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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHRISTOPHER E. MAININI and CLIFTON P. BRICK

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Appeal 2013-005697  
Application 12/712,749<sup>1</sup>  
Technology Center 3600

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Before MICHAEL C. ASTORINO, BRUCE T. WIEDER, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134 from the Examiner’s decision rejecting claims 1–25. We have jurisdiction over the appeal under 35 U.S.C. § 6(b). An oral hearing was held on October 17, 2016.

We AFFIRM-IN-PART.

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<sup>1</sup> According to the Appellants, “[t]he real party in interest in this appeal is Radio Systems Corporation.” Appeal Br. 1.

STATEMENT OF THE CASE

*Claimed Subject Matter*

Claims 1, 11, and 22 are the independent claims on appeal. Claim 11, reproduced below, is illustrative of the subject matter on appeal.

11. A stimulus delivery probe for delivering an electrical stimulus to an animal, said stimulus delivery probe comprising:

a base member adapted to be mechanically secured to an animal training device, the animal training device being adapted to be carried by the animal and capable of generating the electrical stimulus;

a compliant member mechanically secured to said base member, said compliant member being in electrical communication with the animal training device when said base member is mechanically secured to the animal training device, said compliant member being electrically conductive and mechanically compliant to a force between the base member and the animal; and

a tip member mechanically secured to and in electrical communication with said compliant member, said tip member being positioned in physical contact with the animal when the animal training device is carried by the animal, said tip member delivering the electrical stimulus to the animal when the animal training system generates the electrical stimulus.

*Rejections*

Claims 1, 2, 4–9, 11–17, and 19–25 are rejected under 35 U.S.C. § 102(b) as anticipated by Boyd (US 2007/0186871 A1, pub. Aug. 16, 2007).

Claims 3, 10, and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Boyd.

## ANALYSIS

The Appellants request that the rejections be withdrawn because the Examiner has not properly rejected the claims. Appeal Br. 5. More specifically, the Appellants assert that “the substance of neither the claim amendments nor the associated arguments were acknowledged or addressed in the current action.” Appeal Br. 4. However, this request is reviewable by petition under 37 C.F.R. § 1.181 and is not within the jurisdiction of the Board. *See* Ans. 4; *see also* Manual of Patent Examining Procedure (MPEP) §§ 706.07(c), 1002.02(c)(3)(a), 1201; *In re Mindick*, 371 F.2d 892, 894 (CCPA 1967).

### *Independent claims 1 and 22, and dependent claims 2–10 and 23–25*

Independent claim 1 recites “[a] stimulus delivery probe . . . for delivering an electrical stimulus to an animal” including “a compliant member” and “a compliant member covering disposed about said compliant member . . . and flexible to the extent that it does not restrict the mechanical compliance of said compliant member.” Appeal Br., Claims App.

The Examiner finds that Boyd discloses a stimulus delivery probe for delivering an electrical stimulus to an animal including: coiled wire 58 that corresponds to the “compliant member”; and first outboard section 20’ and second inboard section 22’, which are affixed together by mating threads 15’ and 17’, that correspond to the “compliant member covering.” *See* Final Act. 2–3; *see also* Boyd, Fig. 4, paras. 20–22, 26. Further, the Examiner explains that Boyd’s section 20’ is made of a soft — and as such, a flexible — material (*see* Ans. 5–6), and that Boyd’s material is “flexible to the extent that it does not restrict the mechanical compliance of said compliant

member” because the breadth of the claim limitation reads on coiled wire 58 compressing down or extending up when a mechanical force is applied to section 20’; for example, forces are applied to coiled wire 58 by section 20’ sufficient to flex the soft material of section 20’ when section 20’ is threaded up or down relative to section 22’ (*id.* at 7–10).

The Appellants argue that Boyd’s first outboard section 20’ and second inboard section 22’ fail to correspond to the claimed “compliant member covering” because Boyd’s coiled wire 58 is contained inside and restricted by the rigidity of Boyd’s sections 20’ and 22’, i.e., the covering restricts the compliance of the compliant member. *See* Appeal Br. 5–6; Reply Br. 2–3. The Appellants’ argument is persuasive.

Thus, we do not sustain the Examiner’s rejection of independent claim 1 and dependent claims 2 and 4–9 as anticipated by Boyd. Also, the Examiner’s rejection of dependent claims 3 and 10 fails to remedy the deficiency in the Examiner’s rejection of claim 1. As such, we do not sustain the Examiner’s rejection of dependent claims 3 and 10 as unpatentable over Boyd. Additionally, independent claim 22 recites substantially similar language as claim 1 (Appeal Br., Claims App) and the Examiner’s rejection of claim 22 is based on substantially similar findings as those provided for the rejection of claim 1 (*see* Final Act. 5). Therefore, we do not sustain the Examiner’s rejection of independent claim 22 and dependent claims 23–25 as anticipated by Boyd.

*Independent claim 11 and dependent claims 12–19 and 21*

Independent claim 11 recites “[a] compliant member being . . . mechanically compliant to a force between the base member and the animal.” Appeal Br., Claims App.

The Examiner finds that Boyd’s base 24 corresponds to the “base member.” Final Act. 3, 4; *see also* Boyd, para. 21. And, as discussed above, the Examiner finds that Boyd’s coiled wire 58 corresponds to the “compliant member.” Final Act. 2, 4.

The Appellants contend the Examiner fails to identify an element of Boyd that is “mechanically compliant to a force between the base member and the animal,” as recited in independent claim 11. *See* Appeal Br. 4. The Appellants’ contention is not persuasive.

The Appellants acknowledge that “Boyd’s conductive element . . . 58 is stretched, twisted, or compressed when the outboard section 20 is moved up or down, to conform with the desired length selected by the user.” Reply Br. 2. We agree with the Appellants and determine that the foregoing acknowledgement offers a position that corresponds to the disputed claim limitation.

We have considered the remaining arguments presented by the Appellants in the Briefs and determine that they are not persuasive because they are not commensurate in scope with the requirements of claim 11. Thus, we sustain the Examiner’s rejection of independent claim 11 as anticipated by Boyd. For the same reasons, we also sustain the Examiner’s rejections of dependent claims 12–19, which are not argued separately. *See* Appeal Br. 9.

Notably, dependent claim 21 directly depends from claim 19, which depends from independent claim 11, and recites “said compliant member covering is electrically insulative.” Appeal Br., Claims App. The added limitation in claim 21 is relevant to an argument advanced by the Appellants for independent claim 1. *See* Appeal Br. 5. As discussed above, the Examiner finds that Boyd’s first outboard section 20’ and second inboard section 22’ correspond to the “compliant member covering.” *See* Final Act. 3, 5. The Examiner also finds that Boyd’s outboard section 20’ is made out of an electrically insulative material. Ans. 5 (citing Boyd, para. 11). The Examiner’s findings are adequately supported. The Appellants advance an argument specific to a misstatement in the Final Office Action that identified Boyd’s outboard section 20’ as being made of a metallic rubber material (Final Act. 7 (citing Boyd, para. 23)). *See* Appeal Br. 5. We determine that this misstatement is merely a harmless error in part because the Appellants acknowledge that “Boyd describes in paragraph [0020] that the housing 12 (which includes the outboard section 20 and inboard section 22) is electrically insulative.” *Id.* at 6 (emphasis omitted); *see also* Reply Br. 1–2. Thus, we sustain the Examiner’s rejection of dependent claim 21 as anticipated by Boyd.

*Dependent claim 20*

Claim 20 depends from independent claim 11 and dependent claim 19 and includes a substantially similar limitation as independent claim 1, i.e., “wherein said compliant member covering is flexible to the extent that it does not restrict the mechanical compliance of said compliant member.” Appeal Br., Claims App. Notably, the Examiner’s rejection of claim 20 is

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based on substantially similar findings as those provided for the rejection of claim 1. *See* Final Act. 4. Therefore, we do not sustain the Examiner's rejection of dependent claim 20 as anticipated by Boyd.

#### DECISION

We AFFIRM the Examiner's decision rejecting claims 11–19 and 21.

We REVERSE the Examiner's decision rejecting claims 1–10, 20, and 22–25.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART