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Fay Kaplun & Marcin, LLP 150 Broadway, suite 702 New York, NY 10038			PRESTON, REBECCA STRASZHEIM	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALBERTO A. FERNANDEZ DELL'OCA

Appeal 2015-001920
Application 12/295,815
Technology Center 3700

Before: JOHN C. KERINS, STEFAN STAICOVICI, and LEE L. STEPINA,
Administrative Patent Judges.

STEPINA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Alberto A. Fernandez Dell'Oca (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's final decision to reject claims 1 and 4.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Claim 2 is objected to as dependent on a rejected base claim, but indicated as reciting allowable subject matter. Final Act. 3 (mailed on January 2, 2014). Claims 5 and 10–18 are canceled, and claims 3 and 6–9 are withdrawn from consideration. Appeal Br. 10–11 (filed May 23, 2014).

CLAIMED SUBJECT MATTER

Appellant's invention relates to an "apparatus for securing surgical cable around bone using a minimally invasive technique." Spec. para. 1. Claim 1, the sole independent claim, is reproduced below and is representative of the claimed subject matter:

1. A surgical cable and crimp assembly kit comprising:
 - a length of flexible cable;
 - a crushable wire crimp having at least one hole there through sized to receive the flexible cable there through; and
 - crimp pliers comprising:
 - a pair of operating handles; and
 - a pair of opposed jaws sized and shaped to be inserted through a small incision to a bone about which the cable is to be fixed via the wire crimp, each jaw extending from a respective handle and coupled to the other jaw via a hinge mechanism, an extension extending perpendicularly from the tip of each jaw, each extension including a recess formed therein and being disposed opposite to the other extension, the recess sized and shaped to receive the wire crimp such that the pair of jaws is operative to hold and crush the wire crimp there between, each recess being substantially aligned with a length of a corresponding one of the jaws such that the wire crimp is receivable between the pair of jaws along a longitudinal axis of the crimp pliers.

REFERENCE

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Lawson

US 3,791,189

Feb. 12, 1974

THE REJECTION

Claims 1 and 4 are rejected under 35 U.S.C. § 102(b) as anticipated by Lawson.

ANALYSIS

Claim 1 recites, in part, “an extension extending perpendicularly from the tip of each jaw.” Appeal Br. 9 (Claims App.).

The Examiner finds that Lawson discloses “a pair of oppositely disposed extensions (levers 12, 14) that extend[] perpendicularly from the tip of the jaws (jaws 56).” Final Act. 3.

Appellant argues that “the levers 12, 14 of the crimping tool 10 are (not) extensions of the jaws 56.” Appeal Br. 6. Appellant asserts that “crimping tool 10 is an entirely separate component that is positioned between the jaws 56 once the terminal 18 has been positioned over the wire 20, as desired, so that a compression force F may be applied thereto.” *Id.* Appellant contends that “[u]nder the Examiner’s use of the term extending anything placed between the jaws would be considered part of the jaws of the tool,” and that “this is a reading that no one skilled in the art would apply to this term.” *Id.*

The Examiner responds that, “[d]ue to the ‘comprising’ claim language[,] the claim does not exclude or preclude two component configuration (the crimp pliers, as claimed, being made from in combination both the tool 10 and the pliers 16, as disclosed by Lawson).” Ans. 5.

In reply, Appellant reiterates that “no one having skill in the art would interpret an extension of the jaws to be a distinct and separate tool, as is the

crimping tool 10 of Lawson.” Reply Br. 5. Appellant asserts that, “[t]he specification of the current application makes clear that the extensions are coupled to the jaws— they are part of the jaws in a manner not shown or suggest(ed) in Lawson,” and rather, “the crimping tool 10 (of Lawson) is its own component and thus, cannot be construed as an ‘extension’ extending from the jaws of the pliers.” *Id.*

We agree with Appellant on this point. Lawson discloses that crimping tool 10 is “used *in conjunction with* a compression-exerting tool.” Lawson, col. 1, ll. 51–53. As depicted in Figures 1 and 4 of Lawson, the compression-exerting tool is a pair of pliers. *Id.* at col. 2, ll. 48–51; Figs. 1 and 4. As such, crimping tool 10 of Lawson is a separate tool that is inserted into pliers 16, and is not an extension of jaws 56 of pliers 16. *See* Appeal Br. 6; Reply Br. 5. By contrast, the Specification describes long-nosed crimp pliers 1 having a pair of operating handles 3 and opposed long jaws 2 that are connected to each other via a hinge mechanism 22, and that each jaw “has an extension 24 that extends perpendicularly from the tip of the jaw.” Spec., para 29; Figs. 1–4. Based on a broadest reasonable interpretation consistent with the Specification, one of ordinary skill in the art would understand that the claimed extension is a structure that extends from the jaws of the pliers, not a separate tool that is inserted into the jaws of the pliers. In view of the above, the Examiner has not established by a preponderance of the evidence that Lawson discloses an extension as recited in claim 1. Accordingly, we do not sustain the rejection under 35 U.S.C. § 102(b) of claim 1, and claim 4 depending from claim 1, as anticipated by Lawson.

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DECISION

The rejection of claims 1 and 4 under 35 U.S.C. § 102(b) as anticipated by Lawson is reversed.

REVERSED