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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/702,871	02/06/2007	Takeshi Yokoi	16370Y	8811
	7590 03/08/2013			
Paul J. Esatto, Jr. Scully, Scott, Murphy & Presser 400 Garden City Plaza Garden City, NY 11530			EXAMINER SMITH, PHILIP ROBERT	
			ART UNIT	PAPER NUMBER
			3779	
			MAIL DATE	DELIVERY MODE
			03/08/2013	PAPER

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAKESHI YOKOI, HIRONOBU TAKIZAWA,
AKIO UCHIYAMA, and HITOSHI MIZUNO

Appeal 2011-011872
Application 11/702,871
Technology Center 3700

Before LORA M. GREEN, MELANIE L. McCOLLUM, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

McCOLLUM, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving a claim to a capsule type medical device. The Examiner has rejected the claim as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Claim 6 is on appeal (App. Br. 4).¹ Claim 6 reads as follows:

6. A capsule type medical device comprising:
a swallowable housing, adapted to be introduced into a subject, the swallowable housing having a center axis in a longitudinal direction of the swallowable housing;

a battery placed in the housing;

a magnet placed in the housing;

an antenna placed in the housing and adapted to wirelessly communicate with a device located outside the subject; and

a propulsion generating unit adapted to convert rotational motion of the capsule type medical device generated by the magnet into propulsion force,

wherein:

the battery is arranged on a first side of the magnet and the antenna is arranged on a second side substantially opposite to the first side with respect to the magnet, and

the center of gravity of the capsule type medical device is substantially on the center axis of the swallowable housing.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as obvious over Ueda et al. (US 5,681,260, Oct. 28, 1997) in view of Vega (US 4,249,536, Feb. 10, 1981) (Ans. 4).

ISSUE

Does the evidence support the Examiner's conclusion that Ueda teaches or suggests a capsule type medical device having a center of gravity that is substantially on the center axis of the swallowable housing?

¹ Claims 3-5 and 7-30 are also pending but have been withdrawn from consideration (App. Br. 4).

ANALYSIS

We incorporate the Examiner's fact finding and conclusions as set forth in the Answer at pages 4-6. Appellants argue, however, that "Ueda fails to disclose or suggest the limitation 'the center of gravity of the capsule type medical device is substantially on the center axis of the swallowable housing'" (App. Br. 7). We are not persuaded by this argument for the reasons set forth in the Answer at pages 6-9, which Appellants have not responded to.

CONCLUSION

The preponderance of the evidence supports the Examiner's conclusion that Ueda teaches or suggests a capsule type medical device having a center of gravity that is substantially on the center axis of the swallowable housing. We therefore affirm the obviousness rejection of claim 6.

TIME PERIOD FOR RESPONSE

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

AFFIRMED

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