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Datasheet for the decision of 15 February 2024

Case Number: T 2052/20 - 3.2.02

Application Number: 13175392.3

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Language of the proceedings: EN

Title of invention:
Catheter needle tip shielding device

Patent Proprietor:
Greiner Bio-One GmbH

Opponent:
Poly Medicure Limited

Headword:

Relevant legal provisions:
EPC Art. 100(c), 76(1), 54, 56

Keyword:
Divisional application - subject-matter extends beyond content of earlier application (yes)
Novelty - auxiliary request (yes)
Inventive step - auxiliary request (no)

Decisions cited:

Catchword:

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Case Number: T 2052/20 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 15 February 2024

Appellant: (Patent Proprietor)	Greiner Bio-One GmbH Bad Haller Straße 32 4550 Kremsmünster (AT)
Representative:	Burger, Hannes Anwälte Burger & Partner Rechtsanwalt GmbH Rosenauerweg 16 4580 Windischgarsten (AT)
Respondent: (Opponent)	Poly Medicure Limited Plot No. 105, Sector 59 HSIIDC Industrial Area Faridabad, Haryana 121004 (IN)
Representative:	Thum, Bernhard Thum & Partner Thum Mötsch Weickert Patentanwälte PartG mbB Siebertstr. 6 81675 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 26 October 2020 revoking European patent No. 2647403 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The appeal is directed against the decision of the Opposition Division revoking European patent No. 2647403.

II. Oral proceedings before the Board took place on 15 February 2024.

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted. In the alternative, the appellant requested that the patent be maintained on the basis of one of auxiliary requests 1 to 8, whereby auxiliary requests 1 to 5 were filed on 23 July 2020 and auxiliary requests 6 to 8 were filed at the oral proceedings before the Opposition Division. The appellant also requested that the respondent's submissions dated 4 January 2024 not be admitted into the proceedings.

The respondent (opponent) requested that the appeal be dismissed.

III. Claims 1 and 5 of the **main request** (patent as granted) read as follows:

1. "A plastic needle tip shielding device (100) for being fitted inside an intravenous catheter hub (200), said needle tip shielding device comprising:
a body with a rear side (106), a front side (107), and a hole (102) extending from said rear side (106) to said front side (107); and

a resilient arm (103) extending at an attachment point (105) from said front side (107) of said body;
wherein said resilient arm (103) has a resting state, from which it may be forced to yield free passage through said hole (102) in an axial direction of said body, said resilient arm (103) being adapted for clamping a needle tip (304) of a hollow needle (303) extending through said hole (102) in a direction from said rear side (106) to said front side (107), when said resilient arm (103) is in said resting state;
wherein any straight imaginary line extending longitudinally through said hole (102) in the axial direction of said body coincides with said resilient arm (103), when said resilient arm (103) is in said resting state; and
characterized in that said plastic needle tip shielding device (100) is in form of one integral unit made of a thermoplastic polymer."

5. "The needle tip shielding device (100) according to any one of the preceding claims, wherein said resilient arm (103) comprises a back-hooking elongation (110), said resilient arm (103) together with said back-hooking elongation (110) thereof having an L-shaped form."

IV. Compared with claim 5 of the main request, claim 5 of **auxiliary requests 1 and 3** and claim 2 of **auxiliary requests 2, 4 and 5** further includes the following feature added at the end of the claim:

", where the horizontal line of the L corresponds to the back-hooking elongation (110) of the resilient arm."

V. Compared with claim 1 of the main request, claim 1 of **auxiliary request 6** further includes the following feature added immediately after "a body with a rear side (106), a front side (107),":

"an outer surface (108) connecting the rear side (106) and the front side (107)"

VI. Compared with claim 1 of auxiliary request 6, claim 1 of **auxiliary request 7** further includes the following feature added at the end of the claim:

", and wherein the outer surface (108) of the body is arranged with at least one protuberance (101)."

VII. Compared with claim 1 of auxiliary request 6, claim 1 of **auxiliary request 8** further includes the following feature added at the end of the claim:

", and wherein a plurality of protuberances (101) are located on the outer surface (108)."

