

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 JUAN CARLOS ABARNO

Appeal 2006-3162
Application 10/216,307
Technology Center 3700

Decided: April 30, 2007

Before TERRY J. OWENS, ROBERT E. NAPPI, and ANTON W. FETTING,
Administrative Patent Judges.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 48-77, which are all of the pending claims. The rejections of claims 52, 53, 55, 56, 58, 59, 61, 62, 64, 65, 67, 68, 70 and 71 are withdrawn in the Examiner's Answer (Answer 2). Hence, the claims before us are claims 48-51, 54, 57, 60, 63, 66, 69 and 72-77.

THE INVENTION

The Appellant claims a dental implant. Claim 48 is illustrative:

48. A dental implant adapted to be at least partially implanted within an upper or lower portion of a jawbone, said dental implant comprising:

an apical insert adapted to be at least partially inserted in a jawbone, said apical insert including an upper portion and a lower portion each having ends, said lower portion including an outer surface adapted to engage the jawbone, said upper portion including a connection cavity that extends along a longitudinal axis of said apical insert, said connection cavity including a connection surface, said upper end of said upper portion having an opening that provides access to said connection cavity, said apical insert including a plurality of engagement surfaces positioned between said ends of said upper and lower portions;

a coronal base adapted to be at least partially inserted in the jawbone when connected to said apical insert that has been at least partially inserted in the jawbone, said coronal base including a body having a longitudinal axis, said body including an upper engagement surface, a distal end and an internal passageway extending along said longitudinal axis of said body and between said upper engagement surface and the distal end, said distal end and said upper engagement surface each including an opening into said internal passageway, said opening in said distal end adapted to telescopically receive at least a portion of said upper portion of said apical insert, said internal passageway including a plurality of engagement regions adapted to engage a plurality of said engagement surfaces on said apical insert when said coronal base is inserted on said apical insert, said plurality of said engagement surfaces on said apical insert and said plurality of engagement regions on said coronal base enabling said coronal base to be at least partially locked in a plurality of different positions about said longitudinal axis of said apical insert, said internal passageway of said coronal base at least substantially aligned with said connection cavity of said apical insert along said longitudinal axis of said coronal base and apical insert when said coronal base is inserted on said apical insert;

an engagement abutment having an upper and lower section and an internal passageway extending along a longitudinal axis of said engagement

abutment and through said engagement abutment, said upper and lower sections each having ends, each of said ends including an opening into said internal passageway, said opening in said lower end adapted to telescopically receive at least a portion of said upper engagement surface of said coronal base when said engagement abutment is inserted on said coronal base, said internal passageway including at least one surface adapted to engage at least one surface of said upper engagement surface of said coronal base to inhibit rotation of said engagement abutment about said longitudinal axis of said coronal base when said engagement abutment is inserted on said coronal base, said internal passageway of said coronal base and said engagement abutment at least substantially aligned along said longitudinal axis of said coronal base and engagement abutment when said engagement abutment is inserted on said coronal base, said upper end adapted to support a prosthetic tooth or crown; and,

a fastener to hold together said engagement abutment to said coronal base and said coronal base to said apical insert, said fastener including a head and a body, said body adapted to at least partially extend into said internal passageway of said coronal base and said engagement abutment and into said connection cavity of said apical insert when said engagement abutment, said coronal base and said apical insert are connected together, said body of said fastener adapted to be secured to said connection surface in said connection cavity of said apical insert.

THE REFERENCES

Daftary	US 5,810,592	Sep. 22, 1998
Hamada	US 5,863,200	Jan. 26, 1999
Dinkelacker	US 6,164,969	Dec. 26, 2000
Niznick	US 6,287,117	Sep. 11, 2001
Gittleman	US 2003/0013068 A1	Jan. 16, 2003 (filed Jul. 16, 2001)

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 48, 50, 57, 60, 63, 74, and 75 over Gittleman; claims 49 and 51 over Gittleman in view of Dinkelacker; claims 54, 69, 72, and 73 over Gittleman in view of Daftary; claim 66 over Gittleman in view of Hamada; and claims 76 and 77 over Gittleman in view of Niznick.

OPINION

We reverse the aforementioned rejections. We need to address only the sole independent claim, i.e., claim 48.¹

Gittleman discloses “an apparatus to achieve a variable height trans-tissue extension (TTE) useful in matching a prosthesis to underlying implant fixtures to preserve soft tissue shape, improve hygienic care, improve the distribution of load bearing forces and prevent a dissimilar metal, electrolytic effect below the tissue line” (¶ 0003). The apparatus includes a typical implant (30), a series of TTEs (3, 4, 5 and 6) that can be used alone or in combination, a mounting element (2) and a machine screw (7) (¶¶ 0006, 0012-0013). The implant has an upper conic section (33) having a flared lip (34) and an internal surface (36) with a polygonal recess (¶ 0013). Below the upper section is a cylindrical barrel (31) that terminates in a rounded end (32). *See id.* The TTEs have a cylindrical through-hole (9), an upper polygonal recess (14) and a lower polygonal projection (8) (¶ 0012). The lower polygonal projection mates with the polygonal recess in the implant

¹ The Examiner does not rely upon Dinkelacker, Daftary, Hamada or Niznick for any disclosure that remedies the deficiency in Gittleman as to the independent claim (Answer 5-7).

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(¶ 0013). The TTEs alternatively can have a lower mating recess instead of a mating projection. *See id.* The mounting element can be a straight abutment having a countersunk through-hole (19), conic tapers (20, 22), a flat surface (21) and a polygonal projection (23) (¶ 0012). The polygonal projection mates snugly with the TTE's upper polygonal recess. *See id.* The machine screw's shaft extends through the mounting element and the TTE to mate with internal threads in the implant's cylindrical barrel (¶ 0013; Fig. 3).

The Appellant's claim 48 requires "a coronal base adapted to be at least partially inserted in the jawbone when connected to said apical insert that has been at least partially inserted in the jawbone".

The Examiner relies upon Gittleman's TTE as corresponding to the Appellant's coronal base (Answer 3). The Examiner argues that "there is no structure in Gittleman to prevent the apical insert to be driven to such a depth in the jawbone so that the coronal base is at least partially located in the jawbone" (Answer 9). The Appellant argues (Reply Br. 5):

Gittleman discloses in the Abstract and in paragraph 0003 that the TTE is used to preserve "soft tissue shape" when using the apparatus of Gittleman. Soft tissue is known as the tissue surrounding the jawbone, not the jawbone itself. As such, Gittleman does not disclose, teach or suggest that the TTE is designed to be inserted into the jawbone when connected to implant 30. Indeed, the names of the components of Gittleman indicate that implant 30 is a structure to be implanted in the jawbone and the TTE is a spacer designed to extend through and above the soft tissue located above the jawbone.

The Examiner has not provided evidence or technical reasoning which shows that Gittleman's TTE, which is a trans-tissue extension for preserving soft

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tissue shape (Gittleman, ¶ 0003), is capable of being at least partially inserted into a jawbone. The Examiner's mere speculation that the TTE has that capability because Gittleman does not say it lacks that capability is not an adequate basis for a *prima facie* case of unpatentability.

DECISION

The rejections under 35 U.S.C. § 103 of claims 48, 50, 57, 60, 63, 74, and 75 over Gittleman, claims 49 and 51 over Gittleman in view of Dinkelacker, claims 54, 69, 72, and 73 over Gittleman in view of Daftary, claim 66 over Gittleman in view of Hamada, and claims 76 and 77 over Gittleman in view of Niznick, are reversed.

REVERSED

jlbt

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