

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDOLPH H. WATKINS, MICHAEL PRISCO, and JAMES S. SLEPICKA

Appeal No. 2004-1692
Application No. 09/871,863

ON BRIEF

Before GARRIS, WALTZ, and TIMM, Administrative Patent Judges.
WALTZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the primary examiner's final rejection of claims 1 and 3 through 28, which are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellants, the invention is directed to dialyzers for use in dialysis therapies where the dialyzer has an improved header design providing an improved flow of blood into the interior of the dialyzer and specifically to the fiber bundle (Brief, page 3). Appellants state that arguments are provided for each of the independent claims, with arguments for dependent claims

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"where specified" (Brief, page 9). We consider the claims separately to the extent of appellants' individual arguments. See 37 CFR § 1.192(c)(7)(2000). Representative independent claim 1 is reproduced below:

1. A dialyzer inlet header comprising:

a body that is designed to be attached to an end of a dialyzer;

an inlet channel providing fluid communication from an exterior of the dialyzer to an interior of the dialyzer, the inlet channel defining a fluid flow path that is axial to a fiber bundle located in the interior of the dialyzer; and

at least one member for modifying the fluid flow path of a fluid as it exits the inlet channel, wherein the member includes a curved vane extending from a portion of the body.

The examiner relies on Heilmann et al. (Heilmann), DE 3435883 A1, published Apr. 17, 1985, as sole evidence in support of the rejections on appeal.¹ The claims on appeal stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as unpatentable over Heilmann (Answer, page 3). We *affirm* the rejections on appeal essentially for the reasons stated in the Answer and those reasons set forth below.

¹We rely upon and cite from a full English translation of this document (listed as PTO 04-1941), previously made of record.

OPINION

The examiner finds that Heilmann discloses a dialyzer inlet header comprising a body, an inlet channel (28) providing fluid communication to the interior of the dialyzer and defining a flow path axial to the fiber bundle, and a member modifying the fluid flow as the fluid exits the inlet channel, where the member includes a curved vane extending from the body as required by claim 1 on appeal, a plurality of curved vanes imparting a circular motion to the fluid as required by claim 21 on appeal (item 50 in Figure 2), and a body with two ends, a fiber bundle, a blood inlet, and a member integral and in juxtaposition to the blood inlet causing blood to flow to the perimeter of the fiber bundle as required by claim 12 on appeal (Answer, page 3). Accordingly, the examiner finds that every element of the claims on appeal is described by Heilmann within the meaning of section 102(b) (Answer, page 5).

In our analysis of the examiner's rejection based on section 102(b), we must first correctly construe the claim to define the scope and meaning of any contested limitation. *See Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). Appellants' principal argument is that Heilmann requires the use of a plate (46) in combination with guide ribs (50) in

order to direct flow but these guide ribs extend from the plate and not the closure cap (24) where the plate is separately connected to the closure cap, in contrast to the curved vane that extends from a portion of the body of the dialyzer inlet header as required by claim 1 on appeal (Brief, page 16; Reply Brief, pages 2-3).

Appellants present similar arguments concerning the rejection of claims 12 and 21 on appeal (Brief, pages 17-18). Accordingly, we must ascertain the proper scope and meaning of the disputed language in claims 1, 12 and 21. We note that, during prosecution before the examiner, the claim language is given its broadest reasonable meaning in its ordinary usage as it would have been understood by one of ordinary skill in the art, when read in light of the specification. See *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

Both claims 1 and 21 recite that the member (or plurality of members) that modify the fluid flow path as it exits the inlet channel are curved vanes that "extend" from a portion of the body.² Appellants do not argue that the flow directing elements taught by Heilmann are not curved or cannot be considered "vanes," and by

²Claim 1 on appeal recites "a body that is designed to be attached to an end of a dialyzer" while claim 21 merely requires a "body member having an inlet channel."

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their very name must be used for "modifying the fluid flow path of a fluid" as it exits the inlet channel, as required by claim 1 on appeal (Heilmann, page 4, claims 4 and 5). The term "extend" is not specifically defined in appellants' specification and thus must be given its broadest reasonable ordinary meaning, i.e., "to stretch or spread out to full length."³ The language disputed in claim 12 on appeal requires the a member be "located in juxtaposition and integral to" the blood inlet and cause blood to flow to a perimeter region of a first end of the fiber bundle. Again, we note that the specification fails to define or provide guidelines as to the meaning of "located in juxtaposition and integral to." We must give these terms their broadest reasonable ordinary meaning, i.e., juxtaposition meaning "to place side by side" and integral meaning "a complete unit."⁴ Accordingly, giving these terms their broadest reasonable meaning in ordinary usage, we determine that the member recited in claim 12 on appeal must be located side by side and part of the blood inlet unit.

Given our claim construction as detailed above, we agree with the examiner that every element recited in independent claims 1, 12

³See *Webster's II New Riverside University Dictionary*, p. 456, The Riverside Publishing Co., 1984.

⁴*Id.* at pages 660 and 634, respectively.

and 21 on appeal is described by Heilmann within the meaning of section 102(b). Contrary to appellants' arguments, the claims do not require any direct physical connection between the curved vanes and the body. As admitted by appellants (Brief, page 18), the guide ribs of Heilmann "extend" from the plate that is separately connected to the closure cap. Heilmann teaches that the closure or "end" caps are designed to be placed on the end of the dialyzer housing (page 4, last paragraph). Therefore we find that the curved flow directing elements of Heilmann "extend" or stretch forth from the "body" or end cap, thus describing the elements of claims 1 and 21 on appeal.⁵ We further find that the "members" taught by Heilmann are located next to or side by side as part of the blood inlet unit (see Figures 1 and 3 of Heilmann, especially "28" located within the end cap 24 in Figure 3).

For the foregoing reasons and those stated in the Answer, we determine that each and every element recited in claims 1, 12 and 21 is described within the meaning of section 102(b) by Heilmann. We adopt the examiner's findings of fact from page 4 of the Answer concerning the limitations of claims 3-11 (see the Brief, page 16).

⁵We note that Heilmann teaches that the flow-directing system "diverts the blood in an essentially radial fashion" (page 8, second full paragraph), thus describing the "circular motion" recited in claim 21 on appeal.

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All other claims stand or fall with the independent claims. Accordingly, we affirm the examiner's rejection of the claims on appeal under 35 U.S.C. § 102(b) over Heilmann.

Since anticipation has long been held to be the ultimate or epitome of obviousness, we also affirm the examiner's rejection of the claims on appeal under 35 U.S.C. § 103(a) over Heilmann. See *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982).

The decision of the examiner is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

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| BRADLEY R. GARRIS |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| THOMAS A. WALTZ |) | APPEALS |
| Administrative Patent Judge |) | AND |
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| CATHERINE TIMM |) | |
| Administrative Patent Judge |) | |

TAW/jrg

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