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**Datasheet for the decision
of 6 March 2023**

Case Number: T 0207/18 - 3.2.02

Application Number: 11758266.8

Publication Number: 2584962

IPC: A61B5/0428

Language of the proceedings: EN

Title of invention:
BIOMETRIC BELT CONNECTOR

Patent Proprietor:
Nox Medical ehf.

Opponent:

Headword:

Relevant legal provisions:
EPC Art. 54(2)

Keyword:
Novelty - public prior use (no)

Decisions cited:

Catchword:



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Case Number: T 0207/18 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 6 March 2023

Appellant: Nox Medical ehf.
(Patent Proprietor) Katrinartun 2
105 Reykjavik (IS)

Representative: Arnason Faktor
Intellectual Property Consulting
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Appellant:
(Opponent)

Representative:

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
6 November 2017 concerning maintenance of the
European Patent No. 2584962 in amended form.

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
C. Schmidt
A. Martinez Möller
N. Obrovski

Summary of Facts and Submissions

- I. Both the patent proprietor and the opponent filed an appeal against the decision of the Opposition Division to maintain the patent on the basis of auxiliary request 1.
- II. By letter of 25 June 2019, the opponent withdrew its opposition and the appeal.
- III. The appellant (patent proprietor) requests that the decision be set aside and the patent be maintained on the basis of one of the main request (patent as granted) and the first to seventh auxiliary requests filed with the statement of grounds of appeal.
- IV. The following documents are relevant to this decision.
- D1 US 2010/0297868
 - D2 CareFusion Disposables and Accessories Catalog for Respiratory Diagnostics, March 2010
 - D11 Test results submitted with the patent proprietor's letter of 23 February 2017
 - D14 Declaration of Dr Justin C. Williams
 - D21 Enlarged colour photographs of D11
- V. Claim 1 of the patent as granted (main request) reads as follows.
- "An electrode belt (2) with attached biometric belt connector (1) for electrically connecting the electrode belt to a biometric device to be carried on a human or animal body, the belt connector comprising:
- (a) a molded plastic frame (3) having a front side and a rear side,

(b) said frame having a receiving hole (6) with radial flexibility to function as a female snap button fastener for receiving and fastening on the frame a male snap protrusion,
(c) fastening means (7) for fastening to the frame a belt end of said electrode belt, and
(d) a member (13) adjacent to said hole, which member engages an electrode wire end (9) electrically connected to said belt such that said end is in contact with said hole and comes in electrical contact with a conducting male snap fastener inserted in said hole."

VI. The patent proprietor's arguments relevant to the decision can be summarised as follows.

The photo of D2 showed an electrode belt as disclosed in D1. Such a belt had been produced and sold prior to the filing date of the patent in suit.

No prior-use evidence had been produced indicating if and when the connector shown in the photos of D14 and D11/D21 had been used prior to the filing date of the patent. The devices used for the tests in D14 and D11/D21 were bought and used after the filing date of the patent.

Therefore, D14 and D11/21 should not be used as prior art showing anything other than what was disclosed in D1 or D2.

Reasons for the Decision

1. The invention relates to a belt to be carried on a human or animal body, having an attached connector for

connecting the belt to a biometric device. The biometric device is configured to measure biosignals, e.g. cardiography or respiratory signals.

The belt connector (Figures 1 and 2) comprises a moulded plastic frame (3) having a receiving hole (6). The receiving hole has radial flexibility to function as a female snap button fastener for receiving a male snap protrusion (of the biometric device). The plastic frame also has fastening means (7) for fastening a belt end and a member (13) adjacent to the hole (6), which member engages an electrode wire end electrically connected to the belt such that the wire end is in contact with the hole and comes in electrical contact with a conducting male fastener inserted in the hole.

2. Novelty

2.1 The Opposition Division considered the subject-matter of claim 1 to lack novelty over the public prior use of a "marketed device as shown in D2 corroborated by D14 and D21" (point 24.1.3 of the decision).

2.2 D2 is a product catalogue showing a photo of a RIP belt of the patent proprietor Nox Medical (page 99). The patent proprietor acknowledged during opposition proceedings that the photo of D2 shows an electrode belt as disclosed in D1 and that such a belt had been produced and sold prior to the filing date of the patent in suit (points 4.1 and 4.2 of the reply to the notice of opposition). The belt has a connector with a hole. However, from the photo it cannot be discerned whether there is a wire end extending into the hole or being in contact with the hole on the connector.

As also admitted by the patent proprietor (D11, first

paragraph; minutes of the oral proceedings before the Opposition Division, points 4.5.7, 4.5.8, 4.5.15), both D14 and D11/D21 show photos of two types of electrode belts as defined in D1 and D2. The photos were made to record the results of tests done during litigation proceedings in the US, i.e. after the filing date of the patent. The Opposition Division held that the patent proprietor had admitted the public prior use of the device of D14 and D11/D21.

- 2.3 The Board agrees with the patent proprietor that no evidence of public prior use has been produced indicating if and when the connector shown in the photos of D14 and D11/D21 was used prior to the filing date of the patent.

Moreover, the patent proprietor did not admit that the connector used in the tests of D11/D21 and D14 had been publicly used before the filing date of the patent. As can be derived from the above-mentioned documents, it instead acknowledged that the connector used in the tests was a connector as disclosed in D1.

The opponent alleged that the patent proprietor admitted the public prior use in the US litigation proceedings and announced in its reply to the patent proprietor's statement of grounds of appeal to submit documents D23 and D24 (a draft pretrial order in the US litigation and a transcript of the related court hearing). However, these documents have not been submitted and are thus not available to the Board. Hence, the opponent's allegation is not supported by any evidence.

Consequently, D11/D21 and D14 cannot be used as prior art showing any details of the device shown in the

photo on page 99 of D2.

Therefore, whether D14 or D11/D21 shows a wire end in contact with the hole does not need to be addressed.

- 2.4 Hence, the subject-matter of claim 1 is not anticipated by any prior use of a device shown in D2.
3. Since lack of novelty over the prior use of a device according to D2 was the only reason for refusing the main request in the Opposition Division's decision (all other issues were decided in favour of the patent proprietor) and since the opponent withdrew its opposition, no other issues have to be considered by the Board.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chair:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated