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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			HAYMAN, IMANI N	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CRAIG HINES and CORY WILLIAMSON

Appeal 2011-008946
Application 12/077,530
Technology Center 1600

Before DONALD E. ADAMS, LORA M. GREEN, and
SHERIDAN K. SNEDDEN, *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 4-7, 9, 12-14, 19, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

Claim 4 is the only independent claim on appeal, and reads as follows:

4. A wearable infusion device comprising:
a liquid medicament dispenser having an enclosure, a base attachable to a patient's skin and an actuator that, when enabled, causes a dose of the liquid medicament to flow to beneath the skin of the patient, the dispenser being arranged to provide a plurality of doses of the liquid medicament while being attached to a patient's skin;
and

a safety assembly arranged to preclude the actuator from being enabled, the safety assembly being releasable to permit the actuator to be enabled for delivering a dose of the liquid medicament and resettable after the delivery of each dose of the liquid medicament to preclude the actuator from being enabled between dose deliveries, the safety assembly being releasable and resettable while the device is attached to the patient's skin.

The following ground of rejection is before us for review:

Claims 4-7, 9, 12-14, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Cindrich¹ and Shermer² (Ans. 4).

We reverse.

ANALYSIS

Claim 4 requires “a safety assembly arranged to preclude the actuator from being enabled, the safety assembly being releasable to permit the actuator to be enabled for delivering a dose of the liquid medicament and resettable after the delivery of each dose of the liquid medicament to preclude the actuator from being enabled between dose deliveries, the safety

¹ Cindrich et al., US 2008/0215015 A1, Sept. 4, 2008.

² Shermer et al., US 7,250,037 B2, Jul. 31, 2007.

assembly being releasable and resettable while the device is attached to the patient's skin.”

The Examiner finds that Cindrich teaches “the invention substantially as claimed,” finding that Cindrich “fails to explicitly disclose a safety assembly arranged to preclude the actuator from being enabled” (Ans. 4).

The Examiner finds that Shermer teaches a safety assembly that is “releasable and resettable while the device is attached to the patient's skin (column 12, lines 4-48)” (*id.* at 4-5).

Appellants argue that neither Cindrich nor Shermer, alone or combination, teach or suggest a resettable safety assembly as required by claim 4 (App. Br. 16). Specifically, Appellants argue that Shermer teaches a “safety assembly that is releasable only” (*id.*).

“Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), cited with approval in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417-18 (2007). We agree that the Examiner has failed to establish that the combination of Cindrich and Shermer renders the wearable infusion device of claim 4 *prima facie* obvious.

Shermer provides “a patch-like infusion device which provides an interlock between the pull handle assembly and the push button to prevent accidental activation” (Shermer, col. 3, ll. 15-18). Shermer teaches that the device may include a pull handle that prevents accidental activation of the device via a push button prior to placement (*id.* at col. 12, ll. 12-24). The

device thus cannot be activated until the pull handle is removed (*id.* at col. 12, ll. 38-39).

The Examiner has not explained how the safety assembly of Shermer is reset once the pull handle is removed, much less how such may be accomplished while the device is attached to the patient's skin. We thus reverse the rejection.

REVERSED

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