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Venable LLP 1290 Avenue of the Americas New York, NY 10104-3800			MORAN, EDWARD JOHN	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SASCHA SCHNEIDER

Appeal 2019-006392¹
Application 14/045,324
Technology Center 3700

Before STEFAN STAICOVICI, LEE L. STEPINA, and
ERIC C. JESCHKE, *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 9–11, 13, 15–24, and 26–28. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellant presented oral arguments on September 1, 2020.

² We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Dentsply Sirona Inc. as the real party in interest. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a dental system that includes a “final abutment” and a “healing abutment” (gingiva former) used to shape a patient’s gingiva in anticipation of installation of the final abutment. Spec.

¶ 1.

Claim 28, reproduced below with emphasis added, is illustrative of the claimed subject matter.

28. A dental system, comprising:

a gingiva former that includes *a gingiva former edge* that divides the gingiva former into a top portion and a bottom portion, with the top portion including a peripheral surface that tapers towards a longitudinal axis of the gingiva former, *with the taper of the peripheral surface starting at the gingiva former edge, and with the bottom portion including a peripheral surface that decreases in distance from the longitudinal axis starting at the gingiva former edge,*

wherein the bottom portion of the gingiva former includes a connecting geometry; and

a final abutment that includes a final abutment edge and a region below the final abutment edge, wherein a geometry of the final abutment edge corresponds to a geometry of the gingiva former edge, and wherein a geometry of the region below the final abutment edge corresponds to a geometry of the bottom portion of the gingiva former.

Appeal Br. vi (Claims App.).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Daftary	US 5,073,111	Dec. 17, 1991
Morgan	US 5,499,918	Mar. 19, 1996
Sims	US 2005/0084821 A1	Apr. 21, 2005
Korrodi	US 2008/0254412 A1	Oct. 16, 2008

