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EXAMINER

SCHALL, MATTHEW WAYNE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYAN STANFIELD, JOHN WOODARD, and GILL BEARNSON

Appeal 2018-003356
Application 13/708,616
Technology Center 3700

Before JENNIFER D. BAHR, MICHELLE R. OSINSKI, and
BRANDON J. WARNER, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

World Heart Corporation (“Appellant”)¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–5, 7, 8, and 21–30, which are all the pending claims. *See* Appeal Br., Cover Page. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ World Heart Corporation is the applicant, as provided in 37 C.F.R. § 1.46, and is identified as the real party in interest. *See* Appeal Br. 1.

CLAIMED SUBJECT MATTER

Appellant's disclosed invention "relate[s] to a device for coupling a conduit to a vessel of the human body." Spec. ¶ 2. Claim 1, reproduced below, is the sole independent claim and is representative of the subject matter on appeal.

1. A cannula ring comprising:

a body portion including a substantially cylindrical member defining a tubular member having a substantially cylindrical wall defining a lumen wherein at least a portion of the wall is solid; and

a plurality of anchor arms coupled with the body portion at a coupled end, each of the plurality of anchor arms connecting to the coupled end within a respective one of the plurality of openings, the plurality of anchor arms being configured to be positioned in a first, collapsed state and a second, deployed state, the anchor arms each include a length extending from the coupled end to a free end, wherein the free end is radially displaced from the body portion while in the second, deployed state relative to their positions while in the first, collapsed state;

wherein the body portion has a constant diameter as the anchor arms move from the first state to the second state; and

wherein each of the anchor arms, along its length, is adjacent the body portion when in the first state.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

| | | |
|-------------|--------------------|---------------|
| Kocur | US 6,350,277 B1 | Feb. 26, 2002 |
| Marseille | US 2009/0023975 A1 | Jan. 22, 2009 |
| Reichenbach | US 2012/0010455 A1 | Jan. 12, 2012 |

REJECTIONS

The following rejections are before us for review:

- I. Claims 1–5, 7, 8, and 21–30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Final Act. 2–3.
- II. Claims 1–5, 7, 8, 29, and 30 stand rejected under 35 U.S.C. § 102(b) as anticipated by Marseille. *Id.* at 3.
- III. Claims 21–24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Marseille and Reichenbach. *Id.* at 4.
- IV. Claims 25–28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Marseille and Kocur. *Id.* at 5.

ANALYSIS

Rejection I— Claims 1–5, 7, 8, and 21–30 as indefinite

Independent claim 1 recites, in relevant part, “the plurality of openings.” Appeal Br. 11, Claims App. The Examiner determined that this limitation lacks proper antecedent basis. *See* Final Act. 3. Appellant does not contest this ground of rejection. *See* Appeal Br. 3 (stating only that Appellant “will amend Claim 1 to include a proper antecedent basis, should prosecution be re-opened[,] or consent [to] an Examiner’s Amendment should the case be allowed”). As such, we summarily sustain the rejection of claims 1–5, 7, 8, and 21–30 under 35 U.S.C. § 112, second paragraph, as being indefinite. *See Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (explaining that summary affirmance without consideration of the

substantive merits is appropriate where an appellant does not contest a ground of rejection).²

Rejection II – Claims 1–5, 7, 8, 29, and 30 as anticipated by Marseille

Independent claim 1 recites, *inter alia*, that “the plurality of anchor arms [connect] to the coupled end within a respective one of the plurality of openings.” Appeal Br. 11, Claims App. Appellant argues that Marseille fails to disclose that the anchor arms are connected *within a plurality of openings*. See Appeal Br. 5–8; Reply Br. 4. We agree with Appellant.

In rejecting independent claim 1, the Examiner found that Marseille discloses, in relevant part, “a cannula ring comprising a body portion (75) and a plurality of expandable and collapsible anchor arms (72) [and] (76) connecting to the coupled end, extending along the body[,], and capable of expanding while the body stays in a collapsed state.” Final Act. 3 (citing Marseille, Figs. 3–4D). According to the Examiner, “[a]s shown in

² We note that claim 1 also recites, in relevant part, “a plurality of anchor arms coupled with the body portion at a coupled end, each of the plurality of anchor arms connecting to the coupled end within a respective one of the plurality of openings.” Appeal Br. 11, Claims App. Based on Appellant’s disclosure, we understand this language to mean that the anchor arms are coupled with the body portion at a coupled end *of each anchor arm*, such that each anchor arm is connected *at* its coupled end within a respective one of a plurality of openings *in the body portion*. See, e.g., Spec. ¶¶ 28–32 (referring to first end 114 (coupled end) and second end 116 (free end) of each anchor arm 112); Figs. 1A–1D (depicting same); claim 1 (further reciting that “the anchor arms each include a length extending from the coupled end to a free end, wherein the free end is radially displaced from the body portion”). If such an interpretation is inconsistent with Appellant’s intended claim scope, Appellant may wish to consider a clarifying amendment.

Figure 4A, there are openings (75) located between (74) and (72). The anchor arms (72) [and] (76) are connected to the body of the cannula ring within these openings when looking at the circumferential or radial location of the attachment.” Ans. 2.

Appellant persuasively asserts, however, that Marseille’s “flared tip portion (72) defines the gap (75), [and,] thus[,] the flared tip portion (72) is not necessarily disposed within the gap (75), as claimed.” Appeal Br. 8 (boldface and italics omitted); *see also id.* (asserting that “the flared tip portion [(72)] itself is defined by the wall (76) and thus is permanently a part of the cannula (70)” (boldface and italics omitted)). Given that Marseille’s gap 75 is *defined by* flared tip portion 72 and ring member 74 (*see* Marseille, Fig. 4A; ¶ 33), we do not see how flared tip portion 72 would be *connected within* gap 75. In other words, Marseille’s arm (i.e., flared tip portion 72) appears to be a unitary part of Marseille’s body portion (i.e., elongate body 70a of cannula 70), and this arm defines the extent of an opening (gap 75), but this structure does not appear to be *connected within* the identified opening. Thus, the Examiner has not established a finding supported by a preponderance of the evidence that Marseille discloses, either expressly or inherently, a “plurality of anchor arms connecting to the coupled end within a respective one of the plurality of openings,” as recited in claim 1.

Accordingly, based on the record before us—because an anticipation rejection requires a finding in a single reference of each and every limitation as set forth in the claims—we do not sustain the rejection of independent claim 1, and its dependent claims 2–5, 7, 8, 29, and 30, under 35 U.S.C. § 102(b) as anticipated by Marseille.

*Rejections III and IV – Claims 21–28 as unpatentable over
Marseille and one of Reichenbach and Kocur*

Regarding Rejections III and IV, we note that these rejections are premised on the same purported disclosure from Marseille discussed above in connection with Rejection II, and further that the Examiner relied on Reichenbach (Rejection III) and Kocur (Rejection IV) for teaching additional features, but not to cure the above-noted deficiency of Marseille. *See* Final Act. 4–5. Accordingly, for the same reasons, we likewise do not sustain the rejections of claims 21–28 under 35 U.S.C. § 103(a).

DECISION

We AFFIRM the Examiner’s decision rejecting claims 1–5, 7, 8, and 21–30 under 35 U.S.C. § 112, second paragraph, as being indefinite.

We REVERSE the Examiner’s decision rejecting claims 1–5, 7, 8, 29, and 30 under 35 U.S.C. § 102(b) as anticipated by Marseille.

We REVERSE the Examiner’s decision rejecting claims 21–24 under 35 U.S.C. § 103(a) as being unpatentable over Marseille and Reichenbach.

We REVERSE the Examiner’s decision rejecting claims 25–28 under 35 U.S.C. § 103(a) as being unpatentable over Marseille and Kocur.

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