

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 30 June 2022**

Case Number: T 3259/19 - 3.5.03

Application Number: 14842972.3

Publication Number: 3042510

IPC: H04R25/00, A61N1/36

Language of the proceedings: EN

Title of invention:
IMPLANTABLE HEARING AID SYSTEM

Applicant:
MED-EL Elektromedizinische Geraete GmbH

Headword:
Implantable hearing aid/MED-EL

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Added subject-matter - all claim requests (yes)



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 3259/19 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 30 June 2022

Appellant:
(Applicant)

MED-EL Elektromedizinische Geraete GmbH
Fuerstenweg 77
Innsbruck 6020 (AT)

Representative:

Downing, Michael Philip
Downing IP Limited
Grosvenor House
7 Horseshoe Crescent
Beaconsfield, Bucks. HP9 1LJ (GB)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 18 July 2019
refusing European patent application No.
14842972.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair J. Eraso Helguera
Members: K. Peirs
C. Almberg

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing the present European patent application on the grounds of, *inter alia*, added subject-matter (Article 123(2) EPC).
- II. The appellant was summoned to oral proceedings before the board. A communication was issued under Article 15(1) RPBA 2020 including the board's preliminary opinion concerning added subject-matter (Article 123(2) EPC).
- III. Oral proceedings before the board were held on 30 June 2022 by video link. At the end thereof, the board announced its decision.
- IV. The appellant's (applicant) final requests were that the decision under appeal be set aside and that a patent be granted according to the claims of
- a **main request** subject to the appealed decision (then labelled "1st auxiliary request") and re-filed with the statement of grounds of appeal, or
 - one of **three auxiliary requests** filed with the statement of grounds of appeal.
- V. Claim 1 of the **main request** reads as follows (board's feature labelling):
- (a) "A implantable hearing aid system, comprising,
 - (b) an external transmitter unit (101) having a transmitter (102) for transmitting signals to a hearing stimulation device (137) to stimulate a hearing organ (170) and a first connection portion (103);

- (c) an implantable receiver unit (136) having a receiver (138) to receive a signal from the transmitter (102); the implantable receiver unit (136) having the hearing stimulation device (137);
- (d) a rigid interconnection unit (104) having a first side (108) having an integral second connection portion (105) and a second side (120) at least partly provided with an adhesive component (109), and
- (e) the first connection portion (103) and the second connection portion (105) forming a removably connectable mechanical connection, characterised by
- (f) the external transmitter unit (101) being supported on the first side of the rigid interconnection unit (104), the second side of the interconnection unit (104) being adhesively attachable to a skin (113) of a user (172) for attaching the external transmitter unit (101) to the user (172) relative the implantable receiver unit (136),
- (g) wherein the first connection portion (103) is tiltably disconnectable from the second connection portion (105),
- (h) and wherein the second connection portion (105) is non-centrally positioned on the first side (108) of the interconnection unit (104) toward a rear portion of the interconnection unit (104) when attached to the user".

VI. Claim 1 of the **first auxiliary request** includes all the features of claim 1 of the main request but with feature (f) replaced by the following feature (board's labelling and highlighting of the amendments vis-à-vis feature (f)):

(f') "the external transmitter unit (101) being supported on the first side of the rigid interconnection unit (104), the second side of the interconnection unit (104) being adhesively attachable to a skin (113) of a user (172) for attaching-retaining the external transmitter unit (101) ~~to~~ on the user (172) relative the implantable receiver unit (136) by adhesive".

VII. Claim 1 of the **second auxiliary request** includes all the features of claim 1 of the first auxiliary request but with feature (h) replaced by the following feature (board's labelling and highlighting of the amendments vis-à-vis feature (h)):

(h') "~~and wherein~~ the second connection portion (105) is non-centrally positioned on the first side (108) of the interconnection unit (104) toward a rear portion of the interconnection unit (104) when attached to the user, and wherein the implantable receiver unit (136) is fabricated of MRI compatible material".

VIII. Claim 1 of the **third auxiliary request** includes all the features of claim 1 of the first auxiliary request but with feature (h) replaced by the following feature (board's labelling and highlighting of the amendments vis-à-vis feature (h)):

(h") "~~and wherein~~ the second connection portion (105) is non-centrally positioned on the first side (108) of the interconnection unit (104) toward a rear portion of the interconnection unit (104) when attached to the user, and wherein the external transmitter unit (101) is rotatable in

of interconnection unit 104 via snapping, adhesive or magnetic means. In operation, transmitter unit 101 transmits signals to receiver 138. These signals allow vibrator 137 to produce sound that is audible by means of bone conduction through part 132 of a user's skull.

- 1.3 According to the invention, interconnection unit 104 is adhered to the skin behind the user's ear, so that the external part, once attached, is less likely to be torn off inadvertently.

2. *Main request: claim 1 - added subject-matter*

- 2.1 The board concurs with the conclusion drawn in Reasons 16.1 of the appealed decision regarding claim 1 of what was then labelled the "1st auxiliary request". This means that claim 1 of the present main request (cf. point IV above) adds subject-matter that extends beyond the content of the application as filed.

- 2.2 The board endorses in particular the examining division's assessment that there is no direct and unambiguous basis for the expression "integral" in **feature (d)** (see Reasons 16.1 of the impugned decision):

- 2.2.1 The examining division construed the expression "integral" in the context of feature (d) in the sense that second connection portion 105 is integral to rigid interconnection unit 104. While a skilled reader would indeed have readily adopted such an interpretation, there is no direct and unambiguous disclosure for it in the application as filed.

- 2.2.2 The board particularly agrees with the fifth, i.e. the penultimate, paragraph of Reasons 16.1 of the appealed

decision. There, the examining division explained why the applicant's reference to lines 2 and 3 of page 15 of the description as filed and original Figures 3A to 3D was not convincing as regards a direct and unambiguous disclosure in the original application for the expression "integral".

- 2.3 The appellant revisited the disclosure of Figure 3A as filed and the associated part of the original description in the present appeal. It stated that the skilled reader would have understood the phrase "*[i]n Fig. 3A the separated parts are shown before assembly in manufacturing*" of lines 2 and 3 of original page 15 as excluding any prior assembly step. It concluded that, hence, second connection portion 105 must have been an integral part of interconnection unit 104 in original Figure 3A.

The board does not share the appellant's view.

This is because the skilled reader would have been aware, based on their common general knowledge, that an assembly often starts from pre-assembled components. These could be, for instance, delivered by a subcontractor. The application as filed does not directly and unambiguously teach, explicitly or implicitly, the components shown in Figure 3A as filed to constitute an exception in this respect. More importantly, Reasons 15.1 of the impugned decision already correctly observed that, if Figure 3A as filed were indeed to directly and unambiguously disclose an integral structure, the part of second connection portion 105 and the remaining part of interconnection unit 104 should have been uniformly hatched, without any separation line between those parts. Furthermore, in lines 24 to 31 of page 12 of the description as

filed the interconnection unit 104 is a double-sided adhesive sheet having connection portions 105 and 106 as its adhesive sides. This alternative points away from an "integral" structure.

2.4 As a result, claim 1 of the main request does not comply with Article 123(2) EPC.

3. *First to third auxiliary requests: claim 1 - added subject-matter*

3.1 **Features (f'), (h') and (h")** (see points VI to VIII above) do not remedy the deficiency mentioned for claim 1 of the main request in point 2 above, neither taken by themselves nor in combination.

3.2 Hence, also the first, second and third auxiliary requests are not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

J. Eraso Helguera

Decision electronically authenticated