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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* Siemens Aktiengesellschaft  
(Inventor: Michael Maschke)

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Appeal 2011-007427  
Application 11/708,149  
Technology Center 1700

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Before RICHARD E. SCHAFER, BEVERLY A. FRANKLIN, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

SCHAFER, *Administrative Patent Judge*.

DECISION ON APPEAL

Siemens Aktiengesellschaft (Applicant) appeals from an Examiner's decision rejecting claims 21-26 and 29-31. 35 U.S.C. §§ 6(b) and 134(a). We affirm.

*The Claimed Subject Matter*

Applicant claims a method for sterilizing medical instruments. The sole independent claim --Claim 21-- illustrates the invention:

21. A method for sterilizing a medical object in a sterilization device, comprising:

reading a machine readable information code by an electromagnetic wave from a radiofrequency identification (RFID) tag of the medical object via a RFID read unit of the sterilization device;

determining a number of sterilization cycles of the medical object that has undergone to date based on the information code;

comparing the number of sterilization cycles with a maximum number of permitted sterilization cycles that the medical object is allowed to undergo;

automatically triggering a warning signal if the number of sterilization cycles reaches the maximum number of permitted sterilization cycles; and

automatically overwriting the number of sterilization cycles of the medical object if the number of sterilization cycles has not reached the maximum number of permitted sterilization cycles and the medical object undergoes a further sterilization;

wherein the sterilization device verifies if a plurality of different medical objects subject to different sterilization requirements are located in one sterilization area of the sterilization device based on information code of each respective medical object,

**wherein a combined sterilization process is configured to reach a compromise sterilization solution suitable to each of the different medical objects based on the different sterilization requirements of each respective medical object,**  
and

**wherein the combined sterilization process comprises: selecting a sterilizing sequence based on the compromise sterilization solution suitable to each of the medical objects,**  
automatically triggering the warning signal, and automatically restricting a sterilization function of the sterilization device while the combined sterilization process is performed to avoid damage to any of the different medical objects in the sterilization area,

wherein the sterilization area of the sterilization device is divided into a plurality of subareas,

wherein a plurality of read units are arranged at the sub-areas, and wherein locations of the medical objects in the sub-areas are determined based on identification elements of the medical objects and the read units arranged at the sub-areas.

Brief, 9-10 (Claims Appendix, emphasis added).

*The Examiner's Evidence*

Denen	US 5,400,267	Mar. 21, 1995
Fuchs	US 5,996,889	Dec. 7, 1999
Perruchot	US 2004/0037736 A1	Feb. 26, 2004
Root	US 2004/0024290 A1	Feb. 5, 2004
Neuberger	US 2004/0122419 A1	Jun. 24, 2004
Wu	US 2005/0265889 A1	Dec. 1, 2005

*Rejections*

In the Answer, the Examiner maintained the following rejections, all based on 35 U.S.C. § 103(a):

1. Claims 21, 23, 25-26, and 29-31 relying on the combined teachings of Wu, Denen, and Perruchot;
2. Claims 22, 25-26, and 31 relying on the combined teachings of Wu, Denen, Root, and Neuberger; and
3. Claim 24 relying on the combined teachings of Wu, Denen, and Fuchs.

*Applicant's Contentions*

1. Applicant contends that “the term ‘combined sterilization process’ should be construed as a process not requiring human intervention” and “that Wu involves a user in order to choose or modify the sterilization cycle to appropriately treat a load having different attributes, such as different weigh, different volume, etc.” Brief 5.

2. Applicant also contends that “Wu [does] not describe or suggest a *compromise sterilization solution* suitable to each of the different medical objects” placed in the sterilizer. Brief 6.

*Discussion*

Applicant confines its arguments to independent Claim 21 and the Wu reference. We also limit our discussion to that claim and reference. The patentability of the subject matter of Claims 22-26 and 29-31 therefore runs with that of Claim 21. 37 C.F.R. § 41.37(c)(1)(vii).

*1.*

With respect to Applicant’s first contention, it is unnecessary for us to decide whether Applicant’s claims are implicitly limited to a method that precludes human intervention. The Examiner found that Wu teaches that “a user or a control system chooses or modifies the sterilization cycle . . . .” Answer 18 (emphasis added). The Examiner relied upon “Wu, p. 4 [0057] - specifically lines 10-12, p. 5 [0062] first four lines and first six lines of [0063], and p. 6 [0064] lines 2-3 and 16-18” as evidentiary support. Answer 18.

A preponderance of the evidence supports the Examiner’s finding. Wu describes a flexible sterilization system which allows for both fully automated computer control as well as operator assisted control. In addition to the portions of Wu specifically referenced by the Examiner, we note the following. Wu states that

in prior systems the sterilizer did not determine the sterilization cycle and the operator had to input the desired cycle. Wu , ¶ [0004], ll. 5-6. Wu states that “[t]he present invention overcomes these and other limitations in the prior art.” Wu , ¶ [0004], ll. 6-8. Thus, Wu teaches that the control system can determine the sterilization cycle based upon the inputted data. Wu, ¶ [0064]. Wu’s control system can read data from multiple sources and use those inputs to determine which sterilization cycle is to be performed. Wu, ¶ [0062], ll. 1-4. For example Wu’s system can take data inputs regarding the nature of the instruments loaded into the sterilizer and determine sterilization parameters based upon those inputs. Wu, ¶ [0005], ll. 5-9. and ¶ [0012], ll. 9-11. The instrument data can be read automatically from data encoded on, *inter alia*, RFID tags attached to the instrument. Wu, ¶ [0010], ll. 1-4. Exemplary input data includes whether the instruments are wrapped or unwrapped, the weight of the instruments, the number and types of instruments, and the materials and proportions of the materials from which the instruments are made. Wu, ¶ [0006], ll. 1-2 and ¶ [0062], ll. 1-14. Based upon the data encoded on the instruments, the controller can select the sterilization cycle from those previously stored in the controller. Wu, ¶ [0057], ll. 8-12. The controller also includes sensors that collect sterilization parameters such as pressure, temperature, sterilant concentration and plasma power. Wu, ¶ [0011], ll. 4-6 and ¶ [0063], ll. 1-3. The data inputted from the sensors is fed to feedback circuitry that is used to adjust the sterilization cycle parameters. Wu, ¶ [0011], ll. 1-4.

Based upon the above facts, we do not see error in the Examiner’s determination that Wu teaches a sterilization method in which “a control system chooses or modifies the sterilization cycle.” Answer 18. Applicant’s argument to the effect that Wu only teaches a system in which the operator chooses the

sterilization cycle (Brief 5) is contrary to the weight of the evidence. On this point, we note that Applicant has not directed us to evidence establishing that one having ordinary skill in the art would understand Wu as teaching a system that necessarily requires the operator “to choose or modify the sterilization cycle to appropriately treat a load having different attributes, such as different weigh, different volume, etc.” Brief 5. As we noted above, Wu teaches a flexible system which allows both computer and operator assisted control.

2.

Applicant’s second contention asserts that Wu does not teach a “combined sterilization process . . . configured to reach a compromise sterilization solution suitable to each of the different medical objects based on the different sterilization requirements of each respective medical object.” Brief 6.

We disagree. Wu teaches that the control system is programmed to take inputs regarding the nature of the instrument load and uses those inputs to determine sterilization cycle parameters. Wu, ¶ [0005], ll. 1-8. Wu notes that it was typical to optimize sterilization cycles to permit sterilization of the most challenging, i.e. most difficult to sterilize, of the instruments loaded into the sterilizer. Wu, ¶ [0056], ll. 1-4. For example, Wu in describing the sterilization of lumens (i.e. tubular medical instruments), notes that

the devices can be coded themselves, such as with a bar code which is scanned as the device is loaded, and the control system 28 selects the appropriate cycle to meet a particular lumen claim based upon the most challenging lumen device which was scanned.

Wu, ¶ [0057], ll. 8-12. Additionally, Wu teaches that data may be inputted item by item or based upon inputted aggregated information from which the control system determines the sterilization steps to be taken. Wu, ¶ [0064]. Thus, Wu reasonably

suggests a “combined sterilization process . . . configured to reach a compromise sterilization solution suitable to each of the different medical objects based on the different sterilization requirements of each respective medical object.”

3.

In the Reply Brief, Applicant argues for the first time that the Perchot reference is not combinable with Wu. Applicant argues that Wu and Perchot sterilizers have substantially different principles of operation --the use of a chemical sterilant and a plasma, respectively. Reply Brief 3-4.

This argument is not timely. Since we do not have the Examiner’s views on this issue, we decline to consider the argument. *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (Informative) (“The reply brief is not an opportunity to make arguments that could have been made during prosecution, but were not. Nor is the reply brief an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not”). However, we do note that it appears that Wu considers a plasma to be a sterilant. See Wu, ¶ [0034]. Therefore the combination would not involve a change in the principle of operation.

4.

Having carefully considered Applicant’s arguments and the record, we do not see error in the Examiner’s decisions Rejecting Claims 21-26 and 29-31.

*DECISION*

The Examiner’s decisions rejecting Claims 21-26 and 29-31 under 35 U.S.C. § 103(a) are affirmed.

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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)(1).

AFFIRMED

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