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**Datasheet for the decision  
of 3 December 2021**

**Case Number:** T 1079/17 - 3.4.03

**Application Number:** 13199673.8

**Publication Number:** 2889853

**IPC:** G09B19/00, A63B24/00

**Language of the proceedings:** EN

**Title of invention:**

A method for optimizing running performance for an individual

**Applicant:**

SHFT ApS

**Headword:**

**Relevant legal provisions:**

EPC Art. 83, 84, 97(2), 111(1), 113(1)

**Keyword:**

Sufficiency of disclosure - (no)  
Claims - clarity (no) - conciseness (no)

**Decisions cited:**

**Catchword:**



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Case Number: T 1079/17 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 3 December 2021**

**Appellant:** SHFT ApS  
(Applicant) Rued Langgaards Vej 7  
2300 Copenhagen S (DK)

**Representative:** Nordic Patent Service A/S  
Bredgade 30  
1260 Copenhagen K (DK)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 14 December  
2016 refusing European patent application No.  
13199673.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** G. Eliasson  
**Members:** T. M. Häusser  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

I. The appeal concerns the decision of the examining division refusing the European patent application No. 13 199 673 for lack of inventive step (Article 56 EPC) in view of the following document:

D1: US 2008/0190202 A1

II. The appellant indicated in the letter dated 13 October 2021 that it was not going to attend the scheduled oral proceedings before the board which were subsequently cancelled.

In the letter of 7 April 2017 setting out the grounds of appeal the appellant requested that the impugned decision be set aside and a patent be granted on the basis of the "claims filed 17 November 2016". In the alternative, the appellant requested that a patent be granted "based on the auxiliary request filed together with this submission".

However, no claims were filed on 17 November 2016. Rather, the claims upon which the impugned decision is based were filed on 21 November 2016 (see page 2 of the decision). Moreover, no set of claims of an auxiliary request was filed together with the letter setting out the grounds of appeal.

In its communication pursuant to Article 15(1) RPBA 2020 the board requested the appellant to clarify its requests and informed the appellant that it assumed the appellant to have requested that the decision under appeal be set aside and a patent be granted on the basis of the claims filed on 21 November 2016.

Since the appellant neither clarified its requests nor contested the board's stated assumption this is considered to constitute the appellant's request.

III. The wording of independent claim 1 and dependent claim 5 of the set of claims filed with the letter dated 21 November 2016 is as follows (board's labelling "(a)" to "(e)"):

"1. A method for optimizing running performance for an individual (10) during a training pass in order to minimize the risk of injury, the method comprising the steps of:

- (a) continuously monitoring movements of a foot of the individual (10) in real time during running, using one or more accelerometers arranged at or near the foot of the individual,
- (b) transmitting data obtained during the monitoring step from the one or more accelerometers (11) to a portable electronic processing device (13),
- (c) the portable electronic processing device (13) deriving a three-dimensional movement pattern of the foot of the individual during an impact phase of a stride in real time by deriving points of impact and duration of impact on the foot between the foot and the ground during an impact phase of a stride, monitoring points of impact between the foot and the ground, monitoring duration of impact between the foot and the ground, based on the information regarding the speed, position and impact time of the foot, during the impact phase of a stride obtained by the accelerometers during the monitoring step,
- (d) the portable electronic processing device (13) continuously comparing the derived movement pattern

of the foot of the individual during an impact phase of a stride in real time to an optimal movement pattern, said optimal movement pattern being a pattern that is known to minimize the risk of injuries, and

- (e) the portable electronic processing device (13) providing audible feedback in real time repeatedly during the entire running pass to the individual, based on the comparing step, and in order to adjust the movement pattern of the foot of the individual in the direction of the optimal movement pattern, thereby improving a running performance in order to minimize the risk of injury."

"5. A method according to any of the preceding claims, wherein the step of deriving a movement pattern of the foot comprises deriving points of impact and/or duration of impact on the foot between the foot and the ground during an impact phase of a stride."

## **Reasons for the Decision**

2. Procedural matters

2.1 Oral proceedings

Oral proceedings were scheduled to be held before the board on 18 November 2021 as requested by the appellant in the statement setting out the grounds of appeal (see point 1 of the letter). In its letter dated 13 October 2021 the appellant stated that it was not going to attend these oral proceedings.

In accordance with settled case law the board considers this statement as equivalent to a withdrawal of the

request for oral proceedings (see *Case Law of the Boards of Appeal of the EPO*, 9th edition 2019, section III.C.4.3.2). Consequently, the oral proceedings were cancelled and the proceedings were continued in writing.

## 2.2 Right to be heard

In its communication pursuant to Article 15(1) RPBA 2020 dated 25 November 2020 the board raised for the first time objections of lack of sufficiency of the disclosure and lack of clarity and conciseness and informed the appellant of the corresponding essential reasoning. The appellant has not availed itself of the opportunity to present its comments on these issues but has had available a period of about one year to do so. The present decision, which is based on these grounds, is therefore in conformity with the requirements of Article 113(1) EPC that the decisions of the EPO may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

## 3. Sufficiency of the disclosure

3.1 According to the claimed method for optimizing the running performance of an individual the movements of the individual's foot are continuously monitored in real time during running using an accelerometer (feature (a)). The data of the accelerometer (see feature (b)) are then used to derive and monitor points of impact and duration of impact between the foot and the ground to thereby derive a three-dimensional movement pattern of the individual's foot (feature (c)). The derived movement pattern is then continuously

compared to an "optimal movement pattern ... known to minimize the risk of injuries" (feature (d)).

3.2 However, there is no disclosure in the application about what constitutes an "optimal movement pattern".

3.2.1 The part of the description disclosing the invention in general terms merely describes the desired physiological consequences of the "optimal movement pattern", e.g. the fact that undesired loads on muscles, joints and tendons are minimized (see page 3, paragraph 2). Moreover, it is stated in unspecific terms that artificial intelligence may be used to obtain these patterns (see page 8, paragraph 4).

However, there is no indication of the specific technical characteristics of the "optimal movement pattern", namely in terms of values of quantities derived from the acceleration data (see feature (c)), or on how precisely such values might be obtained using artificial intelligence.

3.2.2 In the part of the description of the application disclosing the invention in detail it is mentioned that the "maximum impact force", "ground contact duration", "foot imprint characteristics", and the "magnitude and/or position of an impact" may be determined and used to derive the claimed movement pattern of the individual's foot during the impact phase of a stride (paragraph bridging pages 10 and 11; page 13, paragraph 3).

However, in relation to none of these parameters the description provides any details, e.g. typical values, let alone optimal values for avoiding risks of injuries. Hence, no guidance is provided to the skilled person to identify the optimal combination of values of



these parameters minimizing the risk of injuries. Rather, the skilled person needs to find out these values from scratch without any such guidance. This is considered to amount to an undue burden.

- 3.2.3 The board is therefore of the opinion that the description does not describe in detail at least one way of carrying out the claimed invention (Rule 42(1) (e) EPC) and the application does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person (Article 83 EPC).

4. Clarity, conciseness

- 4.1 Since there is no indication in claim 1 about what constitutes an "optimal movement pattern" that is "known to minimize the risk of injuries" the reader is also left in doubt as to the boundaries of the scope of the claim. The skilled person is therefore not in a position to establish whether or not subject-matter falls within the claimed scope.

Therefore claim 1 is not clear, contrary to the requirements of Article 84 EPC, second sentence.

- 4.2 Dependent claim 5 relates to the additional feature that the step of deriving a movement pattern of the foot comprises deriving points of impact and/or duration of impact on the foot between the foot and the ground during an impact phase of a stride.

Feature (c) of claim 1, on which claim 5 depends, relates to a more specific implementation of the same subject-matter as it specifies in addition that the movement pattern is "three-dimensional" and derived "in

real time" and that both the points of impact and the duration of impact are derived for determining the movement pattern. The additional feature of claim 5 is therefore necessarily implied by feature (c).

Hence, claim 5 is redundant and the set of claims is not concise, contrary to the requirements of Article 84 EPC, second sentence.

5. Conclusion

Since the application does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person, claim 1 is not clear and the set of claims is not concise, the examining division's decision refusing the application is confirmed. Consequently the appeal has to be dismissed (Articles 97(2) and 111(1) EPC).

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



B. Atienza Vivancos

G. Eliasson

Decision electronically authenticated