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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN D. WORLEY

Appeal 2015-000585
Application 13/353,398
Technology Center 3600

Before CHARLES N. GREENHUT, LISA M. GUIJT, and GORDON D. KINDER, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1, 2, and 8–14. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to a catheter guiding flexible connector. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. For coupling the inlet end of a tracheotomy tube inner cannula to an outlet port of an in-line catheter, a connector comprising:
>
> an elongated, flexible, accordion-like tubular body;
>
> means on a catheter entry end of said tubular body for serially coupling said body in pneumatic communication with the catheter outlet port;
>
> means on a catheter exit end of said tubular body for serially coupling said body in pneumatic communication with the inlet end of the tracheotomy tube inner cannula; and
>
> means on said body-to-cannula coupling means for guiding a downstream tip of the catheter into the inlet end of the inner cannula in response to pushing the catheter at a location upstream of the catheter outlet port.

REJECTION

Claims 1, 2, and 8–14[1] are rejected under 35 U.S.C. § 102(b) as being anticipated by Radford (US 3,991,762).

OPINION

The claims are argued as a group, for which we select claim 1 as representative. 37 C.F.R. § 41.37(c)(iv). The Examiner correctly identifies the disputed limitation, "means . . . for guiding a downstream tip of the catheter into the inlet end of the inner cannula," as being a means-plus-function limitation in accordance with 35 U.S.C. § 112, paragraph six. Final Act. 2A claim employing *means*-plus-function language is construed to

[1] We understand the Examiner's omission of claims 13 and 14 from this statement of the rejection to be a typographical error.

cover, *inter alia*, the corresponding *structure* in the Specification. Appellant's arguments pointing out the differences between the purpose of Radford's projection 51 and the purpose of Appellant's taper 49 (App. Br. 8–11) are of little probative value so long as their structures are the same.

The Examiner takes a reasonable approach to determining the so-called "corresponding structure" for purposes of the means-plus-function analysis: As claim 2 expressly defines the specific structure of the guiding means, removing the limitation from the realm of § 112, sixth paragraph (MPEP § 2181(I)), and dependent claims must further limit the subject matter of the claim from which they depend (§ 112, fourth paragraph), the Examiner reasonably concluded that by disclosing subject matter falling within the express limitations of claim 2, Radford must also anticipate claim 1. Final Act. 2; Ans. 3–4. The Examiner's finding that Radford discloses the *structure* of claim 2 is uncontroverted. We agree with the Examiner that Radford must therefore disclose the structure of the "means for guiding" recited in claim 1.

Appellant's arguments focus on the functional portion of the guiding means recitation. Appellant contends that with a particular tracheotomy device end (for example, E as Appellant added to Radford's Figure 4 as modified at page 10 of the Appeal Brief) and with a catheter exhibiting a particular amount of flexibility, Radford's projection 51 would not be able to perform the recited guiding function due to "hang up" at the tracheotomy cannula opening. Although the Examiner disputes this, asserting that Figure 4 of Radford illustrates that the rigidity of the components is sufficient to perform the guiding function, this is not a dispositive issue because, as the Examiner also points out, the claim is *not* directed to the combination of the

connector with any particular catheter or any particular tracheotomy device. Although the catheter and tracheotomy devices are used to define the claimed subject matter, *i.e.,* the connector itself, the claim does not define any specific structure of the catheter and tracheotomy devices that must interact in any particular way with the claimed connector. Thus Appellant's argument, "[i]f Radford's catheter is not flexible enough for [the illustrated bowing] to occur, then Radford's catheter is not the problem catheter illustrated in Appellant's Figures 1 and 2," is not commensurate with the scope of the claim, which does not specify any particular catheter flexibility. Reply Br. 4; *See, e.g.*, *Geneva Pharmaceuticals, Inc. v. GlaxoSmithKline, PLC*, 349 F. 3d 1373 (Fed. Cir. 2003) (Discussing an example of a claim that defines the claimed subject matter based on open-ended class of unclaimed subject matter). Similarly, as the claim also does not require any particular interaction of the claimed connector with any particular tracheotomy device cannula, the presence or absence of Radford's X connector 19, or the particular structure of the tracheotomy device to which Radford intends to couple, is inapposite. *See* Reply Br. 4–5; Ans. 3–4.

DECISION

The Examiner's rejection is affirmed.

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