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**Datasheet for the decision  
of 24 April 2024**

**Case Number:** T 0354/22 - 3.2.08

**Application Number:** 14803859.9

**Publication Number:** 3005983

**IPC:** A61F2/966, A61F2/24, A61F2/95

**Language of the proceedings:** EN

**Title of invention:**  
ELECTRIC HANDLE FOR IMPLANT DELIVERY AND DELIVERY SYSTEM

**Patent Proprietor:**  
SHANGHAI MICROPORT CARDIOFLOW MEDTECH CO., LTD.

**Opponent:**  
Edwards Lifesciences Corporation

**Relevant legal provisions:**  
EPC Art. 100(b), 100(c), 123(2), 83  
RPBA 2020 Art. 12(4), 12(6), 13(2)

**Keyword:**

Amendments - main request - extension beyond the content of  
the application as filed (yes)

Sufficiency of disclosure - (yes)

Late-filed facts - circumstances of appeal case justify  
admittance (yes)

Late-filed request - admitted (yes)



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Case Number: T 0354/22 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 24 April 2024**

**Appellant:** SHANGHAI MICROPORT CARDIOFLOW MEDTECH CO., LTD.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 29 November  
2021 revoking European patent No. 3005983  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairwoman** P. Acton  
**Members:** G. Buchmann  
F. Bostedt

## Summary of Facts and Submissions

- I. The opposition division revoked the European patent No. EP 3 005 983. The opposition division held that the ground of opposition under Article 100(c) EPC prejudiced the maintenance of the patent.
- II. The patent proprietor filed an appeal against this decision.
- III. Oral proceedings took place in the form of a videoconference before the Board on 24 April 2024.
- IV. The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, in the alternative, that a patent be maintained on the basis of one of the following auxiliary requests in the following order: 1b, 1b2, 1c, 1d, 1e, 2-1, 3-1, 4-1, 5-1, 6-1, 2-3, 3-3, 4-3, 5-3, 6-3, 1-2, 1, 2, 3, 4, 5, 6.
- V. The respondent requested that the appeal be dismissed and that the patent be revoked.
- VI. In the present decision, reference is made to the following documents:
- D3** Translation by RWS of WO 2014/190880 filed on 6 November 2019
- D16** D3 with declarations of RWS, filed on 9 June 2020
- D17** Declaration of Jun Wu filed on 9 June 2020
- P1** Translation of WO 2014/190880 filed together

with the statement of the grounds of appeal

**P2** Declaration of translator of P1

**P3** Annexes 1-6 of P2

VII. The independent claims 1 and 7 of the main request read as follows. The numbering of the features has been added by the Board.

**Claim 1:**

**M1**

"An electric handle (1) for delivering an implant, comprising

**M2**

an electric control unit (10),

**M3**

a power-driven transmission mechanism (20),

**M4**

a handle housing (30),

**M5**

an outer tube anchor (40) and an

**M6**

inner tube anchor (50), characterized in that:

**M7**

the electric control unit (10) comprises a controller (101), control buttons (102), a power switch (103), a power supply socket (104), and a power supply connector (105), and

**M8**

the electric control unit (10) is operatively coupled to the power-driven transmission mechanism (20) to actuate the power-driven transmission mechanism (20);

**M9**

the control buttons (102) provide an instruction indicative of a direction and a speed,

**M10**

the controller (101) receives the instruction from the control buttons (102) and convert the instruction into a signal recognizable by the power-driven transmission mechanism (20) so as to actuate the power-driven transmission mechanism;

**M11**

the power switch (103) is connected to the controller (101) or the control buttons (102) via a cable (105d) so as to activate or deactivate the controller (101),

**M12**

the power supply socket (104) is coupled to the power supply connector (105),

**M13**

the power supply connector (105) is connected to a power supply so as to supply power to the electric control unit (10) and the power-driven transmission mechanism (20);

**M14**

the power-driven transmission mechanism (20) is supported within the handle housing (30) and moveable together with the outer tube anchor (40);

**M15**

the inner tube anchor (50) is disposed within the handle housing (30) and is configured to hold an inner tube (3) of a delivery system;

**M16**

and the outer tube anchor (40) is disposed within the handle housing to hold an outer tube (2) of the delivery system."

**Claim 7:**

**v1**

"A delivery system, comprising

**v2**

an outer tube (2),

**v3**

an inner tube (3) and

**v4**

an implant,

**v5**

the inner tube (3) comprising an inner tube section (3a), a guide cone (3d) and a connector for the implant (3b),

**v6**

the implant loaded on the section of the inner tube (3) where it is located between the guide cone (3d) and the connector for the implant (3b) and attached to the connector for the implant (3b),

**v7**

the outer tube (2) shielding over the inner tube (3) in order to cover the implant and being movable along the outer surface of the inner tube (3),

**v8**

the delivery system further comprising an electric handle (1) as defined in any of claims 1 to 6, wherein:

**v9**

the outer tube (2) and inner tube (3) each has a portion proximal to the connector for the implant (3b) that is at least partially assembled into the electric handle (1);

**v10**

the outer tube anchor (40) is configured to hold the outer tube (2) such that the outer tube (2) moves together with the outer tube anchor (40);

**V11**

an end of the inner tube (3) opposite to the guide cone (3d) is fixed within the handle housing (30) by the inner tube anchor (50)."

VIII. The arguments of the appellant can be summarised as follows:

*Admittance of documents*

Documents D16 and D17 should not be admitted because they were filed after the opposition period.

P1 to P3 should be admitted because they were a reaction to the opposition division's decision.

*Amendments - Article 100(c) EPC*

The term "lián dòng" in Feature M14 of claim 1 mainly meant a common movement of several things. A linkage between these things was implicitly included in the term "movable together with". Therefore, claim 1 did not contravene Article 123(2) EPC.

The term "connector for the implant (3b)" in Feature V5 of claim 7 did not add anything to the claim compared to the expression "implant fixing head".

The description did not contravene Article 123(2) EPC.

*Sufficiency of disclosure - Article 83 EPC*

The subject-matter of claim 1 was disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

IX. The arguments of the respondent can be summarised as follows:

*Admittance of documents*

The documents D16 and D17 were part of the opposition proceedings and should be taken into account by the Board.

The documents P1 to P3, which were filed by the appellant together with the statement setting out the grounds of appeal, should not be admitted because they could and should have been filed earlier.

*Amendments - Article 100(c) EPC*

Feature **M14** of claim 1 went beyond the content of the application as originally filed because the words "movable together with" had a different meaning than the originally filed expression "lián dòng".

The term "connector for the implant (3b)" in Feature V5 of claim 7 went beyond the content of the application as originally filed. The Chinese wording in claim 7 as originally filed meant "implant fixing head".

Several incorrect translations in the description went beyond the content of the application as originally filed.

*Sufficiency of disclosure - Article 83 EPC*

In the handle according to claim 1, the complete transmission mechanism was movable together with the outer tube anchor. Such a handle could not be carried out by a skilled person.

## **Reasons for the Decision**

### 1. Admittance of documents

#### 1.1 D16 and D17

The appellant requested that documents D16 and D17 not be admitted because they were filed after the opposition period.

These documents were filed, however, as a reaction to the reply to the opposition in which the proprietor had challenged the validity of the translation filed by the opponent. Additionally, these documents were admitted by the opposition division and were used in the opposition decision (points 2.3 and 2.4).

The Board cannot find any error in the Opposition Division's exercise of discretion. Therefore, the Board sees no reason to overrule the decision to admit these documents. They are therefore in the proceedings.

#### 1.2 P1-P3

The respondent requested that documents P1 to P3, which were filed by the appellant together with the statement setting out the grounds of appeal, not be admitted into the proceedings.

The respondent argued that P1 to P3 could not be considered as a reaction to the reasons of the decision in opposition. On the contrary, the objection concerning the correctness of the translation had been known to the appellant since the beginning of the

opposition proceedings. They could not be considered a reaction to the objection under Article 123(3) EPC raised against auxiliary request 1 either. Documents P1 to P3 could and should have been filed already during opposition proceedings.

However, P1 to P3 provide the Board with information on the meaning of the term "lián dòng" which is suitable to address the issues which led to the decision under appeal. They allow the Board to get a more complete picture of an issue which is essential to the case in hand. In the exercise of its discretion, the Board admitted these documents into the proceedings (Article 12(4) RPBA 2020).

## 2. Amendments - Article 100(c) EPC

### 2.1 Claim 1

2.1.1 The respondent raised the objection that Feature **M14**, according to which "the power-driven transmission mechanism (20) is supported within the handle housing (30) and moveable together with the outer tube anchor (40),"

went beyond the content of the application as originally filed.

In particular, the words "movable together with" had a different meaning than the originally filed Chinese expression "lián dòng".

2.1.2 The translations filed by the appellant (patent application and P1) understand the term "lián dòng" to mean "movable together with".

In the translation filed by the respondent (D3, D16), it is interpreted as "linked to".

- 2.1.3 The declaration of Jun Wu (D17), point 5.5 explains that the term "lián dòng" contains both meanings of "linked" and "movable". In the embodiment described in paragraphs [0036] and [0037] and shown in Figure 1 of the patent, it was not the complete transmission mechanism but only the driving nut 205 which was movable together with the outer tube anchor 40. Since the remaining components of the transmission mechanism were fixed (or rotating only), Jun Wu concluded in D17 that the translation "linked to" was more appropriate than "movable".

However, it is not explained in D17 why the aspect of motion could or should be omitted, although it is said to be included in the meaning of "lián dòng".

- 2.1.4 The declaration of Yang Hua (P2), point 6 explains that based on the research of the translator, in the etymological meaning of "lián dòng" "the correlation of object's motion or state are emphasized."

However, Annex 3 of P3 shows that the meaning "linkage" is also included in the term "lián dòng".

- 2.1.5 From the above, the Board concludes that the term "lián dòng" means that several objects are linked in a way that they can be moved together. Both aspects are present at the same time. "Linked" and "movable" as mentioned in D17 are not two alternative meanings of "lián dòng", but they are two aspects of the same term.

- 2.1.6 The respondent argued that the movement aspect of "lián dòng" did not refer to a common movement but to a

movement in general. This argument was based on D17, point 5.5 which mentioned that "lián dòng" contained the meanings of "linked" and "movable" (instead of "movable together with").

However, P3 Annex 3 explains that the movement aspect of "lián dòng" refers to a common movement of related things. Since the aspect of a "linkage" is present in "lián dòng", the movement aspect cannot be considered in isolation, but only as the common movement of several things. This corresponds to the English expression "movable together with".

2.1.7 The respondent further argued that the translation should take the context of the patent into account. The only embodiment, described in particular in paragraphs [0036] and [0037], excluded that the transmission mechanism was moved together with the outer tube anchor. Only the driving nut (i.e. a part of the transmission mechanism) was movable together with the outer tube anchor. Additionally, since the transmission mechanism according to claim 1 had to recognise the signal from the controller and to receive electric power, it was excluded that the complete transmission mechanism was movable inside the handle. Therefore, the translation "movable together with" was incorrect, and "linked to" was the only correct translation.

However, this line of argument presupposes that the claim as originally filed is supported by the description, which is not necessarily the case. Furthermore, the term "lián dòng" is not mentioned in the description of the embodiment but it is used only in the claim. Therefore, it cannot be excluded that the claim wording as originally filed had a meaning which

deviates from the description.

- 2.1.8 The appellant argued that "movable together" implied a link between the transmission mechanism and the outer tube anchor. Without any linkage, no common movement was possible. Therefore, the words "linked to" could be omitted from the claim.

However, a common movement of several components is not only possible in situations in which these components are (mechanically) linked to each other. Therefore, a linkage is not implicitly included in the term "movable together".

- 2.1.9 For the above reasons, both aspects of a linkage between and a common movement of the transmission mechanism and the outer tube anchor were present in claim 1 as originally filed. The current wording, according to which the transmission mechanism is "movable together with the outer tube anchor", has broadened the subject-matter of claim 1 of the main request and, therefore, the subject-matter of this claim goes beyond the content of the application as originally filed.

## 2.2 Claim 7

- 2.2.1 The respondent objected that the term "connector for the implant (3b)" in Feature V5 of claim 7 went beyond the content of the application as originally filed. The meaning of the Chinese original was "implant fixing head" (see D17, point 6.2). By replacing "implant fixing head" with "connector for the implant", the subject-matter of claim 7 had been broadened.

The appellant presented the translation P1 which uses

the term "connector for the implant". The appellant did, however, not present any further arguments or evidence as to why the translation of P1 was correct whereas the translation of D17 was incorrect.

Therefore, the Board concludes that the translation of D17 is correct.

- 2.2.2 The term "fixing" implies that there is no possibility of movement left between the parts fixed to each other. In contrast, "connecting" is a more general form of linking two parts together because it does not exclude movement between the parts. This is confirmed (in a different context) by P2, point 6 (filed by the appellant) which explains that "even if two objects are 'connected', they will not transmit the motion relationship necessarily."

Therefore, the term "connector for the implant" goes beyond the content of the application as originally filed.

- 2.2.3 For the above reasons, the subject-matter of claim 7 of the main request goes beyond the content of the application as originally filed.

## 2.3 Description

- 2.3.1 The respondent argued that in paragraph [0042] of the patent, the expression that the prosthetic valve 4 is loaded on the inner tube 3 "in a state covering over" an inner tube section 3c, went beyond the content of the application as originally filed. They argue that the correct translation would be "located at".

The term used in the patent is more specific than

merely "located at" because a valve which is in a state covering of the tube section 3c can only be located at said section. Figure 5b, which is described in paragraph [0042], shows that the implant surrounds the inner tube at section 3c which corresponds to wording of the description. Therefore, the term "in a state covering over an inner tube section 3c" does not add subject-matter to the description as originally filed.

- 2.3.2 The respondent argued that in paragraph [0042] of the patent, the passage according to which the outer tube "is movable along the outer surface of the inner tube 3 activated by the motor 201" went beyond the content of the application as originally filed. They argued that the correct translation would be "moves axially along an outer wall of the inner tube 3 by means of rotary movement of the motor 201", which was different from paragraph [0042] of the patent.

The respondent did, however, not specify which technical information was added to the description as a whole by the allegedly incorrect translation provided by the appellant.

- 2.3.3 The respondent argued that in paragraphs [0043] and [0044] of the patent, the terms "deploying" and "deployment" went beyond the content of the application as originally filed. They argued that the correct translation would be "release" and "releasing". "Release" was different from "deployment".

In the field of minimally invasive implantation of heart valves, the release of a heart valve from the delivery system is the same process as deployment of the heart valve.

The Board does not recognise any additional technical information given by the terms "deploying" and "deployment".

2.3.4 For the above reasons, the description of the patent as granted does not extend beyond the content of the application as filed.

### 3. Sufficiency of disclosure

3.1 The respondent raised the objection that the patent did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. According to claim 1, the complete transmission mechanism was movable together with the outer tube anchor. But, since the transmission mechanism according to claim 1 had to recognise the signal from the controller and to receive electric power, it was not possible for a skilled person to construct a handle in which the complete transmission mechanism was movable inside the handle. Such an arrangement was also not disclosed in the description, which describes a handle in which only the driving nut (i.e. a part of the transmission mechanism) was movable together with the outer tube anchor.

The Board agrees with the respondent insofar as in the handle according to claim 1 the complete transmission mechanism is indeed movable together with the outer tube anchor 40, whereas in the only described embodiment only the driving nut 205 moves together with the outer tube anchor 40 and the other components of the transmission mechanism remain fixed in the handle housing 30 (paragraphs [0036]-[0037] and Figure 1). This leads to the conclusion that the subject-matter of claim 1 as granted is not supported by the description

of the patent which is a requirement under Article 84, second sentence, EPC and not a requirement of sufficiency of disclosure.

For a skilled person it is possible without undue burden to construct a handle in which the complete transmission mechanism moves together with the outer tube anchor. For example, a motor could be fixed to the outer tube anchor and transfer a force to the housing of the handle. The electric connection for signal and power supply would not prevent the transmission mechanism from moving together with the outer tube anchor.

- 3.2 The respondent raised a further objection that there was no example given in the patent of how the control buttons (102) could provide an instruction indicative of a direction and a speed (Feature M9), and how the controller (101) could receive the instruction from the control buttons (102) and convert the instruction into a signal recognizable by the power-driven transmission mechanism (20) so as to actuate the power-driven transmission mechanism (Feature M10).

These features are, however, sufficiently self-explanatory so that a person skilled in the art can carry them out. The lack of an example in the description is not sufficient proof to the contrary. Since the patent is addressed to the person skilled in the art, it is neither necessary nor desirable that details of well-known features are given in the description. This is the case for Features M9 and M10.

- 3.3 For the above reasons, the ground for opposition under Article 100(b) EPC does not prejudice the maintenance

of the patent.

4. Auxiliary requests 1b and 1b2

The opposition division did not admit auxiliary request 1b. It held that auxiliary request 1b was prima facie not allowable because the term "movable together with" was still present in the claim. Previously, the opposition division had decided in view of the main request that a handle in which the transmission mechanism was "movable together with" the outer tube anchor was not disclosed in the patent application as originally filed.

The decision not to admit auxiliary request 1b was based on a consequential reasoning and does not put in doubt the opposition division's exercise of discretion. However, the assessment of the term "movable together with" by the Board differs from the one applied by the opposition division (see above). Therefore, the opposition division's assessment that claim 1 of auxiliary request 1b prima facie contravened Article 123(2) EPC does no longer apply. On the contrary, in view of the above reasoning under point 2.1., claim 1 of auxiliary request 1b prima facie overcomes the objections raised under Article 123(2) EPC against claim 1 of the main request.

Due to this change in the circumstances of the appeal case, the non-admittance of auxiliary request 1b by the opposition division is set aside (Article 12(6), first sentence, RPBA 2020).

Auxiliary request 1b2, which was filed during the oral proceedings in appeal, differs from auxiliary request 1b in the mere deletion of claims 7-9. Since the

objections against the remaining claims 1-6 had already been discussed in detail, the deletion of claims 7-9 did not change the factual and legal framework of the case. Even if this deletion were considered an amendment of the appellant's appeal case, such an amendment consisting of a mere deletion of claims significantly enhances procedural economy by overcoming existing objections raised against these claims without giving rise to any new issues and is seen in the present case as exceptional circumstances within the meaning of Article 13(2) RPBA 2020.

Therefore, the Board admits auxiliary request 1b2 into the proceedings (Article 13(2) RPBA 2020).

## 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 for further prosecution.

The Registrar:

The Chairwoman:



G. Magouliotis

P. Acton

Decision electronically authenticated