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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN D. WORLEY

Appeal 2011-004626
Application 11/731,538
Technology Center 3700

Before DEMETRA J. MILLS, ERIC GRIMES, and STEPHEN WALSH,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims relating to a tracheotomy tube. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

The Specification discloses a coupling “for connecting a ventilator tube to a tracheotomy tube” (Spec. 5:2-3). Figure 36 of the Specification is shown below:

at least one circumferential set of at least two displaced striations on said annular ring;

said cannula, neck plate, annular ring and tubular extension each having a passageway therethrough sequentially forming one continuous passageway from a leading end of said cannula to a trailing end of said tubular extension.

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) as obvious in view of Mongeon¹ and Gross.² The Examiner also rejected claims 2-13 as obvious in view of Mongeon and Gross, further in view of Carlsen,³ or Carlsen and Werth.⁴ The same issue is dispositive for all of the rejections.

The Examiner finds that Mongeon discloses a tracheotomy tube that meets the limitations of claim 1 except that it lacks displaced striations on the annular ring (Answer 4). The Examiner finds that Gross discloses at least one circumferential set of at least two displaced striations on the annular ring of its device (*id.*). The Examiner concludes that it would have been obvious to replace the “matching threaded connector disclosed by Mongeon, by utilizing the quicker, easier connection means, as taught by Gross because of the reasonable expectation of obtaining a tracheotomy tube with a removable inner cannula that can be removed and replaced quicker and easier than with a threaded connection” (*id.*).

Appellant argues that the references would not have made obvious the claimed tracheotomy tube because “Gross does not teach striations on an

¹ Mongeon, US 6,135,111, Oct. 24, 2000.

² Gross, US 4,852,563, Aug. 1, 1989.

³ Carlsen et al., US 6,769,430 B1, Aug. 3, 2004.

⁴ Werth US 6,796,586 B2, Sept. 28, 2004.

annular ring which has a tubular extension on its trailing end, as claimed by Appellant. Gross teaches annular rings on a female end of a friction-fit component without any tubular extension on the trailing end.” (Appeal Br. 10.)

We agree with Appellant that the Examiner has not adequately explained how Mongeon and Gross would have made obvious the tracheotomy tube of claim 1. Figure 2 of Mongeon is shown below:

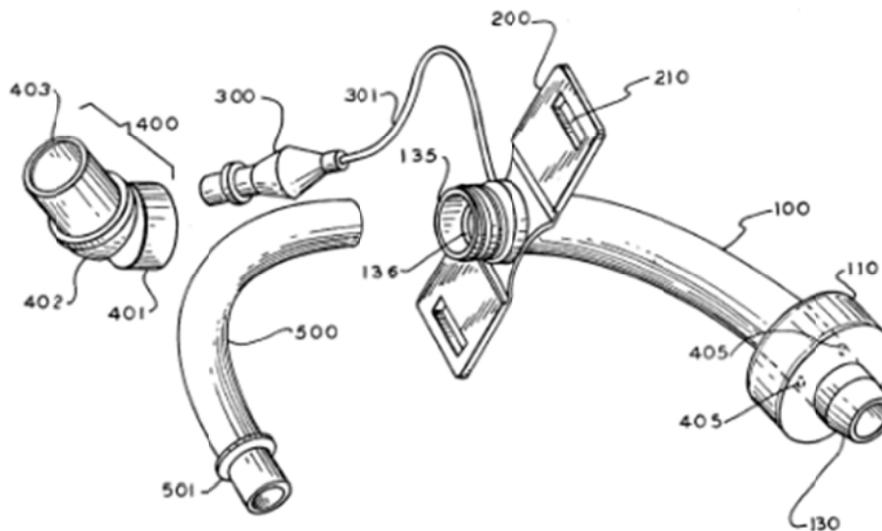


Figure 2 shows a “tracheostomy tube ... including a removable inner cannula” and a connector (Mongeon, col. 2, ll. 3-8). Mongeon discloses that its device includes tracheal tube **100** with connected flange **200** and inner cannula **500** that can be inserted into tube **100** (*id.* at col. 3, ll. 25, 44; col. 4, ll. 9-10). Mongeon discloses that “the proximal end **135** of the tube **100** is shown to be threaded. Cap **401** of connector **400** is adapted to be threadedly attached to the proximal end **135**.” (*Id.* at col. 3, ll. 52-54.)

