



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/726,105	12/22/2012	Robert L. Wilcox	2001.2125102	2990
11050	7590	12/27/2019	EXAMINER	
SEAGER, TUFTE & WICKHEM, LLP			LEE, BRANDY SCOTT	
100 South 5th Street			ART UNIT	
Suite 600			PAPER NUMBER	
Minneapolis, MN 55402			3783	
			NOTIFICATION DATE	
			DELIVERY MODE	
			12/27/2019	
			ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

BSC.USPTO@stwiplaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT L. WILCOX and RONALD L. HAAS

Appeal 2018-004197
Application 13/726,105
Technology Center 3700

BEFORE MICHAEL J. FITZPATICK, MICHELLE R. OSINSKI, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant, Ekos Corporation,¹ appeals from the Examiner's decision to reject claims 10, 12, 15–17, 20, 22, 23, and 30–32. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies itself as the sole real party in interest. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a method for treating a blood clot. Claim 10, reproduced below, is illustrative of the claimed subject matter:

10. A method for treating a blood clot in a patient comprising:
- advancing a tubular body comprising a central lumen with a device configured to provide additional stiffness to the tubular body positioned within the central lumen through a patient's skull and into the blood clot;
 - removing the device from the central lumen;
 - advancing an inner core comprising an ultrasound radiating element into the central lumen of the tubular body;
 - delivering a therapeutic compound through the tubular body and to the blood clot positioned outside the tubular body;
 - transmitting ultrasound energy with the inner core to the clot; and
 - removing clot material from the target through the central lumen.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Stiles	US 4,692,139	Sept. 8, 1987
Soltani	US 2005/0192556 A1	Sept. 1, 2005
Schulz-Stubner	US 2007/0083100 A1	Apr. 12, 2007

REJECTIONS

Claims 10, 15, 22, and 30–32 are rejected under § 103(a) as being unpatentable over Stiles and Schulz-Stubner.

Claims 12, 16, 17, 20, and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stiles, Schulz-Stubner, and Soltani.

OPINION

Appellant argues claims 10, 15, 22, and 30–32 as a group. Appeal Br. 5–6. We select claim 10 as representative. Claims 15, 22, and 30–32 stand or fall with claim 10. *See* 37 C.F.R. § 41.37(c)(1)(iv). In addition, Appellant relies on the arguments presented with respect to claim 10 for the patentability of claims 12, 16, 17, 20, and 23. Thus, claims 12, 16, 17, 20, and 23 likewise stand or fall with claim 10.

Appellant contends that “[f]or the reasons stated below, one of ordinary skill in the art would not be motivated to combine Stiles with the stylet of Schulz-Stubner as doing so would render the device in Stiles unsatisfactory for its intended purpose.” Appeal Br. 5–6. Appellant does not apprise us of Examiner error because the Appeal Brief never provides the alleged “reasons provided below.” That is, we are left with an unsupported allegation that the Examiner’s proposed modification would “render the device in Stiles unsatisfactory for its intended purpose.”

The Appeal Brief proceeds to provide a general summary of Stiles and Schulz-Stubner, and alleges that “[o]ne of ordinary skill in the art would not look to a reference regarding a catheter designed specifically for use in a patient’s biological duct (e.g. an artery) when designing a device for placement in a patient’s skull.” Appeal Br. 6. Again, however, Appellant provides no explanation to support this allegation. Rather, Appellant simply states that “Stiles makes clear that the disclosed catheter device is designed specifically with features to prevent the spread of ‘fragments and residual medication’ into the circulatory system.” Appeal Br. 6.

Appellant further contends that “[t]he Office Action has also provided no explanation why one of ordinary skill would be motivated to combine the device in Stiles with the device in Schulz-Stubner which is for specifically

Appeal 2018-004197
Application 13/726,105

positioning a catheter into the brain of a patient” and “the Office Action fails to provide a motivation why one of skilled in the art would look to a device for use in a blood vessel in its application for use in a patient’s skull.”

Appeal Br. 6.

Notwithstanding the contentions noted above, the Examiner’s rejection is essentially un rebutted. Initially, we note that Appellant does not dispute any finding made by the Examiner. Contrary to Appellant’s contentions, the Examiner provides a rationale for modifying the teachings of Stiles based on those of Stubner-Schulz, which is also un rebutted. The Examiner explains, for example, that “it would have been obvious . . . to use the burr hole/stylet method taught by Schulz-Stubner with the therapeutic delivery ultrasonic catheter of Stiles for optimal treatment of blood clots, and for traversing the patient’s skull.” Non-Final Act. 3. The Examiner finds that “the stylet (26) of Schulz-Stubner can be used to deliver the delivery lumen (1) of Stiles through the bone in the skull.” Ans. 6.² The Examiner explains that the “catheters [of Stiles and Schulz-Stubner each] being used for the drainage of unwanted fluid provides motivation to combine, with the stylet of the secondary reference simply being used to provide the additional stiffness needed to traverse bone.” *Id.* at 7.

Because the Examiner’s findings and rationale are un rebutted, we are not apprised of error.

CONCLUSION

The Examiner’s decision to reject claims 10, 12, 15–17, 20, 22, 23, and 30–32 is affirmed.

² No Reply Brief was filed to address the Examiner’s Answer.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
10, 15, 22, 30–32	103	Stiles, Schulz-Stubner	10, 15, 22, 30–32	
12, 16, 17, 20, 23	103	Stiles, Schulz-Stubner, Soltani	12, 16, 17, 20, 23	
Overall Outcome			10, 12, 15–17, 20, 22, 23, 30–32	

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