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**Datasheet for the decision  
of 25 August 2023**

**Case Number:** T 1814/21 - 3.2.01

**Application Number:** 17187595.8

**Publication Number:** 3266416

**IPC:** A61F2/24

**Language of the proceedings:** EN

**Title of invention:**

TRUNCATED LEAFLET FOR PROSTHETIC HEART VALVES

**Patent Proprietor:**

W. L. Gore & Associates, Inc.

**Opponent:**

Edwards Lifesciences Corporation

**Headword:**

**Relevant legal provisions:**

EPC R. 100(2)

**Keyword:**

Main request in appeal proceedings corresponding to request that was intended to be filed in oral proceedings before the opposition division

Withdrawal of appellant's objections against the main request

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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**Case Number: T 1814/21 - 3.2.01**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 25 August 2023**

**Appellant:** Edwards Lifesciences Corporation  
(Opponent) One Edwards Way  
Irvine, CA 92614 (US)

**Representative:** Somerville, Andrew Edward  
Somerville Associates  
Dunston Innovation Centre  
Dunston Road  
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**Respondent:** W. L. Gore & Associates, Inc.  
(Patent Proprietor) 555 Paper Mill Road  
Newark, DE 19711 (US)

**Representative:** HGF  
HGF Limited  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
26 July 2021 concerning maintenance of the  
European Patent No. 3266416 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** A. Pieracci  
A. Jimenez

## **Summary of Facts and Submissions**

I. An appeal was filed by the opponent in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining the European patent No. 3 266 416 in amended form according to the auxiliary request 1.

II. With the statement of grounds of appeal the opponent (appellant) requested:

that the appealed decision be set aside and  
that the patent be revoked in its entirety.

The opponent requested, as an auxiliary measure, to arrange for oral proceedings.

III. With the reply to the statement of grounds of appeal the patent proprietor (respondent) requested:

that the patent be maintained as amended according to the main request,  
or, in the alternative,  
that the patent be maintained on the basis of the set of claims according to one of the first to fourteenth auxiliary requests, all requests as filed with the reply to the statement setting out the grounds of appeal.

The patent proprietor also requested oral proceedings to be arranged should the Board be minded to refuse the main request.

IV. With a communication pursuant to Rule 100(2) EPC the Board noted, inter alia, that the claims according to

the main request in appeal corresponded to the claims that the patent proprietor was expected to file during oral proceedings before the opposition division, in order to correct a typing error in the previous version of auxiliary request 1 that was considered to be allowable by the opposition division. Instead the auxiliary request 1 filed during oral proceedings and forming the basis for the maintenance of the patent included further amendments in claim 1. The Board also invited the patent proprietor to confirm that the version of the description and of the drawings associated with the main request in appeal was that of auxiliary request 1 of the oral proceedings before the opposition division.

- V. In reply to the Board's communication the patent proprietor confirmed that the version of the description and of the drawings intended to be part of the main request was that associated with auxiliary request 1 filed during the oral proceedings before the opposition division.
- VI. In reply to the same communication the opponent withdrew all objections against the main request and withdrew the request for oral proceedings.
- VII. Claim 1 according to the main request reads:

"A prosthetic valve (100) comprising a frame (130) having a generally tubular shape, the frame defining a plurality of leaflet windows (137);  
and a film (160) defining at least one leaflet (140) extending from each of the leaflet windows, each leaflet having two leaflet sides (141), a planar central zone (182), a leaflet base (143) and a free

edge (142) opposite the leaflet base, wherein the two leaflet sides diverge from the leaflet base;  
wherein each leaflet base is truncated, providing a relatively flat leaflet base;  
wherein a truncated zone is located on the section of the leaflet (140) adjacent the leaflet base (143) and wherein the truncation zone is truncated by the alpha plane (AP) so as to define an attachment line (145) of the leaflet base (143) wherein the attachment line (145) is perpendicular to a valve axis (X) at the leaflet base (143)."

## **Reasons for the Decision**

1. Allowability of the main request
  - 1.1 In its communication pursuant to Rule 100(2) EPC the Board informed the parties of its preliminary opinion that the main request filed in appeal corresponded to the set of claims that the patent proprietor was expected to file at the oral proceedings before the opposition division to form the basis for the maintenance of the patent.
  - 1.2 The Board noted in point 1 of its communication that from the minutes of the oral proceedings before the opposition division (point 2.8) it results that auxiliary request 1 discussed during the oral proceedings and found by the opposition division to comply with the EPC was initially filed on 7 February 2020 as auxiliary request 2. However, it also results from the minutes that a typing mistake in claim 1 of said auxiliary request 1 was identified and that the parties agreed on the

correction (replacing "the" by "a" in line 6; see point 2.14.1 of the minutes) and that the version of the claims of auxiliary request 1 filed by the patent proprietor at the end of the oral proceedings before the opposition division was intended to solely correct the typing mistake. However, the version of auxiliary request 1 that was filed included further amendments in claim 1 (on line 5 the additional wording "a film (160) attached to the frame" and on line 14 the word "that" instead of the word "is" were added) and these amendments went undetected. As a consequence, the opposition division decided to maintain the patent based on claims 1-11 filed during the oral proceedings as auxiliary request 1 with claim 1 including said further amendments.

1.3 The Board also noted in point 2 of its communication that the main request filed by the patent proprietor with its reply to the statement setting out the grounds of appeal corresponds to auxiliary request 2 filed in opposition proceedings on 7 February 2020 in which the typing mistake mentioned above was corrected, but without the above-mentioned further amendments. Therefore the claims submitted as main request in appeal proceedings correspond to the amended set of claims that the opposition division considered to comply with the requirements of the EPC.

1.4 In view of the positive opinion given by the opposition division on the present main request and since the appellant has withdrawn all its objections against it, the Board having no reason for questioning the validity of the patent proprietor's main request, the claims according to the main request, with the associated description and figures, forms a suitable basis for the maintenance of the patent in amended form.

## Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:

Description:

Paragraphs	1-6, 8-119	of the patent specification
	7	filed during the oral
		proceedings before the
		opposition division on
		15 March 2021

Claims:

No.	1-11	of the main request filed on
		14 April 2022

Drawings:

Sheets	1/9-9/9	of the patent specification
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The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated