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15/292,761	10/13/2016	Justin Williams	H- US-04198.USU1(203-1028)	2031
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Covidien LP 60 Middletown Avenue Mailstop 54, Legal Dept. North Haven, CT 06473			MINCHELLA, ADAM ZACHARY	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JUSTIN WILLIAMS and JON WINK

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Appeal 2020-001262  
Application 15/292,761  
Technology Center 3700

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BEFORE JOHN C. KERINS, JEREMY M. PLENZLER, and  
ERIC C. JESCHKE, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–18. 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(a). Appellant identifies the real party in interest as Covidien LP. Appeal Br. 1.

### CLAIMED SUBJECT MATTER

The claims are directed to “[a] surgical assembly for operably connecting an end effector to an electrosurgical instrument.” Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A surgical assembly for operably connecting an end effector to an electrosurgical instrument, the surgical assembly comprising:

an adapter assembly including,

a connector assembly;

a drive transfer assembly operably received through the connector assembly and including a first rotatable shaft; and

a first pusher assembly operably connected to the first rotatable shaft for converting rotational motion from the first rotatable shaft to longitudinal movement to perform a first function, the first pusher assembly including a first pusher member, and first and second pawl assemblies; and

an extension assembly operably connected to a distal end of the adapter assembly, the extension assembly including a flexible band assembly having first and second connector members, the first connector member being releasably connectable to the first pawl assembly of the first pusher assembly and the second connector member being releasably connectable to the second pawl assembly, wherein the first connector member is laterally spaced from the second connector member.

### REFERENCES

The prior art relied upon by the Examiner is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Palmer	US 5,454,378	Oct. 3, 1995
Milliman	US 2009/0179063 A1	July 16, 2009
Ross	US 2011/0174099 A1	July 21, 2011
Shelton	US 2013/0012957 A1	Jan. 10, 2013

## REJECTIONS<sup>2</sup>

Claim 15 is rejected under 35 U.S.C. § 102(a)(1) or (a)(2) as being anticipated by Ross (including Milliman's disclosure).

Claims 1–5 are rejected under 35 U.S.C. § 103 as being unpatentable over Ross (including Milliman's disclosure) and Shelton.

Claims 6–14 are rejected under 35 U.S.C. § 103 as being unpatentable over Ross (including Milliman's disclosure), Shelton, and Palmer.

Claims 16–18 are rejected under 35 U.S.C. 103 as being unpatentable over Ross (including Milliman's disclosure) and Palmer.

## OPINION

Independent claims 1 and 15 each require “first and second pawl assemblies” that provide a “releasabl[e] connect[ion]” to “first and second connector members” (claim 1) or “a flexible band assembly” (claim 15).

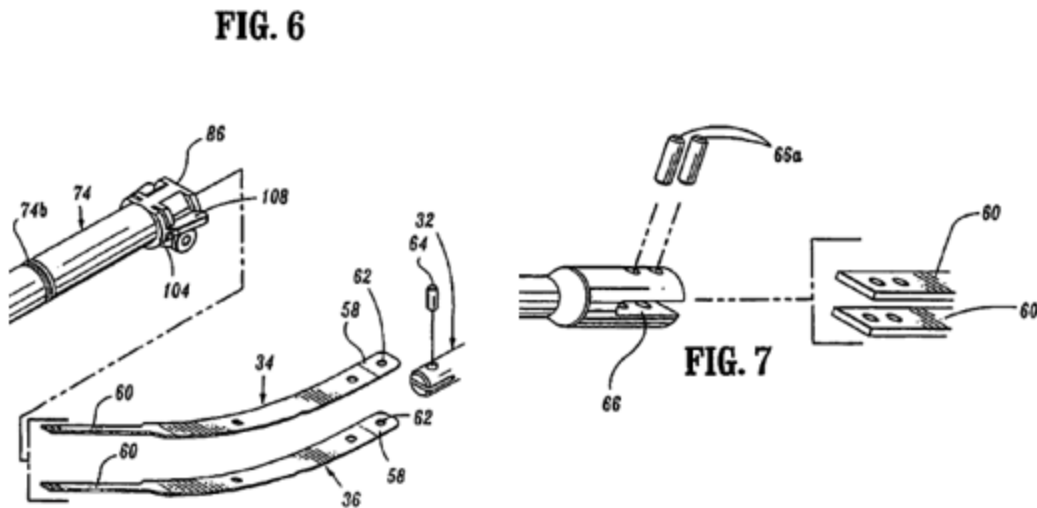
In the rejection of those claims, the Examiner finds that Milliman's pins 64, 66a correspond to the recited “pawl assemblies.” Final Act. 3, 5. In support of this finding, the Examiner determines that “[t]he definition of ‘pawl’ according to the Merriam-Webster Dictionary is ‘a pivoted tongue or sliding bolt on one part of a machine that is adapted to fall into notches or interdental spaces on another part so as to permit motion in only one direction.’” Ans. 6–7. The Examiner finds that “[t]he pins (64 and 66a) of Milliman are sliding bolts adapted to fall into notches (holes) to permit the screw extension (34 and 36) to flex laterally, while restricting movement in the proximal and distal directions.” *Id.* at 7.

