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WOOD, HERRON & EVANS, LLP			SASS, SARA A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARY BETH PRIVITERA and ARTHUR PANCIOLI

Appeal 2020-001267
Application 14/434,544
Technology Center 3700

Before JEREMY M. PLENZLER, GEORGE R. HOSKINS, 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), Appellant¹ appeals from the Examiner's decision to reject claims 1, 2, 4–9, 12–14, 22, and 23. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ 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 the University of Cincinnati. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a device for directing a medical fabric into the body. Claim 1, reproduced below with emphasis added and reformatted for clarity, is illustrative of the claimed subject matter:

1. A device for directing a medical fabric into a portion of a body, comprising:
 - an elongated housing having a distal end and an opening at the distal end;
 - a supply of medical fabric in the housing; [and]
 - an actuator spaced from said opening, said actuator including *a wheel* that resides in an aperture in the housing and *extends to a point outside of said housing* to be accessed by a user to advance a portion of the medical fabric through said housing and out of the opening and the supply of medical fabric is upstream of the wheel.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Shlain	US 5,263,927	Nov. 23, 1993
Wendorf	US 2007/0191753 A1	Aug. 16, 2007

REJECTIONS

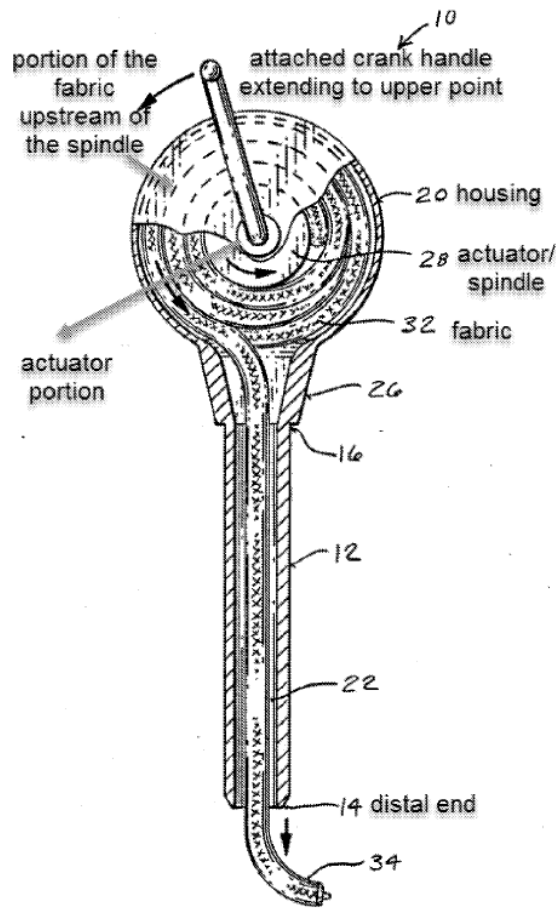
Claims 1, 2, 4–9, and 12–14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Shlain.

Claims 22 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shlain and Wendorf.

OPINION

Claim 1 is the sole independent claim on appeal and, as seen above, requires that the “actuator includ[es] a wheel that resides in an aperture in the housing and extends to a point outside of said housing.”

The Examiner finds that Shlain discloses “an actuator cylindrical spindle 28 . . . [that] is a wheel . . . and the spindle 28 extends in its attached crank handle 30 to an upper point outside housing 20.” Final Act. 4. In the Answer, the Examiner further explains that “Shlain teaches the wheel 28, due to its attached crank handle 30 (see annotated Figure 1B above) extends to a point outside of the housing 20 to be accessed by a user.” Ans. 6. The annotated figure referenced by the Examiner is reproduced below.



The figure reproduced above is Shlain’s Figure 1B, which is a fragmentary side view of Shlain’s surgical packing dispenser, with the Examiner’s annotations mapping the portions of Shlain’s dispenser to the claim elements. *Id.* at 4, 6.

Appellant responds, for example, that Shlain’s “spindle 28 does not extend from an aperture in the housing 20.” Appeal Br. 5. Appellant contends that although “the crank handle does extend outside the housing . . . it is not part of any wheel.” Reply Br. 5. Appellant explains that

[t]he spindle itself (which is being used by the Examiner as providing the ‘wheel’ limitation) is entirely within the housing . . . [a]nd the fact that the handle is ‘attached’ to the spindle (wheel) suggests that it is a separate component, and therefore not part of the spindle - i.e., not part of any wheel. *Id.*

Appellant has the better position. The claim expressly requires “a wheel that . . . extends to a point outside of said housing.” Shlain’s crank handle 30 is not a wheel. There is no dispute that Shlain’s spindle 28, itself, does not “extend[] to a point outside of said housing” as required by the claim. Accordingly, the Examiner’s rejections fail.

CONCLUSION

The Examiner’s rejections are reversed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–9, 12–14	102(b)	Shlain		1, 2, 4–9, 12–14
22, 23	103(a)	Shlain, Wendorf		22, 23
Overall Outcome				1, 2, 4–9, 12–14, 22, 23

REVERSED