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**Datasheet for the decision
of 4 September 2025**

Case Number: T 0624/23 - 3.5.05

Application Number: 19382090.9

Publication Number: 3694226

IPC: H04R25/00

Language of the proceedings: EN

Title of invention:

Flexible adaptive hearing aid

Applicant:

Collado Bonet, José

Headword:

Flexible adaptive hearing aid/COLLADO

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Added subject-matter - all claim requests (yes): no direct and unambiguous disclosure in the drawings as filed



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Case Number: T 0624/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 4 September 2025

Appellant: Collado Bonet, José
(Applicant) CL. 238, N° 42
46182 El Plantio / Valencia (ES)

Representative: Lozano Alonso, Jose
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 January 2023
refusing European patent application
No. 19382090.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: K. Peirs
F. Blumer

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division to refuse the present application. The examining division deemed the claim request underlying the appealed decision not to be allowable under Article 123(2) EPC.

II. Oral proceedings before the board were held on 4 September 2025.

The appellant's final requests are that the decision under appeal be set aside and that a patent be granted on the basis of a **main request** or any one of three auxiliary requests (the **first to third auxiliary requests**), all claim requests having been filed with the statement of grounds of appeal.

At the end of the oral proceedings, the board's decision was announced.

III. The sole claim of the **main request** reads as follows (board's feature labelling):

- (a) "A flexible adaptative hearing aid comprising at least one part made of rigid material and, at least, one part made of flexible adaptative material that covers at least a portion in a form of a recess of the surface of the part of the rigid material;
- (b) wherein the part made of rigid material consists on a hollow body arranged to house in its interior the electronic circuit arranged to amplify the sound reaching a microphone emitting it by means of a built-in loudspeaker;

- (c) wherein the part made of flexible material is arranged to be disassembled with respect to the rigid part such that it allows the ease substitution
- (d) and wherein the part made of rigid material further comprises a cover placed at one end of the part made of rigid material;
- (e) characterized in that the part made of flexible adaptive material [is] annular-shaped
- (f) and is completely inserted into the recess made in the part of rigid material;
- (g) and wherein the part made of flexible adaptive material further comprises a plurality of annular hook-shaped flanges arranged to be introduced in the inner ear canal of a user to fit between the inner ear canal and the part of flexible adaptive material,
- (h) wherein the external diameter[s] of the annular hook-shaped flanges are identical."

IV. The sole claim of the **first auxiliary request** differs from the one of the main request merely by editorial changes.

V. The sole claim of the **second auxiliary request** differs from the one of the main request in that features (e), (g) and (h) are replaced, respectively, by the following features (board's feature labelling and underlining):

- (i) "characterized in that the part made of flexible adaptive material is annular-shaped";
- (j) "and wherein the part made of flexible adaptive material further comprises at least, two annular hook-shaped flanges arranged to be introduced in

the inner ear canal of a user to fit between the inner ear canal and the part of flexible adaptative material wherein:

- the external diameter of the annular hook-shaped flanges are identical;
- the annular hook-shaped flanges are arranged in parallel;"

(k) "the annular hook-shaped flanges all comprise the same and identical shape".

VI. The sole claim of the **third auxiliary request** differs from the one of the second auxiliary request again merely by editorial changes.

Reasons for the Decision

1. *Technical background*

1.1 The patent application addresses the challenges associated with "completely-in-canal hearing aids". While discreet and aesthetically pleasing, these hearing aids often suffer from fit and comfort issues. These issues can lead to pain, rubbing and accidental dislodging.

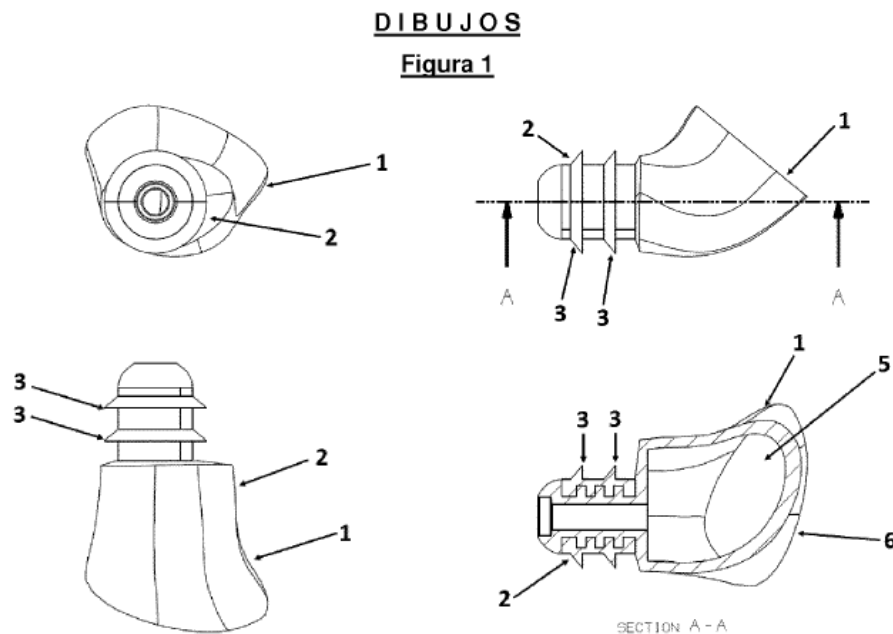
1.2 The present invention proposes a solution in the form of a hearing aid composed of two distinct parts:

