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D E C I S I O N
of 12 August 1996

Case Number: T 0299/96 - 3.2.2

Application Number: 91304018.4

Publication Number: 0460807

IPC: A61F 2/00

Language of the proceedings: EN

Title of invention:
Urinary incontinence device

Applicant:
Zedlani Pty. Limited

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54

Keyword:
"Novelty (yes)"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0299/96 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 12 August 1998

Appellant: Zedlani Pty. Limited
1 Smith Street
Parramatta
New South Wales 2150 (AU)

Representative: Smith, Philip Antony
Reddie & Grose
16 Theobalds Road
London WC1X 8PL (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 8 November 1995
refusing European patent application
No. 91 304 018.4 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. D. Weiß
Members: D. Valle
C. Holtz

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal received on 27 December 1995 against the decision of the Examining Division on the refusal of the application No. 91 304 018.4 the statement setting out the grounds of appeal was received on 13 March 1996. The fee for appeal was paid on 22 December 1995.

The examining division held that the application did not meet the requirements of novelty according to Article 52(1) and 54 EPC having regard to the following documents:

- (1) WO-89/09582
- (2) EP-A-0 264 258 or US-A-4 139 006.

It also held that claim 9 (erroneously cited in the decision as claim 8) was not clear.

II. Following a communication of the Board, the appellant submitted a new main claim, which reads as follows:

"An entirely intra-vaginal urinary incontinence device (10) comprising a resilient base portion (11) having a front part to engage the anterior vaginal wall and a rear part to engage the posterior vaginal wall, and being sufficiently flexible so as to be insertable into the vagina of a patient, the base portion (11) having a major upper surface (16), a bladder support portion (12, 13; 30, 40) projecting from the base portion (11), the bladder support portion (12, 13; 30, 40) comprising a support element (13; 30), wherein the support element (13; 30) passes through a medial plane (20), the medial plane (20) extending generally normal to the upper surface (16) and between the front part and the rear part of the base portion (11) to support, directly or

indirectly, the neck of the bladder of the patient, and the bladder support portion (12, 13; 30, 40) extends from the upper surface (16) of the base portion (11), characterized in that the support element (13, 30) is arranged away from the upper surface (16) of the base portion (11) so as to be displaced therefrom."

III. The appellant requested that the decision under appeal be set aside and the application be remitted to the examining division for completion of prosecution on the basis of the following documents:

Claims: 1 to 11 as filed with letter of
1 June 1998;

Description: page 1 as originally filed,
pages 2, 4 to 8 as filed on
19 April 1995,
page 3 as filed with letter of
1 June 1998;

Drawings: sheets 1/4 to 4/4 as filed on 19 April
1995.

Reasons for the Decision

1. The appeal is admissible.

2. *Clarity*

Claim 9 is sufficiently clear in stating that the support portion extends in directions normal to and parallel to the plane of the base portion. This statement means in fact that the extension of the support portion has a direction consisting of two components, the one perpendicular, the other one parallel to the plane of the base portion, that is that the direction is inclined with respect to said plane.

3. *Amendments*

Claim 1 is derived from the original disclosure, claim 1, Figures 5, 7 and 9 to 11, description, pages 5, lines 12 to 15, page 6, lines 5 to 8 and 14 to 17, page 7, lines 8 to 12 and 20 to 21.

Claims 2 to 7 originate from the original Figures 4 and 5, claim 8 derives from the original Figure 8, claims 9 and 10 derive from the original Figure 12, claim 11 derives from the original Figures.

The amendments to the description have been made in order to adapt the description to the new filed claims.

Article 123(2) EPC is therefore met.

4. Novelty

4.1 Document (2), see in particular Figures 1 and 2, discloses an entirely intra-vaginal urinary incontinence device comprising a resilient base portion having a front part (14, 18) to engage the anterior vaginal wall and a rear part (22) to engage the posterior vaginal wall (see Figure 1), and being sufficiently flexible so as to be insertable into the vagina of a patient, the base portion having a major upper surface (the upper surface of the device of Figure 1), a bladder support portion (18, 20) projecting from the base portion (the tips of the projections (18) with respect to the surface of the element (14)), the bladder support portion comprising a support element (20), wherein the support element passes through a medial plane, the medial plane extending generally normal to the upper surface and between the front part and the rear part of the base portion, to support, directly or indirectly, the neck of the bladder of the patient, and the bladder support portion (18, 20) extends from the upper surface of the base portion.

Figure 5 also discloses the same features of claim 1, whereby the support element is represented by the inflatable balloon (28).

The subject-matter of claim 1 of the application-in-suit distinguishes from the disclosure of document (2) in that the support element (13) is arranged away from the upper surface of the base portion so as to be displaced therefrom.

Contrary to the application-in-suit, the support element disclosed in document (2) is either an integral part of the base portion or is lodged therein.

4.2 Document (1), see Figures 7 to 9, discloses an entirely intra-vaginal urinary incontinence device comprising a resilient base portion (31) having a front part (36) to engage the anterior vaginal wall and a rear part (34) to engage the posterior vaginal wall, and being sufficiently flexible so as to be insertable into the vagina of a patient, the base portion having a major upper surface, a bladder support portion (35) projecting from the base portion (the projections 36), the bladder support portion comprising a support element (cradle 37), wherein the support element passes through a medial plane, the medial plane extending generally normal to the upper surface and between the front part and the rear part of the base portion, to support, directly or indirectly, the neck of the bladder of the patient, and the bladder support portion extends from the upper surface of the base portion, see description, page 5, third paragraph.

Accordingly document (1) discloses in Figures 7 to 9 an embodiment which corresponds to the embodiment of document (2) as far as claim 1 of the application-in-suit is concerned.

Additionally, document (1) discloses in Figures 5 and 6 the same embodiment of document (2).

4.3 From the foregoing it follows that the subject-matter of claim 1 is novel within the meaning of Article 54 EPC.

5. The conclusions drawn above differ from those of the first instance in that the examining division considered the distinguishing feature also as disclosed and therefore rejected the main claim as not novel. The amended claims have therefore not yet been examined by the first instance as far as inventive step is concerned.

In order to preserve the appellant its right to two instances, and in accordance with its request, the Board makes use of its discretionary power according to Article 111(1) EPC and remits the case to the Examining Division for further prosecution.

Order

For these reasons it is decided that:

1. The appeal is dismissed
2. The matter is sent back to the examining division for further prosecution on the basis of the following documents:

Claims: 1 to 11 as filed with letter of 1 June 1998

Description: page 1 as originally filed
pages 2, 4 to 8 as filed on 19 April 1995
page 3 as filed with letter of 1 June 1998

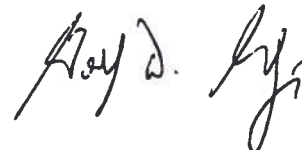
Drawings: sheets 1/4 to 4/4 as filed on 19 April 1995

The Registrar:



S. Fabiani

The Chairman:



W. D. Weiß