Gross discloses a breathing circuit element that “may be adapted to lock certain other components of that circuit together” (Gross, col. 1, ll. 62-66). Figures 1 and 2 of Gross are shown below:

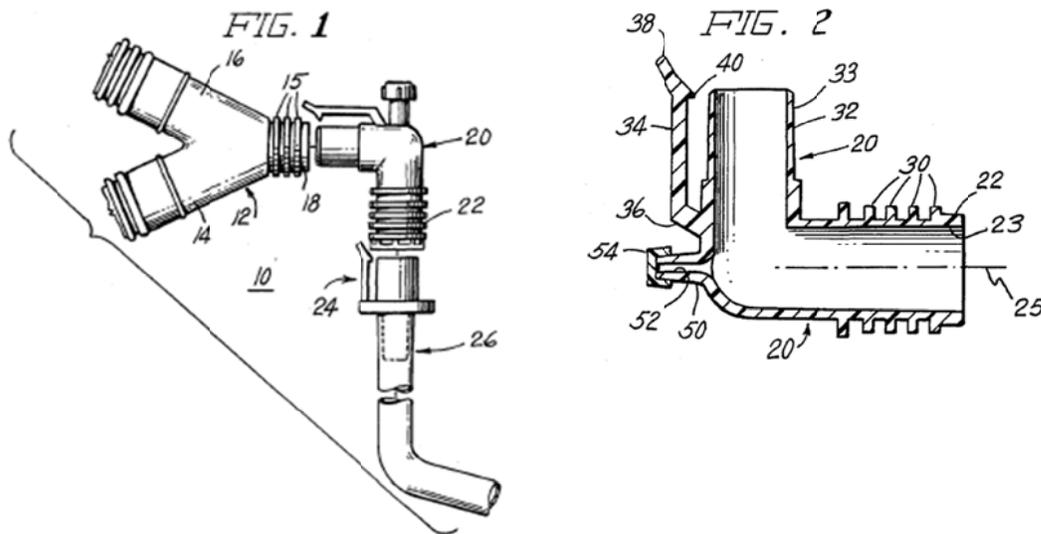


Figure 1 shows “a plan view of a portion of a breathing circuit” and Figure 2 shows a side elevational view of elbow **20** (*id.* at col. 2, ll. 57-60). Gross discloses that “elbow member **20** has a female end **22** which mates with an endotracheal tube adapter **24**” (*id.* at col. 3, ll. 6-8). The “female end **22** of the elbow **2** [sic, **20**] has at least two annular rings **30** (four are shown), spaced longitudinally from one another” (*id.* at col. 3, ll. 12-14), and a “locking clip ... disposed parallel to the longitudinal axis **25** of the male end **32** of the elbow **20**” (*id.* at col. 3, ll. 18-20). Gross discloses that the locking clip “engage[s] the proximal side of the annular rings on any mating component which may have them” (*id.* at col. 3, ll. 27-30).

We agree with Appellant that the Examiner has not adequately explained how these references would have made obvious a tracheotomy tube with displaced striations on an annular ring on the trailing end of a neck plate. Element 135 of Mongeon’s tracheotomy tube, which the Examiner finds to correspond to the claimed annular ring, is a threaded male end which is to be inserted into the female end of the connector 400. By contrast, Gross discloses striations on the *female* member of a coupled

fitting. That is, in Gross, the striations are located on the attachment part (e.g., elbow 20) that fits over the other attachment part (e.g., adapter 24). Thus, simple substitution of Gross' attachment means for Mongeon's threaded connection, as posited by the Examiner (Answer 4), would put the striations on the attachment part that goes inside the other attachment part, where Gross' locking clip would not be able to engage them.

Alternatively, the Examiner may have intended to modify the annular ring 135 to be the female member of Mongeon's coupling, with the extension 400 being inserted into the annular ring. However, Mongeon discloses that the trailing end of inner cannula 500 sits within the annular ring 135, which would prevent extension 400 being mated to annular ring 135 by being inserted into it. The Examiner has not adequately explained how annular ring 135, if made the female member of the coupling, could accommodate both a male end of the extension 400 and the trailing end of inner cannula 500. Thus, we reverse the rejection of independent claim 1 as being obvious in view of Mongeon and Gross.

Similar to claim 1, claim 13 (the only other independent claim) requires "a cannula having an annular ring on a trailing end thereof, said ring having a tubular extension trailing therefrom and at least one circumferential set of at least two displaced striations thereon" (Appeal Br. 30, Claims Appendix). The Examiner's rejection of claim 13 as obvious in view of Mongeon, Gross, and Carlsen relies on Mongeon and Gross, as discussed above, to make obvious a tracheotomy tube comprising an annular ring with displaced striations on it. For the reasons discussed above, we disagree with the Examiner's conclusion in this regard. The Examiner points to nothing in

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Carlsen that makes up for the deficiency of Mongeon and Gross. Thus, we also reverse the rejection of claim 13, as well as dependent claims 2-12.

REVERSED

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