enlarged portion of nozzle portion 12 constituted a priming button which "c[ould] be slid parallel to the longitudinal axis of the device" as required by claim 1.

Reasons for the Decision

1. The invention

1.1 The patent in suit relates to a substance delivery device (1) enabling a substance contained in a container, such as a syringe (20), to be injected automatically by simply requiring a user to push a trigger button (52) (paragraphs [0001]-[0004]). The device claimed corresponds to the first embodiment described, illustrated in Figures 1-2 reproduced below:



1.2 In accordance with the invention, the device includes means for priming the container before injection, i.e. for expelling from the container any air and perhaps a small amount of substance, to prevent that air be injected into the patient (paragraphs [0004], [0024], [0025]). In the illustrated embodiment the device is configured to exhibit the two following functions:

(a) carrying out the priming operation is arranged to move the syringe with respect to the body in proximal direction (see feature 1.5), when a user slides a priming button (70) proximally. Hence, to perform an injection operation a user has simply to "work their way up" along the device in proximal direction starting from the distal end, which makes the injection device particularly easy to use (paragraph [0035]);

(b) as a safety measure, delivery of the substance cannot take place until the priming operation has been carried out (see features 1.3-1.4; paragraph [0027]).

2. **Admittance of auxiliary requests 2-4, 6-7**

2.1 Auxiliary requests 2-4 were filed with the proprietor's statement of grounds of appeal, i.e. at the earliest possible stage of the appeal proceedings. The claims of these requests are based on the claims as granted and include amendments addressing the objections raised by the Opposition Division against the proprietor's then main request and first auxiliary request (see decision under appeal, points 11-15). The filing of these requests therefore represents a normal reaction of the proprietor to the impugned decision. The amendments

merely consist in the deletion of entire claims or alternative features in claim 1, or in the addition of features which are not technically complex and do not raise any complex new issues.

2.2 Auxiliary requests 6 and 7 were filed with the proprietor's reply to the opponent's statement of grounds of appeal. Claim 1 of both requests is based on the claim found allowable by the Opposition Division and includes minor amendments addressing the objections raised by the opponent at the oral proceedings before the Opposition Division and in their statement of grounds of appeal (points 1.1 and 2).

2.3 For these reasons, the Board decided to take auxiliary requests 2-4, 6-7 into account in accordance with Article 12(4) RPBA 2007 (which applies in this case by virtue of the transitional provisions of Article 25(2) RPBA 2020).

3. **Main request - Added subject-matter**

3.1 Claim 1 as granted is based on claim 50 of the parent application in which feature 1.5 has been incorporated from the description of the first embodiment.

3.2 The proprietor argued that feature 1.5 was originally disclosed on its own, without referring to the underlying mechanism or to the other steps of pivoting and unlocking the container (third paragraph of page 8 of the description of the parent application as filed). Feature 1.5 was also described as advantageous in itself in making the device particularly easy to use (page 12, second paragraph). Moreover, the last sentence of the first paragraph of page 9 underlined that it was not essential that the syringe turned

during priming. Hence, the original disclosure of the parent application supported the extraction of feature 1.5 from the remaining structural features of the device.

3.3 This argumentation does not convince the Board. As described on pages 8-9, the two functions of (a) priming the container by moving it in proximal direction (as defined in feature 1.5) and (b) preventing delivery of the substance until priming has been carried out (as following from features 1.3-1.4), result from a very specific interaction between several structural features of the first embodiment:

- a priming button (70) arranged to be moved during the priming operation (page 8, second and third paragraphs);

- a projection (80) formed on a container carrier (82) around the container with which a projection (72) of the priming button engages before priming has been carried out (resulting in the container carrier moving in proximal direction, as defined in feature 1.5, as the priming button is moved proximally; page 8, second paragraph) and then disengages after pivoting of the container carrier, the projections being limited in circumferential direction (page 9, first paragraph);

- a pivoting mechanism (corresponding cam surfaces provided on the container carrier and the inside of the body) arranged to cause pivoting of the container carrier about the longitudinal axis as the container is moved in proximal direction (page 9, first paragraph), thereby causing the disengagement of the projections once the priming operation has been carried out (thus,

making substance delivery then possible, features 1.3-1.4).

