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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOUGLAS BLOCK

Appeal 2018-004708¹
Application 14/721,310
Technology Center 3700

Before JOHN C. KERINS, JILL D. HILL, and CYNTHIA L. MURPHY,
Administrative Patent Judges.

MURPHY, *Administrative Patent Judge.*

DECISION ON APPEAL²

The Appellant³ appeals from the Examiner's rejections of claims 1–12 and 14–21 under 35 U.S.C. § 103.

We REVERSE.

¹ An oral hearing was held on December 4, 2019.

² We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a).

³ The Appellant is the “applicant” as defined by 37 C.F.R. § 1.42 (“the inventor”). “Dr. Douglas Block is the sole inventor, and real party in interest.” (Appeal Br. 3.)

STATEMENT OF THE CASE

According to the Appellant, “[t]he present invention is directed to improvements in dentistry, dental care and elder and other care involving the teeth and gums.” (Spec. ¶ 2.)

Illustrative Claim

1. A device for removing dental appliances from a patient mouth comprising:
a handle;
a shaft, said shaft being affixed to said handle at one end thereof;
a hook, said hook being affixed at one end to a second end of said shaft,
wherein said hook is affixed to said shaft, and
wherein said hook has a tip portion at an angle of about 30–110 degrees from a horizontal line,
wherein said horizontal line is perpendicular to the axis of said shaft,
whereby said device is adapted for a user employing said device to engage a dental appliance in said patient mouth, and said device is adapted to remove said dental appliance therefrom.

References

Pankratz	US 3,686,756	August 29, 1972
Lukase	US 5,378,151	January 3, 1995
Rahman	US 6,361,317 B1	March 26, 2002
Kangasniemi	US 6,997, 709 B2	February 14, 2006
Moritz	US 2010/028162 A1	November 11, 2010

Rejections

The Examiner rejects claims 1, 3, 5–7, 9, 11, 12, 14, and 15 under 35 U.S.C. § 103 as unpatentable over Pankratz. (Final Action 2.)

The Examiner rejects claims 8, 16, and 17 under 35 U.S.C. § 103 as unpatentable over Pankratz and Lukase. (Final Action 4.)

The Examiner rejects claims 2, 4, and 10 under 35 U.S.C. § 103 as unpatentable over Pankratz and Rahman. (Final Action 5.)

The Examiner rejects claim 18 under 35 U.S.C. § 103 as unpatentable over Pankratz, Lukase, and Moritz. (Final Action 6.)

The Examiner rejects claims 19 and 21 under 35 U.S.C. § 103 as unpatentable over Pankratz and Kangasniemi. (Final Action 6.)

The Examiner rejects claim 20 under 35 U.S.C. § 103 as unpatentable over Pankratz, Lukase, and Kangasniemi. (Final Action 7.)

ANALYSIS

Independent claim 1 sets forth “[a] device for removing dental appliances from a patient mouth” which comprises “a hook” having “a tip portion at an angle of about 30–110 degrees from a horizontal line.” (Appeal Br., Claims App.)

The Examiner concludes that the dental device set forth in independent claim 1 would have been obvious over Pankratz. (*See* Final Action 2.) Specifically, the Examiner finds that Pankratz discloses a dental device having a hook, but does not “explicitly disclose the hook having a tip portion at an angle of about 30–110 degrees.” (*Id.*) However, the Examiner determines that it would have been obvious to modify Pankratz so that its hook had a tip portion at the claimed angle, “for the purpose of providing easy access to the dental appliance, while preventing damage to the surface of the prosthetic.” (*Id.* at 3.)

The Appellant argues that the Examiner’s conclusion of obviousness is not sufficiently supported by the record. (*See* Appeal Br. 11–19.) The Appellant’s position is persuasive.

According to the Appellant, Pankratz discloses a dental device that “provide[s] hammering power in both the insertion and the extraction of cemented dental crowns.” (*Id.* at 16.) The Appellant contends that the angular profile of the tip portion of Pankratz’s hook is “due to the insertion hammering needs.” (*Id.* at 17.) In other words, the Appellant contends that Pankratz does not show or suggest that the angle of its hook’s tip portion somehow correlates with the Examiner’s articulated reason for the proposed modification. (*See id.* at 16–19.)

Pankratz describes its disclosed tool as “a conventional hammer member having a hooked end 18,” which “has a surface 19 usable to hammer a crown or similar member into place.” (Pankratz, col. 2, ll. 15–19.) Pankratz does indicate that “the end of hook 18” is “used to extract and remove crowns or similar inserts.” (*Id.* at col. 2, ll. 19–20.) But Pankratz does not indicate how the tip angle of this hook affects the operation of its dental device for any purpose, much less the purposes stated by the Examiner (i.e., “providing easy access to the dental appliance” and “preventing damage to the surface of the prosthetic”).

The Examiner does not address the Appellant’s contentions regarding the teachings of Pankratz. (*See* Answer 8–9.) Rather, the Examiner maintains that “[m]odification of the disclosed angle of Pankratz would be obvious” based upon *In re Aller*, 220 F.2d 454 (CCPA 1955). (Answer 9.) The Examiner is correct that, “where the general conditions of a claim are

disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” (*Aller*, 220 F.2d at 456.) However, the parameter purportedly being optimized (i.e., the angle of the hook’s tip portion) must first be recognized as “a result-effective variable.” (*In re Antonie*, 559 F.2d 618, 619 (CCPA 1977).) Here, the record contains no discussion as to why the angle of the hook’s tip portion would be recognized as a result-effect variable in Pankratz’s dental device.

Thus, we do not sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103 as unpatentable over Pankratz.

The rest of the claims on appeal likewise require “a hook” having “a tip portion at an angle of about 30–110 degrees from a horizontal line,” and their rejections likewise rely upon Pankratz to show or suggest this limitation. Thus, we also do not sustain the Examiner’s rejections of claims 2–12 and 14–21 under 35 U.S.C. § 103.

CONCLUSION

Claims Rejected	35 U.S.C.	References	Affirmed	Reversed
1, 3, 5–7, 9, 11, 12, 14, 15	§ 103	Pankratz		1, 3, 5–7, 9, 11, 12, 14, 15
8, 16, 17	§ 103	Pankratz, Lukase		8, 16, 17
2, 4, 10	§ 103	Pankratz Rahman		2, 4, 10
18	§ 103	Pankratz Lukase Moritz		18
19, 21	§ 103	Pankratz Kangasniemi		19, 21
20	§ 103	Pankratz Lukase Kangasniemi		20
Overall Outcome				1–12, 14–21

REVERSED