

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-1470
Application No. 10/122,299

ON BRIEF

Before OWENS, CRAWFORD, and FETTING, 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 6, which are all of the claims pending in this application.

The appellant's invention relates to a subdermal chip (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 reference of record relied upon by the examiner in rejecting the appealed claims is:

Feierbach	5,935,078	Aug. 10, 1999
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THE REJECTION

Claims 1 to 6 stand rejected under 35 U.S.C. § 102(b) as anticipated by Feierbach.

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 December 1, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed September 6, 2005) and reply brief (filed December 19, 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 reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner has rejected claims under 35 U.S.C. § 102(b). We initially note that 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). In support of this rejection, the examiner finds:

Feierbach shows a system for medical use having the limitations as recited in the above listed claims, including: a device (12) that is implanted under the skin of a patient that stores information of the subject, where the information is selected from the group consisting of data or medical records (see col. 8, lines 6-11) which can be read by an external device (14); and where a visible marker (see col. 10, lines 24-30) can be used to help [sic, inform] the patient that it is permissible for an operation to take place [answer at page 3].

The examiner finds that the recitation in claims 2, 4 and 6 of an external visible marking is disclosed in Feierbach at col. 10, lines 24-25.

Appellant argues that Feierbach discloses a communication device rather than a storage device as claimed.

The argument is not persuasive because claims 1 and 5 are set out in comprising format and as such are broad enough to include elements not specifically recited. In addition, Feierbach discloses that the device therein disclosed stores data regarding any physiological attribute of the patient (col. 4, lines 13 to 20).

Appellant also argues that Feierbach does not store data that can be considered medical records. In appellant's opinion, in order for data to be considered medical records it must include identity, healthcare provider, past and present health status and medical examination findings information.

We do not agree. In our view, data that relate to the medical status of the individual are medical records as broadly claimed. The information stored on the device of Feierbach relate to the physiological attributes of the patient and as such is a medical record.

In any case, even if we agreed with the appellant that the information stored on the Feierbach device is not medical record information, the Feierbach device has the capability to store a medical record as such would read on the appellant's device.

In view of the foregoing, we will sustain the examiner's rejection of claim 1. We will also sustain the examiner's rejection of claims 2, 3, 5 and 6 because the appellant has not advanced arguments regarding the separate patentability of these claims.

In regard to claim 4, the appellant argues that Feierbach does not describe an external visible mark or tattoo regarding the identity of the implanted device.

We do not agree. Feierbach clearly discloses a tattoo to indicate the position and identity of the device (col. 10, lines 24 to 26). Therefore, we will also sustain the examiner's rejection of claim 4.

The decision of the examiner is affirmed.

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

AFFIRMED

TERRY J. OWENS
Administrative Patent Judge

MURRIEL E. CRAWFORD
Administrative Patent Judge

ANTON W. FETTING
Administrative Patent Judge

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