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Pabst Patent Group LLP 1545 PEACHTREE STREET NE SUITE 320 ATLANTA, GA 30309			SCHALL, MATTHEW WAYNE	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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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* KLAUS-PETER SCHMITZ, DETLEF BEHREND,  
KATRIN STERNBERG, NIELS GRABOW, DAVID P. MARTIN, and  
SIMON F. WILLIAMS

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Appeal 2013-006135<sup>1</sup>  
Application 12/188,113<sup>2</sup>  
Technology Center 3700

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Before PHILIP J. HOFFMANN, KEVIN W. CHERRY, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–3, 7, 9, 10, and 14–32. An oral hearing was held on October 20, 2016. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> Our decision will refer to Appellants' Appeal Brief ("App. Br.," filed Mar. 12, 2012) and Reply Brief ("Reply Br.," filed Apr. 1, 2013), and the Examiner's Answer ("Ans.," mailed Jan. 31, 2013).

<sup>2</sup> Appellants identify Tepha, Inc. as the real party in interest. App. Br. 2.

### CLAIMED INVENTION

Appellants' claimed invention "relates to absorbable polymer compositions that can be used to prepare absorbable stents, and absorbable stent coatings." Spec. 1, ll. 9–11.

Claim 1, reproduced below, with added bracketed notations, is illustrative of the subject matter on appeal:

1. An absorbable biocompatible stent comprising a blend of poly-4-hydroxybutyrate (P(4HB)) and poly(L-lactide) (PLLA) comprising between 5 and 95 % P4HB by weight of the polylactide,

wherein the stent is expandable at normal body temperature, and is of a first diameter sufficient to be retained upon a balloon catheter for placement within a body lumen, and is expandable to a second diameter sufficient to be retained within the body lumen.

### REJECTIONS

The following rejections are before us for review:

Claims 1–3, 7, 9, 10, 14–21, and 23–32 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hossainy (US 2006/0147412 A1, pub. July 6, 2006) and Levenberg (US 2005/0031598 A1, pub. Feb. 10, 2005).

Claim 22 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hossainy, Levenberg, and Williams (US 6,548,569 B1, iss. Apr. 15, 2003).

### ANALYSIS

*Independent claim 1 and dependent claims 3 and 4*

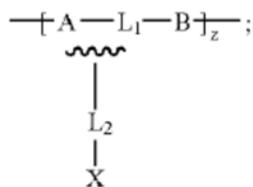
We are persuaded by Appellants' argument that Hossainy does not disclose a stent comprising poly-4-hydroxybutyrate (P(4HB)) and, thus, does not disclose or suggest a stent comprising a blend of P(4HB) and poly(L-

lactide) (PLLA) comprising between 5 and 95 % P(4HB) by weight of the polylactide,” as recited in claim 1. App. Br. 13–21; Reply Br. 3–7.

In rejecting claim 1, the Examiner interprets the term “poly-4-hydroxybutyrate” to require “multiple monomers of P(4HB),” instead of a homopolymer. Ans. 6. And the Examiner finds that Hossainy at paragraph 95 describes multiple monomers of P(4HB). *Id.* We disagree.

During examination, “claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Amer. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)). Here, Appellants’ Specification at page 10, lines 2–5, explicitly defines the term “poly-4-hydroxybutyrate” as “a homopolymer comprising 4-hydroxybutyrate units.”

Hossainy is directed to polymers containing polyhydroxyalkanoates (PHA) and agents for use with medical articles, such as stents. *See* Hossainy ¶¶ 2, 10, 16. Hossainy’s polymer generally is represented by the formula:



where A is an A-moiety, B is a B-moiety, L1 is an optional linkage connecting the A-moiety to the B-moiety, X is an optional agent, L2 is an optional linkage connecting X to the polymer, and z is an integer not equal to zero. *Id.* ¶¶ 11, 13, 91, 92. Thus, in its simplest form, Hossainy’s polymer is a copolymer composed of two moieties. The two moieties are “independently selected, and comprise any combination of monomers such

that the polymer has at least one hydroxyalkanoate group.” *Id.* ¶ 92; *see also id.* ¶ 13. In one embodiment, the A-moiety is 4-hydroxybutyrate. *Id.* ¶ 95. The B-moiety may include a polyol, a polycarboxylic acid, an amino acid, or a combination thereof. *Id.* ¶ 107. We do not find, and the Examiner has not identified, any teaching or suggestion in Hossainy that both the A- and B-moieties are 4-hydroxybutyrate, thereby forming a homopolymer of 4-hydroxybutyrate units.

Therefore, we reverse the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a). We also reverse the Examiner’s rejection of claims 2, 3, 7, 9, 10, and 24, which depend from claim 1.

*Independent Claims 14 and 15, and Dependent Claims 16–21, 23, and 25–32*

Independent claims 14 and 15 include language substantially similar to the language of claim 1. Therefore, we do not sustain the Examiner’s rejection under 35 U.S.C. § 103(a) of independent claims 14 and 15, and claims 16–21, 23, and 25–32, which depend from claim 15, for the same reasons set forth above with respect to claim 1.

*Dependent Claim 22*

Claim 22 ultimately depends from claim 15. The Examiner’s rejection of claim 22 based on Williams, in combination with Hossainy and Levenberg, does not cure the deficiency in the Examiner’s rejection of claim 15. Therefore, we do not sustain the Examiner’s rejection of claim 22 for the same reasons set forth above with respect to claim 15.

Appeal 2013-006135  
Application 12/188,113

**DECISION**

The Examiner's rejections of claims 1–3, 7, 9, 10, and 14–32 under 35 U.S.C. § 103(a) are reversed.

**REVERSED**