1.2.1 The first part is *rigid* and houses the electronic components responsible for sound amplification and processing.

1.2.2 The second part is *flexible*, covers a portion of the rigid part and ensures a snug and comfortable fit

within the ear canal. It features at least one "annular hook-shaped flange".

- 1.3 Figure 1 provides a general overview of the hearing aid, showcasing both the *rigid* and *flexible* parts:



The rigid material (1) houses in its interior (5) the necessary signal-processing electronics. The flexible material (2) forms the outer shell conforming to the ear canal. Annular hook-shaped flanges (3) comprise a protruding ring surrounding the entire assembly.

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

- 2.1 The board fully agrees with the reasoning set out in Reasons 14.2 of the appealed decision, particularly that a skilled reader would not directly and unambiguously derive **feature (h)** from any of the Figures as filed.

For the following reasons, the appellant's arguments in

this regard could not sway the board:

- 2.1.1 The appellant argued that the Figures provide a "detailed and precise technical plan", where the identical external diameters of the "harpoon-shaped annular fins" would be seen as a "deliberate measure" by the skilled reader.

However, even if the Figures were drawn to scale and accurately represented the device (a point not directly disclosed in the application as filed), they only depict two "annular hook-shaped flanges", as acknowledged by the appellant. **Feature (g)**, however, specifies a "plurality of annular hook-shaped flanges", meaning *at least* two. Yet, the original application does not unequivocally disclose that the external diameters of these flanges should remain the same when there are more than two. On the contrary, lines 28 to 30 of page 5 as filed discloses that the "entire shape of the soft part" is customisable, thereby suggesting, in fact, a variable "external diameter" across the various annular hook-shaped flanges. Thus, the skilled reader would readily appreciate that such a variable external diameter is advantageous for hearing aids designed to be "one size fits all" or "one size fits most", as it allows for accommodation of variations in ear-canal dimensions between individuals. A variable external diameter would be also beneficial even for the same individual, given that the diameter of the "inner ear canal" into which the "plurality of annular hook-shaped flanges" is supposed to be introduced in accordance with feature (g) is typically not constant across the length of the user's inner ear canal.

- 2.1.2 The appellant countered at the oral proceedings before the board that the original disclosure contained an

"underlying assumption" that all flanges, in particular those referred to with the term "at least one flange" in original claim 2, must share the same technical characteristics. He argued that while the Figures as filed only show two flanges – a simplification made for the sake of clarity – the disclosure of "at least one flange" in original claim 2 envisaged embodiments with more than two.

The board cannot accept this argument. This alleged "underlying assumption" is not directly and unambiguously derivable from the application as filed. The appellant's argument amounts to an inference which cannot substitute for a positive disclosure in the original application documents.

2.1.3 For the same reasons, the appellant's argument that the case law according to T 169/83, T 523/88 and T 818/93 shows that "the EPC does not prohibit the amendment of claims to include features from drawings, provided the structure and the function of such features were clearly, unmistakably and fully derivable from the drawings by the skilled person and not at odds with the other parts of the disclosure" was found to be unpersuasive: the present Figures as filed do not provide for a structure where more than two flanges have identical diameters. The appellant's reference to T 465/88, T 308/90 and T 372/90 could also not sway the board in this regard.

2.2 Moreover, **feature (f)** is not directly and unambiguously disclosed in the original application. In particular, by comparing Figures 1 and 2 as filed, it can be readily gathered that the flexible material (2) is fitted over portion (4) of the surface of the part of rigid material (1). The expression "completely inserted

into the recess" mentioned in feature (f) suggests a different arrangement, namely that the flexible part is pushed *into* a cavity in the rigid part.

The appellant's references to the description as filed, namely the passages

- at lines 10 to 12 on page 3,
- from page 4, line 35 to page 5, line 1 and
- at lines 12 to 18 on page 5,

do not provide a direct and unambiguous disclosure for the insertion of the flexible part *into* the rigid part either.

2.3 In conclusion, the sole claim of the main request contains subject-matter which extends beyond the content of the application as filed. Therefore, the main request is not allowable under Article 123(2) EPC.

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

3.1 As acknowledged by the appellant, the **first to third auxiliary requests** include the same issues as set out for the main request in point 2 above.

3.2 These requests are, as a result, also 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

K. Bengi-Akyürek

Decision electronically authenticated