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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/342,996	12/23/2008	Willem Wisselink	12730/429 (PA-6360-RFB)	3683
48003	7590	12/19/2019	EXAMINER	
BGL/Cook - Chicago PO BOX 10395 CHICAGO, IL 60610			WEISBERG, AMY REGINA	
			ART UNIT	PAPER NUMBER
			3649	
			MAIL DATE	DELIVERY MODE
			12/19/2019	PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WILLEM WISSELINK

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Appeal 2018-004497  
Application 12/342,996  
Technology Center 3700

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Before MICHAEL J. FITZPATRICK, MICHELLE R. OSINSKI, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–24, which constitute all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> Appellant is the “applicant” under 37 C.F.R. § 1.42(a) and identifies Cook Medical Technologies LLC as the sole real party in interest. Appeal Br. 2.

## STATEMENT OF THE CASE

### *The Specification*

The Specification's disclosure "relates to delivery systems for implanting endoluminal devices within the human or animal body for treatment of endovascular disease." Spec. ¶2. In particular, it "relates to delivery systems having a novel catheter system to cannulate a contralateral portion of an endoluminal device." *Id.*

### *The Claims*

Claims 1–24 are rejected. Final Act. 1. Claims 1, 10, 18, and 20 are independent. Claim 1 is illustrative and reproduced below.

1. An endovascular delivery system comprising:
    - a delivery device for delivering a prosthesis to a body vessel, the delivery device comprising a sheath;
    - a bifurcated prosthesis disposed in the sheath of the delivery device and having a main body, a first limb and a second limb, each limb having a lumen;
    - a snare catheter, pre-loaded with the bifurcated prosthesis in the sheath, and having a proximal end, a distal end, a lumen therebetween, and a snare opening system between the proximal end and the distal end;
    - a snare mechanism disposed within the snare catheter that is capable of forming a loop external to the snare catheter and having at least one free end exiting the snare catheter distal end;
- where at least a portion of the snare catheter is positioned external to and adjacent to the bifurcated prosthesis and at least a portion of the snare catheter is positioned within the lumen of one of the limbs, and both portions are enclosed within the sheath.

Appeal Br. 33.

*The Examiner's Rejections*

The rejections before us are:

1. claims 1–3, 5, 7–12, 14, 16–18, and 20, under 35 U.S.C. § 102(e), as anticipated by Saeed<sup>2</sup> (Final Act. 7);
2. claims 4, 6, 13 and 15, under 35 U.S.C. § 103(a), as unpatentable over Saeed and Konya<sup>3</sup> (*id.* at 16–17);
3. claim 19, under 35 U.S.C. § 103(a), as unpatentable over Saeed (*id.* at 18); and
4. claims 21–24, under 35 U.S.C. § 103(a), as unpatentable over Saeed and Ouriel<sup>4</sup> (*id.* at 19).

*Oral Hearing*

An oral hearing was held December 5, 2019. A transcript of the hearing will be entered in due course.

DISCUSSION

Claim 1 recites, among other things:

a snare catheter, pre-loaded with the bifurcated prosthesis in the sheath, . . . where at least a portion of the snare catheter is positioned external to and adjacent to the bifurcated prosthesis and at least a portion of the snare catheter is positioned within the lumen of one of the limbs [of the bifurcated prosthesis], and both portions are enclosed within the sheath.

Appeal Br. 33.

Each of the remaining independent claims includes similar claim language. *See id.* at 35 (regarding claim 10), 36 (regarding claim 18), and 37 (regarding claim 20).

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<sup>2</sup> US 2008/0208309 A1, published Aug. 28, 2008 (“Saeed”).

<sup>3</sup> US 6,517,550 B1, issued Feb. 11, 2003 (“Konya”).

<sup>4</sup> US 6,641,606 B2, issued Nov. 4, 2003 (“Ouriel”).

Relying on Figure 1 of Saeed, the Examiner found that Saeed teaches “a snare catheter (40), loaded within the bifurcated prosthesis in the sheath.” Final Act. 7 (citing Saeed Fig.1). Relying on Figure 7a, the Examiner found that Saeed also teaches “the limitation where both portions, that is the portion of the snare catheter external and within the lumen of one of the limbs, are enclosed within the sheath.” *Id.* at 8 (citing Saeed Fig. 7a).

Appellant argues that “neither [Figure 7a] nor any other or the accompanying text support the Examiner’s argument that the escort catheter is disposed within a limb of the prosthesis in a preloaded state and prior to delivery.” Appeal Br. 31. Appellant explains:

Figure 7a according to Saeed shows the escort catheter and the third guide wire are moved into the cuff [i.e., limb] *after* the [sheath] portion 33a covering the tip of the escort catheter has been released. This is not a disclosure of both portions of the escort catheter enclosed within the sheath in the preloaded state or any portion disposed within a limb in the preloaded state.

*Id.* Appellant’s characterization of Saeed is correct.

Saeed explains that “[o]nce the first component 19 is properly positioned, the first releasable portion 33a of the restraining device shown as the sheath 30, is released as shown in FIGS. 6–7.” Saeed ¶73; *see also id.* ¶65 (first component 19 refers to the trunk 14 and cuff 22 of bifurcated prosthesis 12). “Release of the first releasable portion 33a expands the trunk 14 and the cuff 22 in the aorta, and also releases the distal end of the escort catheter 40 from its engagement under the first releasable portion 33a of the fabric sheath 30.” *Id.* ¶73. Thereafter, “the escort catheter 40 is . . . translated along the pre-positioned second guide wire 36 extending into the now expanded cuff 22 as depicted in FIG. 7.” *Id.* ¶74.

Accordingly, Saeed does teach that its escort catheter is preloaded with its bifurcated prosthesis in a sheath and also teaches that a portion of the escort catheter may be advanced into the cuff. However, Saeed teaches the latter only after the sheath has been removed from the portion of the catheter to be advanced into the cuff. Thus, Saeed does not teach any portion of the escort catheter both positioned within the cuff *and* enclosed within a sheath. In other words, not all of the claim limitations are ever met by Saeed’s device simultaneously.

This deficiency is fatal to all of the rejections, which we accordingly reverse.

SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–3, 5, 7–12, 14, 16–18, 20	§ 102(e)	Saeed		1–3, 5, 7–12, 14, 16–18, 20
4, 6, 13, 15	§ 103(a)	Saeed, Konya		4, 6, 13, 15
19	§ 103(a)	Saeed		19
21–24	§ 103(a)	Saeed, Ouriel		21–24
<b>Overall Outcome</b>				1–24

REVERSED