VIII. The following documents are relevant to the present decision:

D2 DE 101 10 133 A1
D4 EP 2 016 963 A1
E9 nelson science Chemistry, 2nd edition by John Holman and Phil Stone, published year 2001
E15 Michel Biron, "Thermoplastics and Thermoplastic Composites”, Technical Information for Plastics Users, Butterworth-Heinemann, 2007, pages: 14-18, 451-454

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

Admittance of the respondent's submissions of 4 January 2024

The respondent's letter of 4 January 2024 should not be admitted into the proceedings. The submissions represented an amendment to the respondent's appeal case, in particular the discussion of the function of the protuberances and the use of a new document for arguing on lack of inventive step.

Main request and auxiliary requests 1 to 5 - added subject-matter

Claim 5 of the main request did not comprise added subject-matter, nor did the corresponding claim present in each of auxiliary requests 1 to 5. Figures 1 to 7 disclosed the resilient arm comprising a back-hooking elongation, having together an L-shaped form. This shape was not interlinked with its position in the resting state. Figures 1, 2 and 6 showed the L-shaped form without any restriction as to how the arm would react when it was in its resting state, thus providing a basis for the L-shaped feature of claim 5.

Auxiliary request 6 - novelty over D4

The subject-matter of claim 1 of auxiliary request 6 was novel over D4. There were three differentiating features.

1) D4 did not disclose the feature "a resilient arm extending at an attachment point from said front side of said body". It was arbitrary to regard the region immediately above the protuberances 48 as defining a front side within the meaning of claim 1, it was instead the top of the base portion 30 which defined a

front side. Moreover, the jaws in D4 were a continuation of the side wall, extending from the outer surface and not from the front side.

2) D4 did not disclose a device "in form of one integral unit". D4 consistently disclosed a device together with an elastic element 44, which was an essential part to ensure the function of the device of D4. Figure 3B only served to illustrate how the link 46 was arranged below the elastic element 44 in order to aid in biasing the jaws towards each other. D4 disclosed the link as a complement, not an alternative, to the elastic element. The elastic element was so important that a safety mechanism had been added in case there would be a malfunction as disclosed in paragraph [0015]. Without the elastic element, the device would neither meet the criteria for certification as a medical device nor be suitable "for being fitted inside an intravenous catheter hub", as required by claim 1. The protrusions 48 served to receive the elastic element, further highlighting its importance. The elastic element was made of a different material, so that the device comprising the elastic element was not in form of one integral unit.

3) D4 did not disclose an integral unit "made of a thermoplastic polymer", because paragraph [0016] did not disclose an integral unit and a thermoplastic material in combination.

Auxiliary request 6 - inventive step

The subject-matter of claim 1 was inventive in view of D4 combined with common general knowledge even if the feature "made of a thermoplastic polymer" was regarded as defining the only distinguishing feature over D4.

Thermoplastic polymers had significant advantages, allowing an elastic deformation of the resilient member, a long shelf life and ease of manufacture. None of D2, D4 or E15 prompted the person skilled in the art to use thermoplastic polymers. On the contrary, D4 disclosed a thermoplastic material only for the inner part of the jaws, thereby teaching away from using thermoplastic materials for the whole device. D2 taught that thermosetting materials were preferable. E15 reflected the common general knowledge that thermoplastics were more sensitive to temperature increases than thermosets. E15 provided a list of the main applications for POM, a type of thermoplastic, and despite the length of the list, no application relating to catheter assemblies or needle tip shielding devices was mentioned. Therefore, the person skilled in the art would not have been prompted to manufacture the device of D4 in form of one integral unit made of a thermoplastic polymer.

Auxiliary requests 7 and 8 - inventive step

The subject-matter of claim 1 of each of auxiliary requests 7 and 8 was inventive in view of D4 combined with common general knowledge.

In D4, the "front side" was defined by the top of the base portion 30 because claim 1 further required "a hole extending from said rear side to said front side" and "a resilient arm extending at an attachment point from said front side of said body", features which would not be present if the front side was arbitrarily regarded as being defined by the portion above the lower protuberances 48. The feature "a front side" required a structure defining said front side.

Hence, the feature of the protuberance(s) on the outer surface was not disclosed by D4 and defined an additional distinguishing feature which increased the fixation of the device within the catheter, especially when a plurality of protuberances were located on the outer surface. An inventive step was thus to be acknowledged.

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

Admittance of the respondent's submissions of 4 January 2024

The respondent's letter was a direct reply to the preliminary opinion of the Board.

Main request and auxiliary requests 1 to 5 - added subject-matter

The Figures did not provide basis for the definition of the back-hooking elongation of claim 5 as granted without the further features of claim 3 of the earlier application. Hence claim 5 as granted comprised added subject-matter. The same applied to the corresponding claim of each of auxiliary requests 1 to 5.

