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STOEL RIVES LLP - PDX 760 SW 9TH AVENUE SUITE 3000 PORTLAND, OR 97205			STICE, PAULA J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROLF HAGELGANZ and JUERGEN BATHEN

Appeal 2018-001143
Application 14/742,289
Technology Center 3700

Before GEORGE R. HOSKINS, BRADLEY B. BAYAT, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–9. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as World Class Technologies, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a self-ligating bracket with sliding cover.
Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A self-ligating orthodontic bracket comprising
 - (a) a base portion adapted to be affixed to a patient's tooth;
 - (b) an upper body portion, the upper body portion having an archwire slot extending in a mesial-distal direction for receiving an archwire, the upper body portion having a surface on a first side of said archwire slot;
 - (c) a sliding cover adapted to slide on said support surface and move from an open position exposing said archwire slot, to a closed position covering said archwire slot;
 - (d) said sliding cover having a main body with a leading edge spanning said archwire slot in said closed position, and a locking tab forward of, and supported by, a flexible neck adapted to flex in a lingual-labial direction, the flexible neck having two ends supported by a surrounding structure of the sliding cover, the flexible neck more flexible than the surrounding structure; and
 - (e) a ridge on said upper body portion situated on a second side of said archwire slot for engaging said locking tab.

REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Damon	US 5,439,378	Aug. 8, 1995
Korn	US 9,089,386	Jan. 2, 2012

REJECTIONS

- 1) Claims 1–9 are rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Damon.
- 2) Claims 1–6 are rejected on the ground of non-statutory double patenting over claims 1 and 2 of Korn.

OPINION

Anticipation by Damon

Claims 1 and 2

In the rejection of independent claim 1, the Examiner finds, *inter alia*, that Damon discloses “a locking tab 27 . . . extending forward of the leading edge and supported by a flexible neck” which “flexes to overcome the ridge 28 . . . in the upper body portion.” Final Act. 3 (citing Damon Figs. 1–3, 5, 6). In support of the rejection, the Examiner provides annotated versions of Damon’s Figures 2, 3, and 6. *See id.* at 2, 4.

Appellant contends that Damon fails to disclose the “sliding cover having . . . a locking tab . . . forward of a flexible neck.” Appeal Br. 6. In support of this contention, Appellant argues that in the Examiner’s annotated versions of Damon’s figures, the Examiner identifies the locking tab and the flexible neck as “the same physical structure” which “cannot be ‘forward of itself.’” *Id.*

The Examiner responds that “the *locking tab, as defined as 28 of Damon* . . . can be forward of the flexible neck either before the neck is slid forward or during the sliding process.” Ans. 3 (emphasis added). Further, the Examiner finds that “[t]he locking tab can be both forward of (figure 6) and supported by (figure 5) a flexible neck.” *Id.*

In the Reply Brief, Appellant notes that in the Final Rejection, the Examiner found that Damon’s element 27 corresponds to the recited “locking tab” and Damon’s element 28 corresponds to the recited “ridge.” Reply Br. 4 (citing Final Act. 3). Appellant further argues that the Examiner’s position in the Answer “implausibly reads the claim term ‘locking tab’ not on the front tab structure of Damon’s sliding cover, but

squarely address Appellant's argument that the Examiner did not show how Damon's element 27 met the claim limitation of the locking tab being "forward of a flexible neck." Rather, the Examiner found that Damon's element 28 corresponds to the "locking tab." *See* Ans. 3. However, the Examiner has not shown that element 28 is part of Damon's cover 21 as required by claim 1. *Id.* Further, the Examiner does not explain, in the Answer, which element of Damon corresponds to the recited ridge if element 28 corresponds to the locking tab. *See* Ans. 2–3. With respect to the Final Rejection, the Examiner has not adequately explained how Damon's element 27 is forward of the flexible neck as required by claim 1 because it appears that element 27 is part of the "flexible neck" identified by the Examiner in the rejection. Therefore, we do not sustain the rejection of claim 1 and claim 2 which depends from claim 1.

Claims 3–9

Appellant contends that Damon does not disclose the limitation in independent claim 3 of "the recess and the ridge are each shaped to facilitate flexing of the neck over the ridge when the sliding cover moves towards the closed position and to resist flexing of the neck over the ridge when the sliding cover moves from the closed position towards the open position." Appeal Br. 9. Appellant contends that the Examiner did not account for this "significant limitation" in the Final Rejection. *Id.* In the Answer, the Examiner does not address Appellant's contentions concerning claim 3. *See generally* Ans. 2–5. For the following reasons, we do not sustain the rejection of claim 3.

With respect to the limitation quoted above from claim 3, the Examiner did not provide sufficient evidence or technical reasoning in the

Final Rejection to establish that Damon discloses this limitation. *See* Final Act. 3. Further, the Examiner did not provide any argument or analysis in the Answer in response to Appellant’s contention. Ans. 2–5. Consequently, we do not sustain the rejection of claim 3. Claims 4–9 depend directly or indirectly from Claim 3. Appeal Br. 13 (Claims App.). We, thus, do not sustain the rejection of claims 4–9 for the same reasons.

DOUBLE PATENTING

The Examiner rejected claims 1–6 on the ground of non-statutory double patenting over claims 1 and 2 of Korn. Final Act. 7. Appellant does not address this rejection in the Appeal Brief. *See generally* Appeal Br. Therefore, we summarily sustain this rejection.

CONCLUSION

The Examiner’s rejection of claims 1–9 as anticipated by Damon is reversed.

The Examiner’s rejection of claims 1–6 on the ground of non-statutory double patenting is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–9	102	Damon		1–9
1–6	Double Patenting	Korn	1–6	
Overall Outcome			1–6	7–9

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TIME PERIOD FOR RESPONSE

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-IN-PART