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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL TURTURRO, MIKE STANKEIWICZ,
BARBARA CONNELL, and MIKA HULLIBERGER

Appeal 2019-003247¹
Application 15/492,864
Technology Center 3700

Before JENNIFER D. BAHR, JILL D. HILL, and
LEE L. STEPINA, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellant indicates that Appeal Numbers 2018-007423 and 2018-007402 are related to the present Appeal. Appeal Br. 2.

² We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Medline Industries Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The disclosure is directed to medical kits configured to facilitate prevention of infection and other complications during medical procedures. Spec. ¶ 2.

Claim 1, reproduced below with emphases added, is illustrative of the claimed subject matter.

1. A medical kit, comprising:
 - a drape;
 - a plurality of pockets disposed a predefined distance from a bottom edge of *a first side of the drape* in a linear, side-by-side arrangement, wherein each pocket of the plurality of pockets abuts at least one adjacent pocket at a common border;
 - a plurality of medical implements, stowed in the plurality of pockets on a one to-one basis;
 - one or more other pockets disposed along *a second side of the drape*, wherein the one or more other pockets are rotated 180 degrees relative to the each pocket of the plurality of pockets; and
 - medical indicia disposed along each pocket of the plurality of pockets, the medical indicia comprising one or more educational prompts that instruct medical personnel how to use a particular medical implement disposed in a pocket to complete a central catheter dressing change.

Appeal Br. 29 (Claims App.).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Melges	US 3,503,391	Mar. 31, 1970
Morris	US 4,457,026	July 3, 1984
Aruffo	US 6,579,271 B1	June 17, 2003
Morelli	US 2010/0274205 A1	Oct. 28, 2010
Adams	US 2011/0041995 A1	Feb. 24, 2011
Tomes	US 2011/0290260 A1	Dec. 1, 2011
Wiley	US 2015/0101616 A1	Apr. 16, 2015

REJECTIONS

- I. Claims 1 and 2 are rejected under 35 U.S.C. § 103(a) as unpatentable over Melges, Morelli, and Wiley.
- II. Claim 3 is rejected under 35 U.S.C. § 103(a) as unpatentable over Melges, Morelli, Wiley, and Aruffo.
- III. Claims 4–6 and 10–12 are rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morelli, Wiley, and Morris.
- IV. Claim 7 is rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morelli, Wiley, Morris, and Tomes.
- V. Claims 8 and 9 are rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morelli, Wiley, Morris, Tomes, and Adams.
- VI. Claims 13–15 are rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morelli, Wiley, Morris, and Adams.
- VII. Claims 16 and 19 are rejected under 35 U.S.C. § 103 as unpatentable over Melges and Morris.
- VIII. Claim 17 is rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morris, and Tomes.
- IX. Claim 18 is rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morris, and Morrelli.

X. Claim 20 is rejected under 35 U.S.C. § 103 as unpatentable over Melges, Morris, Morrelli, and Adams.

OPINION

Rejection I—Claims 1 and 2

The Examiner finds that Melges discloses many of the elements recited in claim 1, including a plurality of pockets disposed on each of first and second sides of a drape, but relies on Morelli to teach indicia provided on pockets of a medical kit and Wiley to teach the recited requirements relating to medical implements. Final Act. 2–4.

Appellant argues the Examiner’s interpretation of claim 1, in which the recited first and second sides of the drape are on the same face of the drape, is unreasonably broad. According to Appellant, the broadest reasonable interpretation of “a first side of the drape” and a “second side of the drape” does not place both “sides” on the same “face,” such that Melges fails to disclose pockets on first and second sides of a drape. Appeal Br. 12–18. In particular, Appellant contends that, in light of the Specification, the broadest reasonable interpretation of first and second sides of a drape corresponds to first and second faces of the drape. *Id.* at 16–18 (citing Spec. ¶¶ 22–27, 104, 107, 133, Figs. 19–24).

In response, the Examiner takes the position that Appellant’s argument is an attempt to read limitations from the Specification into the claims. *See* Ans. 3–7. Specifically, the Examiner states:

Regarding Appellant’s argument, the specification of the present invention does not recite a special definition for the term “side”, but merely describe first and second sides of the drape. Examiner’s interpretation of the term “side” is clearly aligned with a well-known and common definition of the term which is

“A position to the left or right of an object, place, or central point” and also “Either of the two halves of an object, surface, or place regarded as divided by an imaginary central line.”

Id. at 6 (quoting <https://en.oxforddictionaries.com/definition/side>). Thus, the Examiner notes that the Specification does not explicitly define the term “side,” and the Examiner’s interpretation corresponds to one found in a common dictionary definition.

In reply, Appellant reiterates that the Specification uses the term “side” as being synonymous with the word “face.” Reply Br. 9–12. Appellant states, “[i]n the present case, as demonstrated in its Brief at pages 16-17, each and every use of ‘side’ refers to a major face of the drape. This is most clearly evidenced by the description of FIGS. 21 and 22, each of which shows a plan view of the drape, which indicates each view is an opposite ‘side’ of the drape.” *Id.* at 11.

When claim terminology is construed during prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The Federal Circuit has described the correct inquiry for determining the broadest reasonable construction as follows:

The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is not whether the specification proscribes or precludes some broad reading of the claim term adopted by the examiner. And it is not simply an interpretation that is not inconsistent with the specification. It is an interpretation that corresponds with what and how the inventor describes his invention in the specification, i.e., an interpretation that is “consistent with the specification.”

In re Smith Int'l, Inc., 871 F.3d 1375, 1382–1383 (Fed. Cir. 2017).

Although we understand that a common dictionary definition of the word *side* may allow for an interpretation as one end of a sheet (or drape), as determined by the Examiner, the Examiner's analysis falls short of adequately supporting the rejection of claim 1 because the relevant terms in this claim are "first side" and "second side," not the word "side" in isolation. In light of Appellant's consistent use of the words "first side" and "second side" in the Specification to refer to *faces of the drape* when describing the location of pockets, we agree with Appellant that the Examiner's interpretation of claim 1 is unreasonably broad. The Brief Description of the Drawings includes paragraphs 22–27, each describing views of a drape (in Figures 19–24) as showing a first or second side. The structure depicted in each of Figures 19–24 is one entire face of a drape. Moreover, paragraphs 104, 107, 108, 110, 115, 118, 119, 121, 126, 134, 136, and 141 each use one or both of the terms "first side" or "second side" in accordance with Appellant's interpretation rather than with the Examiner's interpretation.³

³ The Specification uses the term "side-by-side" to refer to the position pockets that are adjacent each other. *See e.g.*, Spec. ¶¶ 39, 90. The Specification also uses the term "right side of the second partially folded drape" to refer to an edge. *Id.* ¶ 87. The Specification also describes the location of a pocket as "about twenty-four centimeters *from* the upper side of the unfolded drape 1900." *Id.* ¶ 109 (emphasis added). However, given the context of these statements, we do not think they support the Examiner's interpretation of the terms "first side" and "second side" as they apply to the sides of the drape on which the pockets are disposed. In this regard, we note that claim 1 also recites the location of the pockets in terms of their distance *from a bottom edge* of the drape. Thus, defining the location of the pockets in terms of a first (or second) side of the drape, under the Examiner's interpretation of the term "side," would appear to overlap with defining this location in terms of a distance from a particular edge.

Accordingly, we do not sustain the rejection of claim 1, and claim 2 depending therefrom, as unpatentable over Melges, Morelli, and Wiley because the Examiner's finding that Melges discloses a plurality of pockets disposed on each of first and second sides of a drape relies on an unreasonably broad interpretation of claim 1.

Rejections II–VI—Claims 2–15

Each of Rejections II–VI relates to a claim depending from claim 1 and relies on the Examiner's interpretation of claim 1 to support the rejection. *See* Appeal Br. 29–31 (Claims App.); Final Act. 4–8. Accordingly, for the reasons discussed above regarding the rejection of claim 1, we do not sustain Rejections II–VI.

Rejections VII–X—Claims 16–20

Independent claim 16 recites “four pockets disposed along, and separated from, an edge of a first side of the the [sic] drape” and “a single pocket disposed along a second side of the drape.” Appeal Br. 31 (Claims App.). The rejection of claim 16 relies on the same interpretation of the terms “first side” and “second side” as discussed above regarding the rejection of independent claim 1. *See* Final Act. 2–3, 8–9. For the same reasons, we do not sustain the rejection of independent claim 16, and claim 19 depending therefrom, as unpatentable over Melges and Morris. Each of Rejections VIII–X relates to a claim depending from claim 16 and relies on the Examiner's interpretation of claim 16 to support the rejection. *See* Appeal Br. 32 (Claims App.); Final Act. 10–11. Accordingly, for the reasons discussed above regarding the rejection of claim 16, we do not sustain Rejections VIII–X.

CONCLUSION

The Examiner's rejections are reversed. More specifically,

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 2	103	Melges, Morelli, Wiley		1, 2
3	103	Melges, Morelli, Wiley, Aruffo		3
4-6, 10-12	103	Melges, Morelli, Wiley, Morris		4-6, 10-12
7	103	Melges, Morelli, Wiley, Morris, Tomes		7
8, 9	103	Melges, Morelli, Wiley, Morris, Tomes, Adams		8, 9
13-15	103	Melges, Morelli, Wiley, Morris, Adams		13-15
16, 19	103	Melges, Morris		16, 19
17	103	Melges, Morris, Tomes		17
18	103	Melges, Morris, and Morrelli		18
20	103	Melges, Morris, Morrelli, Adams		20
Overall Outcome				1-20

REVERSED