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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID W. DANIELS, JONATHAN E. CARR,  
BARRY A. SCHNIEDERS, LARRY G. MCCLEARY, and  
GABRIEL M. SURMA

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Appeal 2010-011723  
Application 11/529,799  
Technology Center 3700

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Before BIBHU R. MOHANTY, MICHAEL W. KIM, and  
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from rejections of claims 1-5 and 25-37<sup>1</sup>. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

The rejected claims recite features of a reamer, a reamer assembly including the reamer, and a sleeve for use with the reamer (Spec., paras. [0022]-[0036]). Claims 1, 25, and 32 are the sole independent claims. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A reamer for reaming a proximal portion of a cavity for use in implanting a joint prosthesis, said reamer for cooperation with a proximal portion of an orthopaedic implant component, said reamer comprising:
  - a body defining a cavity formed therein, the cavity configured to surround at least a portion of an orthopaedic implant component;
  - a plurality of cutting edges extending outwardly from said body; and
  - a stem extending from an end portion of the body.

The Examiner rejects the claims as follows: claims 1, 2, 5, 25, 26,

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<sup>1</sup> Our decision will refer to Appellants' Specification ("Spec.," filed Sep. 29, 2006), Appeal Brief ("App. Br.," filed Apr. 26, 2010), and Reply Brief ("Reply Br.," filed Aug. 5, 2010), as well as the Examiner's Answer ("Ans.," mailed Jun. 9, 2010).

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and 31-33 under 35 U.S.C. § 102(b) as anticipated by Daniels (US 2004/0267267 A1, pub. Dec. 30, 2004); claims 3, 4, and 27-30 under 35 U.S.C. § 103(a) as being unpatentable over Daniels in view of Martin (US 2001/0007957 A1, pub. Jul. 12, 2001); and claims 34-37 under 35 U.S.C. § 103(a) as being unpatentable over Daniels.

### ANALYSIS

#### Independent Claim 1

We are not persuaded of error by Appellants' arguments that Daniels does not disclose the claimed features of

a body defining a cavity formed therein, the cavity configured to surround at least a portion of an orthopaedic implant component

as recited in independent claim 1. Essentially, Appellants argue that although Daniels discloses a “shaft 94” of a “reamer 2” which includes a “cavity 88,” the “cavity 88” surrounds a “second component 12” that is a part of “reamer 2,” and thus “cavity 88” is not “configured to surround at least a portion of an orthopaedic implant component” as required by independent claim 1 (App. Br. 6-7). We disagree, and find that because “cavity 88” is capable of “surround[ing] at least a portion of an orthopaedic implant component,” Daniels anticipates this claim. Thus, we sustain the rejection of independent claim 1.

#### Independent Claim 25

We are not persuaded of error by Appellants' argument that Daniels does not disclose the claimed features of

a sleeve defining an inner bore configured to mate with a proximal portion of an orthopaedic implant component, said sleeve defining an outer periphery thereof

as recited in independent claim 25. Essentially, Appellants argue that although Daniels discloses "sleeve 96 . . . threadingly engaged with . . . shaft 94 . . . [that] is part of reamer 2," a "reamer is not an orthopaedic implant component" and thus "sleeve 96" of Daniels does not "mate with a proximal portion of an orthopaedic implant component" as required by independent claim 25 (App. Br. 9). We disagree, and find that because "sleeve 96" is capable of "mat[ing] with a proximal portion of an orthopaedic implant component," Daniels anticipates this claim. Thus, we sustain the rejection of independent claim 25.

*Independent Claim 32*

We are not persuaded of error by Appellants' arguments that Daniels does not disclose the claimed features of

a bore configured to matingly receive a proximal portion of an orthopaedic implant stem

as recited by independent claim 32. Essentially, Appellants argue that although Daniels discloses "sleeve 96 . . . threadingly engaged with . . . shaft 94 . . . [that] is part of reamer 2," a "reamer is not an orthopaedic implant

component” and thus “sleeve 96” of Daniels does not “mate with a proximal portion of an orthopaedic implant component” as required by independent claim 32 (App. Br. 11). We disagree, and find that because “sleeve 96” is capable of “matingly receiv[ing] a proximal portion of an orthopaedic implant stem,” Daniels anticipates this claim. Thus, we sustain the rejection of independent claim 32.

*Dependent Claims 3 and 27*

We are not persuaded of error by Appellants’ arguments that a combination of Daniels and Martin does not render obvious the claimed features of

said body of the reamer includes a feature for  
securing said sleeve thereto

as recited by each of dependent claim 3 and 27. Essentially, Appellants argue that it would not be obvious to include a “set screw” of Martin “to fix the reamer 80 [of Daniels] to the sleeve 96 of Daniels,” because this would “likely shatter a bone” on which the modified apparatus of Daniels is used (App. Br. 13-18, Reply Br. 2-3). We note, however, that these claims do not recite “a set screw,” but rather claim “a feature for securing said sleeve.” Appellants concede elsewhere in their Appeal Brief that “sleeve 96 is threadingly engaged with . . . shaft 94,” thereby meeting the claimed requirement that “said body of the reamer includes a feature for securing said sleeve thereto” as recited in each of dependent claim 3 and 27. *See also*

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Ans. 6. Thus, we sustain the rejection of dependent claims 3 and 27.

Dependent Claim 37

We are persuaded of error by Appellants' arguments that Daniels does not render obvious the claimed features of

the bore generally defines a cone shape

as recited by dependent claim 37. The Examiner's Answer at pages 7-8 does not appear to identify or address any portion of Daniels that allegedly discloses or renders obvious these claimed features. Thus, we do not sustain the rejection of dependent claim 37.

Dependent Claims 2, 4, 5, 26, 28-31, and 33-36

Appellants argue that dependent claims 2, 4, 5, 26, 28-31, and 33-36 are allowable for the same reasons as the claims on which they depend. Thus, we sustain the rejection of dependent claims 2, 4, 5, 26, 28-31, and 33-36 for the same reasons as the claims on which claim 2, 4, 5, 26, 28-31, and 33-36 depend.

DECISION

The Examiner's rejections of claims 1-5 and 25-36 are AFFIRMED, while the rejection of claim 37 is REVERSED.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

JRG