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**Datasheet for the decision
of 5 December 2025**

Case Number: T 0704/23 - 3.2.02

Application Number: 16825597.4

Publication Number: 3397229

IPC: A61G11/00

Language of the proceedings: EN

Title of invention:

NEWBORN SUPPORT DEVICE AND RESUSCITATION DEVICE

Patent Proprietor:

Academisch Ziekenhuis Leiden h.o.d.n. LUMC

Opponent:

Lunt, Mark

Headword:

Relevant legal provisions:

EPC Art. 54, 56

EPC R. 103(1) (a)

Keyword:

Novelty - (yes)

Inventive step - (yes)

Reimbursement of appeal fee - substantial procedural violation
(no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0704/23 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 5 December 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 February 2023 concerning maintenance of the
European Patent No. 3397229 in amended form.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
Y. Podbielski

Summary of Facts and Submissions

- I. Both the opponent and the patent proprietor filed an appeal against the interlocutory decision of the opposition division finding that, on the basis of auxiliary request 1 filed on 11 November 2022, the patent met the requirements of the EPC.
- II. The opponent withdrew his appeal with letter dated 8 April 2024 and requested that 75% of the appeal fee be reimbursed in accordance with Rule 103(2) EPC.
- III. In a communication dated 23 April 2024 the Board informed the remaining respondent (opponent) that Rule 103(2) EPC did not apply in the present case and that only 50% of the appeal fee was to be reimbursed pursuant to Rule 103(3) EPC. The respondent replied with its letter dated 26 April 2024 with further arguments and re-affirmed its request for reimbursement of 75% of the appeal fee. In a communication dated 14 May 2025 the Board rejected this request and gave further reasons why only 50% of the appeal fee could be reimbursed.
- IV. The parties were summoned to attend oral proceedings on 10 October 2025.
- V. The respondent announced with letter dated 21 July 2025 that they would not attend the oral proceedings and requested that 50% of the appeal fee be reimbursed following his withdrawal of the appeal.
- VI. With letter dated 29 July 2025 the remaining appellant (patent proprietor) withdrew their request for oral proceedings on the condition that the Board decided to

set aside the decision under appeal and to maintain the patent as granted.

- VII. The Board cancelled the oral proceedings.
- VIII. The remaining appellant (patent proprietor) requested that the decision of the Opposition Division be set aside and the patent be maintained as granted (main request) or on the basis of auxiliary requests 1 or 2 filed with the statement of grounds of appeal (SGA) or on the basis of auxiliary requests 3 or 4 filed with the reply to the opponent's SGA. The appellant further requested that the appeal fee be reimbursed by reason of a substantial procedural violation.
- IX. The respondent requested that the appeal be dismissed.
- X. Documents referred to in this decision:
- D1 US 2013/0283536
D9 US 2009/0178202
D10 Weeks, A. D. et al., Innovation in immediate neonatal care: development of the Bedside Assessment, Stabilisation and Initial Cardiorespiratory Support (BASICS) trolley, BMJ Innov. 2015; 1: 53-58, 10 April 2015
- XI. Claim 1 as granted (main request), with the features denominated as in point 13.1 of the appealed decision, reads as follows.

"[A] Newborn support device (10)
[B] for supporting a newborn in close proximity to the mother
[C] comprising a support platform having a top surface (11)

[D] for receiving in an at least almost fully supported manner the newborn thereon,

[E] wherein the support platform is coupled to a support frame (8)

[F] which enables positioning of the platform in close proximity to the mother and in particular enables positioning of the platform aligned above the vaginal introitus of the mother,

[G] characterised in that the support platform is provided with an elongated slit

[H] that defines a passage in the support platform which is accessible from a side of the platform and extends through the platform from the top surface to a bottom surface of the platform

[I] to enable passing of an umbilical cord with which the newborn is attached to the mother through at least a part of the platform."

XII. The appellant's arguments concerning the main request can be summarized as follows.

Novelty in view of D1

The lower fingers of the movable element 214 of Figure 5 could not be considered a support platform having a top surface and an elongated slit as claimed in claim 1, as there was no disclosure that the fingers were intended for receiving in an at least almost fully supported manner the newborn thereon.

Hence, the subject-matter of claim 1 was novel in view of D1.

Inventive step starting from D10

The appellant did not provide any arguments relating to

this issue.

Reimbursement of the appeal fee

The decision under appeal included the conclusion of the Opposition Division that claim 1 of the patent as granted was novel over D9 as feature E was not disclosed. Hence, the patent proprietor was not given an opportunity to provide its comments on features F and I of claim 1 in view of D9. That constituted a substantial procedural violation. Hence, in accordance with Rule 103(1)(a) EPC the appeal fee should be reimbursed.

- XIII. The respondent's arguments concerning the main request can be summarized as follows.

Novelty in view of D1

D1 disclosed a newborn support device having a stand (12 in Figure 1, 212 in Figure 5) and a moveable element (14 in Figure 1, 214 in Figure 5) comprising an infant platform 38 and a set of fingers 40 extending outwardly and upwardly from the platform. When the device was in the position of Figure 5, the newborn would be supported by the fingers. Hence, in the embodiment of Figure 5, the lower fingers would represent the support platform of claim 1, with one of the spaces between two of the fingers forming the elongated slit through which the umbilical cord could pass.

Hence, the subject-matter of claim 1 lacked novelty in view of D1.

Inventive step starting from D10

The closest prior art could be considered to be document D10, because it related to the same technical field of platforms to support newborn infants who were still connected to their mother through the umbilical cord.

The subject-matter of claim 1 differed from the arrangement of figure 2, drawing B, of D10 by providing an elongated slit in the support platform.

This had the effect of relieving the tension in the umbilical cord by shortening the distance it had to traverse between the mother and newborn.

The provision of a slit in the platform of drawing B of Figure 2 was obvious for the person skilled in the art to achieve the desired result of supporting a newborn with a short umbilical cord.

A slit was the only solution that provided support for the infant while reducing the distance the cord had to travel.

Therefore, the subject-matter of claim 1 lacked an inventive step.

Reimbursement of the appeal fee

The Opposition Division held that the patent was novel over D9. Hence, the patent proprietor had not been disadvantaged by the decision.

Thus, there was no procedural violation.

Reasons for the Decision

1. Subject-matter of the patent

The patent relates to a support device for a preterm newborn. The device (10) comprises a support platform that has a top surface (11) and is coupled to a support frame (second arm 8) (Figures 1A, 4E). In many cases, preterm newborns require some form of respiratory support or even resuscitation. In recent years studies on the physiological transition at birth have shown that establishing ventilation in the newborn before the umbilical cord is clamped greatly stabilizes the cardiovascular transition at birth. Delayed cord clamping, as compared to immediate clamping, reduces the risk of intracranial hemorrhages, necrotizing enterocolitis, hypotension and need for blood transfusions.

In order to provide a newborn support device that allows for delayed cord clamping, the support platform is provided with an elongated slit (13) that defines a passage in the support platform which is accessible from a side of the platform and extends through the platform from the top surface to a bottom surface of the platform to enable passing of an umbilical cord with which the newborn is attached to the mother through at least a part of the platform (Figure 3A).

2. Novelty in view of D1

2.1 The opposition division held that the subject-matter of claim 1 of the patent as granted lacked novelty in view of Figure 5 of D1 (point 13.3 of the decision).

- 2.2 D1 discloses a newborn support device having a stand (12 in Figure 1, 212 in Figure 5) and a moveable element (14 in Figure 1, 214 in Figure 5) comprising an infant platform 38 and a set of fingers 40 extending outwardly and upwardly from the platform. The purpose of the fingers is to secure the newborn (paragraph [0033], Figure 2). The roll angle of the moveable element (14, 214) can be adjusted (paragraphs [0039] and [0040]). Figure 5 shows a possible roll angle of 90° of the infant platform from the horizontal position shown in Figure 6.
- 2.3 The opposition division and the respondent considered that, when the device was in the position of Figure 5, the newborn would be supported by the fingers. Hence, in the embodiment of Figure 5, the lower fingers would represent the support platform of claim 1, with one of the spaces between two of the fingers forming the elongated slit through which the umbilical cord could pass.
- 2.4 As correctly argued by the appellant, the lower fingers of the movable element 214 of Figure 5 cannot be considered a support platform having a top surface and an elongated slit as claimed in claim 1, since there is no disclosure that the fingers are intended or indeed suitable for receiving in an at least almost fully supported manner the newborn thereon. As in the embodiment of Figures 1 to 4, in the embodiment of Figure 5, the newborn is intended to be supported by the platform in the middle between the two sets of fingers which are provided only to secure the newborn against sideways movement.

- 2.5 Hence, the subject-matter of claim 1 is novel in view of D1.
3. Inventive step starting from D10
- 3.1 On file is the respondent's objection against claim 1 as granted starting from D10. It was raised in his statement of grounds of appeal against claim 1 of the auxiliary request held allowable by the opposition division, but is equally applicable to claim 1 of the main request.
- 3.2 D10 discloses a platform to support newborn infants who are still connected to their mother through the umbilical cord (Figure 2, drawing B). It is undisputed that the platform does not have an elongated slit that defines a passage in the support platform which is accessible from a side of the platform and extends through the platform from the top surface to the bottom surface of the platform.
- 3.3 According to the respondent, the provision of such a slit was obvious for the person skilled in the art to solve the problem of supporting a newborn with a short umbilical cord. A slit was the only solution that provided support for the infant while reducing the distance the cord had to travel.
- 3.4 The respondent's argumentation is based on hindsight. The issue of short umbilical cords is not mentioned in D10. Furthermore, drawing B of Figure 2 of D10 shows a support of a newborn where delivery took place by caesarean section. In that case, the view on the operating field must not be obstructed by the support platform. Hence, the support platform cannot be positioned directly above the operating field which

renders it unsuitable for preterm newborns with a short umbilical cord. Therefore, the teaching of D10 would not prompt the person skilled in the art to provide an elongated slit as defined in claim 1 in the platform.

3.5 Hence, the subject-matter of claim 1 of the main request involves an inventive step when starting from D10.

4. Request for reimbursement of the appeal fee

4.1 The appellant argued that they were not given an opportunity to provide their comments on features F and I of claim 1 in view of D9. Allegedly, that constituted a substantial procedural violation.

4.2 A "substantial procedural violation" is an objective deficiency affecting the entire proceedings. Evidently, the Opposition Division's finding that the subject-matter of claim 1 was novel in view of D9 was not decisive for the outcome of the decision under appeal.

4.3 Hence, the Opposition Division did not commit a substantial procedural violation. Therefore, the request for reimbursement of the appeal fee pursuant to Rule 103 EPC cannot be granted.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is maintained as granted.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated