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Datasheet for the decision of 5 March 2021

Case Number: T 1348/19 - 3.2.08

Application Number: 03790057.8

Publication Number: 1575443

IPC: A61C9/00

Language of the proceedings: EN

Title of invention:
METHOD AND DEVICE FOR THE RETRACTION OF TISSUE DURING CROWN AND BRIDGE PROCEDURES

Applicant:
CENTRIX, INC.

Relevant legal provisions:
EPC Art. 84, 123(2)

Keyword:
Claims - clarity - main request (yes)
Amendments - allowable (yes)

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Case Number: T 1348/19 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 5 March 2021

Appellant: (Applicant)	CENTRIX, INC. 770 River Road Shelton, CT 06484-5458 (US)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 3 December 2018 refusing European patent application No. 03790057.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman	P. Acton
Members:	G. Buchmann
	P. Schmitz

Summary of Facts and Submissions

I. With the decision of 3 December 2018 the examining division refused European patent application No. EP 03 790 057.8.

The examining division decided that the subject-matter of claim 1 according to the then valid main request contravened Article 123(2) EPC, while the subject-matter of auxiliary requests 1 and 2 contravened Articles 123(2) and 84 EPC.

II. The applicant filed an appeal against that decision.

III. The appellant (applicant) requested that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution on the basis of the main request or auxiliary request 1, both filed with a letter of 4 February 2021.

IV. Independent claim 1 of the main request reads as follows.

The amendments compared to original claim 11 are underlined or ~~crossed out~~. (Numbering added by the Board)

"**1.1** A device for effecting the cordless retraction of gum tissue comprising:

1.2 a block of a cellular material of a size to receive a prepared tooth (20) and formed of open cells;

1.3 said block having a groove (24a) extending co-

extensively thereof to form a dental dam (24);

1.4 ~~said~~ the groove being adapted to be fitted to ~~receive~~ the prepared tooth covered with a settable impression material;

1.5 and said groove being ~~adapted to be~~ filled with ~~an~~ settable impression material (26)."

1.6
~~whereby said filled groove is fitted to the prepared tooth covered with an impression material.~~

Independent claim 4 of the main request reads (numbering added by the Board):

4.1
"A kit used by a dentist for cordless retracting gum tissue from a prepared tooth having a gingival sulcus margin comprising:
4.2
a settable silicone impression material fortified with a hemostatic agent that sets after a predetermined time;
4.3
a syringe for applying the settable impression material to the gingival sulcus margin;
4.4
a liquid hemostatic or astringent agent and an applicator for applying it to the sulcus;
4.5
and a dam made of a porous material formed of open cells, said dam having a groove extending co-extensively thereof,

4.6
wherein said dam is configured to be placed over the prepared tooth and the settable impression material for the predetermined time for the settable impression material to set, the set settable impression material is configured to mechanically adhere to the dam made of the open-cell porous material permitting the set settable impression material and the dam to be removed in unison from a patient's mouth."

V. The arguments of the appellant can be summarised as follows.

The newly filed main request overcame the objections of the examining division and addressed all the objections raised by the Board. In particular, the omitted features which were indicated in the Board's communication of 30 June 2020 had been added to claims 1 and 4.

Reasons for the Decision

1. **Main request - amendments - Article 123(2) EPC**

1.1 **Claim 1**

Present claim 1 is based on originally filed claim 11.

The following amendments have been made compared to claim 11 as originally filed:

a) Feature 1.2 specifies that the block of cellular material is formed of open cells. This feature is based on the description page 13, lines 5-7.

b) The original Features 1.4 and 1.6 have been merged

into the present Feature 1.4 in the following way:

The term "adapted to receive" of original Feature 1.4 has been replaced by "adapted to be fitted to". These terms are equivalent from a technical point of view.

Amended Feature 1.4 further specifies that the groove is (adapted to be) fitted to the prepared tooth covered with a settable impression material, which was already present in the original Feature 1.6. The original definition according to which the groove is adapted to receive the prepared tooth (not covered with impression material) may be omitted because if a groove is built in such a way that it fits over a prepared tooth covered with a settable material (present Feature 1.4), it will necessarily fit over a prepared tooth not covered with any settable material (original Feature 1.4).

c) Feature 1.5 specifies that the impression material is settable. This feature is based on the description page 14, lines 11-13. The amendment of the phrase "being adapted to be filled" to "being filled" does not add any subject-matter.

d) With the deletion of original Feature 1.6, it has been omitted that the filled groove fits to the prepared tooth. This is technically equivalent to the present definition according to which the groove (without filling) fits over the prepared tooth because the impression material filled into the groove is pliable and does not prevent the tooth from entering the groove.

Therefore, claim 1 of the main request fulfils the

requirements of Article 123(2) EPC.

1.2 **Claim 4**

Claim 4 is based on the description.

Page 14, lines 7-9, describes that the invention may be sold in the form of a "kit containing the required components to practice the retraction method of the present invention", i.e. for cordless retracting gum tissue from a prepared tooth having a gingival sulcus margin (see page 5, lines 9-16) (Feature 4.1).

Methods according to the invention are described on page 5, line 13 to page 6, line 21 (summary of the invention) and on page 9, line 20 to page 11, line 21 (detailed embodiment).

Regarding Features 4.2 and 4.3, page 6, lines 7-11, discloses that the fortified silicone impression material (with a hemostatic agent) is placed about the circumference of the prepared tooth by syringing. It follows that that material and a suitable syringe must be part of the kit. The same is valid in view of the passage on page 10, lines 21-23.

Regarding Feature 4.4, according to page 5, lines 19-25, the method of the invention includes application of a liquid hemostasis agent by a syringe or another applicator in order to control bleeding. The detailed description on page 9 also refers to controlling of the bleeding as a necessary step of the method (page 9, lines 23-24).

Both described methods refer to a dam (24) of a foam material having a groove (page 6, lines 2-4; page 9,

line 24; page 11, lines 13-18). The groove extending along the whole length of the dam is described on page 9, lines 13-15, where the dam (24) is described in more detail. One embodiment of the material of the dam has open cells (page 13, lines 5-7) (Feature 4.5).

Regarding Feature 4.6, page 6, lines 12-21, describes that the dam is placed over the tooth and the impression material. At removal, the impression material adheres to the dam material. Essentially the same is described on page 11, lines 6-18. These passages lead to the conclusion that the dam (24) must be suitable to fit over the tooth and the impression material, and that the impression material must be suitable to adhere to the porous dam material.

No other components which had to be regarded as essential to perform the method of the invention are originally described.

In summary, all the features of claim 4 are disclosed in the originally filed application, and the kit for use in the described method has been originally disclosed in the broad form as defined in claim 4.

Therefore, claim 4 of the main request fulfils the requirements of Article 123(2) EPC.

1.3 For the above reasons, the claims of the main request fulfil the requirements of Article 123(2) EPC.

2. **Main request - clarity - Article 84 EPC**

Claim 1 of the main request no longer contains any features which were subject to a clarity objection during the proceedings.

No objections in view of clarity were raised by the examining division against the version of claim 4 on which the decision was based.

Also, the Board does not find any clarity problems with regard to the present claim 1 or 4 or the dependent claims.

Therefore, the claims of the main request fulfil the requirements of Article 84 EPC.

3. **Remittal to the department of first instance**

Under Article 11 RPBA 2020, the Board may remit the case to the department whose decision was appealed if there are special reasons for doing so.

In the present case, the examining division had decided only on the questions of clarity (Article 84 EPC) and allowability of amendments (Article 123(2) EPC); it has not yet considered the patentability requirements, e.g. novelty and inventive step (Articles 54(2) and 56 EPC).

Since the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA 2020), and there is no decision concerning the patentability which can be reviewed yet, there exist special reasons for a

remittal of the case.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the examining division for further prosecution.

The Registrar: The Chairwoman:

C. Moser P. Acton

Decision electronically authenticated