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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* DAVID ERNEST HARTLEY and  
EDWARD GRAHAM MILLS

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Appeal 2015-003574  
Application 13/377,453  
Technology Center 3700

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Before PATRICK R. SCANLON, BEVERLY M. BUNTING, and  
GORDON D. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134 from a rejection of claims 1–9. We have jurisdiction under 35 U.S.C. § 6(b). Appellants presented oral argument to this panel June 13, 2017.

We reverse.

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<sup>1</sup> We are informed that the real party in interest is Cook Medical Technologies LLC, the assignee of record in the present application. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

The claims are directed to a reinforcing ring. Spec. 1. Claims 1 and 9 are independent. Claim 1 is reproduced below and illustrates the claimed subject matter:

1. A reinforcing ring for a fenestration of a stent graft, the reinforcing ring comprising a plurality of turns of a substantially inextensible resilient wire in a circular two dimensional planar shape and terminal ends at each end of the wire, the terminal ends each comprising a loop and a tail, the tail extending from the loop, the tail being folded back and extending around the circular shape.

Appeal Br. 22 (Claims App.).

### REJECTIONS

I. Claims 1–4, 6, 7 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tanaka et al. (US 2005/0070934A1, pub. Mar. 31, 2005) (“Tanaka”).

II. Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka in view of Spence et al. (US 6,565,581 B1, iss. May 20, 2003) (“Spence”).

III. Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka in view of Hartley et al. (US 2007/0219621 A1, pub. Sept. 20, 2007) (Hartley”).

## OPINION

### *Rejection I*

The Examiner finds that Tanaka discloses all the limitations of claim 1. Final Act. 4, Ans. 2. Appellants dispute six features of claims 1 and 9 they contend are absent from Tanaka. Appeal Br. 10. We focus on Appellants' assertion that Tanaka does not disclose "a loop and a tail, the tail extending from the loop [and] being folded back and extending around the circular shape." Appeal Br. 22 (Claims App.).

The first step in assessing Appellants' argument is determining the construction of "tail." "Tail" appears not only in claim 1, above, but also in Claim 9. In claim 9 each of the tails comprises an enlarged end. Appeal Br. 23 (Claims App.). The enlarged end is intended to protect the tissue into which the claimed device is to be inserted from trauma caused by a sharp wire end. Spec. 5:18–24. This purpose can be realized only if the tail has a free end which in turn is protected by the enlargement. We can see no reason why "tail" should have a different scope in claim 1 than in claim 9. *Phillips v. AWH Corp.*, 415 F. 3d 1303, 1314 (Fed. Cir. 2005) ("Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims."). In light of the requirements of claim 9, we conclude that the claimed tail in both claims 1 and 9 must have a free end, and this conclusion informs our consideration of whether the tail in Tanaka "extend[s] around the circular shape" as required by claims 1 and 9.

Appellants contend Tanaka does not show a tail "extending around the circular shape" as required by claims 1 and 9. Appeal Br. 17. In the Answer, the Examiner finds that "[t]he loop extends from the terminal end,

and has a tail that is folded back to extend around the circular shape ([s]een in Figure 22). . . . The tail is extended from the loop and thus also meets the claim limitations.” Answer 3, 4. Appellants contend that Tanaka has no tail and that the portion of the wire which the Examiner identifies as the tail does not “extend around the circular shape of the ring.” Reply Br. 3 (emphasis omitted).

We do not see in Figure 22 where the tail extends around the circular shape. While Appellants’ Specification is not limiting, it does suggest that one way to meet the claim limitation is for the tail to extend generally parallel to the turn of wire for at least some portion of the circular shape. We do not see any part of the tail in Figure 22 of Tanaka which corresponds to the claim limitation that the tail extend around the circular shape. Instead, the portion of the wire identified by the Examiner as the tail appears to close the loop, but does not extend around the circular shape. Accordingly, we conclude the Examiner’s finding (Ans. 3, 4) that Tanaka discloses a tail “extending around the circular shape” as required by claims 1 and 9 is not supported by a preponderance of the evidence. Appeal Br. 22, 23 (Claims App.).

In view of the foregoing, we do not sustain the Examiner’s rejection of claims 1 and 9. Claims 2–4, 6, and 7 depend from claim 1. The Examiner relies on Tanaka in the same way as in connection with claims 1 and 9. Therefore, for the above reasons, we also do not sustain the rejection of these claims.

Appeal 2015-003574  
Application 13/377,453

*Rejections II and III*

Claims 5 and 8 depend from claim 1. The Examiner relies on Tanaka in the same way as in connection with claims 1 and 9, and for the same reasons discussed above we reverse the rejection of these claims.

DECISION

The Examiner's rejection of claims 1–9 is reversed.

REVERSED