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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW P. ISCH

Appeal 2018-002911
Application 14/108,694
Technology Center 3700

Before KEVIN F. TURNER, DANIEL S. SONG, and BRETT C. MARTIN,
Administrative Patent Judges.

MARTIN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–4 and 6–14. Claims 5 and 15–20 were cancelled during prosecution. App. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE INVENTION

Appellant's claims are directed generally "to medical devices and more particularly to a guide wire for placement of a tubular medical device within a body lumen." Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A guide wire comprising:
 - a core member about a longitudinal axis of the guide wire and comprising a distal end;
 - an outer coil disposed about the core member and comprising a proximal end and a distal end disposed proximal of the distal end of the core member, the outer coil extending longitudinally along a majority of a length of the guide wire and being longitudinally movable relative to the core member between a retracted position and an advanced position, the distal end of the outer coil being longitudinally spaced from the distal end of the core member by a greater distance in the retracted position than in the advanced position, wherein the outer coil comprises an outer diameter of between about 0.032 inches and about 0.038 inches;
 - an anchor member comprising an elongate wire extending longitudinally between the distal end of the outer coil and the distal end of the core member and comprising a proximal end attached to the distal end of the outer coil and a distal end attached to the distal end of the core member, whereby, in response to longitudinal movement of the outer coil relative to the core member, the anchor member is movable between a

delivery configuration and a deployed configuration, at least a portion of the anchor member being positioned radially away from the longitudinal axis of the guide wire by a greater distance in the deployed configuration than in the delivery configuration; and

a retaining mechanism comprising a tubular member removably positionable about the core member and in abutting contact with a proximal end of the outer coil, the retaining mechanism being engageable with the core member to inhibit longitudinal movement of the outer coil proximally relative to the core member.

REFERENCES

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

Gunther et al.	US 5,329,942	July 19, 1994
Galdonik et al.	US 2010/0010476 A1	Jan. 14, 2010

REJECTION

The Examiner made the following rejection:

Claims 1–4 and 6–13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Galdonik and Gunther. Final Act. 2.

ANALYSIS

Appellant first argues that the Examiner erred because “Galdonik’s actuation tool 200 is not *removably positionable about* a core member.” Br. 9. Appellant asserts that this is so because “Galdonik does not disclose an operable device whereby the actuation tube is moved from one position of the corewire (the properly loaded position) to another properly loaded position about the corewire.” Br. 10. We agree with the Examiner,

however, that “the features upon which applicant relies...are not cited in the rejected claim(s).” Ans. 5.

Appellant does not assert that the combination results in a device that is in conflict with other aspects of the claim, but merely asserts that we are to read the above-described feature or function of the actuation tube being moved from one position of the corewire to another into the claims via the term “about.” Appellant’s arguments appear to be directed toward some repositionability of the actuation tool about the core member, but the claims only require that the actuation tool be “removably positioned about a core member.” We agree with the Examiner that the prior art teaches what is claimed and that Appellant’s arguments are not commensurate in scope with what is actually claimed. Further, we do not agree that the additional requirements can be read into the term “about” as asserted by Appellant.

Appellant next argues that the “rejection of claim 1 also fails to present a *prima facie* case of obviousness” because “the Examiner has failed to provide any factual support for its conclusion of obviousness.” Br. 10. Appellant further argues that “[t]he Examiner makes no citation to the prior art, or any other evidence, to show that that this motivation existed in the art at the time of the disclosed subject matter.” *Id.* The Examiner is correct, however, that it is not required “that the claimed invention must be expressly suggested in any one or all of the references.” Ans. 7. That said, however, the Examiner does point out that Gunther specifically touts the use of a resilient element, such as a coil, to provide a desired degree of flexibility, which facilitates steering of the guide wire. *Id.* Using this teaching in Gunther, the Examiner has articulated a reasoning with a rational underpinning for making the proposed combination. Accordingly, we are not persuaded of error in the Examiner’s rejection.

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DECISION

For the above reasons, we AFFIRM the Examiner's decision to reject claims 1–4 and 6–13.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED