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Datasheet for the decision of 17 November 2022

Case Number: T 2384/18 - 3.2.02

Application Number: 09810642.0

Publication Number: 2320990

IPC: A61M31/00, A61M25/01

Language of the proceedings: EN

Title of invention:
CATHETER CONTROL SYSTEM AND GRAPHICAL USER INTERFACE

Patent Proprietor:
Corindus, Inc.

Opponent:
Spreepatent Schutzrechtsverwertung und Innovationstransfer GmbH

Headword:

Relevant legal provisions:
EPC Art. 123(2), 56
RPBA 2020 Art. 13(1)
RPBA Art. 12(4)

Keyword:

Amendments - added subject-matter (yes)
Inventive step - (yes) - problem and solution approach
Amendment to appeal case - amendment overcomes issues raised (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
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Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2384/18 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 17 November 2022

Appellant: (Opponent)	Spreepatent Schutzrechtsverwertung und Innovationstransfer GmbH Rudower Chaussee 29/31 12489 Berlin (DE)
Representative:	Gulde & Partner Patent- und Rechtsanwaltskanzlei mbB Wallstraße 58/59 10179 Berlin (DE)
Respondent: (Patent Proprietor)	Corindus, Inc. 11 Erie Drive Natick, MA 01760 (US)
Representative:	Horn Kleimann Waitzhofer Patentanwälte PartG mbB Ganghoferstraße 29a 80339 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 19 July 2018 concerning maintenance of the European Patent No. 2320990 in amended form.**

Composition of the Board:

Chairman	M. Alvazzi Delfrate
Members:	A. Martinez Möller
	Y. Podbielski

Summary of Facts and Submissions

I. The appeal is directed against the interlocutory decision of the Opposition Division that, account being taken of the amendments made by the patent proprietor during the opposition proceedings according to then auxiliary request 3, the patent and the invention to which it related met the requirements of the Convention.

II. In preparation for the oral proceedings, the Board sent a communication dated 7 July 2022 setting out its preliminary opinion. The Board indicated, among other points, that two issues of added subject-matter for claim 1 as maintained by the Opposition Division appeared to be of particular relevance and invited the parties under Rule 100(2) EPC to reply to those two issues.

III. Oral proceedings before the Board took place on 17. November 2022.

The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (proprietor) requested that the appeal be dismissed (main request) or that the patent be maintained on the basis of auxiliary request 1a filed with letter dated 7 September 2022, or one of auxiliary requests 1-7 filed with the reply to the statement of grounds of appeal.

IV. Claim 1 of the **main request** reads as follows:

"A remote workstation (14) for the control of percutaneous intervention devices provided at multiple remote lab units, the remote workstation comprising:

a control system (16) configured to remotely and independently control at least two percutaneous intervention devices, the control system including at least one input device (18, 23, 25, 29, 31) to control the percutaneous intervention devices, wherein the control system controls movement of at least one of the percutaneous intervention devices along at least two degrees of freedom;

a graphical user interface (200) configured to display a first set of icons representative of the operational status of the two percutaneous intervention devices; and

a measurement module (66) configured to allow a user to measure the length of a structure by aligning the tip of a percutaneous device controlled by the control system (16) with the distal end of the structure, withdrawing the tip until it is aligned with the proximal end of the structure and measuring the distance moved by a percutaneous device as the percutaneous device traverses the length of the structure, wherein the measurement module is configured to cause the display of the measured length on a display device, and wherein

the measurement module (66) is operable to be activated by a user when the distal tip of the percutaneous device is aligned with the distal end of the structure and the measurement module enables the user to indicate when the tip is aligned with the proximal end of the structure, and the measurement module (66) is configured to calculate the distance that the percutaneous device was withdrawn as the measured length on the display device; and

the workstation includes a selection device to enable the user located at the workstation to select which lab unit the workstation is currently controlling."

