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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NICHOLA CHARLES and ADAM ZERDA

Appeal 2020-001576
Application 14/246,723
Technology Center 3700

Before JOSEPH A. FISCHETTI, MICHAEL C. ASTORINO, and
JAMES A. WORTH, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject claims 1 and 6. 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. The Appellant identifies the real party in interest as Becton, Dickinson and Company. Appeal Br. 3.

STATEMENT OF THE CASE

Claimed Subject Matter

Claim 1, the sole independent claim, is representative of the subject matter on appeal and is reproduced below.

1. A method of disinfecting a vascular access device, the method comprising:

obtaining a flush syringe having a barrel including a side wall having an inside surface defining a chamber for retaining a fluid, the barrel further includes an open proximal end, a distal end including a distal wall with an elongated first tip extending distally therefrom having a first passageway therethrough in fluid communication with said chamber,

attaching a removable reservoir collar to the distal wall of the barrel to surround the elongated first tip, the reservoir collar including at least one side wall having an inside surface defining a compartment containing a disinfectant or an antimicrobial agent, a sealed distal end of the reservoir collar having a removable seal, a proximal end of the reservoir collar comprising a pierceable seal adjacent the distal wall of the barrel, with a second tip extending distally from the proximal end of the removable reservoir collar, a plurality of threads on the inside surface of the removable reservoir collar, an absorbent material in the compartment surrounding the second tip, the absorbent material soaking up the disinfectant or the antimicrobial agent contained in the compartment of the reservoir collar, the first tip interlocking the second tip, the second tip having a second passageway therethrough in fluid communication with said first passageway of the elongated first tip of the flush syringe, the second tip of the removable reservoir collar adapted for connection to a hub of the vascular access device,

partially threading the reservoir collar onto the distal wall of the barrel of the flush syringe in an initial position such that the pierceable seal of the proximal end of the reservoir collar is not pierced,

activating the reservoir collar by twisting the proximal end of the reservoir collar onto the distal wall of the barrel such that the first tip of the flush syringe pierces the pierceable seal of the proximal end of the reservoir collar and the first tip of the flush syringe interlocks with the second tip of the removable reservoir collar to establish fluid communication between the first tip and the second tip;

removing the removable seal of the distal end of the reservoir collar;

connecting the hub of the vascular access device to the reservoir collar to compress and create friction with the absorbent material in the compartment.

References

The prior art relied upon by the Examiner is:

Name	Reference	Date
Mericle	US 4,343,306	Aug. 10, 1982
Palestrant	US 5,336,192	Aug. 9, 1994
Howlett et al. (“Howlett”)	US 2009/0062766 A1	Mar. 5, 2009

Rejection

Claims 1 and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mericle in view of Howlett and Palestrant.

ANALYSIS

Independent claim 1’s “method of disinfecting a vascular access device” includes a step of “attaching a removable reservoir collar to the distal wall of the barrel to surround the elongated first tip, the reservoir collar including at least one side wall having an inside surface defining a compartment containing a disinfectant or an antimicrobial agent.” *Supra.*

The Examiner construes the attaching step of claim 1 to “not require the disinfectant to be present in the compartment *before* the removable reservoir collar is attached to the distal wall of the barrel.” Ans. 4 (emphasis added). Stated otherwise, it is the Examiner’s position that claim 1 requires that the disinfectant or antimicrobial agent be present in the compartment *after* the removable reservoir collar is attached to the distal wall of the barrel. *See id.*

The “Appellant respectfully submits that the Examiner has misconstrued the plain meaning of the claimed invention.” Reply Br. 2.² The Appellant submits that “a proper construction of claim 1 requires that the removable reservoir collar includes a compartment containing a disinfectant or antimicrobial agent” where “[t]he disinfectant or antimicrobial agent is present in the removable reservoir collar *prior to* being attached to the distal wall of the barrel.” *Id.* at 4 (emphasis added). We agree with the Appellant’s claim construction.

Claim 1 recites “attaching a removable reservoir collar to the distal wall of the barrel to surround the elongated first tip,” then the next part of the claim specifies the structure of the removable reservoir collar that is involved in the attaching step. In other words, the plain language of claim 1 requires a step of attaching a removable reservoir collar, which includes at least one side wall having an inside surface defining a compartment containing a disinfectant or an antimicrobial agent, to the distal wall of the barrel to surround the elongated first tip. We note that this construction of

² The Reply Brief lacks page numbers. We designate page 1 as the page that includes the heading “**REPLY BRIEF**” and number the remaining pages in the Reply Brief consecutively therefrom.

claim 1's attaching step is consistent with the Specification. *See also id.* at 3 (citing Spec. ¶¶ 13, 42, 43). We also note that the Examiner's construction of claim 1's attaching step lacks support in the Specification.

Turning to the rejection on appeal, the Examiner finds that Mericle's adapter 15 and recess 22 correspond to the claimed "removable reservoir collar" and "compartment," respectively. Final Act. 3; Ans. 4. The Examiner explains, Mericle teaches that recess 22 receives and contains the disinfectant from syringe 11 after adapter 15 is attached to the distal wall of barrel 12. Ans. 4 (citing Mericle, col. 2, ll. 50–61). The Appellant appears to agree with the Examiner's explanation. *See* Appeal Br. 12 (citing Mericle, col. 2, ll. 50–57).

The Appellant argues that "adapter 15 of Mericle **does not** include a 'compartment containing a disinfectant or an antimicrobial agent' but, rather, the adapter 15 of Mericle must be attached to **a syringe loaded with cleaning liquid** in order to clean element 23." *Id.*; Reply Br. 2, 4. The Appellant's argument is persuasive.

Although Mericle teaches attaching adapter 15 and recess 22 to the distal wall of syringe 11's barrel 12, recess 22 does not contain a disinfectant or antimicrobial agent when this attachment occurs. Therefore, we do not agree with the Examiner's finding that Mericle teaches, "attaching a removable reservoir collar to the distal wall of the barrel to surround the elongated first tip, the reservoir collar including at least one side wall having an inside surface defining a compartment containing a disinfectant or an antimicrobial agent," as recited in claim 1.

Further, we note that the Examiner fails to rely on the teachings of Howlett or Palestrant in any manner that would remedy the deficiency in the Examiner's rejection of claim 1.

Thus, we do not sustain the Examiner's rejection of independent claim 1 and dependent claim 6.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
1, 6	103(a)	Mericle, Howlett, Palestrant		1, 6

REVERSED