- 3.4 In addition, it is also required that the movement of the priming button, hence that of its projection (72), should be restricted in the distal direction (page 9, second paragraph) in order for the container carrier to be prevented from moving in distal direction until the priming operation has been performed (thus, initially preventing the substance delivery, features 1.3-1.4).
- 3.5 The intricate structural and functional relationship between these features does not allow, with regard to the requirements of Art. 76(1) EPC, to isolate from this embodiment the sole feature 1.5 while omitting the additional features above. This applies in particular to the cooperating projections (72, 80) which are responsible for both functions (a) and (b) defined by features 1.5 and 1.3-1.4 as discussed above.
- 3.6 The proprietor's argument that the parent application, page 9, first paragraph, disclosed that it was "not essential" that the syringe, i.e. the container, turned during priming is not relevant. In fact, this passage underlines, by contrast, that pivoting of the container carrier during priming and the resulting disengagement of the projections is at the core of the first embodiment and cannot be separated from the proximal movement of the container carrier. Moreover, the fact that priming is achieved by moving the container in proximal direction may be advantageous does not contradict the view above.
- 3.7 The subject-matter of claim 1 is therefore based on an unallowable intermediate generalisation of the first embodiment in breach of Article 76(1) EPC.

4. **Auxiliary requests 1-4 - Added subject-matter**

Claim 1 of each of auxiliary requests 1-4 lacks at least some of the features mentioned in point 3.3 above, in particular the cooperating projections. Consequently, the objection under Article 76(1) EPC raised against the main request in point 3.5 above also applies to these requests.

5. **Auxiliary request 5 - Added subject-matter**

5.1 The Board is satisfied that claim 1 of auxiliary request 5 includes all those features mentioned in point 3.3 above which are regarded as inextricably linked to each other.

5.1.1 In particular, it follows implicitly from the definition of the priming button in claim 1 that movement of the priming button in distal direction is restricted to ensure that initially the container cannot move in distal direction and the substance delivery is impeded as long as the cooperating projections engage (see point 3.4 above). Therefore, contrary to the opponent's view, the fact that claim 1 does not stipulate that the priming button is prevented from moving in a distal direction by contacting the distal end of the window does not contravene Article 76(1) EPC.

5.1.2 Furthermore, as brought forward by the proprietor, the parent application provides ample support for a substance delivery device which does not include a container carrier, but is merely suitable "for use" with a container carrier specifically configured therefor (see e.g. page 12 of the description, third

paragraph which, contrary to the opponent's assertion, relates to the first embodiment).

While the container carrier is not part of the device claimed, those features of the container carrier which are inextricably linked with those of the device as discussed in point 3.3 above do limit the definition of the device itself since the device as claimed is required to be suitable for use with a container carrier including those specific features. This excludes de facto devices which are not suitable for use with such container carriers. The Board therefore sees no violation of Article 76(1) EPC in this respect.

5.1.3 The parent application also supports that claim 1 refers to a container carrier merely "suitable for use with a container portion", and not to a container carrier necessarily including a container portion (see also page 12, third paragraph). This is in line with the fact that the interaction claimed between the container and the substance delivery device entirely relies upon features of the delivery device and the container carrier, and not on features of the container portion.

5.2 On the other hand, claim 1 stipulates that "the priming button (70) can be slid parallel to the longitudinal axis of the device *over the length of the window (18)*" (emphasis added). According to the proprietor, this wording means that the priming button is configured to slide *from one side of the window to the other side of the window*.

The Board shares the opponent's contention that this feature is not supported by the parent application as filed. Disclosed on page 8, second paragraph is indeed

that the priming button can be slid "over a small distance *determined by* the length of the window" (emphasis added), which distance may differ from the length of the window itself. For that reason, the requirements of Article 76(1) EPC are not met.

6. **Auxiliary request 6**

6.1 *Added subject-matter*

Compared to claim 1 of auxiliary request 5, claim 1 of auxiliary request 6 specifies that the priming button can be slid "over a distance determined by the length of the window", and not over the length of the window itself. This wording is in line with the original disclosure of the parent application.

How large said distance is is, however, not relevant for the function of the injection device. The omission of the adjective "small" in claim 1 does therefore not violate Article 76(1) EPC, contrary to the opponent's argument.

The Board therefore concludes that the subject-matter of claim 1 of auxiliary request 6 meets the requirements of Article 76(1) EPC.

