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SHUMAKER & SIEFFERT, P. A. 1625 RADIO DRIVE SUITE 300 WOODBURY, MN 55125			PATTON, AMANDA K	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CAROLE A. TRONNES

Appeal 2010-006423
Application 10/977,500
Technology Center 3700

Before PHILLIP J. KAUFFMAN, PATRICK R. SCANLON, and
NEIL T. POWELL, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Carole A. Tronnes (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1-6, 8-14, 31, 32 and 50-54. Claims 7, 15-30 and 33-49 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

The claimed subject matter "relates to medical devices implantable in and near a human or animal body and, more particularly, mechanisms [sic] for fixation of medical devices." Spec., para. [0001]. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. An implantable medical device comprising:
 - a housing comprising a first end and a second end substantially opposite the first end;
 - an electrode coupled to the housing;
 - a pulse generator coupled to the electrode;
 - and
 - a plurality of collapsible fixation structures coupled to the housing, wherein the collapsible fixation structures are configured to collapse in a first direction toward the first end of the housing and in a second direction toward the second end, wherein the fixation structures include flanges, and the flanges each comprise a plurality of ribs and webbing deployed between at least two of the ribs.

REFERENCES

The Examiner relies upon the following prior art references:

Schulman '367	US 5,405,367	Apr. 11, 1995
Altman	US 5,662,698	Sep. 2, 1997

Ollivier	US 5,800,499	Sep. 1, 1998
Schulman '284	US 6,164,284	Dec. 26, 2000
Haffner	US 2003/0229303 A1	Dec. 11, 2003
Whitehurst	US 2003/0236558 A1	Dec. 25, 2003
King	US 6,714,822 B2	Mar. 30, 2004
Heil	US 2004/0230281 A1	Nov. 18, 2004

THE REJECTIONS

Appellant seeks review of the following rejections:

The rejection of claims 1, 3-6, 8-12, 31, 32 and 52-54 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman and Ollivier.

The rejection of claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman, Ollivier and Haffner.

The rejection of claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman, Ollivier and Whitehurst.

The rejection of claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman, Ollivier and Schulman '284.

The rejection of claim 50 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman, Ollivier and King.

The rejection of claim 51 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman, Ollivier and Heil.

ANALYSIS

Rejection of claims 1, 3-6, 8-12, 31, 32 and 52-54

Independent claim 1 is directed to an implantable medical device that includes a plurality of fixation structures that include a plurality of ribs with webbing deployed between at least two of the ribs. Independent claim 31 contains a similar limitation.

The Examiner's conclusion of obviousness is based in part on a finding that Altman discloses an implantable medical device having a plurality of fixation structures that include a plurality of ribs with webbing deployed between at least two of the ribs. Ans. 4 (citing Figures 7-10 and 12); Ans. 10 (citing Figure 12, and col. 5, ll. 1-3). The Examiner relies upon three embodiments in Altman (insulation 12a shown in Figure 5; insulation 12b shown in Figures 7-10, and insulators 12c-e shown in Figure 12). Ans. 4, 10; *see also* Altman, col. 2, ll. 50-56, 59-62.

Appellant argues that the Examiner has not articulated a sufficient rationale for the proposed combination. App. Br. 7. Specifically, according to Appellant, the insulation of Altman cannot reasonably be characterized as a fixation structure. App. Br. 9. Rather, the insulation 12b of Altman is deployed only during a defibrillation shock and is collapsed upon completion of shock delivery, which suggests that the insulation 12b cannot be characterized as a fixation structure. App. Br. 10 (citing Altman, col. 3, ll. 46-63; col. 5, ll. 40-50).

None of the three embodiments relied upon by the Examiner disclose an implantable medical device having a plurality of fixation structures that include a plurality of ribs with webbing (insulation 12a, 12b, or 12c-e) deployed between at least two of the ribs. First, insulation 12a is in the form of a disk 28 and does not include ribs. Altman, col. 4, ll. 52-54; fig. 5. Second, insulation 12b is disclosed as normally parallel to the lead body and electrode 14 (Figure 6) and is deployed "to form a barrier to direct current flow to the heart during the shock" (Figure 7). Altman, col. 5, ll. 36-46. Altman makes no disclosure that insulation 12b and struts 32 perform an anchoring function. Third, insulators 12c-e are not described or depicted as

including ribs. Altman, col. 6, ll. 15-27; fig. 12. Therefore, the Examiner's finding that Altman discloses an implantable medical device having a plurality of fixation structures that include a plurality of ribs with webbing (insulation 12a, 12b, or 12c-e) deployed between at least two of the ribs is not supported by a preponderance of the evidence and does not provide a rationale underpinning for the proposed combination.

For these reasons, we do not sustain the rejection of claims 1 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Schulman '367, Altman and Ollivier. We do not sustain the rejection of dependent claims 3-6, 8-12, 32 and 52-54, which depend respectively from claim 1 or claim 31, for the same reasons.

Rejections of claims 2, 13, 14, 50 and 51

Each one of claims 2, 13, 14, 50 and 51, which depend directly or indirectly from claim 1, is rejected as being obvious over the combination of Schulman '367, Altman and Ollivier in further combination with one of a plurality of additional references (i.e., Haffner, Whitehurst, Schulman '284, King and Heil). The Examiner does not rely on any of these additional references to disclose providing a plurality of collapsible fixation structures, with each structure including a flange comprising a plurality of ribs with webbing deployed between at least two of the ribs. As such, none of the additional references cure the above-noted deficiencies in the combination of Schulman '367, Altman and Ollivier with regard to independent claim 1. We thus do not sustain the rejections of claims 2, 13, 14, 50 and 51 as being obvious under 35 U.S.C. § 103(a).

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Application 10/977,500

DECISION

We reverse the decision of the Examiner rejecting claims 1-6, 8-14,
31, 32 and 50-54.

REVERSED

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