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**Datasheet for the decision  
of 1 December 2023**

**Case Number:** T 0314/23 - 3.2.01

**Application Number:** 19188404.8

**Publication Number:** 3583920

**IPC:** A61F2/24

**Language of the proceedings:** EN

**Title of invention:**

A PROSTHETIC VALVE FRAME

**Patent Proprietor:**

Edwards Lifesciences Corporation

**Opponents:**

Meril GmbH  
Mermaid Medical A/S  
Meril Life Sciences Pvt Ltd.

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(c), 105  
RPBA Art. 15(1)

**Keyword:**

Grounds for opposition - subject-matter extends beyond content of earlier application (yes)

**Decisions cited:**

**Catchword:**



**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 0314/23 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 1 December 2023**

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

**Representative:** Smith, Jeremy Robert  
Kilburn & Strode LLP  
Lacon London  
84 Theobalds Road  
London WC1X 8NL (GB)

**Appellant:** Meril GmbH  
(Opponent 1) Bornheimer Straße 135-137  
53119 Bonn (DE)

**Representative:** Klicznik, Alexander  
Hogan Lovells International LLP  
Kennedydamm 24  
40476 Düsseldorf (DE)

**Party as of right:** Mermaid Medical A/S  
(Opponent 2) Frydensbergvej 25  
3660 Stenløse (DK)

**Party as of right:** Meril Life Sciences Pvt Ltd.  
(Opponent 3) M1-M2, Meril Park, Survey No 135/2/B & 174/2  
Muktanand Marg  
Chala  
Vapi - 396 191, Gujarat (IN)

**Representative:** Klicznik, Alexander  
Hogan Lovells International LLP  
Kennedydamm 24  
40476 Düsseldorf (DE)

**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
15 December 2022 concerning maintenance of the  
European Patent No. 3583920 in amended form.

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** A. Pieracci  
P. Guntz

## **Summary of Facts and Submissions**

- I. An appeal was filed by the patent proprietor and by opponent 1 in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining the European patent No. 3 583 920 in amended form.
- II. The opposition division found the patent as amended according to auxiliary request 2 and the invention to which it relates to meet the requirements of the EPC.
- III. Opponents 2 and 3 (interveners 1 and 2) intervened in the appeal proceedings according to Article 105 EPC.
- IV. In preparation for the oral proceedings the Board communicated its preliminary assessment of the case with a communication pursuant to Article 15(1) RPBA, according to which the appeal of the patent proprietor was likely to be unsuccessful.
- V. The opponents and the patent proprietor reacted, respectively, with letter dated 13 November 2023 and 28 November 2023 to the above communication of the Board.
- VI. Oral proceedings before the Board took place on 1 December 2023. At the end of the oral proceedings the decision was announced. For further details of the proceedings reference is made to the minutes thereof.
- VII. The final requests of the patent proprietor after having withdrawn all auxiliary requests on file are:

that the decision under appeal be set aside and that the patent be maintained as granted.

VIII. The final requests of the opponents are:

that the decision under appeal be set aside and that the European patent be revoked.

IX. The relevant arguments of the parties are dealt with in detail in the reasons for the decision.

X. Claim 1 of the patent as granted (main request) reads as follows:

"A catheter-based prosthetic valve (100) configured to be crimped to a radially collapsed state on a balloon of a delivery apparatus comprising: a collapsible and expandable annular frame (102), configured to be collapsed to a radially collapsed state for mounting on a delivery apparatus and expanded to a radially expanded state inside the body;  
wherein the frame (102) is made of a nickel-cobalt-chromium alloy and comprises a plurality of rows (112a, 112b, 112c, 112d) of angled struts (114), the angled struts (114) are joined to each other so as to form a plurality of rows of hexagonal cells;  
characterized in that the frame (102) is made up entirely of hexagonal cells,  
and wherein each of the hexagonal shaped cells is defined by six struts (144, 146, 148), including two opposing side struts (144) extending parallel to a flow axis of the valve (100), a pair of lower angled struts (146), extending downwardly from respective lower ends of the side struts (144) and converging to intersect with each other, and a pair of upper angled struts (148) extending upwardly from respective upper ends of

the side struts (144) and converging to intersect with each other."

## **Reasons for the Decision**

1. Added subject-matter of claim 1 of the patent as granted (Article 100 (c) EPC)
- 1.1 The patent proprietor contested the finding of the opposition division that the feature of claim 1 that:

"the frame (102) is made up entirely of hexagonal cells"

provides subject-matter extending beyond the content of the earlier application as filed (WO 2013/012801 A2).

- 1.2 The opposition division considered paragraph [0013] of the earlier application to provide the basis for claim 1 of the patent as granted. In paragraph [0013] it is indicated that "the frame comprises a homogeneous pattern of hexagonal cells" and in paragraph [0054] a definition of the term "homogeneous pattern" is given, namely:

"The frame 102 in the illustrated embodiment has what can be referred to as a 'homogenous' pattern of hexagonal cells, meaning that the frame is made up entirely of hexagonal cells and does not include any struts that do not form part of one of the hexagonal cells, except for any struts that extend axially away from the inflow end or outflow end for mounting the frame to a delivery apparatus".

- 1.3 Since in claim 1 of the patent as granted the term "homogeneous pattern of hexagonal cells" of paragraph [0013] of the earlier application is not present, although the claim is based upon that paragraph, and only the first part of the definition of the term "homogenous pattern of hexagonal cells" of paragraph [0054] is given in the claim, the opposition division found that subject-matter had been added extending beyond the content of the earlier application. In fact, in claim 1 the feature is present that "the frame is made up entirely of hexagonal cells" but not the feature that "the frame does not include any struts that do not form part of one of the hexagonal cells, except for any struts that extend axially away from the inflow end or outflow end for mounting the frame to a delivery apparatus" (see point 2.1.9, pages 9 and 10 of the appealed decision, in particular point 2.1.9.4).
- 1.4 The patent proprietor (see the statement setting out the grounds of appeal, page 14, second and fourth paragraph) argued that there is no need to recur to the interpretation of paragraph [013] of the earlier application on the basis of paragraph [0054] as the skilled person understands the expression "homogenous", also used in claim 15 of the earlier application, as indicating something "uniform in nature" so that the cells are understood as being all hexagonal. This reading would be additionally supported by paragraph [055] of the earlier application referring to "the honeycomb structure of the frame", which is a structure made entirely of hexagonal cells, and by paragraph [053] explaining that "each cell of the frame 102 in the illustrated configuration is defined by six struts". Both paragraph [053] and [055] thus provide additional support for the feature of claim 1 that "the frame is made up entirely of hexagonal cells".

- 1.5 The Board is not convinced.  
The Board rather concurs with the opponents and with the opposition division considering that the contested feature is not disclosed *expressis verbis* in paragraph [013] of the earlier application and that the argument that the person skilled in the art would understand the term "homogenous pattern of hexagonal cell" in paragraph [013] as equivalent to "the frame is made up entirely of hexagonal cells" is an assertion which remains unsubstantiated.  
Even by interpreting the term "homogeneous" as meaning "uniform in nature" (see the patent proprietor's statement setting out the grounds of appeal, page 14, second paragraph, last two sentences) the expression of paragraph [013], "the frame *comprises* a homogeneous pattern of hexagonal cells", would not imply that "the frame is made up *entirely* of hexagonal cells" (see also reply to the patent proprietor's statement setting out the grounds of appeal dated 1 September 2023, page 21, last paragraph - page 22, second paragraph).
- 1.6 The Board also concurs with the opponent 1 (see the reply to the patent proprietor's statement setting out the grounds of appeal dated 1 September 2023, page 19, first paragraph) that it cannot be derived from the earlier application that the expression "honeycomb *structure* of the frame" is to be seen equivalent to the expression "frame *made up entirely* of hexagonal cells" and that the fact that in paragraph [053] the cells therein described are "defined by six struts" does not exclude that other struts might be present in the frame (see the reply to the patent proprietor's statement setting out the grounds of appeal dated 1 September 2023, page 20, third paragraph).

- 1.7 The Board also notes that paragraphs [053] and [055] of the earlier application are linked to paragraph [054] as they describe the same embodiment, in which it is specified that other struts can be present in the frame apart from those of the hexagonal cells, so that paragraphs [053] and [055] cannot be considered independently from paragraph [054]. Also for this reason the argument of the patent proprietor considering paragraph [053] and [055] of the earlier application, in particular with reference to the "honeycomb structure", as a basis for the contested feature of claim 1, cannot be followed.
  
- 1.8 The Board is also not convinced by the argument of the patent proprietor that the feature "except for any struts that extend axially away from the inflow end or outflow end for mounting the frame to a delivery apparatus" is optional and can be omitted (see statement of grounds of appeal, page 15, third paragraph from the bottom), since the additional struts may be optional but being defined as the only optional exception said expression provides the skilled reader with a further definition, through the limitation of the feature it refers to (see also the appealed decision, page 10, point 2.1.9.4).
  
- 1.9 The Board also notes the following.
  - 1.9.1 The arguments submitted by the patent proprietor specifically on paragraph [054] (see the statement setting out the grounds of appeal, page 15, fourth paragraph - page 16, second paragraph) essentially are based on the position that the opposition division failed to appreciate that basis for the contested feature of claim 1 can be found in other parts of the

earlier application, so that the omission of the features of paragraph [054] is irrelevant (see the passage bridging pages 15 and 16). These arguments are not convincing since a basis for the contested feature in the earlier application apart from paragraph [054] cannot be found.

1.10 The above findings have been communicated to the parties with the communication of the Board pursuant to Article 15(1) RPBA, to which the patent proprietor has not reacted either in writing or at the oral proceedings.

Thus, after having reconsidered all the factual and legal aspect of the case the Board confirms its preliminary opinion as final.

1.11 In conclusion, the Board is not convinced by the arguments of the patent proprietor that the opposition division erred in considering that the feature "the frame is made up entirely of hexagonal cells" adds subject-matter extending beyond the content of the earlier application as filed.

1.12 The sole request of the patent proprietor being not allowable, the appealed decision is to be set aside and the patent revoked.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated