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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GUIDO VEZZU and RETO GRUEEBLER

Appeal 2020-002404
Application 14/550,470
Technology Center 3700

Before STEFAN STAICOVICI, EDWARD A. BROWN, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1–3, 5–10, and 12–20.² 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. Appellant identifies Alcon Inc. as the real party in interest. Appeal Br. 2.

² Claims 4 and 11 are cancelled. Appeal Br. (Claims App.).

CLAIMED SUBJECT MATTER

Appellant's disclosure "generally relates to surgical instruments, and in particular to a forceps instrument for use in vitreoretinal surgeries having an adhesion-optimized edge condition to enhance the grasping and peeling of retinal membrane layers during a vitreoretinal procedure." Spec. ¶ 2.

Claims 1, 8, and 16 are independent. Claim 1, reproduced below, illustrates the claimed subject matter.

1. A forceps comprising:
 - a body;
 - a first pincer and a second pincer extending from a first end of the body, the first pincer and the second pincer movable between an open configuration and a closed configuration, each of the first pincer and the second pincer comprising:
 - a longitudinally extending portion;
 - a hook-shaped curved portion formed at a distal end of the longitudinally extending portion, the hook-shaped curved portion curved inwardly and terminating with a grasping surface, the grasping surface of the first pincer and the grasping surface of the second pincer facing each other;
 - an end surface formed along a distal side of the hook-shaped curved portion, the end surface formed adjacent to the grasping surface;
 - a grasping edge extending between the grasping surface and the end surface; and
 - a textured surface formed along at least a portion of the end surface, the textured surface configured to generate a capillary action with a contacted membrane as the pincers are moved into the closed configuration, wherein the grasping edge of each of the first pincer and the second pincer defines a rounded surface such that the end surface, the grasping edge and the grasping surface define a continuous surface.

Appeal Br. 13 (Claims App.).

REJECTIONS ON APPEAL

Claims 1–3, 5, 7–10, 12–18, and 20 are rejected under 35 U.S.C. § 103 as unpatentable over Scheller (US 2014/0277110 A1, published Sept. 18, 2014) and Corcosteugi (US 2011/0015669 A1, published Jan. 20, 2011).

Claims 6 and 19 are rejected under 35 U.S.C. § 103 as unpatentable over Scheller, Corcosteugi, and Garrison (US 2007/0043352 A1, published Feb. 22, 2007).

ANALYSIS

Rejection over Scheller and Corcosteugi (Claims 1–3, 5, 7–10, 12–18, and 20)

Claims 1–3, 5, 7, 12–15, and 20

For claim 1, the Examiner finds that Scheller discloses a forceps 700 comprising first and second pincers (jaws 710), each pincer comprising a hook-shaped curved portion (distal portion of abrasive surface 740) terminating with a grasping surface, an end surface formed along a distal side of the hook-shaped portion and adjacent the grasping surface, a grasping edge (“the edge created where the distal portion of 710 meets 711”) extending between the grasping surface and the end surface, and a textured surface (abrasive surface 740). Final Act. 3–4 (citing Scheller, Fig. 7). The Examiner concedes that Scheller does not disclose the claim limitation “wherein the grasping edge of each of the first pincer and the second pincer defines a rounded surface such that the end surface, the grasping edge and the grasping surface define a continuous surface.” *Id.* at 4.

The Examiner relies on Corcosteugi as teaching a forceps comprising first and second pincers (jaws 26, 28), each having a grasping edge defining

a rounded surface such that the end surface of the grasping edge, the grasping edge, and the grasping surface define a continuous surface. Final Act. 4 (citing Corcosteugi, Fig. 5, ¶¶ 7–8, 24–25). The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify Scheller’s forceps with the rounded surface teachings of Corcosteugi to “allow[] an even greater field of vision when jaws are partially opened.” *Id.* at 4–5 (citing Corcosteugi ¶ 25); Ans. 4.

Appellant contends that it would not have been obvious to combine the rounded surface of Corcosteugi with Scheller. Appeal Br. 8. As depicted in Figure 3, Corcosteugi describes left jaw 26 as including inner surface 32 having first segment 32a and second segment 32b, which is arcuate shaped, and describes right jaw 28 as having an inner surface with a similar configuration as left jaw 26. *See* Corcosteugi ¶¶ 20–22, Fig. 3. Corcosteugi discloses that second segment 32b “terminates at the point at which jaw tip 38 and 48 are in contact with each other.” *Id.* ¶ 22, Fig. 3. Figure 3 also shows reference numbers 44 and 44a, the latter identifying an inner surface segment of jaw 28. As for the purpose of the inner surface shaping of jaws 26, 28, Corcosteugi explains:

The effect of this shaping is to create a “window” or “bight” 54 when jaws 26, 28 are fully closed and jaw ends 40, 52 are in contact with one another, through which the surgeon may observe the operating field, an advantage which aids in the location of tissue to be removed and the manipulation of the forceps to grasp this tissue.

