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**Datasheet for the decision
of 20 November 2020**

Case Number: T 0670/19 - 3.2.01

Application Number: 09760368.2

Publication Number: 2369956

IPC: A45D44/00

Language of the proceedings: EN

Title of invention:
CLINICAL ASSESSMENT SCALES AND METHODS

Applicant:
ALLERGAN, INC.

Headword:

Relevant legal provisions:
EPC Art. 52(1), 52(2), 52(3), 111(1)
RPBA 2020 Art. 11

Keyword:
Patentable invention - technical character of the invention
(yes)
Remittal - (yes)

Decisions cited:

Catchword:



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 0670/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 20 November 2020

Appellant: ALLERGAN, INC.
(Applicant) 2525 Dupont Drive
Irvine, CA 92612 (US)

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 10 August 2018
refusing European patent application No.
09760368.2 pursuant to Article 97(2) EPC.**

Composition of the Board:
Chairman G. Pricolo
Members: V. Vinci
O. Loizou

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application in suit.
- II. In the decision under appeal the examining division came to the conclusion that the subject-matter of independent claim 1 of the main request and of the auxiliary request 2 related to abstract subject-matter excluded from patentability under Articles 52(2) and (3) EPC. Furthermore, the auxiliary requests 1 and 3 were found not in conformity with Articles 123(2) and 84 EPC and the auxiliary requests 4 and 5 filed at the oral proceedings were not admitted.
- III. Oral proceedings pursuant Article 116 EPC were held on 20 November 2020 before the Board.
- IV. The applicant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request filed on 22 December 2014 and underlying the appealed decision or, in the alternative, on the basis of one of the following auxiliary requests in the order presented below:

auxiliary request 0 filed on 19 October 2020, auxiliary request 1 filed on 13 March 2018, auxiliary request 1A filed with the statement of grounds of appeal, auxiliary requests 2 and 3 filed on 13 March 2018, auxiliary requests 4 and 5 filed on 17 April 2018, auxiliary request 6 filed with the statement of grounds of appeal or auxiliary request 7 filed on 19 October 2020.

V. Claim 1 of the main request reads as follows:

A scale system for assessing at least one characteristic of the mouth area of an individual, the system comprising:

a lip fullness scale comprising illustrations of the mouth area of human subjects, the illustrations being organized in different categories representing levels of lip fullness; characterized in that the system further comprises:

a severity scale for perioral lines at rest comprising illustrations of the mouth area of human subjects, the illustrations being organized in different categories representing levels of severity of perioral lines at rest;

an oral commissure severity scale comprising illustrations of the mouth area of human subjects, the illustrations being organized in different categories representing levels of severity of oral commissure; and

a severity scale for perioral lines at maximum contracture.

Reasons for the Decision

1. The Board does not agree with the examining division that the subject-matter of claim 1 of the main request is excluded from patentability and concurs with the appellant that the invention as claimed does not relate to purely abstract subject-matter in the meaning of

Articles 52(2) and (3) EPC, but does have a technical character. The reasons are the following:

1.1 Claim 1 relates to a system comprising a plurality of scales each of them being associated with one specific characteristic of the mouth area, wherein each scale comprises in turn a plurality of illustrations representing different severity levels of the respective characteristic. The Board is convinced by the argument of the appellant that the feature "*illustration*", in the context of a claim for a system, does imply the presence of a concrete physical medium carrying said illustrations and from which they can be viewed or displayed, for example a sheet of paper, a board, a display or the screen of a computer or tablet. The implicit presence of a physical medium does thus confer technical character to at least part of the subject-matter of the independent claim and this regardless of a possibly non-technical nature of the cognitive content of the illustrations carried by or displayed on the physical medium "*per se*". Therefore, unlike the assessment of the examining division, the Board agrees with the appellant that the subject-matter of claim 1 is an invention within the the meaning of Article 52(1) EPC as it does not fall under the exceptions to patentability presented in Article 52(2) and (3) EPC.

2. The examining division has dismissed the main request only on grounds pursuant Article 52(2) and (3) EPC without deciding on any substantial issue. The Board considers this circumstance to represent the "*special reasons*" in the meaning of Article 11 RPBA 2020 justifying the remittal of the case to the department of first instance in accordance with Article 111 EPC. In this respect it is observed that the appellant did

not raise any objection to the remittal of the case to the examining division.

Order

For these reasons it is decided that:

1. The decision is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



D. Magliano

G. Pricolo

Decision electronically authenticated