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patti.demichele@Philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WADE A. BOWE, PATRICK HUNKINS, BRIAN KAGARISE,  
CHRISTOPHER REISER, and KEVIN D. TAYLOR

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Appeal 2019-006923  
Application 13/333,783  
Technology Center 3700

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Before JOSEPH A. FISCHETTI, MICHAEL C. ASTORINO, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 50–57, 65–67, 69, and 70. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as “THE SPECTRANETICS CORPORATION[, which] is [a] subsidiary KONINKLIJKE PHILIPS N.V.” Appeal Br. 2.

STATEMENT OF THE CASE

*Claimed Subject Matter*

Claims 50 and 66 are the independent claims on appeal. Claim 50, reproduced below, is illustrative of the claimed subject matter.

50. An endocardial lead removing apparatus for removing a lead implanted within a patient, comprising:

a tubular member having a proximal end, a distal end, and a central longitudinal axis, wherein said distal end comprises a fixed cutting surface disposed at an acute angle relative to said central longitudinal axis;

a blade comprising a pivotable cutting surface, said blade pivotally connected to said distal end and pivotable about a pivot axis between a retracted position and an extended position, in said retracted position said pivotable cutting surface being disposed on a first side of said central longitudinal axis and in said extended position said pivotable cutting surface being disposed entirely on a second side of said central longitudinal axis, said pivot axis intersecting said central longitudinal axis; and

a pull wire for pivoting said blade between said retracted and extended positions, whereupon applying a pulling force to tension said pull wire pivots said blade from said retracted position to said extended position, and whereupon pivoting said blade from said retracted position to said extended position causes said pivotable cutting surface to pivot toward said central longitudinal axis and toward said fixed cutting surface to facilitate severing said lead between said fixed cutting surface and said pivotable cutting surface.

*Rejections*

Claims 50–52, 54–57, 65–67, 69, and 70 are rejected under 35 U.S.C. § 103(a) as unpatentable over Basile et al. (US 5,431,674, iss. July 11, 1995) (hereinafter “Basile”) and Slater (US 5,241,968, iss. Sept. 7, 1993).

Claim 53 is rejected under 35 U.S.C. § 103(a) as unpatentable over Basile, Slater, and Dycus et al. (US 2003/0018331 A1, pub. Jan. 23, 2003) (hereinafter “Dycus”).

#### ANALYSIS

Independent claims 50 and 66 require “[a]n endocardial lead removing apparatus” including “a tubular member having . . . a *distal end* . . . wherein said distal end comprises a fixed cutting surface” and “a *blade* comprising a pivotable cutting surface, *said blade* pivotally connected to said *distal end* and pivotable about a pivot axis between a *retracted position* and an *extended position*.” Appeal Br., Claims App. (emphases added).

The Examiner finds that Basile teaches the foregoing requirements of claims 50 and 66. Final Act. 4–5. The Examiner finds that tubular member 34 and anvil 64’s first end 68 correspond to the claimed “tubular member.” *Id.* (citing Basile col. 5, ll. 9–11). The Examiner finds that the distal end of these structures includes a fixed cutting surface, namely toothed surface 75. *See id.* Toothed surface 75 extends to anvil 64’s distal end 70. Basile Fig. 5, col. 5, ll. 9–11. The Examiner also finds cutting member 66 corresponds with the claimed “blade” and cutting edge 96 corresponds to the claimed “pivotable cutting surface.” Final Act. 5 (citing Basile col. 7, ll. 20–22).

The Examiner explains that Basile’s Figure 5 shows cutting member 66 in the retracted position when the blade “is pivoted in an open position in which the cutting member is drawn back or retracted away from the fixed cutting surface (75).” *See* Ans. 4. The Examiner explains that Figure 5 shows cutting member 66 in the extended position when the blade

is in a closed position, i.e., when cutting member 66 “is extended into the slot (72) of the fixed cutting surface [(75)].” *Id.* Therefore, the Examiner’s convention for the retracted and extended positions of Basile’s cutting member 66 is based on its proximity to toothed surface 75 and elongated slot 72. *See id.*

The Appellant argues that the Examiner confuses the retracted and extended positions of Basile’s cutting member. *See* Appeal Br. 5–7; Reply Br. 2–4. The Appellant argues that the plain and ordinary meaning of the term “extend,” when read in light of the Specification, supports a construction where Basile’s cutting member is in a “retracted position” when it is depicted by the solid lines in Figure 5 and in an “extended position” when it is depicted by the dash lines in Figure 5 (or solid lines in Figure 6). Appeal Br. 6. The Appellant has the better position.

We understand the broadest reasonable interpretation of the claimed “retracted” and “extended” positions of the “blade,” as understood by one of ordinary skill in the art upon reading the Specification, by the blade’s position relative to the tubular member’s distal end. For example, in Appellant’s Figures 8A–C, Figure 8A shows the “retracted position” of blade 352 and Figures 8B and 8C show the “extended position” of blade 352. Spec. ¶ 42. In Figure 8A, blade 352 is drawn back (i.e., retracted) from tubular member 312’s longitudinal distal end 318. In Figures 8B and 8C, blade 352 is stretched (i.e., extended) beyond the tubular member 312’s longitudinal distal end 318. *See* Reply Br. 3. The Specification uses the same convention for “retracted” and “extended” positions in an alternative, but similar, embodiment. Spec. ¶¶ 22, 41, Figs. 6A–C.

Based on this construction of claims 50 and 66, we determine that the Examiner's finding that the Basile's Figure 5 shows cutting member in a retracted position when the blade is in an open position, which is depicted using dashed lines, and in an extended position when cutting member is in a closed position, which is depicted using solid lines, is in error. Rather, Basile's Figure 5 shows the cutting member in an extended position when the blade is in an open position, which is depicted using dashed lines, because the cutting member is stretched (i.e., extended) beyond distal end 70 of anvil 64. *See* Basile Fig. 6. And, Basile's Figure 5 shows the cutting member in a retracted position when the blade is in a closed position, which is depicted using solid lines, because it is in a position where it is being drawn back (i.e., retracted) from distal end 70 of anvil 64.

We note that claims 50 and 66 add further requirements to the "retracted position" and the "extended position" of the blade by requiring a specific movement when tension is applied by a pull wire. *See* Appeal Br., Claims App. For example, claim 50 recites:

*whereupon applying a pulling force to tension said pull wire pivots said blade from said retracted position to said extended position, and whereupon pivoting said blade from said retracted position to said extended position causes said pivotable cutting surface to pivot toward said central longitudinal axis and toward said fixed cutting surface to facilitate severing said lead between said fixed cutting surface and said pivotable cutting surface.*

*Id.* (emphasis added). This further requirement does not define the meaning of either "retracted position" or "extended position." Rather, the foregoing recitation further limits the positional relationship of the claimed "blade" when it moves from the retracted position to the extended position.

The Appellant argues that, contrary to the Examiner’s finding, “*Basile’s* cutting member (66) pivots from an extended position to a retracted position when the drive rod (42) allegedly moves rearwardly by a pulling force.” Appeal Br. 6–7. The Appellant’s argument is persuasive. Accordingly, “*Basile’s* cutting member (66), therefore, does not pivot from a retracted position to an extended position when the drive rod (42) moves rearwardly by a pulling force,” as required by claims 50 and 66. *Id.* at 7.

The Examiner fails to rely on Slater or Dycus in any manner which would remedy the deficient findings discussed above. Therefore, we do not sustain the Examiner’s rejections of independent claims 50 and 66 and dependent claims 51, 52, 54–57, 65, 67, 69, and 70 as unpatentable over Basile and Slater, and dependent claim 53 as unpatentable over Basile, Slater, and Dycus.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
50–52, 54–57, 65–67, 69, 70	103(a)	Basile, Slater		50–52, 54–57, 65–67, 69, 70
53	103(a)	Basile, Slater, Dycus		53
<b>Overall Outcome</b>				50–57, 65–67, 69, 70

REVERSED