Id. ¶ 22. Thus, Corcosteugi discloses that first and second segments 32a, 32b of jaw 26 interact with the similar opposed inner surfaces of jaw 28 to create a “window” or “bight” that allows a greater field of vision when jaws 26, 28 are fully closed. Figure 5 of Corcosteugi shows that a window is also

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defined by the inner surfaces of jaws 26, 28 when partially open.

Corcosteugi does not disclose that a grasping edge that extends between a grasping surface and an end surface of each jaw 26, 28 provides such window or bight. As such, the Examiner does not explain persuasively how modifying the grasping surface of each of Scheller's jaws 710 to define a rounded surface such that the end surface of the grasping edge, the grasping edge, and the grasping surface define a continuous surface would "allow[] an even greater field of vision when jaws are partially opened." Final Act. 4-5; Ans. 4. Thus, we agree with Appellant that the Examiner has not articulated an adequate reason with rational underpinnings to modify Scheller's forceps in view of Corcosteugi in the proposed manner.

Therefore, we do not sustain the rejection of claim 1, and claims 2, 3, 5, 7, 12-15, and 20 depending from claim 1, as unpatentable over Scheller and Corcosteugi.

Claims 8-10

Independent claim 8 is directed to a vitreoretinal forceps and recites, *inter alia*, "a rounded grasping edge extending between the grasping surface and the end surface" and "wherein the grasping edge of each of the first pincer and the second pincer defines a rounded surface such that the end surface, the grasping edge and the grasping surface define a continuous surface." Appeal Br. 14-15 (emphasis added). The Examiner determines that it would have been obvious to a person of ordinary skill in the art to modify Scheller "with the hook shaped curved portions and rounded surface teachings of Corcosteugi . . . for the purposes of allowing an even greater field of vision when jaws are partially opened." Final Act. 7 (citing Corcosteugi ¶ 25). For the reasons discussed above for the rejection of claim 1, we agree with Appellant that the Examiner has not articulated an

adequate reason with rational underpinnings to modify Scheller in this manner.

Additionally, claim 8 recites “a textured surface formed along the end surface of each pincer,” and “wherein the textured surface is *not* formed along the longitudinally extending portion of the pincers.” Appeal Br. 14–15 (emphasis added). The Examiner finds that Scheller discloses that “the textured surface (740) is not formed (Fig. 8a) along the longitudinally extending portion (proximal portion of 710) [of] the pincers (710).” Final Act. 6; Ans. 6. In contrast, Appellant contends that Figures 7–10D of Scheller “show a textured surface formed along the longitudinally extending portion of the pincers.” Appeal Br. 10.

We agree with the Examiner that Figure 8A of Scheller shows abrasive surface 740 formed on the end surface of jaw 710. However, as also shown, abrasive surface 740 is also formed on a substantial portion of the longitudinally extending portion of each jaw 710. Thus, although abrasive surface 740 is not formed on the *entire length* of the longitudinally extending portions of jaws 710, Scheller fails to satisfy the limitation that “the textured surface is not formed along the longitudinally extending portion of the pincers.”

For the foregoing reasons, we do not sustain the rejection of claim 8, and claims 9 and 10 depending from claim 8, as unpatentable over Scheller and Corcosteugi.

Claims 16–18

Claim 16 is directed to a forceps and requires, *inter alia*, “a textured surface formed along at least a portion of the end surface and *not extending along the longitudinally extending portion*,” and “the grasping edge of each of the first pincer and the second pincer defines *a rounded surface* such that

the end surface, the grasping edge and the grasping surface define *a continuous surface.*” Appeal Br. 16–17 (Claims App.) (emphasis added).

Appellant presents substantially similar argument for claim 16 as for claims 1 and 8. Appeal Br. 10–11. Thus, for reasons similar to those for claims 1 and 8, we do not sustain the rejection of claim 16, and claims 17 and 18 depending therefrom, as unpatentable over Scheller and Corcosteugi.

Rejection over Scheller, Corcosteugi, and Garrison
(Claims 6 and 19)

The Examiner’s further reliance on Garrison in rejecting dependent claims 6 and 19 does not cure the deficiency in the rejection of parent claim 1. Final Act. 11. Thus, we do not sustain the rejection of claims 6 and 19 as unpatentable over Scheller, Corcosteugi, and Garrison for the same reasons as for claim 1.

CONCLUSION

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 5, 7– 10, 12–18, 20	103	Scheller, Corcosteugi		1–3, 5, 7– 10, 12–18, 20
6, 19	103	Scheller, Corcosteugi, Garrison		6, 19
Overall Outcome				1–3, 5–10, 12–20

REVERSED