



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/403,588	03/13/2009	Charles S. Baxter	MDX-318USD2	9953
26875	7590	02/26/2013	EXAMINER	
WOOD, HERRON & EVANS, I.L.P. 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			LEE, BRANDY SCOTT	
			ART UNIT	PAPER NUMBER
			3767	
			NOTIFICATION DATE	DELIVERY MODE
			02/26/2013	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptodock@whe-law.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* CHARLES S. BAXTER, DALE MARVIN GALLOGLY,  
THEODORE J. MOSLER, and CHARLES R. PATZER

---

Appeal 2011-008412  
Application 12/403,588  
Technology Center 3700

---

Before ERIC GRIMES, LORA M. GREEN, and  
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

#### DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-11. We have jurisdiction under 35 U.S.C. § 6(b).



compatible with an oval such that with proximal portion 12 aligned and extending therein as seen in Fig. 5B, an effective seal is achieved with blunt cannula 10 thereat” (*id.*).

Claim 1 is the only independent claim on appeal, and reads as follows:

1. An assembly comprising:
  - a blunt cannula sized to be received in a slit septum, the blunt cannula having a proximal portion extending distally from a proximal end and a distal portion extending distally from the proximal portion, the proximal portion having a non-circular cross section that defines a major diameter and the distal portion having a generally circular cross-section and terminating in a tip end; and
  - a medical site including a housing having a flow path, and a septum bounding a portion of the flow path, the septum having a slit therein, the blunt cannula insertable through the slit in the septum and oriented so that the major diameter of the proximal portion is substantially aligned to the slit when the proximal portion is disposed in the septum.

The following grounds of rejection are before us for review:

- I. Claims 1-7, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Jepson<sup>1</sup> and Lee<sup>2</sup> (Ans. 3).
- II. Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Jepson and Lee as further combined with Frank<sup>3</sup> and Lina<sup>4</sup> (Ans. 6).

We reverse.

---

<sup>1</sup> Jepson et al., US Pat. No. 5,899,888, issued May 4, 1999.

<sup>2</sup> Lee et al., US Pat. No. 4,513,754, issued April 30, 1985.

<sup>3</sup> Frank et al., US Pat. No. Re. 35,841, July 7, 1998.

<sup>4</sup> Lina et al., Pub. No. US 20004/0006319 A1, published January 8, 2004.

## ANALYSIS

The Examiner finds that Jepson teaches a blunt cannula that is sized to be received in a slit septum (Ans. 4). The Examiner notes that “Jepson fails to teach wherein the proximal portion of the cannula has an oval cross section that tapers along the major diameter while the distal portion has a circular cross-section and wherein the major diameter of the proximal portion of the cannula is aligned with the slit of the housing when the proximal portion is disposed in the septum” (*id.*).

The Examiner finds that “Lee teaches a cannula (Figure 10) that has a proximal portion 202 that has an oval cross-section (col. 7, lines 11-12, 17-18) that tapers into a distal portion with a circular cross-section (col. 7, lines 11-14)” (*id.* at 4-5). The Examiner finds that, as taught by Lee, such a shape allows the cannula to be held securely and reliably in the holding means, “as the oval cross-section is prevented from passing through the same opening that the circular distal section would pass through (col. 2, lines 40-64)” (*id.* at 5).

The Examiner thus concludes that one would have “modified the cannula of Jepson to have the proximal portion have an oval cross-section that tapers into a distal section with a circular cross-section as taught by Lee in order to provide a cannula that will securely and reliably hold within the desired holding means, as the oval cross-section is prevented from passing through the same opening that the circular distal section would pass through” (*id.*).

Appellants argue that the Examiner has not demonstrated a reason as to why the ordinary artisan would have combined Lee and Jepson (App. Br. 9). Specifically, Appellants assert that Lee is “directed to a bone marrow biopsy unit” (*id.* at 12), and the elliptical proximal portion “is provided for the express purpose of rigidly holding the cannula within a collet chuck attached to a handle” (*id.* at 13). Appellants assert that the ordinary artisan, however, would not look “to a device that uses the shape as an anchor to provide a rigid hold in order to modify a blunt cannula that is not to rigidly hold to, but is instead to slide in and out of, the septum” (*id.* at 14). Appellants argue further that the Examiner’s rejection is premised on the oval cross-section of the proximal portion butting up against the septum, whereas independent claim 1 requires that the proximal portion “extend into the slit in order to be ‘disposed in the septum’” (*id.* at 15).

As the Supreme Court pointed out in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007), “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” Rather, the Court stated:

[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements *in the way the claimed new invention does* . . . because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

*Id.* at 418-419 (emphasis added); *see also id.* at 418 (requiring a determination of “whether there was an apparent reason to combine the

known elements *in the fashion claimed* by the patent at issue”) (emphasis added).

Here, for the reasons set forth by Appellants above, we agree that the Examiner has not established a prima facie case that the ordinary artisan would have combined Lee with Jepson to arrive at the assembly of claim 1. We thus reverse Rejection I.

As to Rejection II, as the Examiner does not rely upon either Frank or Lina to remedy the deficiencies discussed above (*see* Ans. 6-7), that rejection is reversed as well.

REVERSED

lp