REJECTIONS³

I. Claim 28 is rejected under 35 U.S.C. § 102(b) as anticipated by Daftary.

II. Claims 13, 21, 22, 24, and 27 are rejected under 35 U.S.C. § 103(a) as unpatentable over Daftary and Sims.

III. Claims 22 and 23 are rejected under 35 U.S.C. § 103(a) as unpatentable over Daftary, Sims, and Morgan.

IV. Claim 26 is rejected under 35 U.S.C. § 103(a) as unpatentable over Daftary, Sims, and Korrodi.

V. Claims 9, 10, and 15–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Daftary, Morgan, and Sims.

VI. Claim 11 is rejected under 35 U.S.C. § 103(a) as unpatentable over Daftary, Morgan, Sims, and Korrodi.

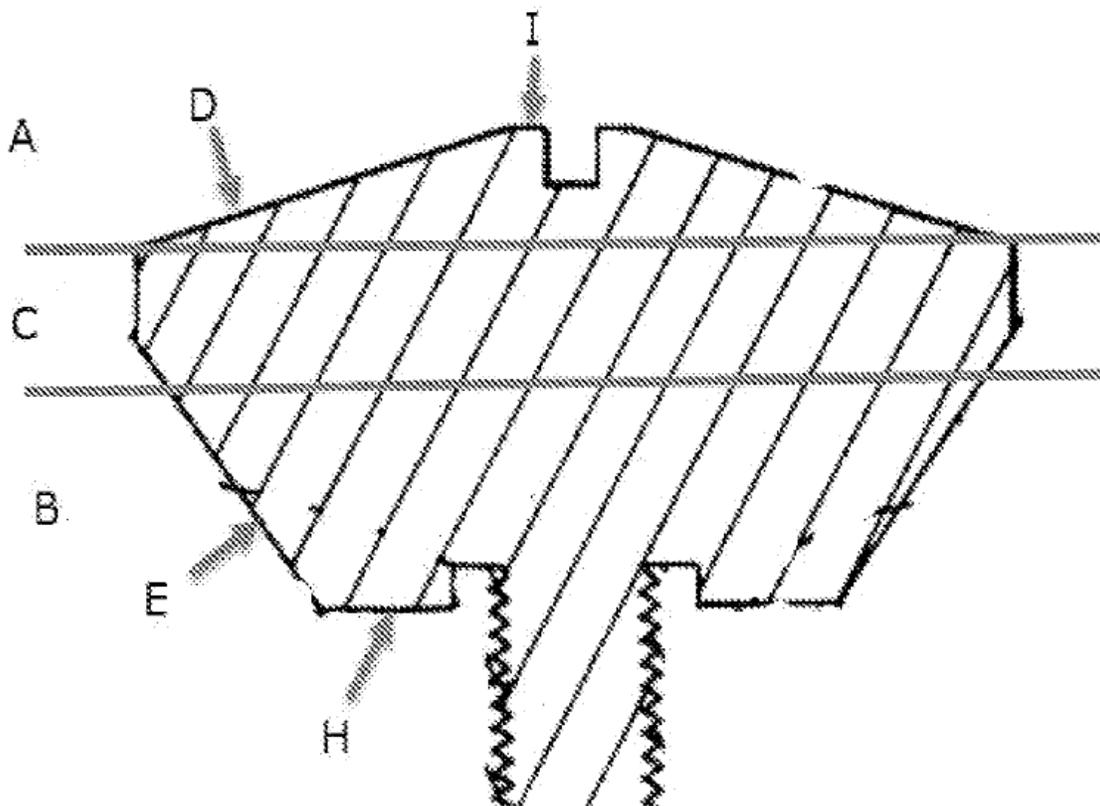
³ The Examiner withdrew a rejection of claims 9–11, 13, 15–24, and 26–28 under 35 U.S.C. § 112(b). Ans. 3; *see also* Final Act. 2.

OPINION

Rejection I–Daftary

Claim 28

The Examiner finds that Daftary discloses all of the elements recited in claim 28, and the Examiner provides an annotated version of a portion of Figure 1 of Daftary (hereinafter, “Annotated Figure 1”) summarizing the Examiner’s findings. Final Act. 3–4. We reproduce Annotated Figure 1 below.



Annotated Figure 1 is a partial cross-section of Daftary’s screw head segment 46 with letters A–I identifying various structures upon which the Examiner relies to meet the requirements of claim 28. *See* Final Act. 3–4; Daftary 3:3–6, 4:16–18. The Examiner finds section “C” in Annotated Figure 1 qualifies as the gingiva former edge recited in claim 28. Final Act. 3–4.

Appellant argues the Examiner’s interpretation of the claimed “gingiva former edge” as reading on section “C” in Annotated Figure 1 is not reasonable, and, therefore, the Examiner erred in finding that Daftary discloses a gingiva former edge as recited in claim 28. *See* Appeal Br. 12–16. Specifically, Appellant contends, “the [S]pecification and drawings of the subject application show that a gingiva former ‘edge’ is akin to a line on the gingiva former, not an entire surface area of the gingiva former as in the Examiner’s interpretation of the claim term.” *Id.* at 13. Appellant points to paragraph 29 of the Specification, Figure 1, and a dictionary definition in support of this claim interpretation. *Id.* at 13–15.

In response, the Examiner states, “limitations from the [S]pecification cannot be read into the claims for claim interpretation. Further, the cited section makes no mention of any thickness of the argued line, and even still, states that it only ‘corresponds’ to[] it, leaving breadth in the explanation and interpretation of the term.” Ans. 4. As for whether a dictionary supports Appellant’s proposed interpretation of the term “edge” in claim 28, the Examiner finds, “Merriam Webster states broader reasonable definitions of the term such as ‘the narrow part adjacent to a border’ (as in the edge of a deck) or ‘the point near the beginning or the end’, both of which encompass the interpretation relied on by the Examiner.” *Id.* at 5. The Examiner determines that both definitions allow section “C” in Annotated Figure 1 to “correspond precisely” to the gingival line. *Id.*; *see also* Spec. ¶ 29 (“[T]he edge of the healing abutment corresponds precisely to the gingival line formed by the gum on the customized final implant replacement or it is at a distance from this gingival line such that the gum overlaps the edge of the healing abutment.”).

In reply, Appellant argues that Figure 1 demonstrates that the gingiva former edge recited in claim 28 has the thickness of a line, not of an area such as section “C” in Annotated Figure 1. Reply Br. 2. Appellant also reiterates that paragraph 29 of the Specification supports a narrower interpretation of “gingiva former edge” than the one used in the rejection of claim 28, stating, “[t]he Examiner’s focus on the word ‘corresponds’ [in paragraph 29 of the Specification] ignores the word ‘precisely’ that directly modifies the word in the cited passage of the specification.” *Id.*

Appellant contends that section “C” in Annotated Figure 1 is not “narrow,” as required by the first of the Examiner’s stated dictionary definitions, and, in any event, Appellant’s Specification uses the terms “edge,” “portion,” and “surface” separately, and, therefore, these terms are not equivalents. *Id.* at 3. As for the second of the Examiner’s stated dictionary definitions, Appellant argues the broadest reasonable interpretation of the term “gingiva former edge,” in light of the Specification, is not merely a “point.” *Id.*

We agree with Appellant that the rejection of claim 28 relies on an unreasonably broad definition of the term “gingiva former edge.” Paragraph 29 of the Specification describes the edge of the healing abutment as “correspond[ing] precisely to the gingival line.” Although not dispositive, this language implies that the edge is itself similar to a line. We use the term “line” here in the sense that the edge is thin in the same way a borderline is, not in the sense that the line is the shortest distance between two points. In this regard, Appellant’s Figure 2 depicts gingival line 16 as a borderline of gingiva 12. Moreover, in accordance with Appellant’s proposed interpretation, claim 28 uses the terms “edge,” “portion,” and “surface” to identify different structures, implying that these terms have different

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meanings. In contrast, the Examiner's interpretation of the term "gingiva former edge" in claim 28 as reading on section "C" in Annotated Figure 1 amounts to interpreting the words "edge," "portion," and "surface" as equivalents. Under the broadest reasonable interpretation of claim 28, in light of the Specification, section "C" in Annotated Figure 1 does not qualify as the recited gingiva former edge. Accordingly, Appellant has apprised us of error in the Examiner's rejection of claim 28 as anticipated by Daftary, and we do not sustain this rejection.

Rejections II–VI

(Daftary in combination with one or more of Sims, Morgan, and Korrodi)
Claims 9–11, 13, 15–24, 26, and 27

Independent claims 9 and 13 both recite a gingiva former edge, along with similar requirements as to its relative location on a gingiva former, and each of claims 10, 11, 15–24, 26, and 27 depends from one of claims 9 and 13. Appeal Br. i–vi (Claims App.). The Examiner relies on the same interpretation of the term "gingiva former edge" and the same findings of fact with respect to section "C" in Annotated Figure 1 to reject claims 9–11, 13, 15–24, 26, and 27. *See* Final Act. 5–12. Accordingly, for the same reasons discussed with respect to Rejection I, we do not sustain Rejection II–IV.

CONCLUSION

The Examiner's rejections are reversed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
28	102(b)	Daftary		28
13, 21, 22, 24, 27	103(a)	Daftary, Sims		13, 21, 22, 24, 27
22, 23	103(a)	Daftary, Sims, Morgan		22, 23
26	103(a)	Daftary, Sims, Korrodi		26
9, 10, 15–20	103(a)	Daftary, Morgan, Sims		9, 10, 15–20
11	103(a)	Daftary, Morgan, Sims, Korrodi		11
Overall Outcome				9–11, 13, 15–24, 26–28

REVERSED