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**Datasheet for the decision
of 14 December 2021**

Case Number: T 0496/18 - 3.2.02

Application Number: 06826283.1

Publication Number: 1945294

IPC: A61B19/00, A61M25/00

Language of the proceedings: EN

Title of invention:
CONVERSION DEVICE

Applicant:
Richmond, Frank M.

Relevant legal provisions:

RPBA 2020 Art. 12(3)

RPBA Art. 12(4)

Keyword:

Admissibility of request (no)



Beschwerdekammern

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Case Number: T 0496/18 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 14 December 2021

Appellant: Richmond, Frank M.
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Representative: Richards, John
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 November
2017 refusing European patent application No.
06826283.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The applicant filed the appeal against the examining division's decision to refuse its patent application.

In that decision, the claims of the main request were found to lack inventive step and the claims of the first auxiliary request found to contain subject-matter extending beyond the content of the application as filed.

II. The appeal was filed with letter dated 29 January 2018, submitting at the same time the grounds of appeal. The appellant gave "notice of appeal against the rejection of [the] application" and requested to "consider the claims of the Second Auxiliary submitted herewith". Oral proceedings were requested as an auxiliary measure.

III. By a telefax received on 29 November 2021, the appellant stated that it would not attend the oral proceedings before the Board to which it had been summoned. The oral proceedings were therefore cancelled and the present decision relies on the appellant's written case.

IV. Independent claims 1 and 5 of the second auxiliary request read as follows (amendments in respect of the first auxiliary request highlighted by the Board):

*"1. A conversion device (100) comprising;
an attachment feature (206, 201, 102, 207, 201, 202, 105, 101) having a valve-connectable interface for attaching to a valve (205, 207) of a container, wherein the ~~valve-connectable interface~~ valve comprises a*

resilient valve member that is uninterrupted within an outer periphery of the valve and that is deformable to a configuration wherein a fluid communication through the valve member is permitted,

at least one membrane port (107) comprising an internal membrane on an end opposite the valve-connectable interface (205, 207), the at least one membrane port (107) effective for receiving a spike (401), and

an intermediate structure (103) disposed between the attachment feature and the at least one membrane port (107),

wherein said intermediate structure is attached to said attachment feature on one end of said intermediate structure;

wherein said at least one membrane port is attached to an inside of another end of said intermediate structure; and

wherein said intermediate structure is connectable to a plurality of different attachment feature types."

"5. A method for connecting a spike to a valve of a container using a conversion device comprising an attachment feature having a valve-connectable interface for attaching to the valve, at least one membrane port comprising an internal membrane on an end of the conversion device opposite the valve-connectable interface, the at least one membrane port effective for receiving the spike, and an intermediate structure disposed between the attachment feature and the at least one membrane port, the method comprising:

connecting a valve (205, 207) to an attachment feature on the conversion device (100);

deforming a resilient valve member that is uninterrupted within an outer periphery of the valve to

a configuration wherein a fluid communication through the valve member is permitted; and

spiking the at least one membrane port (107) on the conversion device with the spike (401),

wherein said intermediate structure is attached to said attachment feature on one end of said intermediate structure and wherein said at least one membrane port is attached to an inside of another end of said intermediate structure; and

wherein said intermediate structure is connectable to a plurality of different attachment feature types."

Reasons for the Decision

1. According to Article 12(3) RPBA 2020, the statement of grounds of appeal shall contain a party's complete appeal case. Accordingly, the statement shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on.

Although these requests have not been explicitly withdrawn, the appellant's statement of grounds of appeal contains no argument whereby the examining division's findings about the main request and the first auxiliary request considered in the decision under appeal were wrong and had thus to be set aside. Hence, the main request and the first auxiliary request do not form part of the appeal proceedings.

The second auxiliary request, filed for the first time with the statement of grounds of appeal, therefore constitutes the appellant's main and sole request in the appeal proceedings.

2. According to Article 12(4) RPBA 2007, which applies in this case by virtue of the transitional provisions of Article 25(2) RPBA 2020, the Board has the power to hold inadmissible requests which could have been presented in the first-instance proceedings.

2.1 The appellant explained in the statement of grounds of appeal (page 1, penultimate paragraph) that the amendments made in the claims of the second auxiliary request were intended to overcome the added subject-matter objections raised against the first auxiliary request in the decision under appeal (point 16). These objections essentially related to the definition of the "valve-connectable interface" and its support in the application as filed.

The appellant further submitted (page 2, first paragraph) that due to these amendments, the claims of the second auxiliary request also involved an inventive step over the document held as closest prior art in the decision (point 15).

2.2 As indicated in point 10 of the decision, however, an added subject-matter objection was already raised against an appellant's earlier auxiliary request during a telephone conversation between the first examiner and the appellant on 6 November 2017, well in advance of the oral proceedings to which the appellant had been summoned by the examining division. This earlier objection, substantiated in writing in point 1 of the telephone conversation's minutes, already concerned the definition of the "valve-connectable interface" and its basis in the application as filed. The added subject-matter objections against the first auxiliary request substantiated in the decision under appeal (point 16)

essentially follow the same line of reasoning as this earlier objection.

2.3 Moreover, the inventive step objections against the main request substantiated in the decision (point 15) have been repeated *verbatim* from the annex (point 4) accompanying the summons to attend oral proceedings dated 16 June 2017 issued by the examining division. These objections were also maintained during the above-mentioned telephone conversation between the first examiner and the appellant (point 2 of the minutes).

2.4 Therefore, the appellant had knowledge of the examining division's objections - on which the decision under appeal was ultimately based - already well in advance of the oral proceedings to which the appellant had been summoned by the examining division.

Although the appellant had been informed that the oral proceedings might be concluded with the refusal of the application (point 2 of the summons; point 3 of the minutes of the above-mentioned telephone conversation), the appellant nevertheless decided not to attend these oral proceedings (point 11 of the decision).

In the Board's opinion, the appellant could and should have filed the second auxiliary request in the first-instance proceedings. This could have been done in advance of or during the oral proceedings before the examining division that the appellant decided not to attend.

This was not contested by the appellant.

2.5 Under the present circumstances as discussed above, the Board, exercising its discretion, finds it

appropriate not to admit the second auxiliary request into the appeal proceedings.

3. As there is no allowable request, it follows that the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Hampe

M. Alvazzi Delfrate

Decision electronically authenticated