V. Claim 1 of **auxiliary request 1a**, with the amendments as compared to claim 1 of the main request highlighted, reads as follows:

"A remote workstation (14) for the control of percutaneous intervention devices, provided at multiple remote lab units, the remote workstation comprising:

a control system (16) configured to remotely and independently control at least two percutaneous intervention devices of a selected lab unit (11) of the multiple remote lab units, the at least two percutaneous intervention devices including a guide wire, the control system including at least one input device (18, 23, 25, 29, 31) to control the percutaneous intervention devices, wherein the control system controls movement of at least one of the percutaneous intervention devices along at least two degrees of freedom;

a graphical user interface (200) configured to display a first set of icons representative of the operational status of the two percutaneous intervention devices; and

a measurement module (66) configured to allow a user to measure the length of a structure by aligning the tip of ~~a~~ the guide wire ~~percutaneous device~~ controlled by the control system (16) with the distal end of the structure, withdrawing the tip until it is aligned with the proximal end of the structure and measuring the distance moved by ~~a percutaneous device~~ the guide wire as the guide wire ~~percutaneous device~~ traverses the

length of the structure, wherein the measurement module is configured to cause the display of the measured length on a display device, and wherein

the measurement module (66) is operable to be activated by a user when the distal tip of the guide wire ~~percutaneous device~~ is aligned with the distal end of the structure and the measurement module enables the user to indicate when the tip is aligned with the proximal end of the structure, and the measurement module (66) is configured to calculate the distance that the guide wire ~~percutaneous device~~ was withdrawn as the measured length on the display device; and

the workstation includes a selection device to enable the user located at the workstation to select which lab unit the workstation is currently controlling."

VI. The following documents are relevant to this decision:

D2: US 6 428 512 B1
D5: US 6 726 675 B1
D11: WO 00/30548 A1
D12: WO 98/16895 A1
D13: US 2003/0060808 A1

VII. The appellant's arguments relevant the decision can be summarised as follows.

(a) Main request - Amendments

The subject-matter of claim 1 comprised added subject-matter for the following reasons.

One percutaneous device in each lab unit
Claim 1 encompassed a workstation configured to control one percutaneous device from a lab unit and another

percutaneous device from another lab unit. This was not originally disclosed and additionally resulted in an unallowable extension of the scope of protection.

"Tip" instead of "distal tip"
There was no support to generalize the term "distal tip" to "tip", since the latter term was not restricted to the distal extremity.

"Structure" instead of "lesion"
There was no support to generalise "vascular lesion" to "structure". Also the embodiment of paragraph [0067] was restricted to a vascular lesion.

"Withdraw" instead of "retract"
There was no support to generalize "retract" by "withdraw". Withdraw meant to remove or take away, which could be done by pulling or pushing, while retract meant to draw back and could only be done by pulling.

"Withdraw tip" instead of "retract guide wire"
There was no support to replace "retract guide wire" (as used in paragraph [0067]) by "withdraw tip". If the guide wire had abutted against a wall before going back towards the lesion, it was then possible to withdraw the distal tip of the guide wire from the proximal end of the lesion to the distal end by pushing the guide wire and not pulling it, thereby not retracting the guide wire.

Unallowable inclusion of a function module
Claim 1 defined that the function "by aligning the tip of a percutaneous device controlled by the control system with the distal end of the structure" was performed by the measurement module, but paragraph

[0067] only provided support for the function being performed before the measurement module was activated and thus implemented outside the measurement module.

Unallowable combination of two separate embodiments
Claim 1 showed indirect guide wire retracting (i.e. using the control system) combined with current distance measurement (i.e. while the device is withdrawn). These two features were respectively disclosed in two different embodiments, namely that of paragraph [0067] and that of paragraphs [0080]-[0081], so that claim 1 was an unallowable combination of both. The same applied to the combination of the control system from original claim 1 and the structure length measuring method from original independent claim 41.

"Percutaneous device" instead of "guide wire"
There was no support to generalize the measurement using a "guide wire" to the measurement using a "percutaneous device".

(b) Auxiliary request 1a - Admittance

A communication under Article 15(1) RPBA was not an invitation to file further requests.

The proprietor had filed seven auxiliary requests before, none of them dealing with added subject-matter. Admitting a further request resulted in additional complexity and could have an impact on the prior art assessment.

The amendments in auxiliary request 1a addressed two issues, but only one of them was found convincing and the other had already been submitted in the opposition proceedings.

(c) Auxiliary request 1a - Inventive step

The subject-matter of claim 1 was not inventive when starting from D5 in combination with D2 and any of D11 or common general knowledge. D5 disclosed all features of claim 1 except (a) the two features related to the measurement module; and (b) the selection of a lab unit from multiple remote lab units. The distinguishing features solved partial problems. The features of the measurement module solved the problem of providing a further use for the remotely controlled device. Faced with this problem, the person skilled in the art would consult D2 and modify the workstation of D5 in view of the embodiments of Figures 7 and 8, which taught displaying the measured length on a display. The selection of a lab unit out of a plurality of lab units was obvious from either of common general knowledge or D11.

The subject-matter of claim 1 was also not inventive when starting from D2. The distinguishing features related to the control system and graphical user interface and solved the problem of improving control of the percutaneous devices, while the distinguishing feature of the selection of which lab unit the workstation is currently controlling solved the problem of improving efficiency of lab units. Their solutions were respectively taught by D5 and by any of D11 or common general knowledge (exemplified by any of D12 and D13).

VIII. The respondent's arguments relevant to the decision can be summarised as follows.

(a) Main request - Amendments

One percutaneous device in each lab unit
Claim 1 defined that the user selected which lab unit was currently controlled and that the control system controlled two percutaneous devices. Hence, claim 1 required that the two controlled devices belonged to the same currently controlled lab unit. This interpretation of claim 1 would also be confirmed when consulting the description.

"Tip" instead of "distal tip"
References to "tip" in claim 1 were clearly references to the distal tip.

"Structure" instead of "lesion"
Paragraphs [0066]-[0067] of the application as filed showed that a lesion was an example of a structure and justified the generalisation.

"Withdraw" instead of "retract"
The person skilled in the art would understand that both terms were used as synonyms.

"Withdraw tip" instead of "retract guide wire"
The person skilled in the art would understand that "withdrawing the tip" in claim 1 meant moving the tip by withdrawing/retracting the wire.

Unallowable inclusion of a function module
Claim 1 did not require the measurement module to align the tip. It was the user that aligned the tip.

Unallowable combination of two separate embodiments
There was no distinction between the distance measurement (total versus current) in paragraphs [0067] and [0080]-[0081] of the application as filed.

"Percutaneous device" instead of "guide wire"
The guide wire was presented in paragraphs [0066]-[0067] of the application as filed as an example of a percutaneous device. The person skilled in the art would understand that the measurement worked not only with the distal end of a guide wire but with the distal end of any suitable percutaneous device.

(b) Auxiliary request 1a - Admittance

The request was filed as a direct reaction to the Board's invitation under Rule 100(2) EPC and addressed the mentioned issues of added subject-matter. It would not be reasonable to expect a party to file hundreds of requests addressing all possible combinations of objections. The amendments did not add complexity to the case.

(c) Auxiliary request 1a - Inventive step

There were six different features distinguishing the subject-matter of claim 1 from D5. Also if starting from D5 the teaching of D2 would be considered, D2 did not disclose displaying the measured length on a display. In the embodiments of Figures 7 and 8 of D2, it was necessary for the user to subtract the value of the distance at one end of the lesion from the value of the distance at the other end of the lesion, as explained in column 4, lines 38-42.

The subject-matter of claim 1 was also inventive when starting from D2. D2 did not disclose displaying the measured length on a display. Moreover, the feature of the control system interacted with the ability to select which lab unit the workstation was currently

controlling to provide an improved efficiency of the workstation. Furthermore, it was impermissible to combine D2 with the control taught by D5 and then look for further prior art to teach further features relating to the control that were not taught by D5.

Reasons for the Decision

1. The invention

The invention relates to a remote workstation for the control of percutaneous intervention devices provided at multiple remote lab units. The workstation comprises a control system, a graphical user interface, a measurement module and a selection device.

The control system is configured to remotely and independently control at least two percutaneous intervention devices, e.g. a guide wire and a working catheter. The graphical user interface is configured to display a set of icons representative of the operational status of the two percutaneous devices. The selection device enables the user to select the lab unit that the workstation is currently controlling.

The measurement module is configured to allow the user to measure the length of a structure (e.g. a vascular lesion) by measuring the distance moved by a controlled percutaneous device as it traverses the length of the structure (see Figure 7 of the patent specification reproduced below, the reference signs in parentheses corresponding to this embodiment). This is done by first aligning the distal tip (150) of the percutaneous device (guide wire 142) with the distal end (152) of

the structure (lesion 140). The measurement module (66) is then activated by the user. The distal tip (150) is then withdrawn until it is aligned with the proximal end (154) of the structure (140). The user indicates this alignment and then the measurement module (66) calculates the distance that the percutaneous device (142) was withdrawn and displays it on a display device.

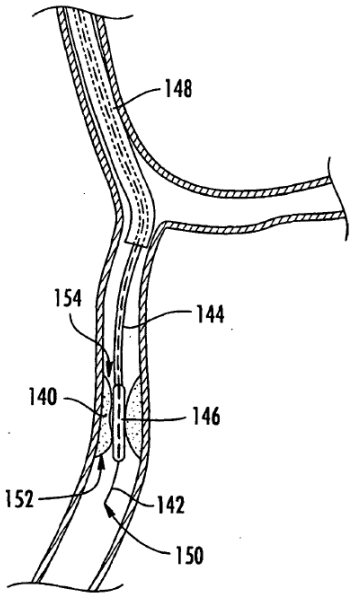

FIG. 7

Figure 7 of the patent specification.

2. Main request - Amendments

2.1 One percutaneous device in each lab unit

The control system in claim 1 is "configured to remotely and independently control at least two percutaneous intervention devices", without any indication in claim 1 that it is configured to simultaneously control the at least two devices. Hence, claim 1 encompasses also the sequential control of the

two devices. Such sequential control by selecting which device to control each time is also described in paragraphs [0024], [0060] and [0075] of the application as filed and the corresponding passages of the granted description. There are thus no reasons to interpret claim 1 as limited to a system where the two controlled devices belong to the same currently controlled lab unit.

The selection of the "currently" controlled lab unit in the last feature of claim 1 does not imply that the at least two percutaneous intervention devices that the control system is configured to control must be provided in the same lab unit. Claim 1 encompasses for example a workstation which allows to currently control a lab unit with only one percutaneous device and to sequentially control a further lab unit with another percutaneous device.

It is undisputed that the application as filed does not disclose controlling a lab unit with a single percutaneous device but requires the at least two percutaneous devices to be provided in the same lab unit (see for example paragraph [0019] in view of paragraph [0034] as well as claims 28 and 31). Hence, claim 1 comprises subject-matter extending beyond the content of the application as filed.

2.2 It follows that the main request is not allowable because it contravenes Article 123(2) EPC.

3. Auxiliary request 1a - Admittance

Auxiliary request 1a was filed within the period specified by the Board in its invitation under Rule 100(2) EPC (point 5 of the communication dated 7

July 2022) and its claims address specifically the two issues highlighted in the Board's invitation. Its admittance into the proceedings is thus subject to Article 13(1) RPBA.

The amendment prima facie overcomes the issue of added subject-matter present in claim 1 of the main request by defining that the at least two percutaneous intervention devices are "of a selected lab unit (11) of the multiple remote lab units". The amendment prima facie does not give rise to new objections nor is it detrimental to procedural economy.

The appellant's argument that the respondent had already filed 7 auxiliary requests with its reply to the appeal is no valid reason in this case to not admit the new request. The Board notes in this regard that those auxiliary requests addressed inventive step objections which had been partly raised for the first time with the statement of grounds of appeal.

It is correct that claim 1 of auxiliary request 1a comprises amendments addressing both issues highlighted in the Board's invitation under Rule 100(2) EPC and not only the issue eventually found to be convincing. This cannot be used against the request's admittance but is rather a sign of the respondent's will to overcome the issues without unnecessarily increasing the number of requests.

The Board thus used its discretion under Article 13(1) RPBA to admit auxiliary request 1a.

4. Auxiliary request 1a - Amendments

4.1 The amendments to claim 1 of auxiliary request 1a as compared to claim 1 of the main request find support in paragraphs [0024], [0034], [0060] and [0066] of the application as filed.

4.2 The appellant did not raise any objection under Article 123 EPC to auxiliary request 1a. However, several of the appellant's objections to the main request are also applicable to auxiliary request 1a, so that it is appropriate to deal with them. The Board does not find any of the objections convincing for the reasons indicated below.

4.3 "Tip" instead of "distal tip"

Claim 1 refers interchangeably to the "tip" and the "distal tip" of the guide wire. It is clear when reading the claim in a technically sensible manner that both terms refer to the same entity, so that claim 1 is already directed to the "distal tip" and involves no generalisation in this regard.

4.4 "Structure" instead of "lesion"

Paragraph [0066] provides basis for the measurement module being configured to measure the length of a structure. The lesion in paragraph [0067] is a specific structure, and the features of the measurement module described in paragraph [0067] dealing with the tip's alignment are unrelated to whether the measured structure is a lesion or not.

4.5 "Withdraw" instead of "retract"

The Board regards both terms in the context of the invention as synonyms referring to pulling/drawing

something back. Reading the term "withdrawing" in claim 1 as encompassing "pushing" goes against its generally accepted meaning and it is not the way the term would be construed by a person skilled in the art.

4.6 "Withdraw tip" instead of "retract guide wire"

The appellant argues by reference to Annex 2 submitted with the statement of grounds of appeal that the tip of the guide wire could be "withdrawn" by pushing the guide wire in case the guide wire was bent. The Board is of the opinion that in the hypothetical situation shown on Figure 2 of Annex 2 the tip would be moved in the proximal direction but it would not be withdrawn. Withdrawing the tip in the context of claim 1 means pulling it back.

4.7 Unallowable inclusion of a function module

Claim 1 requires the measurement module to be configured to allow the user to measure the structure's length, without defining that the measurement module is itself configured to align the tip.

Moreover, the objection raised by the appellant corresponds to an objection against claim 1 as granted but it is not applicable to claim 1 of the main request or of auxiliary request 1a, which recite that the module is to be activated by the user once the tip is aligned with the distal end of the structure. The alignment in claim 1 is thus not done by the - still inactive - measurement module.

4.8 Unallowable combination of two separate embodiments

Paragraph [0066] discloses "measuring the distanced [sic] moved by a percutaneous device as the percutaneous device traverses the length of the structure". This passage corresponds to the wording of claim 1 and thus provides basis for what the appellant refers to as "current distance measurement". Hence, paragraphs [0066]-[0067] disclose what the appellant refers to as "indirect guide wire retracting" combined with the current distance measurement. The support for the measuring method of claim 1 is provided in paragraphs [0066]-[0067], so that there is no unallowable combination with features from claim 41 as originally filed.

4.9 "Percutaneous device" instead of "guide wire"

In claim 1 of auxiliary request 1a, the percutaneous device used for measurement has been restricted to a guide wire, so that this objection to the main request is rendered moot by the amendments.

4.10 In summary, the amendments in auxiliary request 1a do not contravene Article 123(2) EPC.

5. Auxiliary request 1a - Inventive step

The appellant submitted that the subject-matter of claim 1 lacked an inventive step when starting from either of D5 or D2.

5.1 Starting from D5

5.1.1 D5 discloses a remote control catheterization system including a console (34) which can control several percutaneous intervention devices including a guide

wire (see column 4, line 57 to column 5, line 15 as well as column 6, lines 41-46).

It is undisputed that D5 does not disclose at least:
(a) the features of claim 1 related to the measurement module
(b) a selection device to enable the user located at the workstation to select which lab unit [of the multiple remote lab units] the workstation is currently controlling (last feature of claim 1).

The groups of features (a) and (b) do not influence each other to interact synergistically. It is thus justified to assess inventive step using partial problems.

5.1.2 The Board has no reason to question the appellant's submission that the group (a) solved the technical problem of providing a further use for the remotely controlled catheter device and that the person skilled in the art would consult D2 faced with that problem.

The crucial issue in this case is whether D2 teaches a measurement module as defined in claim 1.

D2 deals with a device for measuring distances within a lumen, such as a guide wire for measuring the length of a stenosis. This is done in D2 by aligning a distal marker of the guide wire at an end of a lesion, repositioning the guide wire so that the distal marker is at the other end of the lesion, and determining the length of the lesion by measuring the extracorporeal movement of the guide wire (see column 2, lines 12-31).

The appellant's submission is directed specifically to the embodiments of Figures 7 and 8 of D2.

5.1.3 Embodiment of Figure 7 of D2

The embodiment of Figure 7 is described in column 4, lines 52-65. However, it is appropriate to have a broader look at D2 to understand the disclosure of this embodiment. Underlining has been added by the Board to some passages to emphasise certain aspects.

Starting on column 4, lines 18-22 it is described that the proximal portion of the guide wire (which extends out of the patient) is provided with ruler-like indicia to allow the operator to visually "detect how far the guide wire is axially moved with respect to a reference point such as the proximal end of an adapter 23". This enables noting the distances "L_2" and "L_3" shown when the guide wire's distal marker is positioned at the proximal and distal ends of the lesion. The lesion's length "L_1" can then "be determined by subtracting the distance 'L_2' from the distance 'L_3' shown at the proximal portion" (see column 4, lines 39-42 referring to Figure 5).

The embodiment of Figure 6 uses a "wheeled distance measuring device 40 ... fixed with respect to a reference point, e.g. the adapter on the proximal end of a guiding catheter" (column 4, lines 43-47). The embodiment of Figure 7 uses this wheel 40 which "rotates when the guide wire 10 is moved to locate the radiopaque marker 21 at the ends 32 and 33 of the lesion 30". This rotational movement is related to the distance the guide wire moves and is sensed by a sensor. The sensor generates a signal representing the distance, signal which is transmitted to a display unit (column 4, lines 57-65).

The embodiment of Figure 7 is thus directed to transmitting to the display the distance that the guide wire has been moved, similarly as provided by the ruler-like indicia in the embodiment of Figure 5. It is then still up to the user to note the two distances displayed at each of the lesion's ends and to determine the lesion's length by subtracting both distances.

This is confirmed by other passages of D2. In the summary of the invention, the wheel is presented as an alternative to the ruler-like indicia to determine the distance traveled by the guide wire (column 2, lines 32-37 and 53-60). Column 2, line 63 to column 3, line 1 then states that "[t]hese distance measuring systems must be referenced to a suitable substrate, e.g. the adapter on the proximal end of the guiding catheter, so that the axial movement of the guidewire can be properly detected. To ensure that the distal position of the guidewire is not lost, it is preferred to ...", supporting that the distance/movement is measured with respect to a reference point, i.e. it is not a distance between two positions of the guide wire while in use. Also the independent method claims (see in particular steps c., e. and f. of claims 9 and 12) define a method comprising "noting" two positions and then determining the distance between both.

For these reasons, the embodiment of Figure 7 does not disclose that the measurement module "enables the user to indicate when the tip is aligned with the proximal end of the structure, and the measurement module is configured to calculate the distance that the guide wire was withdrawn as the measured length on the display device" as defined in claim 1. D2 teaches instead in the embodiments of Figure 7 displaying the distance traveled by the guide wire at each moment,

i.e. its distance with respect to a predefined reference point, so that the operator can note the relevant distances and do the necessary calculations.

5.1.4 Embodiment of Figure 8 of D2

In the embodiment of Figure 8, the proximal shaft is provided with equally spaced surface disruptions. Light is emitted onto its surface and the reflected light is received by a sensor. The disturbance caused by the surface disruptions is detected as a series of peaks or valleys which can be counted and displayed as a distance (see column 4, line 66 to column 5, line 17).

Similarly as explained for the embodiment of Figure 7, also in this embodiment it would be up to the user to note the distances at each of the two relevant positions and to subtract the two distances to obtain the lesion's length. This is again confirmed by the reference to the electro-optical system in the same passage of the summary of the invention of D2 (see column 2, 60-66).

Hence, also the embodiment of Figure 8 does not disclose the features of claim 1 defining the measurement module quoted when discussing the embodiment of Figure 7 above.

5.1.5 When starting from the workstation of D5 and consulting the embodiments of Figures 7 or 8 of D2, the person skilled in the art would thus not provide the workstation with a measurement module as defined by claim 1.

The further references to either of D11 or common general knowledge in the inventive step objections

starting from D5 address the second partial problem and are unrelated to the measurement module.

It follows that the objections of lack of inventive step starting from D5 are not convincing.

5.2 Starting from D2

5.2.1 The appellant submitted that the subject-matter of claim 1 was not inventive over D2 in combination with D5 and either of D11 or common general knowledge (as exemplified by D12 and D13).

D12 and D13 were submitted as examples of telemedicine devices for controlling multiple medical devices. D12 discloses on pages 6-8 remote patient monitoring but not any selective control of multiple remote devices. D13 discloses a mobile surgical facility which can be remotely operated. The appellant referred to D13 as a whole, but at first sight there is no disclosure of any selection of the specific surgical facility being remotely controlled. Hence, D12 and D13 do not prove common general knowledge supporting that it was obvious to select which lab unit to control from multiple lab units. The Board thus decided not to admit them under Article 12(4) RPBA 2007.

5.2.2 As indicated above for the objection starting from D5, D2 does not disclose a measurement module as required by claim 1. There are however further reasons why the objections of inventive step starting from D2 are not convincing.

5.2.3 First of all, it is questionable whether D2, which relates to a guide wire, could be a suitable starting point for arriving at a workstation for the remote

control of percutaneous intervention devices provided at multiple lab units. In other words it is questionable whether the person skilled in the art without knowledge of the present invention would have tried to modify the guide wire of D2 to obtain such a workstation in an obvious way. Indeed, as explained hereafter, the objection formulated by the appellant is based on hindsight.

5.2.4 It is undisputed that D2 does not disclose at least the features of:
(a) a control system as defined by claim 1
(b) a graphical user interface as defined by claim 1
(c) a selection device as defined by claim 1

The appellant submitted that features (a) and (b) together solved the technical problem of improving control of the percutaneous device, while feature (c) solved the technical problem of improving efficiency of lab units.

5.2.5 When assessing inventive step using partial problems, the problems are to be determined in view of the technical effects achieved by the invention when compared with the starting point. The starting point is defined in this case by the device of Figs. 7 or 8 of D2.

This is not the approach underlying the appellant's submission. D2 deals with a guide wire facilitating the measurement of distances; it is thus directed to a single percutaneous device and its use. D2 does not disclose any kind of electronic or computer-aided control of the guide wire, let alone a workstation for the control of devices provided at multiple lab units. D2 does not deal with lab units either. This is why the

technical problem allegedly solved by feature (c) of improving efficiency of lab units (or improving efficiency of the workstation as submitted by the respondent and supported by paragraph [0034] of the application as filed) could only become apparent once the teaching of documents D2 and D5 were combined.

The appellant is in fact applying the problem and solution approach twice in a sequential manner. The first time starting from D2 and the second time starting from the device obtained from combining D2 and D5.

This sequential approach does not reflect a stepwise improvement that the person skilled in the art was always wanting to make, as argued by the appellant. Instead, it goes well beyond the way that the problem and solution approach is to be applied when assessing inventive step. The sequential approach is an indicator of hindsight, with the problem including the lab units and thus an unallowable pointer to the solution. It also highlights, as submitted by the respondent, that at least features (a) and (c) interact with each. Both contribute to providing an efficient workstation for the remote control of percutaneous devices.

5.2.6 Hence, the objections of lack of inventive step starting from D2 are not convincing.

6. None of the appellant's objections prejudices maintenance of the patent on the basis of auxiliary request 1a.

The respondent provided a description adapted to the claims of auxiliary request 1a, in particular a new paragraph [0054] to replace the corresponding paragraph

from the version which was found allowable by the appealed decision. The appellant had no objections to this amendment. The Board does not have any objections either.

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:

Claims 1-15 of auxiliary request 1a filed with letter dated 7 September 2022,

Description:
- Paragraphs 1, 2, 4, 6-21, 23-53, 56-80 of the patent specification,
- Paragraphs 3, 5, 22 and 55 filed during the oral proceedings before the opposition division on 5 June 2018,
- Paragraph 54 filed during the oral proceedings before the Board of Appeal on 17 November 2022,

Figures 1-9 of the patent specification.

The Registrar: The Chairman:

A. Chavinier-Tomsic M. Alvazzi Delfrate

Decision electronically authenticated