6.2 *Clarity*

Contrary to the opponent's argument, the definition of the substance delivery device of claim 1 as being suitable for use with a specific container carrier (i.e. not any container carrier, but one including the specific features further defined in claim 1, namely the engagement formations 80 and the first cam surfaces) clearly sets out the scope of protection of

claim 1 (see also point 5.1.2 above, second paragraph). The Board is therefore satisfied that claim 1 is clear (Article 84 EPC).

6.3 *Sufficiency of disclosure*

Claim 1 of auxiliary request 6 defines how the means for preventing or impeding delivery of the substance are implemented by structural features (see points 3.3, 5.1 and 6.1 above). The person skilled in the art understands that for the specific containers intended to be used with the substance delivery device claimed, the process of "delivering the substance" includes moving the container in distal direction before expelling the substance contained in the container (paragraph [0002] of the patent). As exemplified in detail with the first embodiment disclosed in the description, this step corresponds in the case of a syringe to the advancement of the syringe in distal direction so that the needle penetrates the patient's skin and the substance can subsequently be injected.

Hence, by initially preventing movement of the container in distal direction, the mechanism defined in claim 1 actually impedes "delivery of the substance" until the priming operation has been carried out (paragraph [0027]). The means for impeding or preventing the delivery of the substance before the priming operation has been carried out as defined in claim 1 are therefore sufficiently disclosed in the patent.

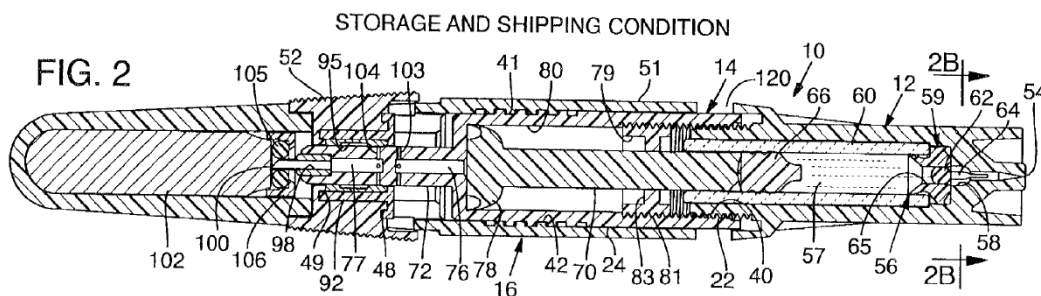
The fact that the description discloses that the container is not limited to a container which must be moved distally before the substance is expelled from the container (paragraph [0002] of the patent) and may

even be deprived of a needle (paragraph [0003]) does not prevent the person skilled in the art from implementing such means for impeding or preventing the delivery of the substance before the priming operation has been carried out as defined in claim 1.

The Board thus concludes that the requirements of Article 83 EPC are met.

6.4 *Inventive step*

The opponent argued that claim 1 did not involve an inventive step starting from D1 as closest prior art. The opponent identified the priming button as the enlarged part of nozzle portion 12 of the injection device shown in Figure 2, reproduced below:



As described in paragraph [0053] of D1, priming is carried out by *threading* nozzle portion 12 into body portion 14. The movement of the enlarged part of nozzle portion 12 is therefore an *helical* motion, as brought forward by the proprietor. Even if an helical motion has a linear component, this motion cannot be regarded as a *sliding* motion as alleged by the opponent. It follows that D1 does not disclose a priming button which can be "slid parallel to the longitudinal axis" as required by claim 1.

The opponent's argumentation starting from D1 therefore fails at least for this reason. The opponent did not

provide any further arguments during the oral proceedings.

In the absence of any convincing reasoning, the Board finds it unlikely that the person skilled in the art would have replaced the threading connection of nozzle portion 12 with body portion 14 by a sliding connection, in view of the significant changes that would have been required in the overall structure of the device.

The Board therefore concludes that the subject-matter of claim 1 of auxiliary request 6 involves an inventive step starting from D1 (Article 56 EPC).

6.5 *Description*

The opponent had no objection against the description. The Board is also satisfied that the description of the patent as granted is adapted to claim 1 of auxiliary request 6.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent as amended in the following version:
 - Claim 1 of auxiliary request 6 filed with letter dated 23 January 2017
 - Description pages 2-10 of the patent specification
 - Figures 1-18 of the patent specification.

The Registrar:

The Chairman:



D. Hampe

M. Alvazzi Delfrate

Decision electronically authenticated