

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARIO BECHTOLD, BERND GRANZ, HANS-PETER HEINDEL,  
and ANDREA HEILINGBRUNNER

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Appeal No. 2003-1751  
Application No. 09/179,357

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ON BRIEF

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Before PAK, WARREN, and MOORE, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 and 3 through 9, which are all of the claims pending in the present application.

*APPEALED SUBJECT MATTER*

The subject matter on appeal is directed to a device for transmitting ultrasonic therapy to a breast of a patient. See

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the claims on appeal. Details of the appealed subject matter are provided in illustrative claim 1, which is reproduced below:

1. A device for providing ultrasonic therapy to a breast of a patient, comprising:

a container filled with at least one liquid for receiving a breast of a patient;

an acoustically transmitting fixing membrane disposed in said container for mechanically fixing the breast of the patient; and

an ultrasonic transducer associated with said container, said ultrasonic transducer emitting sound waves having a principal emission direction forming with a plane of a body of the patient an angle of less than or equal to 50°, said emission direction to be altered for setting the focus of said sound waves to any tissue region within the breast of the patient.

Claims 1 and 3 through 9 stand rejected under 35 U.S.C.

§ 101 as being directed to non-statutory subject matter.

We reverse.

The examiner asserts (Answer, page 2):

The claimed invention is defined in terms of the body of a patient and therefore inferentially includes the patient as part of the claimed invention. The inclusion of a patient in the claimed invention renders the claimed subject matter non-statutory.

We concur with the examiner to the extent that a human cannot be either directly or indirectly claimed as part of an invention. However, in this case, we find nothing in the claims on appeal or the specification which indicates that a human part or a human is

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an integral part of the claimed device. The functional limitation "providing ultrasonic therapy to a breast of a patient . . ." recited in claim 1, for example, indicates that the claimed device must be capable of providing ultrasonic therapy to a breast of a patient. This functional limitation may limit, for example, the design or the structure of the claimed device to those capable of providing ultrasonic therapy to a breast of a patient, but does not include the breast or the patient as part of the claimed device. Thus, for the foregoing reasons and the reasons well articulated by the appellants in their brief, we reverse the examiner's Section 101 rejection.

*REVERSED*

CHUNG K. PAK	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
CHARLES F. WARREN	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
JAMES T. MOORE	)	
Administrative Patent Judge	)	

CKP:hh

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