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**Datasheet for the decision  
of 30 March 2023**

**Case Number:** T 1441/19 - 3.2.02

**Application Number:** 10740852.8

**Publication Number:** 2395963

**IPC:** A61H15/00, A63B22/00,  
A63B23/00, A61H7/00

**Language of the proceedings:** EN

**Title of invention:**  
IMPROVED EXERCISE ROLLER

**Applicant:**  
Castiglione, Angelo

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56  
RPBA 2020 Art. 13(2)

**Keyword:**

Amendment after summons - taken into account (yes)  
Novelty - (yes)  
Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1441/19 - 3.2.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.02**  
**of 30 March 2023**

**Appellant:** Castiglione, Angelo  
(Applicant) PO Box K201  
Haymarket, NSW 1240 (AU)

**Representative:** Baldwin, Mark  
Firebird IP  
27 Old Gloucester Street  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on  
17 December 2018 refusing European patent  
application No. 10740852.8 pursuant to  
Article 97(2) EPC**

**Composition of the Board:**

**Chairman** M. Alvazzi Delfrate  
**Members:** D. Ceccarelli  
N. Obrovski

## **Summary of Facts and Submissions**

I. The applicant has appealed against the Examining Division's decision to refuse the application for lack of novelty of the subject-matter of claim 1 of the main request and the first and second auxiliary requests, and for lack of inventive step of the subject-matter of claim 1 of the third auxiliary request.

II. The Board summoned the appellant to oral proceedings and sent its preliminary opinion in a communication dated 22 December 2022. In the communication, the Board expressed the view that the subject-matter of claim 1 of all the requests then on file lacked novelty or inventive step and that the key issue to be considered was the interpretation of the expression "exercise roller" in the claims.

III. Oral proceedings took place on 30 March 2023.

The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the fifth auxiliary request filed during the oral proceedings before the Board.

IV. The following documents are mentioned in this decision:

D13: JP S58 120730 U

D17: DE 20 2007 004 177 U1

V. Claim 1 of the fifth auxiliary request reads as follows:

"A cylindrical exercise roller (10; 30) for self-massage and flexibility training for an athlete

comprised of at least two sub exercise roller units (12, 14; 32, 34) connected together to form a single exercise roller and separable so as to be usable as separate exercise rollers, wherein each sub-exercise roller unit and the single exercise roller have the same radius (R1, R2), said connection prevents relative rotation of the separable sub exercise roller units (12, 14; 32, 34), said cylindrical exercise roller has a length of 900 mm and said radius (R1, R2) is 50 or 75 mm."

Claims 2 to 14 are dependent claims. Claim 15 is directed to a method of using the cylindrical exercise roller as defined in any of the preceding claims.

VI. The appellant's arguments relevant to the present decision can be summarised as follows.

The subject-matter of claim 1 of the fifth auxiliary request was novel and inventive over D13 and D17.

D13 did not disclose the dimensions of the cylindrical exercise roller as claimed.

D17 concerned a toy. It did not disclose a cylindrical exercise roller for self-massage and flexibility training for an athlete as specified in the claim.

## **Reasons for the Decision**

1. The invention

The invention relates to a cylindrical exercise roller for self-massage and flexibility training for an athlete consisting of at least two units connected and

separable. The units have the same radius and, when connected, form a single exercise roller.

According to the application (page 3, first sentence), "providing a roller in two or more parts allows individuals that travel the ability to take all or part of the roller with them anywhere". Hence, the purpose of the invention is to facilitate the transport of the exercise roller.

2. The fifth auxiliary request was filed during the oral proceedings before the Board. Compared with claim 1 of the third auxiliary request previously on file, claim 1 of the fifth auxiliary request additionally specifies that the cylindrical exercise roller is "for self-massage and flexibility training". This amendment, based on page 1, lines 6 and 7 of the application as filed and explained by the appellant at the oral proceedings, effectively resolved all issues related to the interpretation of the expression "exercise roller" pointed out by the Board in the communication accompanying the summons and promoted procedural economy. The Board considered this to constitute exceptional circumstances justified with cogent reasons by the party concerned, and it admitted the fifth auxiliary request in accordance with Article 13(2) RPBA 2020.
3. The subject-matter of claim 1 of the fifth auxiliary request is based on claim 1; page 1, lines 6 to 10; page 3, lines 7 to 10; page 5, line 3; and page 8, lines 3 and 4 of the application as filed.
4. In the impugned decision, the Examining Division held that the rollers disclosed in D13 and D17 deprived the subject-matter of claim 1 of the requests on file in

the first-instance proceedings of novelty or inventive step.

- 4.1 However, D13 relates to a roller for foot massage. It does not disclose the dimensions of the radius and the length as defined in claim 1 of the fifth auxiliary request.

D17 relates to a toy device for children comprising cylindrical rollers. However, D17 does not disclose that these rollers could be suitable for self-massage and flexibility training, as specified in claim 1 of the fifth auxiliary request.

Consequently, the subject-matter of claim 1 of the fifth auxiliary request is novel (Article 54(1) and (2) EPC).

- 4.2 The person skilled in the art would have had no obvious reason to modify the rollers disclosed in D13 or D17 to arrive at the subject-matter of claim 1 of the fifth auxiliary request.

- 4.2.1 Starting from D13, the Board sees the objective technical problem as how to provide an exercise roller for self-massage and flexibility training which can be effectively used on body parts other than the feet and can still be easily transported.

D17 does not relate to rollers for self-massage and flexibility training. The person skilled in the art would have not considered this document for the solution of the objective technical problem.

- 4.2.2 Starting from D17, the Board sees the objective technical problem as how to make the rollers disclosed

in this document suitable for other uses. There is no teaching in the prior art to modify the toy device disclosed in D17 to make it suitable for self-massage and flexibility training. Hence, the person skilled in the art would have had no obvious reason for doing so.

4.2.3 Consequently, the subject-matter of claim 1 of the fifth auxiliary request involves an inventive step (Article 56 EPC).

5. The description has been adapted to the amended claims.



## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to grant a patent in the following version:
  - claims 1-15 according to the fifth auxiliary request filed during the oral proceedings before the Board
  - description pages 1 and 2 filed on 2 November 2018, pages 3 to 7 as published, and page 8 filed during the oral proceedings before the Board
  - drawings as published

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated