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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/273,288	10/14/2011	Eric Lee	PAT903758-US-NP	7293
26356	7590	03/10/2020	EXAMINER	
ALCON IP LEGAL 6201 SOUTH FREEWAY FORT WORTH, TX 76134			HEWITT, JAMES M	
			ART UNIT	PAPER NUMBER
			3679	
			NOTIFICATION DATE	DELIVERY MODE
			03/10/2020	ELECTRONIC

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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* ERIC LEE and ROBERT BALSAMO

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Appeal 2018-002609  
Application 13/273,288  
Technology Center 3600

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Before CHARLES N. GREENHUT, BENJAMIN D. M. WOOD, and  
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner’s decision to reject claims 1–8, 21–23, and 25–27 (entered Mar. 23, 2017, “Final Act.”).<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Alcon Research Ltd. as the real party in interest. Appeal Br. 2.

<sup>2</sup> Claims 9–20 and 24 have been cancelled. Appeal Br. 13.

## THE CLAIMED SUBJECT MATTER

Appellant's Specification describes the invention as relating generally to connectors and "a convertible collar for multiple connectors." Spec. 1.

Claim 1, reproduced below, is the sole independent claim and is representative of the claimed subject matter.

1. An apparatus, comprising:
  - a first connector coupled to a first tube;
  - a second connector coupled to a second tube;
  - a collar comprising a first aperture and a second aperture, wherein, in a first state, the first aperture and second aperture align the first connector and the second connector, respectively, for coupling to an aligned third connector and fourth connector;
  - wherein in a second state, the first aperture and second aperture of the collar are disengaged from the first connector and second connector, respectively, to allow movement of the first connector relative to the second connector, wherein, in the second state, the first aperture slides along the first tube and the second aperture slides along the second tube;
  - wherein the first connector is secured to the collar, in the first state, through a releasable friction fit with the first aperture and wherein the first connector is detached from the collar, in the second state, by pulling back the collar over the first tube to overcome the friction fit between the first connector and the first aperture of the collar;*
  - wherein the apparatus transitions from the second state to the first state by pulling the collar back over the first connector and second connector to reestablish the friction fit between the first connector and the first aperture of the collar and reestablish the friction fit between the second connector and the second aperture of the collar.*

Appeal Br. 11 (Claims App.)(emphasis added). For ease of reference, we refer to the last two "wherein" clauses collectively as the "friction fit configuration" in this decision.

REJECTIONS<sup>3</sup>

References	Basis 35 U.S.C.	Claims Rejected
Arkans <sup>4</sup> , Sage <sup>5</sup>	§ 103	1–8, 21–23, 27
Arkans, Sage, Blenkush <sup>6</sup>	§ 103	6, 7, 25, 26

ANALYSIS

For independent claim 1, the Examiner determines that the combination of elements would have been obvious in view of Arkans and Sage. Final Act. 2–5 (citing Arkans 5:4–38, Figs. 2–4). Specifically, the Examiner found the apparatus of Arkans to disclose most of the recited structures of claim 1, except it is “not explicit” regarding whether the recited friction fit configuration exists between the connectors and collar. *Id.* at 2–3. Although the Examiner speculated that the apparatus in Arkans’ figures could be viewed as having the recited friction fit configuration (*see id.* at 3–4), the Examiner notably has not rejected claim 1 as being anticipated by Arkans or as being obvious in view of Arkans alone. *Id.* at 2. Instead, the Examiner found Sage to disclose this configuration by showing a “sliding relationship between the connectors and tubes [that] is enabled via a frictional or interfering fit.” *Id.* at 4 (citing Sage ¶¶ 34, 35, 49, 51–53). The Examiner determined a skilled artisan would have known to incorporate the

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<sup>3</sup> The Examiner has withdrawn the rejections based on US 2008/0275429 A1, pub. Nov. 6, 2008 (“Sage ’429”). Ans. 12, 15.

<sup>4</sup> US 6,062,244, iss. May 16, 2000 (“Arkans”).

<sup>5</sup> US 2011/0270230 A1, pub. Nov. 3, 2011 (“Sage”).

<sup>6</sup> US 4,630,847, iss. Dec. 23, 1986 (“Blenkush”).

sliding relationship disclosed by Sage into the disclosed apparatus of Arkans to “permit easy assembly and disassembly and facilitate installation of replacement parts, or use of the components in other applications or environments.” *Id.* at 5.

Appellant disputes Arkans and Sage, alone or in combination, disclose the recited friction fit between a collar and connector. Appeal Br. 6–9. Appellant contends that Arkans not only lacks any disclosure of a releasable friction fit between a connector and collar, which enables them to be separated and reconnected, but it teaches away from such a configuration. *Id.* at 7. As support, Appellant argues that depicting components of an apparatus individually, such as the downstream pneumatic tubes shown in Figures 4a and 4b of Arkans, does not, in of itself, evidence that the components are configured to be separated and reattached from the assembled apparatus using a friction fit. *Id.* Appellant contends that a skilled artisan would have understood the specification of Arkans to discourage allowing the separation of the downstream pneumatic tubes from the downstream connector 44 because the connector unit was designed to prevent any misconnections. *Id.* (citing Arkans 1:60–61, 2:35–40, 4:47–50).

Addressing Sage, Appellant contends that it does “not teach or make obvious a collar that can be disengaged from a first and second connector to allow movement of the first connector relative to the second connector and then pulled back over the first and second connector to reestablish the friction fit as recited in . . . claim 1.” *Id.* at 9. Appellant contends Sage demonstrates that the disclosed collet and connector construction lacks the claimed friction fit configuration because Sage states that the collet is constructed to make it “difficult or nearly impossible” to release the collet

from the connector and indicates trying to do so would “damage[e] or destroy[] one or more components.” *Id.* at 8 (citing Sage ¶¶ 53, 56).

In the Answer, the Examiner was not persuaded by Appellant’s argument that Arkans teaches away from using releasable friction fit between the downstream connectors (50a, 50b) and their collar (44). Ans. 13–14. The Examiner rejected Appellant’s argument because such a configuration “would not lead to incorrect mating of the connector halves” since “the step-like reciprocal engagement of the halves would preclude incorrect mating when sliding the halves back along the tubes/connectors 50a, 50b.” *Id.* at 14. In addition, the Examiner found unpersuasive Appellant’s argument that Sage fails to disclose the recited releasable friction fit between the connector and collar because Sage teaches that “a medical instrument, e.g., forceps, may be used to push the tab 128 radially inwardly . . . sufficiently to permit the collet to return to the unlocked position.” *Id.* at 15–16 (quoting Sage ¶ 56). As a result, according to the Examiner, “Sage ’230 does teach the ability of the collet to move along the tubing from the locked to unlocked position, and vice versa, and that a friction fit connection can be re-established between the collet and tubing.” *Id.* at 16.

As an initial matter, we agree with the Examiner that Arkans does not teach away from using a releasable friction fit between the downstream connectors and collar because Appellant has not shown Arkans teaches, or even suggests, that such a configuration is incompatible with the objective of ensuring proper orientation and precluding the incorrect mating of the connector halves. However, we agree with Appellant that the Examiner has not provided a sufficient evidentiary basis to support a finding that Arkans

would have been understood by a skilled artisan to disclose a releasable friction fit between the downstream connectors and collar. The Examiner opines that such a configuration could exist between the downstream connectors and collar, but offers no evidentiary support this position. As a result, we view the Examiner's remarks as conclusory, lacking little, if any, evidentiary value.

Turning to Sage, we are persuaded the Examiner erred by finding Sage to disclose the recited friction fit between a collar and connector. In particular, we note that claim 1 recites that "the first connector is secured to the collar, in the first state, through a releasable friction fit," which is configured to allow the connector to be detached from the collar "*by pulling back the collar over the first tube to overcome the friction fit between the first connector and the first aperture of the collar.*" Appeal Br. 11 (Claims App.) (emphasis added). Moreover, claim 1 recites re-securing the connector to the collar "by pulling the collar back over the first connector and second connector to reestablish the friction fit between the first connector and the first aperture of the collar and reestablish the friction fit between the second connector and the second aperture of the collar." *Id.* What is clear from the above claim language is that configuration of the "releasable friction fit" between the connector and collar is that the friction fit must enable the collar to be detached from the connectors by "pulling back the collar" and enable the friction fit to be reestablished by pulling the collar back over the connector.

Sage, however, discloses a construction that makes it "difficult or nearly impossible" to pull the collet back from the connector without damaging or destroying one or more components. Sage ¶ 53. The

Examiner's reference to Sage's teaching that the collet may be returned to an unlocked position by using a medical instrument to push the tab 128 radially inward demonstrates further that the construction of Sage does not allow the collet to be detached from the connector by pulling the collet back over the first tube to overcome the friction fit and, subsequently, pull the collet back over the connector to reestablish the friction fit. Therefore, a preponderance of the evidence fails to support the Examiner's rejection of claim 1 as being obvious in view of Arkans and Sage.

As a result, because the Examiner's unpatentability determination for claim 1 is flawed and the remaining claims all depend therefrom, we do not sustain the Examiner's rejections of claims 1-8 and 21-27.

#### DECISION

The Examiner's rejections of claims 1-8 and 21-27 are reversed.

In summary:

<b>Claims Rejected</b>	<b>Basis 35 U.S.C.</b>	<b>Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>
1-8, 21-23, 27	§ 103	Arkans, Sage		1-8, 21-23, 27
6, 7, 25, 26	§ 103	Arkans, Sage, Blenkush		6, 7, 25, 26
<b>Overall Outcome</b>				1-8, 21-27

REVERSED