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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOSE LUIS NAVIA, JOSE A. NAVIA and MARK S. GOODIN

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Appeal 2010-006293  
Application 10/850,508  
Technology Center 3700

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Before: JAMES P. CALVE, HYUN J. JUNG, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

### STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1, 3-12, and 14-22. Claims 2 and 13 are cancelled and claims 23-36 are withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

### CLAIMED SUBJECT MATTER

Claims 1 and 12 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An annuloplasty ring for repairing a cardiac valve, said annuloplasty ring comprising:  
an expandable support member having oppositely disposed proximal and distal end portions and a main body portion between said end portions, said proximal end portion of said support member comprising a plurality of wing members that extend from said main body portion; and  
each of said wing members including at least one fixation hook member, said at least one fixation hook member extending distally between said wing member and a location laterally adjacent said main body portion when said at least one fixation hook member is embedded into a cardiac wall and the annulus of the cardiac valve to secure said annuloplasty ring in the annulus.

### REJECTIONS

1. Claims 1, 9-12, 20, and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by McGuckin (US 2002/0002401 A1; pub. Jan. 3, 2002);

2. Claims 3-5, 8, 14-16, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over McGuckin and Letac<sup>1</sup> (EP 0850607 A1; pub. Jul. 1, 1998);

3. Claims 6, 7, 17, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over McGuckin, Letac, and Bolea (US 6,821,291 B2; iss. Nov. 23, 2004); and

4. Claim 22 are rejected under 35 U.S.C. 1 03(a) as being unpatentable over McGuckin et al. (2002/2401) in view of Von Oepen (WO 00/66033; pub. Nov. 9, 2000).

#### OPINION

The Examiner finds that McGuckin discloses each element of claims 1 and 12. More specifically, the Examiner finds that “Fig. 1 [of McGuckin] shows an expandable support member **10** with proximal **12**, distal **16** portions and main body **14** there between” with “the proximal end [] formed such that it has wing members and each wing member has at least one fixation hook member **42**.” Ans. 3. The Examiner explains that “[s]ince the hook members have barbs that angle inward (Fig. 9B), it can be said that they extend distally between the wing member and a location ‘adjacent’ the body member when embedded in a tissue wall.” *Id.* Initially, we note that the Examiner relies on features disclosed in two separate embodiments from McGuckin when rejecting claims as being *anticipated* by McGuckin.

[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of

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<sup>1</sup> The Examiner refers to Letac as “Cribier” (the second named inventor) in the rejections.

the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

*Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008) (“The district court was also wrong to combine parts of the separate protocols shown in the iKP reference in concluding that claim 23 was anticipated. Granted, there may be only slight differences between the protocols disclosed in the iKP reference and the system of claim 23. But differences between the prior art reference and a claimed invention, however slight, invoke the question of obviousness, not anticipation.”).

McGuckin discloses two distinct embodiments with “FIGS. 1-7 illustrat[ing] a first embodiment of the vascular device . . . and FIGS. 8-11 illustrat[ing] a second embodiment of the vascular device.” Para. [0073]. The Examiner does not find that either the first embodiment (figures 1-7) or the second embodiment (figures 8-11) of McGuckin discloses each element arranged or combined in the manner recited in Appellants’ claims 1 and 12. “[I]t is not enough that the prior art reference . . . includes multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention.” *Net MoneyIN*, 545 F.3d at 1371. Thus, the Examiner’s combination of the first and second embodiments of McGuckin is not proper for an anticipation rejection.

Furthermore, we agree with Appellants that McGuckin “does not teach, explicitly or inherently, at least one fixation hook member *extending distally* between said wing member and a location laterally adjacent said main body portion when said at least one fixation hook member is embedded into a cardiac wall and the annulus of the cardiac valve” as required by

claims 1 and 12. App. Br. 8 (emphasis added). The Examiner finds that “[c]learly the barbs or hook members can be said [to] extend distally from the wing members since they are at a direction away or extend from the wing members.” Ans. 6. Appellants argue that the term “distal” is defined in the Specification in a manner that precludes the Examiner’s interpretation of “distally extending” as merely requiring the hook member to extend away from the wing member. We agree.

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Appellants explain that “distal” is specifically defined in the Specification at page 14, lines 21-22 and page 15, lines 1-2, and is also shown in Figure 6 by arrow “A.” App. Br. 10; Reply Br. 2. Indeed, Appellants’ Specification clearly indicates that “[f]or purposes of this disclosure, the term ‘proximal’ means on the inflow or upstream side of the annuloplasty ring 12 and ‘distal’ means on the outflow or downstream side of the annuloplasty ring.” Spec. 14, ll. 20-22. The Specification additionally explains that “as illustrated in Fig. 6, the letter A indicates the distal direction and the letter B indicates the proximal direction.” Spec. 15, ll. 1-2. Because of the plain language of the claims themselves reciting an expandable support member having oppositely disposed proximal and distal end portions and at least one fixation hook member extending distally from each wing member and the explicit definition provided in Appellants’ Specification, we agree that “the hook member extending distally” requires the hook member to extend in a direction from the wing members at the proximal end of the support member toward the distal end of the support member.

Applying the proper interpretation of “extending distally,” the hook members (42) in Figure 1 of McGuckin do not extend “distally” (i.e., in a direction from the proximal portion (12) toward the distal portion (16)).<sup>2</sup> Rather, the hook members (42) in McGuckin appear to extend generally perpendicular to a “distal” direction. *See* figs. 18-20. McGuckin specifically states that “vessel engaging members **42** extend outwardly and *proximally* from the framework of each of the four cells **17** at the proximal portion **12** of the device **10**.” Para. [0080] (emphasis added). Similarly, the hook members (112) in the embodiment shown in Figure 8 of McGuckin also do not extend in a “distal” direction. Instead, the hook members (112) in McGuckin appear to either extend generally perpendicular to a “distal” direction or at an angle in a “proximal” direction. *See* figs. 9A, 9B. Further, it is unclear what, if anything, the Examiner considers to be the claimed wing members in the second embodiment (figures 8-11) of McGuckin.

For the above reasons, we do not sustain the Examiner’s rejection of claims 1 and 12 as being anticipated by McGuckin. Claims 3-11 depend from claim 1 and claims 14-22 depend from claim 12. The stated reasoning for the rejection of claims 3-11 and 14-22 does not remedy the deficiencies set forth above regarding the rejection of claims 1 and 12. Therefore, we also do not sustain the rejection of claims 3-11 and 14-22 for the reasons set forth above.

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<sup>2</sup> The Examiner’s finding that “the barbs or hook members can be said they extend distally from the wing members since they are at a direction away or extend from the wing members” does not establish by a preponderance of evidence that McGuckin discloses hook members extending “distally” as called for in claims 1 and 12. *See* Ans. 6.

Appeal 2010-006293  
Application 10/850,508

DECISION

We REVERSE the Examiner's decision to reject claims 1, 3-12, and 14-22.

REVERSED

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