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Ralf Ritter

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EXAMINER

KIRSCH, ANDREW THOMAS

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PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RALF RITTER

Appeal 2010-011441
Application 11/639,004
Technology Center 3700

Before MEREDITH C. PETRAVICK, MICHAEL W. KIM, and JAMES A.
TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Ralf Ritter (Appellant) seeks our review under 35 U.S.C § 134 of the Examiner’s final decision rejecting claims 1-6. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

Appellant’s claimed invention relates to a rigid salt container of plastic material for hemodialysis. Spec. 1.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A hemodialysis salt container (1, 2) in the form of a one-way container having rigid walls provided with a coupling arrangement (3) for establishing a flow connection with a dialysis apparatus but which is otherwise sealed in an airtight manner, said container including a venting valve (4) with a venting opening (41) formed in the container wall and a seal member (42) connected to the container wall by local cementing or welding connections so as to cover the venting opening (41) on the inside of the container wall, the cementing or welding connections being so dimensioned that, when a certain pressure difference between the ambient air pressure and a vacuum generated by the dialysis apparatus in the interior of the container is reached, the seal member (4) is at least locally ripped open.

The Examiner relies upon the following evidence:

Schutz	US 5,908,129	Jun. 1, 1999
Scott	US 6,866,056 B1	Mar. 15, 2005

¹ Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed Jan. 7, 2010) and Reply Brief (“Reply Br.,” filed May 17, 2010), and the Examiner’s Answer (“Ans.,” mailed Apr. 15, 2010).

Claims 1-4 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Scott.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott and Schutz.

FINDINGS OF FACT

We find that the findings of fact which appear in the Analysis below are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

ANALYSIS

Claims 1-4 and 6

We are persuaded by Appellant's argument that the Examiner has not established a prima facie showing that Scott anticipates claims 1-4 and 6. The Examiner contends that Scott discloses "a seal member (14) connected to the container wall by local cementing or welding connections ... so as to cover the vent opening (50) on the inside of the container wall." Ans. 4. Scott discloses a vent disc 14 that includes a disc flange 26 and a diaphragm projection 28. Scott Col. 2, ll. 45-47. Contrary to the Examiner's assertion, vent disc 14 does not cover the vent opening, but instead has at least one air passage 30 formed through the disc flange or diaphragm projection. Scott Col. 2, ll. 51-53. The Examiner's further assertion that vent disk 14 of Scott is "at least locally ripped open" when a certain pressure difference is reached is likewise unsupported by the Scott disclosure. *See* Ans. 4. Vent disk 14 of Scott contains at least one air passage 30, permitting air to flow through vent disk 14 in response to a pressure differential without being ripped open.

Claim 5

The Examiner's rejection of Claim 5 as being unpatentable over Scott and Schutz is premised on the same application of Scott as discussed above with respect to claims 1-4 and 6. Ans. 7. Accordingly, for the same reasons discussed above, we find that the Examiner has not made a prima facie showing of obviousness with respect to claim 5.

CONCLUSIONS OF LAW

We conclude that Appellant has overcome the Examiner's rejection of claims 1-4 and 6 under 35 U.S.C. § 102(b) as anticipated by Scott.

We further conclude that Appellant has overcome the Examiner's rejection of claim 5 under 35 U.S.C. § 103(a) as unpatentable over Scott and Schutz.

DECISION

We REVERSE the decision of the Examiner to reject claims 1-6.

REVERSED

MP