Auxiliary request 6 - novelty over D4

The subject-matter of claim 1 was not novel over the embodiment of Figures 1 to 3B of D4. The three features disputed by the appellant were disclosed.

1) A "resilient arm" within the meaning of claim 1 was disclosed in D4 when the lower protuberances 48 defined

the front side of claim 1, as held in the appealed decision.

2) Irrespective of the advantages achieved by the elastic element in D4, paragraph [0015] stated that the device functioned even if the elastic element failed. The component of Figure 3B without the elastic element anticipated all features of claim 1. The first sentence of paragraph [0016] of D4 disclosed that the component was integrally formed, hence anticipating the feature "in form of one integral unit".

3) Paragraph [0016] disclosed that the inner part of the jaws was made from a thermoplastic material, whereas the outer part could be made from a different material, thereby disclosing the possibility that both the inner and outer parts were "made of a thermoplastic polymer" as required by claim 1.

Auxiliary request 6 - inventive step

The subject-matter of claim 1 of auxiliary request 6 was not inventive in view of D4 combined with the common general knowledge.

The contested patent taught that making the device of a plastic material was advantageous, but remained silent as regards any technical effect resulting from the device being made of a thermoplastic polymer. Use of plastic was disclosed in D4. E9 represented common general knowledge and showed that thermoplastics were known for a plurality of applications. A thermoplastic material was merely one of several straightforward possibilities for the plastic material used to manufacture the device of D4. D2 also disclosed use of thermoplastics for a safety device. Hence, the

selection of a thermoplastic material did not involve an inventive step.

Auxiliary requests 7 and 8 - inventive step

The subject-matter of claim 1 of each of auxiliary requests 7 and 8 was not inventive in view of D4 combined with common general knowledge.

Regarding the portion immediately above the lower protuberances 48 of D4 as anticipating the front side within the meaning of claim 1 was not an arbitrary selection. At this portion the cylindrical shape turned into a conical shape, the link 46 was provided and the jaws were thinner allowing their deflection as shown on Figure 1 of D4. Instead, the top part of the base portion 30 did not serve any function.

The outer surface thus included the two lower part-annular protuberances 48 present on each side of Figure 3B, so that D4 disclosed the feature added to claim 1 of each of auxiliary requests 7 and 8. The only distinguishing feature was the feature of the thermoplastic polymer, which did not involve an inventive step for the same reasons indicated for auxiliary request 6.

Reasons for the Decision

1. The patent

1.1 A hollow needle may be mounted inside a flexible catheter tube in such a way as to allow the needle to slide and telescope along the length of the catheter tube. The needle is used to puncture the skin and facilitate introduction of the catheter tube inside the

desired target body cavity, for example a vein. Once the needle has done its duty, it is withdrawn by being pulled backwards through the catheter. However, an unprotected released needle constitutes a serious health hazard.

1.2 The patent deals with a needle tip shielding device for the automatic safety shielding of a needle after its employment inside a catheter. The device is in form of one integral unit made of a thermoplastic polymer and comprises, among other things, a resilient arm adapted for clamping a needle tip of a hollow needle.

2. Admittance of the respondent's submissions dated 4 January 2024

2.1 The respondent filed a letter on 4 January 2024, after notification of the Board's communication under Article 15(1) RPBA. The appellant requested that these submissions not be admitted into the proceedings pursuant to Article 13(2) RPBA.

2.2 Only those parts of the submissions which represent an amendment to the respondent's appeal case are subject to Article 13(2) RPBA. The two specific issues alleged by the appellant to amount to an amendment of the respondent's case relate to a new objection of lack of inventive step to claim 1 of auxiliary request 8 based on the assumption that the front side was anticipated by the upper part of the base portion 30 in D4 (see section "b) second inventive step approach" on page 10 of the respondent's letter dated 4 January 2024). As set out below in the discussion of inventive step of auxiliary requests 7 and 8, the Board holds that the front side is anticipated by a different part of the device of D4. Hence, neither this "second inventive

step approach" nor its admittance are relevant to this decision.

2.3 As to the other submissions in the respondent's letter, they represent a refinement of the respondent's appeal case and their admittance is not subject to Article 13(2) RPBA. The Board thus rejected the appellant's request not to admit the submissions dated 4 January 2024 into the proceedings.

3. Main request - added subject-matter

3.1 The opposed patent derives from a divisional application of European patent application No. 10 808 424.5 ("the earlier application"), published as WO 2011/019316 A1. The figures and the description of the application as filed are identical to the figures and the description of the earlier application as filed, except that the claims of the earlier application are included as clauses at the end of the description.

3.2 In their written submissions on added subject-matter, the parties refer to the application as filed, but only to those parts which correspond to the earlier application. The objections of added subject-matter thus relate to Article 100(c) EPC in connection with Article 76(1) EPC, as clarified at the beginning of the oral proceedings before the Board.

3.3 The features of claim 5 are disclosed in claim 3 of the earlier application (i.e. in clause 3 of the application as filed). However, claim 3 of the earlier application discloses also the further features that "said any straight imaginary line coincides with a point on the surface of said resilient arm (103) in

between said attachment point (105) and an inner corner (104) in said L-shaped form of said resilient arm (103), when said resilient arm (103) is in said resting state" (second paragraph of claim 3) and "said any straight imaginary line coincides with said back-hooking elongation (110), or with a point on the surface in between said attachment point (105) and said corner (104), when said resilient arm (103) is clamping said needle tip (304) in cooperation with said back-hooking elongation (110)" (third paragraph of claim 3). It is disputed whether the subject-matter of claim 5 of the main request, without including said further features of claim 3 of the earlier application, extends beyond the content of the earlier application as filed.

3.4 The appellant refers to the Figures as basis, in particular to Figures 1, 2 and 6. The Figures show the resilient arm in different states, so that part of the features of claim 3 of the earlier application is visible in each Figure (Figures 1, 2 and 6 showing the resting state and Figures 3 to 5 and 7 showing the clamping state). The information disclosed by the Figures must be assessed in view of the whole disclosure of the earlier application. One cannot derive from the drawings in view of the description and claims that the device shown in Figures 1, 2 and 6 of the earlier application does not comprise the omitted features of claim 3 of the earlier application. On the contrary, page 10, line 7 to page 11, line 26 describes, with reference to Figures 2 to 4, the sequential events that occur upon withdrawal of the needle, being thus clear that the device shown in Figure 2 comprises the features of claim 3 of the earlier application when in its resting state. Nothing in the application as filed indicates that the device

shown in Figures 1 and 6 should be any different in this regard.

3.5 The appellant's assertion that there was no inextricable link between the features of claim 5 and the features of the second paragraph of claim 3 of the earlier application is not convincing because, as held in point 1.5 of the appealed decision, the further features prevent that the resilient arm is pushed out of the way when the needle is advanced distally, thus cooperating with the shape recited in present claim 5 to achieve this effect.

3.6 It follows that, due to the omission of at least the features of the second paragraph of claim 3 of the earlier application, the subject-matter of claim 5 of the main request extends beyond the content of the earlier application as filed. Consequently, the ground for opposition under Article 100(c) EPC prejudices maintenance of the patent as granted.

4. Auxiliary requests 1 to 5 - added subject-matter

4.1 Each of auxiliary requests 1 to 5 comprises a claim based on claim 5 as granted, namely claim 5 in auxiliary requests 1 and 3 and claim 2 in auxiliary requests 2, 4 and 5. This claim in each of auxiliary requests 1 to 5 omits the same features of claim 3 of the earlier application as claim 5 as granted. For the same reasons as set out for the main request above, the subject-matter of each of auxiliary requests 1 to 5 extends beyond the content of the earlier application and thus contravenes Article 76(1) EPC.

5. Auxiliary request 6

5.1 Novelty

5.1.1 D4 discloses in the embodiment of Figures 1 to 3C a needle safety device. It is disputed whether or not D4 discloses the following features:

- "a resilient arm extending at an attachment point from said front side of said body"
- the device "is in form of one integral unit"
- the integral unit is "made of a thermoplastic polymer"

5.1.2 Feature "a resilient arm extending at an attachment point from said front side of said body"

Irrespective of whether the front side of claim 1 is anticipated by the upper part of the base portion 30 or by the region immediately above the protuberances 48 in Fig. 3B of D4, the jaw 34 (or the part of the jaw 34 which is above the thick line) extends at an attachment point from said front side and thus anticipates the resilient arm of claim 1. The appellant argues that the jaws in D4 were merely a continuation of the side wall, hence extending from the outer surface and not from the front side. However, the jaws in D4 protrude in the axial direction (i.e. from the front side) rather than in the radial direction (i.e. from the outer surface). Hence, D4 discloses the feature "a resilient arm extending at an attachment point from said front side of said body".

5.1.3 Feature "is in form of one integral unit"

The needle safety device shown in Figure 3A of D4 is made of two parts: the elastic element / tension ring 44, and the component shown in Figure 3B which is

composed of a base portion 30, jaws 34 and 36 and link 46.

It is undisputed that the first sentence of paragraph [0016] discloses that the component shown in Figure 3B may be integrally formed, i.e. it may be in form of one integral unit. Disputed is whether D4 discloses this component as a device by itself, without the elastic element 44.

Paragraph [0015] of D4 teaches that the link (46 in Figure 3B) "causes the jaws to collapse even if the elastic element should fail in its function". As pointed out by the appellant, this statement (among other passages) shows the importance of the elastic element, refers to a malfunction and is not equivalent to disclosing use of the device of Figure 3B, i.e. of the device without the elastic element. However, it follows from this statement that the shielding function is also achieved without the elastic element. Hence, the component shown in Figure 3B of D4 defines a needle tip shielding device by itself.

The appellant's assertion that the component shown in Figure 3B would not meet the criteria for certification as a medical device is speculative and, in any event, potential certification or possible safety concerns are not a decisive criterion for establishing whether the component anticipates a needle tip shielding device within the meaning of claim 1.

The appellant further argued that the component shown in Figure 3B would not be suitable "for being fitted inside an intravenous catheter hub" as required by claim 1. Figure 2 of D4 shows the device formed by the component of Figure 3B together with the elastic

element 44 fitted inside an intravenous catheter hub 10. It is clear from the Figure that also without the elastic element 44 the component of Figure 3B would be suitable "for being fitted inside an intravenous catheter hub".

It follows that D4 discloses a plastic needle tip shielding device "in form of one integral unit".

5.1.4 Feature "made of a thermoplastic polymer"

The first sentence of paragraph [0016] of D4 discloses that the component/device of Figure 3B of D4 may be integrally formed, preferably from a plastic material. Paragraph [0016] goes on to disclose, in the third to fifth sentences, that different materials may be used for different parts. It is only in this context that D4 discloses a thermoplastic polymer for the inner part of the jaws, without any indication that the complete device (i.e. inner and outer part of the jaws, base portion and link) could be made of this polymer. Hence, D4 does not directly and unambiguously disclose a device in form of one integral unit "made of a thermoplastic polymer".

5.1.5 It follows from the above that the subject-matter of claim 1 is novel over D4.

5.2 Inventive step

5.2.1 It is undisputed that D4 defines a valid starting point for the invention defined by claim 1. As set out above, the device of claim 1 is distinguished from the device of Figure 3B of D4 only by the feature "made of a thermoplastic polymer". In the problem and solution approach submitted in the statement of grounds of

appeal, the technical effects and technical problem were defined assuming that further distinguishing features were present. Hence, these submissions are not convincing.

5.2.2 The appellant argues that thermoplastic materials had several advantages. As pointed out by the respondent, the patent specification discloses advantages associated to the use of a plastic material for the device (paragraphs [0056]-[0057], see also the materials mentioned in paragraphs [0058]-[0063]) but does not associate any advantage or technical effect to the particular choice of a thermoplastic polymer.

5.2.3 D4 discloses that the integrally formed device is made from a plastic material, for example, by injection molding (see paragraph [0016], first sentence). The problem to be solved can thus be regarded as selecting a plastic material for manufacturing the integrally formed device of D4.

5.2.4 The appellant argues that person skilled in the art would not consider making the device of D4 of a thermoplastic polymer based on several lines of argument.

5.2.5 Contrary to the appellant's argument and as held in the appealed decision, the disclosure in D4 that a thermoplastic polymer may be used for the inner part of the jaws does not teach away from using it for the remainder of the device.

5.2.6 The appellant refers to D2, which deals with a safety device for a needle made of plastic. Although D2 indicates a preference for thermosetting polymers, it also discloses that either thermoplastic or

thermosetting polymers can be used (paragraph [0021] and claim 4).

5.2.7 The appellant also refers to limitations of thermoplastics related to their behaviour upon temperature rise, supported by E15 as proof of common general knowledge. Any choice of the plastic material implies advantages and disadvantages which are generally known to the person skilled in the art. The disadvantages related to the behaviour upon temperature rise do not necessarily mean that the person skilled in the art would exclude using thermoplastics for manufacturing the device of D4. Indeed D4 itself explicitly disclose that at least a part of the device can be made of thermoplastic material. As disclosed by D2 (paragraph [0021] and claim 4), thermosetting or thermoplastic materials may be used. Also, that a list of main applications for a specific family of thermoplastic polymers (POM) in E15 (page 453) does not mention catheter assemblies or needle tip shielding devices does not mean that thermoplastic polymers would not be considered for that use. The list is not exhaustive and such devices are not necessarily a "main application" for that particular family of thermoplastic polymers. Hence, the person skilled in the art would not be discouraged (by any of D2, D4 or E15) to select a thermoplastic polymer as the plastic material for the device of D4.

5.2.8 On the contrary, thermoplastic polymers are a well-known and widely used plastic material (see E9, page 207, and E15, page 14, as proof of common general knowledge in this regard). Using a thermoplastic polymer as the plastic material for the device of D4 is a straightforward choice which does not involve an inventive step.

5.2.9 It follows that the subject-matter of claim 1 of auxiliary request 6 is not inventive in view of D4 combined with the common general knowledge.

6. Auxiliary requests 7 and 8 - inventive step

6.1 Claim 1 of auxiliary request 7 specifies that "the outer surface of the body is arranged with at least one protuberance", whereas claim 1 of auxiliary request 8 specifies that "a plurality of protuberances are located on the outer surface".

6.2 It is disputed whether the lower part-annular protrusions 48 of Figure 3B of D4 anticipate protuberances on the outer surface. This hinges on which parts of the device of Figure 3B anticipate the front side and the outer surface within the meaning of claim 1.

6.3 The appellant contests the Opposition Division's conclusion that the portion immediately above the lower part-annular protrusions 48 of Figure 3B, i.e. the portion at which the device turns from a cylindrical shape into a conical shape, anticipated the front side (see point 7.3 of the appealed decision). In particular, the appellant argues that this was incompatible with the requirements resulting from the features "a hole extending from said rear side to said front side" and "a resilient arm extending at an attachment point from said front side of said body".

6.4 The body of the device of Figure 3B comprises a hole extending from the lower part of base portion 30 to the portion immediately above the lower part-annular protrusions 48 (see needle 24 extending through the

device of Figure 3B). Hence, the feature "a hole extending from said rear side to said front side" is anticipated by the device of Figure 3B also if the portion immediately above the lower part-annular protrusions 48 is considered to anticipate the "front side".

6.5 The part of the jaw 34 above the lower right part-annular protrusion 48 in Figure 3B extends at an attachment point from the portion immediately above the lower part-annular protrusions 48. The jaw 34 is resilient, at least in its part above the protrusion 48 (see paragraph [0005] of D4 and deflection in Figure 1). Hence, also the feature "a resilient arm extending at an attachment point from said front side of said body" is anticipated.

6.6 It follows that regarding the portion immediately above the lower part-annular protrusions 48 of Figure 3B as anticipating the "front side" of claim 1 does not result in any other feature of claim 1 not being anticipated, i.e. the Board is not convinced by the alleged incompatibility.

6.7 The appellant further argues that a "front side" did not require a surface but that there must be at least some structure. Even if that were to be accepted, the portion immediately above the lower protrusions 48 is structurally identifiable as the part where the lower protrusions end and where the device changes from a cylindrical to a conical shape.

6.8 In summary, the Board agrees with the appealed decision that the portion immediately above the lower protrusions 48 anticipates the front side within the meaning of claim 1. Consequently, the surface

connecting the bottom of the base portion 30 to the portion immediately above the lower protrusions 48 anticipates the "outer surface connecting the rear side and the front side" of claim 1. This surface comprises two part-annular protrusions 48 (on the left and right side of Figure 3B). These protrusions 48 anticipate the protuberance(s) on the outer surface required by claim 1 of each of auxiliary requests 7 or 8.

6.9 It follows that the only feature distinguishing the subject-matter of claim 1 of each of auxiliary requests 7 and 8 from the device disclosed in Figure 3B of D4 is the feature "made of a thermoplastic polymer". For the same reasons as set out for auxiliary request 6 above, an inventive step cannot be acknowledged for this feature. Consequently, the subject-matter of claim 1 of each of auxiliary requests 7 and 8 is not inventive in view of D4 combined with the common general knowledge.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

A. Chavinier-Tomsic M. Alvazzi Delfrate

Decision electronically authenticated