

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2005-1568
Application No. 09/214,875

HEARD: DECEMBER 14, 2005

Before PATE, MCQUADE, and CRAWFORD, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 24 to 31, which are all of the claims pending in this application. Claims 1 to 23 have been canceled.

The appellant's invention relates to a trocar sleeve for endoscopic applications (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Sorensen et al. (Sorensen)	5,320,627	June 14, 1994
Ko	5,354,302	Oct. 11, 1994

The rejections

Claims 24, 25, and 28 to 31 stand rejected under 35 U.S.C. § 102(b) as anticipated by and, in the alternative, under 35 U.S.C. §103 as being unpatentable over Ko.

Claims 26 and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ko in view of Sorensen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection mailed May 16, 2003 and the answer mailed December 16, 2003 for the examiner's complete reasoning in support of the rejections, and to the brief filed September 29, 2003 for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the

respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 24, 25, and 28 to 31 under 35 U.S.C. § 102 (b) as being anticipated by and in the alternative as being obvious under 35 U.S.C. § 103 in view of Ko. The examiner is of the opinion that Ko describes the invention as claimed (see answer at page 2). In regard to the recitation in claim 24 that "end portions of the pivotal parts form a pointed tip which permits the cutting of the body wall," the examiner states:

. . . the pivotable parts/wings/wedges 22a-22d made of metal/plastic (column 9, lines 64-68) do form a pointed tip which permit cutting/penetrating/piercing at least at some degree of a body wall/tissue by itself (final rejection at page 2, Paper No. 26).

We agree with the appellant that Ko does not describe or suggest a pointed tip which permits the cutting of a body wall without an additional trocar mandrel. To the contrary, Ko describes a blunt tip, rather than a pointed tip. In addition, Ko discloses that the blunt tip is inserted only after an opening is made by a cutting instrument (col. 5, lines 35; col 8, lines 37 to 41).

Therefore, we will not sustain this rejection as it is directed to claims 24, and 25 and claim 28 dependent thereon. We will also not sustain this rejection as it is directed to claim 30, and claim 31 dependent thereon, because claim 30 also recites a pointed tip which permits the cutting of the body wall without an additional trocar mandrel.

We will likewise not sustain the examiner's rejection of claims 26 and 27 under 35 U.S.C. § 103 as being unpatentable over Ko in view of Sorensen. Claims 26 and 27 are dependent on claim 24 and thus include the subject matter of a pointed tip which permits the cutting of the body wall without an additional trocar mandrel. We have reviewed the disclosure of Sorensen and find that this disclosure does not cure the deficiencies noted above for Ko.

The decision of the examiner is reversed.

REVERSED

WILLIAM F. PATE, III)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. MCQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

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