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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN ROLFES

Appeal 2014-003029
Application 12/749,926
Technology Center 3700

Before PHILIP J. HOFFMANN, CYNTHIA L. MURPHY, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant¹ appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 1–3, 12, 13, and 27. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ The Appellant identifies the real party in interest as “Integra LifeScience Corporation.” (Appeal Br. 3.)

STATEMENT OF THE CASE

The Appellant's invention "relates generally to a skull clamp for cranial fixation." (Spec. ¶ 2.)

Illustrative Claim²

1. A skull clamp for supporting a patient's head, comprising:
 - a frame defined by a base piece having a slot formed therein and a ratchet extension piece with a ratchet arm extendable into the slot, the ratchet arm including ratchet teeth engageable by the base piece; and
 - a plate hingedly connected to the base piece adjacent the slot, and operable to be hingedly moved between closed and open positions to close off and to open up access to the slot, respectively, thereby to facilitate cleaning and inspection of the slot.

Rejection³

The Examiner rejects claims 1–3, 12, 13, and 27 under 35 U.S.C. § 102(b) as anticipated by Dinkler (US 5,537,704, issued July 23, 1996). (Final Action 2.)

ANALYSIS

Independent Claim 1

Independent claim 1 is directed to a skull clamp comprising "a base piece" that has "a slot formed therein," and "a plate" that is "connected to the base piece adjacent the slot." (Claims App.) The Examiner finds that

² This illustrative claim is quoted from the Claims Appendix (Claims App.) set forth on pages 39–46 of the Appeal Brief.

³ The Examiner's rejections of claims 4–11 and 14–26 have been withdrawn. (See Answer 3.)

Dinkler discloses a skull clamp comprising such a base piece (frame member 16) and such a plate (bottom plate 32). (*See* Final Action 2–3.) In the skull clamp disclosed by Dinkler, the frame member 16 has an arm 20 that “is formed in a U-shape to receive [a ratchet] arm 18” and the bottom plate 32 “is mounted between” sides 30 and 31 of the arm 20 “by fasteners 34.” (Dinkler, col. 4, lines 13–14, 20–21; *see also* Fig. 1.)

Independent claim 1 further requires the plate to be “hingedly connected” to the base piece. (Claims App.) The Examiner finds that Dinkler’s bottom plate 32 is “hingedly connected” to Dinkler’s frame member 16. (*See* Final Action 2.) As discussed above, Dinkler’s bottom plate 32 is mounted to the arm 20 by fasteners 34. Also, Dinkler’s bottom plate 32 “receive[s] a retractable rack member 36 which is connected to release pin 37.” (Dinkler, col. 4, lines 26–29; *see also* Fig. 1.) According to the Examiner, Dinkler’s bottom plate 32 could “hinge around [fastener] 34” (Final Action 2) and/or could “hinge around [release] pin 37” (Answer 2) and thus is hingedly connected to Dinkler’s frame member 16.

We are persuaded by the Appellant’s arguments that Dinkler’s bottom plate 32 hinges around neither fastener 34 nor release pin 37. (*See* Appeal Br. 13–21; *see also* Reply Br. 9–13.) We are persuaded because the Appellant provides plausible technical reasoning as to why such hinged movement of the bottom plate 32 would not be possible in Dinkler’s skull clamp. Specifically, Dinkler’s bottom plate 32 “is secured to the base piece by multiple fasteners 34” and, when so secured, the fasteners 34 “prevent any movement of plate 32.” (Reply Br. 13.) If Dinkler’s fasteners 34 are completely removed, “the plate 32 would fall from the base piece” as “there would be no further structure to hold the plate 32 to the base.” (*Id.*) And

even if one, some, or all of the fasteners 34 were partially removed, the geometry of Dinkler's arm 20 would appear to prevent pivoting of the bottom plate 32 about fastener(s) 34, about release pin 37, or otherwise. (*See* Appeal Br. 17–20, especially annotated drawings on page 19.)

The Examiner maintains that “[p]artially releasing the pin 37 would allow for enough clearance for the plate to be clear from the slot” and “if track 18 is lowered slightly along with pin 37 there would be clearance to allow the plate to be hinged away from the slot.” (Answer 4.) However, the Examiner does not sufficiently explain, and we do not see, how a partial release of the pin 37, the slight lowering of the ratchet arm 18, and/or the clearance allegedly created by these manipulations would result in Dinkler's bottom plate 32 being “hingedly connected” to the first arm 20. Moreover, we agree with the Appellant's implication that Dinkler's bottom plate 32 is connected to Dinkler's base member 18 via fasteners 34, not release pin 37. (*See* Reply Br. 14.)

Thus, we do not sustain the Examiner's rejection of independent claim 1 as anticipated by Dinkler.

Dependent Claims 2, 3, 12, and 27

The Examiner's further findings and determinations with respect to dependent claims 2, 3, 12, and 27 (*see* Final Action 2–4; *see also* Answer 4) do not compensate for the above-discussed deficiency in the rejection of independent claim 1. Thus, we are persuaded by the Appellant's arguments (*see* Appeal Br. 24); and we do not sustain the Examiner's rejection of dependent claims 2, 3, 12, and 27 as anticipated by Dinkler.

Dependent Claim 13

As the Appellant does not argue the rejection of dependent claim 13 (*see* Appeal Br. 13, footnote 1), we summarily sustain the Examiner's rejection of this claim.

DECISION

We REVERSE the Examiner's rejection of claims 1–3, 12, and 27.

We summarily AFFIRM the Examiner's rejection of claim 13.

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

AFFIRMED-IN-PART