

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte BRADLEY M. WILKINSON

Appeal 2007-2559
Application 10/228,798
Technology Center 3700

Decided: September 7, 2007

Before DONALD E. ADAMS, ERIC GRIMES, and LORA M. GREEN,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a blood collection set. The Examiner has rejected the claims as anticipated or obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

DISCUSSION

1. CLAIMS

Claims 1, 2, 4-12, and 14-17 are on appeal. Claims 3 and 13 are also pending but have been withdrawn from consideration by the Examiner.

Claim 1 is representative and reads as follows:

1. A blood collection set comprising:
a fixture for connecting said blood collection set to a receptacle;
an intravenous needle assembly including a needle cannula
having a puncture tip; and
a flexible tube extending between said fixture and said needle
assembly, said flexible tube having a first end connected to said
fixture and an opposed second end connected to said intravenous
needle assembly, said flexible tube including a plurality of helical
turns establishing a coiled structure.

Thus, claim 1 is directed to a blood collection set comprising a connecting fixture, a needle assembly, and a flexible tube. The flexible tube includes a “plurality of helical turns establishing a coiled structure.” As stated by the Examiner, the term “coil” is defined as “(1): a series of loops (2): SPIRAL” (Answer 5 (citing Merriam-Webster’s Collegiate Dictionary)). Although the term “coil” encompasses structures other than a spiral, as reflected by the alternative definition of a “coil” as “a series of loops,” because the coil of claim 1 is established by a plurality of helical turns, we interpret claim 1 to require a three-dimensional spiral.

2. PRIOR ART

The Examiner relies on the following references:

Burns	US 5,192,275	Mar. 9, 1993
Vallelunga	US 5,921,969	Jul. 13, 1999

3. ANTICIPATION

Claims 1, 2, 4-8, 10-12, and 14-16 stand rejected under 35 U.S.C. § 102(b) as anticipated by Vallelunga. The Examiner finds that:

Vallelunga discloses a blood collection set having a fixture 19 for connecting the blood connection set to a receptacle, an

intravenous needle assembly including a needle cannula 12 having a puncture tip (unnumbered), a flexible tube 16 extending between the fixture and a needle assembly, where the flexible tube includes a plurality of helical turns establishing a coiled structure.

(Answer 3-4.) The Examiner also finds that “Vallelunga discloses a helical coiled structure because a coiled structure is inherently helical” (*id.* at 5).

In addition, the Examiner finds that, “[a]ssuming arguendo that Vallelunga does not teach a coiled structure, the Vallelunga device can effect a coiled configuration . . . in the shape of a helix. . . . Such a configuration is permissible from the claim language shown in Appellant’s independent claims.” (*Id.* at 6.)

Appellant argues that “Vallelunga does not disclose the claimed *helical* structure of the flexible tube” (Br. 3). Instead, “Vallelunga discloses, as reflected in Column 5, line 25, and in Figure 13, . . . an embodiment in which the flexible tubing (16) is temporarily stored as a *planar* coil inside of the butterfly shield (100) assembly” (*id.*). “There is no spiral, and clearly no helical structure in the reference” (Reply Br. 4). In particular, Appellant argues that “there are several different interpretations of the word ‘coiled’, e.g. a two dimensional spiral, a two dimensional serpentine arrangement as shown in Vallelunga, a series of loops or concentric rings, or as in the claimed invention a three-dimensional helical coil” (*id.*).

We reverse the rejection. Vallelunga describes a butterfly needle connected to a tube connector through flexible tubing (Vallelunga, col. 2, ll. 58-63, and col. 5, ll. 20-22). Vallelunga states that, “[p]rior to use (FIG. 13), the flexible tubing . . . is preferably coiled within [a] butterfly

shield” (*id.* at col. 5, ll. 25-28). Figure 13 of Vallelunga is reproduced below:

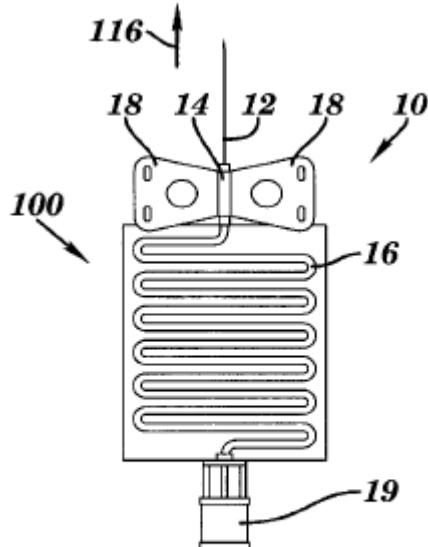


FIG. 13

Figure 13 depicts a butterfly needle 10, a tube connector 19, and flexible tubing 16 in a two dimensional serpentine arrangement.

As discussed above, the term “coil” can be interpreted more broadly than a three-dimensional spiral, and can be interpreted to include the two-dimensional structure depicted in Figure 13. However, claim 1 requires a coiled structure made from a “plurality of helical turns.” We agree with Appellant that Vallelunga does not describe a coil established by a plurality of helical turns, that is, a three-dimensional spiral. In addition, although the Vallelunga device may well be capable of effecting a coiled configuration in the shape of a helix, we do not agree that this is sufficient to anticipate claim 1, which requires a “flexible tube *including* a plurality of helical turns

establishing a coiled structure” (emphasis added). We therefore reverse the anticipation rejection of claims 1, 2, 4-8, 10-12, and 14-16.

4. OBVIOUSNESS

Claims 9 and 17 stand rejected under 35 U.S.C. § 103 as obvious over Vallelunga in view of Burns. Claims 9 and 17 depend from claims 1 and 10, respectively. We have already concluded that the Examiner has not set forth a *prima facie* case that Vallelunga anticipates claims 1 and 10.¹ In addition, the Examiner has not set forth sufficient basis to conclude that claims 1 and 10 would have been obvious over Vallelunga. The Examiner relies on Burns for limitations recited in dependent claims, and has not pointed to any disclosure in this reference that would make up for the deficiencies discussed above. Thus, we conclude that the Examiner has not set forth a *prima facie* case that claims 9 and 17 would have been obvious. We therefore reverse the obviousness rejection of these claims.

OTHER ISSUES

For the reasons discussed above, we have concluded that the Examiner has not set forth a *prima facie* case that Vallelunga anticipates the claims. However, on return of this case, the Examiner should consider whether it would have been obvious to replace the coil described in Vallelunga with a coil established by a plurality of helical turns, such as the helically coiled tube described in U.S. Patent No. 4,846,794 to Hertzler (of record). If so, the Examiner should enter an obviousness rejection.

¹ Like claim 1, claim 10 is an independent claim that is directed to a blood collection set comprising, among other things, a “flexible tube including a plurality of helical turns establishing a coiled structure.”

Appeal 2007-2559
Application 10/228,798

SUMMARY

The Examiner has not shown that the claims were anticipated or would have been obvious to a person of ordinary skill in the art based on the applied references. We therefore reverse the rejections of claims 1, 2, 4-12, and 14-17.

REVERSED

Ssc

DAVID W. HIGHET, VP AND CHIEF IP COUNSEL
BECTON, DICKINSON AND COMPANY
1 BECTON DRIVE, MC 110
FRANKLIN LAKES, NJ 07417-1880