

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Ex parte A. MILTON BELL

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Appeal No. 2006-1282  
Application No. 10/361,899

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ON BRIEF

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Before OWENS, CRAWFORD, and LEVY, Administrative Patent Judges.  
CRAWFORD, Administrative Patent Judge.

#### DECISION ON APPEAL

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

The appellant's invention relates to a dental device (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:

Lee	5,525,059	June 11, 1996
Shank	1,300,495	Apr. 15, 1919

THE REJECTIONS

Claims 11 to 15 and 17 to 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lee.

Claims 1 to 6 and 8 to 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lee.

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lee in view of Shank.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed October 19, 2005) and the final rejection (mailed March 9, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed August 5, 2005) and reply brief (filed December 16, 2005) 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 11 to 15 and 17 to 20 under 35 U.S.C. § 102(b). To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984). The examiner's finding regarding this rejection can be found on page 2 of the final rejection.

The appellant argues that the examiner is in error in finding that the element 28 is both the grasping portion and the seating portion.

We do not find this argument persuasive because it is the shaped surfaces of 28 which the examiner finds is the grasping portion. In our view, it is the outer periphery of surfaces 28 which are inherently capable of functioning as a seating portion. We note that it is the different surfaces of 52 and 62 of gripping element 50 which form appellant's grasping and seating portions respectively.

Appellant argues that there is no evidence that element 28 is capable of functioning as a seating portion.

Appellant's specification discloses that in a seating operation the operative surface 62 is used to press down on gripping head 14 of the post to ensure that the post 10 is properly seated in root canal 32 (specification paragraph 0018).

In our view, the outer periphery of element 28 is capable of pressing down on the head of a post and therefore is capable of functioning as a seating portion.

Appellant also argues that there is no suggestion to include a seating portion in Lee.

We do not find this argument persuasive because the rejection is based on 35 U.S.C. § 102(b) and as such it is not necessary that the reference teach or suggest the subject matter of the claims. It is only necessary that the claims "read on" something disclosed in the reference. Kalman v. Kimberly-Clark Corp., 713 F.2d at 772, 218 USPQ at 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Appellant also argues that Lee does not describe a locking mechanism for locking the device to prevent loss of an article gripped.

We do not agree, Lee does indeed describe a locking mechanism (col. 8, lines 16 to 18) and contrary to appellant's argument discloses locking the device to prevent the loss of the article gripped (col. 15, lines 8 to 9).

In view of the foregoing, we will sustain this rejection as it is directed to claim 11. We will also sustain this rejection as it is directed to claims 12 to 15 and 17 to 20

because the appellant has not argued the separate patentability of these claims. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987).

We turn next to the examiner's rejection of claims 1 to 6 and 8 to 24 under 35 U.S.C. § 103 as being unpatentable over Lee. The examiner, recognizing that Lee does not describe the locking mechanism for the embodiment depicted in Figures 10 and 14, states that Lee describes a locking mechanism in connection with an embodiment depicted in Figure 27, and concludes that it would have been obvious to include the described locking mechanism of Figure 27 in the embodiment of Figures 10 and 14. In regard to the recitation in claim 1 that the first and second gripping elements are rotatably coupled, the examiner states:

Lee further teaches an alternative embodiment shown in Fig. 26 that shows using a rotatable coupling 135, column 8, lines 48-63. It would be obvious to one of ordinary skill in the art to modify the embodiment of Figs. 14 and 18 to include a rotatable coupling as shown in the embodiment of Fig. 26 in order to obtain increased holding force [answer at page 4].

Appellant argues that there is no motivation to modify the embodiment depicted in Figures 14 and 18 so as to have gripping elements that are rotatably coupled as depicted in Figure 26. We agree with the appellant that :

. . . Lee states that the conditions which require "greater holding forces" are pulling posterior teeth and removing crowns which have been partially cemented but require removal. *Lee*, col. 8, lines 54-63. The conditions are corrected using the crown removal forceps 130, not the ball gripping force[p]s 22 or the crown gripping forceps 30. That

is, the tweezer-like arrangements are described as sufficient for the disclosed purpose, i.e., inserting into the mouth the ball post 22 or crown 81. The situations requiring greater forces, i.e. pulling teeth or cemented crowns, can only be rectified by using the crown removal forceps 130. Thus, it is respectfully submitted that the crown removal forceps 130 is not suitable alternative to the ball gripping forceps 22 or the crown gripping forceps 30 which are used for inserting into the mouth the ball post 24 and the crown 81, respectively [ reply brief at page 5].

In view of the foregoing, we will not sustain the rejection as it is directed to claim 1 and claims 2 to 6 and 8 to 10 dependent thereon.

We will, however, sustain this rejection as it is directed to claims 11 to 24 as these claims do not depend on claim 1 and do not require that the first and second gripping elements be rotatably coupled.

Therefore, the rejection of these claims is sustained for the same reasons as discussed above for the rejection of claims 11 to 15 and 17 to 20 under 35 U.S.C. § 102(b).

We turn next to the examiner's rejection of claim 7 under 35 U.S.C. § 103 as being unpatentable over Lee as applied to claim 1 and further in view of Shank. Recognizing that Lee does not describe a stepped portion, the examiner relies on Shank for teaching a stepped portion and concludes:

It would have been obvious to one of ordinary skill in the art to modify Lee to include the stepped portions of Shank in order to allow clearance for the body of the carried device [answer at pages 4 to 5]

We will not sustain this rejection, as we agree with the appellant that Shank does not cure the deficiencies discussed above with regard to the rejection of claim 1 from which claim 7 depends.

In summary, the examiner's rejection of claims 1 to 10 are not sustained. The examiner's rejections of claims 11 to 24 are sustained.

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

AFFIRMED-IN-PART

TERRY J. OWENS	)
Administrative Patent Judge	)
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MURRIEL E. CRAWFORD	) BOARD OF PATENT
Administrative Patent Judge	) APPEALS
	) AND
	) INTERFERENCES
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STUART S. LEVY	)
Administrative Patent Judge	)

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**Comment [jvn1]:** Type address

MEC/jrg