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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW K. HOFFA, JACOB A. FLAGLE, and
MICHAEL L. GARRISON

Appeal 2013-008301
Application 10/831,564
Technology Center 3700

Before EDWARD A. BROWN, JILL D. HILL, and LEE L. STEPINA,
Administrative Patent Judges.

HILL, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Andrew K. Hoffa et al. (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s decision to reject claims 1, 3–16, and 26–29.¹ We have jurisdiction under 35 U.S.C. § 6(b). Oral argument was heard on November 17, 2016. This Decision is based on arguments set forth in Appellants’ briefing. *See* 37 C.F.R. § 41.47(e).

We AFFIRM.

¹ Claims 2 and 17–25 are cancelled. Br. 23, 26 (Claims App.).

CLAIMED SUBJECT MATTER

Independent claims 1, 9, and 10 are pending. Claim 1, reproduced below, illustrates the claimed subject matter, with disputed limitations italicized.

1. A method of delivering multiple medical devices into a body vessel, comprising:

 providing a sheath that defines a lumen having proximal and distal ends;

 providing a plurality of medical devices capable of being advanced through the lumen;

 advancing the sheath through said body vessel;

 advancing a first medical device of the plurality of medical devices through said body vessel;

 deploying the first medical device from the distal end of the lumen at a first point of treatment in said body vessel;

 after deploying the first medical device, inserting a second medical device of the plurality of medical devices into the proximal end of the lumen and advancing the second medical device of the plurality of medical devices through the lumen; and

deploying the second medical device from the distal end of the lumen at a second point of treatment in said body vessel;

 wherein the first medical device is disposed within the sheath to form a delivery assembly prior to the steps of advancing the sheath and advancing a first medical device, and wherein the steps of advancing the sheath and advancing a first medical device comprise inserting the delivery assembly into said body vessel and advancing the delivery assembly through said body vessel such that the step of advancing the sheath through said body vessel comprises advancing the sheath through said body vessel while the first medical device is disposed within the sheath.

REJECTIONS

I. Claims 1, 3, 10, and 15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Castaneda (US 6,395,018 B1, iss. May 28, 2002) and Dehdashtian (US 2002/0019665 A1, pub. Feb. 14, 2002). Non-Final Act. 4.

II. Claims 5–9 and 11–14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Castaneda, Dehdashtian, and Shaolian (US 6,299,637 B1, iss. Oct. 9, 2001). *Id.* at 6.

III. Claims 4 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Castaneda, Dehdashtian, and Turovkiy (US 2002/0038128 A1, pub. Mar. 28, 2002). *Id.* at 7.

IV. Claims 26–29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Castaneda, Dehdashtian, and Mikus (US 6,517,569 B2, iss. Feb. 11, 2003). *Id.* at 8.

ANALYSIS

The dispositive issue in this appeal is whether Dehdashtian discloses “advancing a second medical device through the sheath used to introduce and deploy the first medical device.” Br. 10; Non-Final Act. 5–6; Ans. 3–4. Appellants argue that Dehdashtian is silent regarding “any use of a single sheath in the manner required by each of the rejected claims: first as a component of a delivery assembly containing a first deployable medical device and subsequently as a conduit through which a second deployable medical device is advanced.” Br. 10.

Regarding independent claims 1, 9 and 10, the Examiner relies on Castaneda for disclosing a first medical device “disposed within the sheath to form a delivery assembly prior to” advancing the sheath and device assembly. Non-Final Act. 4. Appellants do not challenge this finding. The

Examiner relies on Dehdashtian for delivery of multiple medical devices by, after deploying a first medical device 10 via sheath 134, inserting a second medical device 170' into the sheath 134 and advancing the second medical device to a second point of treatment for deployment. *Id.* at 5 (citing Dehdashtian ¶¶ 154, 188–200, Figs. 9A–16D).

We agree with the Examiner's findings. Dehdashtian uses a sheath 134 to deliver a first medical device (graft 10) at a first point of treatment (e.g., the location of the end 138 of sheath 134 shown in Fig. 10B). *See* Dehdashtian Figs. 10B–10D (discussed at ¶¶ 146–150). After the first medical device 10 is delivered and deployed, Dehdashtian partially withdraws sheath 134; specifically, Dehdashtian withdraws the sheath 134 from the position shown in Fig. 10B to the iliac artery 102, as shown in Fig. 12B while the balloon 194 used to deploy the first medical device 10 is withdrawn. *Id.* ¶¶ 153–154 (“The aortic graft 10 remains in place within the abdominal aorta with the introducer sheath 134 still in position just downstream thereof.”). Dehdashtian then delivers and deploys a second medical device (extension graft 170') into the leg 16 of the first medical device 10, via sheath 134, at a second point of treatment (e.g., graft septum region 28) as shown in Figs. 16A–16D. *Id.* ¶¶ 197–204. Dehdashtian's sheath 134 is not removed from the patient's body between delivery of the first and second medical devices.

Based on Appellants' above-noted erroneous interpretation of Dehdashtian, Appellants argue that one skilled in the art, combining the teachings of Castaneda and Dehdashtian, would remove the sheath after deployment of the first medical device, “and insert a second sheath containing the second medical device.” Br. 11. Because Appellants'

argument relies on a misunderstanding of Dehdashtian’s disclosure as explained above, we are not persuaded by this argument.

We therefore sustain the rejection of independent claims 1, 9 and 10. Appellants make no argument that the dependent claims would be patentable over the applied references if claims 1 and 10 are not patentable over Castaneda and Dehdashtian. Br. 7, 14, 17, 20. We therefore sustain each of Rejections I–IV.

DECISION

We AFFIRM the rejection of claims 1, 3, 10, and 15 as unpatentable over Castaneda and Dehdashtian.

We AFFIRM the rejection of claims 5–9 and 11–14 as unpatentable over Castaneda, Dehdashtian, and Shaolian.

We AFFIRM the rejection of claims 4 and 16 as unpatentable over Castaneda, Dehdashtian, and Turovkiy.

We AFFIRM the rejection of claims 26–29 as unpatentable over Castaneda, Dehdashtian, and Mikus.

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