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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN T. DYCUS, STEVEN P. BUYSSE, and
DAX D. BROWN¹

Appeal 2018-001074
Application 14/719,887
Technology Center 3700

Before JENNIFER D. BAHR, JEREMY M. PLENZLER, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 19–21 and 25–32. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Covidien AG (Appellant) is the applicant as provided in 37 C.F.R. § 1.46 and is identified as the real party in interest. Appeal Br. 1. According to the Appeal Brief, “[t]he ultimate parent of Covidien AG is Medtronic plc.” *Id.*

THE CLAIMED SUBJECT MATTER

Appellant's invention is directed to an endoscopic bipolar electrosurgical forceps including non-conductive stop members associated with one or both opposing jaw members of the forceps "designed to control the gap distance between opposing jaw members and enhance the manipulation and gripping of tissue during the sealing and dividing process."

Spec. 1. Claims 19 and 27 are independent. Appeal Br. 13–15 (Claims App.). Claim 19, reproduced below with pertinent limitations italicized for emphasis, is representative of the claimed subject matter.

19. A jaw member for a bipolar forceps, the jaw member comprising:

an electrically-conductive flat seal surface extending along a length of the jaw member and adaptable to connect to a source of electrical energy, *the electrically-conductive flat seal surface defining a proximal edge, a distal edge, and a length extending from the proximal edge to the distal edge;* and
a plurality of stop members electrically-insulated from the electrically-conductive flat seal surface, *the plurality of stop members disposed along the length of the electrically-conductive flat seal surface and including at least a first stop member disposed proximate a center portion of the electrically-conductive flat seal surface, at least a second stop member disposed at a proximal portion of the electrically-conductive flat seal surface, and at least a third stop member disposed at a distal portion of the electrically-conductive flat seal surface,* the plurality of stop members configured to maintain a uniform distance of about 0.001 inches to about 0.005 inches between the electrically-conductive flat seal surface and an electrically-conductive flat seal surface of another jaw member when the jaw members are disposed in a closed position, the plurality of stop members further configured to prevent short circuiting between the electrically-conductive flat seal surfaces.

REJECTIONS

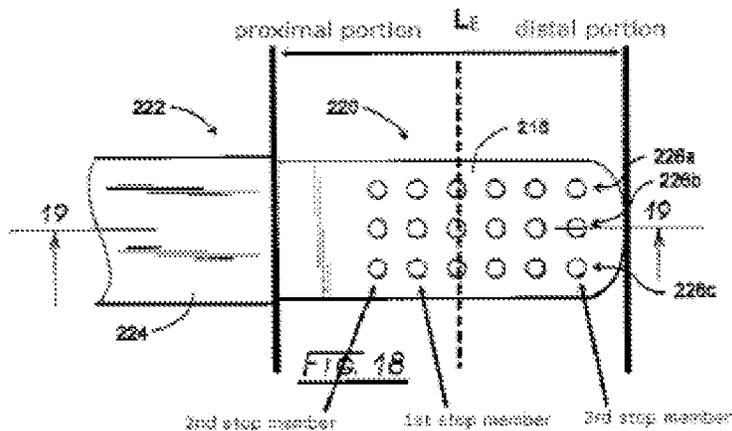
- I. Claims 19, 25–27, and 30–32 stand rejected under 35 U.S.C. § 102(b) as anticipated by Eggers (US 5,891,142, issued Apr. 6, 1999).
- II. Claims 19–21 and 25–32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fox (US 5,674,220, issued Oct. 7, 1997) and Eggers.

DISCUSSION

Rejection I

Initially, in rejecting claim 19 as anticipated by Eggers, the Examiner relied on the Figure 8 embodiment of Eggers, reading the proximal and distal edges of the claimed electrically-conductive seal surface on the proximal and distal boundaries of grasping length L_G and reading the length between the claimed proximal and distal edges on grasping length L_G . *See* Final Act. 3–4. Appellant took issue with the Examiner’s position considering the proximal boundary of the portion of grasping surface 120 extending along grasping length L_G to be an “edge” of the electrically-conductive seal surface. Appeal Br. 7–8. We agree with Appellant on this point. Eggers’s grasping surface 120 is electrically conductive along its entire longitudinal extent L_E from the distal tip back to the distal edge of electrically insulating coating 117. *See* Eggers 8:67–9:2; 9:40–44; 11:11–12; Fig. 8. Electrically insulated spacer regions (strips 124a–124f) are provided only along grasping length L_G , which is a portion of grasping surface 120, but the electrically-conductive seal surface (grasping surface 120) extends along the entire length L_E . *Id.* 9:40–44.

In response to Appellant's arguments, the Examiner finds that, even reading the claimed electrically-conductive seal surface on the entire electrically-conductive grasping surface, extending along length L_E from the distal tip back to insulative coating 224, Eggers's Figure 18 depicts stop members (linear arrays of electrically insulative regions 226a–226c) including at least a first stop member proximate a center portion of the electrically-conductive seal surface (grasping surface 218), at least a second stop member at a proximal portion of the electrically-conductive seal surface, and at least a third stop member at a distal portion of the electrically-conductive seal surface. Ans. 5; *see* Eggers 14:41–56. The Examiner provides an annotated version of Eggers's Figure 18 to identify the first, second, and third stop members. Ans. 5. The annotated Figure 18 is reproduced below.



OA Figure 1

The Examiner's annotated version of Figure 18, which is a plan view of the tip region of a tine of an embodiment of Eggers's forceps (Eggers 5:19–20), includes annotations identifying the entire longitudinal extent L_E of electrically-conductive grasping surface 218, a dotted line denoting the longitudinal center of grasping surface 218, and first, second, and third stop

members. Ans. 5. The spacers labeled “1st stop member” in the annotated Figure 18, as well as the spacers in at least the two rows immediately to the right of these spacers, reasonably appear to be located proximate the center portion of surface 218. Likewise, the spacers labeled “2nd stop member” and “3rd stop member” reasonably appear to be disposed proximally and distally, respectively, of the center region of surface 218 and, thus, are disposed at a proximal portion and at a distal portion, respectively, of surface 218.

Appellant does not present any argument explaining why the embodiment depicted in Figure 18 of Eggers fails to satisfy the limitations of claim 19 directed to the electrically-conductive seal surface and first, second, and third stop members. *See* Reply Br. 2–5. Thus, Appellant fails to apprise us of error in the Examiner’s finding that Eggers (Figure 18) anticipates the subject matter of claim 19. Accordingly, we sustain the rejection of claim 19 as anticipated by Eggers. We also sustain the rejection of claims 25–27 and 30–32, for which Appellant does not present any separate arguments (*see* Appeal Br. 6–11), as anticipated by Eggers.

Rejection II

In rejecting claims 19–21 and 25–32 as unpatentable over Fox and Eggers, the Examiner relied on Eggers for the stop members. *See* Final Act. 6–7. The Examiner determined it would have been obvious to provide stop members as taught by Eggers on Fox’s electrically-conductive seal surfaces “to allow the jaw members to achieve the ideal current path lengths for developing hemostasis without the presence of recurrent sticking phenomenon.” *Id.* at 8. Appellant does not contest the Examiner’s

reasoning in combining Fox and Eggers. *See* Appeal Br. 11–12. Rather, Appellant argues:

Eggers fails to teach or reasonably suggest a plurality of stop members including “at least a first stop member disposed proximate a center portion of the electrically-conductive flat seal surface” and “at least a second stop member disposed at a proximal portion of the electrically-conductive flat seal surface,” as recited in independent claim 19 and as similarly recited in independent claim 27.

Id. at 11.

Appellant does not present any argument explaining why the embodiment depicted in Figure 18 of Eggers fails to satisfy these limitations of claims 19 and 27. *See* Reply Br. 2–5; Ans. 5. Thus, for essentially the reasons discussed above in regard to the anticipation rejection, Appellant fails to apprise us of error in the rejection of claims 19 and 27 as unpatentable over Fox and Eggers. Accordingly, we sustain the rejection of claims 19 and 27, as well as dependent claims 20, 21, 25, 26, and 28–32, for which Appellant does not present any separate arguments (*see* Appeal Br. 12), as unpatentable over Fox and Eggers.

DECISION

The Examiner’s decision rejecting claims 19, 25–27, and 30–32 under 35 U.S.C. § 102(b) as anticipated by Eggers is AFFIRMED.

The Examiner’s decision rejecting claims 19–21 and 25–32 under 35 U.S.C. § 103(a) as unpatentable over Fox and Eggers 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).

Appeal 2018-001074
Application 14/719,887

AFFIRMED