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<sup>2</sup> In the rejections, the Examiner relies on the disclosure of Milliman as part of the Ross disclosure because Milliman is incorporated by reference in Ross.

Appellant responds that Milliman's pins 64, 66a do not provide a releasable connection, nor are they part of a pawl assembly. Appeal Br. 3–9; Reply Br. 1–2. Appellant contends, for example, that “the pins of Milliman longitudinally fix the screw extensions and band portions relative to each other, and thus, do not permit longitudinal motion of the screw extensions and band portions relative to each other in any direction, much less in only one direction.” Reply Br. 2. Appellant has the better position.

Portions of Milliman's Figures 6 and 7 are reproduced below.



The figures reproduced above are portions of Milliman's Figure 6 (“a side perspective exploded view of the central body portion and distal head portion of the surgical stapling device” (Milliman ¶ 25)) and Figure 7 (“an enlarged side perspective of the anvil retainer and band portions of the central body portion shown in FIG. 6” (Milliman ¶ 26)) illustrating its pins 64 (Figure 6), 66a (Figure 7).

Initially, we note that the Examiner does not direct us to any disclosure in Milliman that supports pins 64, 66a providing a releasable

connection or any reasonable explanation as to why one skilled in the art would interpret Milliman in that manner. Milliman simply states that “[t]he proximal end of each band portion 58 includes a hole 62 dimensioned to receive a pin 64 for securing the proximal end of screw extensions 34 and 36 within transverse slot 54 of screw 32” and “a pair of pins 66a which extend through the proximal end of anvil retainer 38 and band portions 60 are used to secure screw extensions 34 and 36 to anvil retainer 38.” Milliman ¶ 128. In fact, Milliman suggests a permanent connection based on the additional discussion of alternate connections. *See id.* (“other fastening techniques may be used . . . e.g., welding, crimping, etc.”).

Further, pins 64, 66a are not part of a “pawl assembly,” as required by the claims. Accepting the Examiner’s definition of “pawl,” we are apprised of no structure in Milliman where its pins 64, 66a “fall into notches or interdental spaces on another part so as to permit motion in only one direction,” as required by the Examiner’s definition. Ans. 7.

Claim 4 depends from claim 1, and further recites that the first and second pawl assemblies each include “pawl members.” Although the Examiner additionally cites Shelton in the rejection of claim 4 as teaching “pawl members,” that finding fails to cure the deficiencies in the rejection of claim 1 for reasons similar to those discussed above. *See* Final Act. 7 (citing Shelton’s pivot link 44 as corresponding to a “pawl assembly”).

For the reasons set forth above, the Examiner’s rejections fail.

## CONCLUSION

The Examiner’s rejections are reversed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
15	102(a)(1)/(a)(2)	Ross (including Milliman's disclosure)		15
1-5	103	Ross (including Milliman's disclosure), Shelton		1-5
6-14	103	Ross (including Milliman's disclosure), Shelton, Palmer		6-14
16-18	103	Ross (including Milliman's disclosure), Palmer		16-18
<b>Overall Outcome</b>				<b>1-18</b>

REVERSED