

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LOU BLASETTI
and SHERWIN V. BROOKLINE

Appeal 2007-3661
Application 10/106,248
Technology Center 1700

Decided: February 29, 2008

Before CHUNG K. PAK, CHARLES F. WARREN, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner rejecting, for at least the second time, claims 9 through 12 in the Office Action mailed December 23, 2005. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a)(2005).

The appeal was heard January 17, 2008.

We affirm the decision of the Primary Examiner.

Claim 9 illustrates Appellants' invention of a kit for use in producing a physiological product comprising a container and one or more guides for a cannula, and is representative of the claims on appeal:

9. A kit for use in producing a physiological product comprising:
a sterile container having a first and second chambers, wherein said chambers are connected to each other to permit fluid flow therebetween and said container provides sterile access to said second chamber by a cannula, and
one or more discrete guides separate from said container and from said cannula and configured to engage said cannula selectively to limit the depth to which said cannula can be inserted into said second chamber.

The Examiner relies upon the evidence in these references (Ans. 3):

Kling	US 4,373,526	Feb. 15, 1983
Zolnierczyk	US 4,676,775	Jun. 30, 1987
Dalto	US 5,141,496	Aug. 25, 1992
Wells	US 5,707,331	Jan. 13, 1998

Appellants request review of the ground of rejection under 35 U.S.C. § 103(a) advanced on appeal (App. Br. 8):
Claims 9 and 10 as unpatentable over Wells in view of Zolnierczyk (Ans. 4);
Claims 9 through 12 as unpatentable over Wells in view of Kling or Dalto (Ans. 5); and
Claims 9 through 12 as unpatentable over Zolnierczyk in view of Kling or Dalto (Ans. 7).

Appellants argue the claims in the first ground of rejection as a group, and argue the second and third grounds of rejection with respect to claims 9 and 10 and further separately with respect to claim 11 and claim 12. Thus, we decide this appeal based on the appealed claims. 37 C.F.R. § 41.37(c)(1)(vii)(2005).

The issues in this appeal are whether the Examiner has carried the burden of establishing a prima facie case in each of the grounds of rejection advanced on appeal.

Independent claim 9 is drawn to a kit comprising at least a specified sterile container and at least one specified guide for a cannula which is separate from the container and from the cannula. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the Specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. *See, e.g., In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

With reference to Specification Figs., e.g., 2, 3c, and 3e, the plain language of claim 9 specifies any manner of sterile container 4 having at least any two chambers, for example chambers 6, 8; the chambers connected in any manner permitting fluid flow therebetween, for example, through bridge 10; and the second chamber has any manner of sterile access, for example, through opening 22 in chamber 8, for any manner of cannula, for example cannula 46 connected to syringe 44. The cannula can thus be attached to any manner of syringe or any other apparatus or part thereof. In this respect, the Examiner contends “a syringe . . . is equivalent to a cannula,” and Appellants do not disagree. Ans. 12; App. Br. and Reply Br. in entirety. The depth the cannula can access the second chamber is limited

by any manner of guide capable of engaging the cannula in any manner, for example, guide 48, and interacting in any manner with the sterile access to the second chamber. Specification, e.g., 5, 7: 7-8, and 8.

We interpret the requirement that the cannula guide “engage said cannula selectively to limit the depth” thereof in the second chamber as specifying that a guide in the kit must be capable of limiting the depth of a cannula in the chamber to some extent, however small, without limitation on the dimensions of the guide or the cannula. We find no basis in the context of the claim language or in the Specification to define the term “selectively” other than with its common, ordinary meaning of “characterized by selection.”¹ Thus, one using the kit may or may not decide to use the cannula guide with the container included in the kit when using the container. See Specification, e.g., 8:18-20.

Dependent claim 10 requires that the container of claim 9 is rigid. Dependent claim 11 requires that the cannula guide of claim 10 comprises at least “a hollow tube that fits over the cannula.” Appellants disclose that the guide can be, among other things, “a hollow tube that fits over the cannula and engages the bottom of the syringe.” Specification 8:16-20. In this light, the broadest reasonable interpretation of the term “hollow” is its common, dictionary meaning of “having a cavity, gap or space within,”² and thus, the cannula guide is any tube having a cavity, gap or space to receive a

¹ See, e.g., **selective**, *The American Heritage Dictionary of The English Language* 1578 (4th ed., Boston, Houghton Mifflin Company, 2000).

² See, e.g., **hollow**, *The American Heritage Dictionary of The English Language* 792 (4th ed.).

cannula, regardless of any other interior structural features the tube may have. Dependent claim 12 requires that the kit of claim 11 comprises at least two hollow cannula guide tubes of different lengths.

The terms “comprising” and “having” open the claims to include kits which have at least one sterile container having at least the components specified and at least one (claim 9) or two (claim 12) guides which limits the depth of a cannula in the second chamber. We find no basis in the claim language or in the written description in the specification to interpret the term “having” in a limiting manner. *See, e.g., Vehicular Technologies Corp. v. Titan Wheel Int’l Inc.*, 212 F.3d 1377, 1383 (Fed. Cir. 2000); *Genentech Inc. v. Chiron Corp.*, 112 F.3d 4954, 501 (Fed. Cir. 1997); *In re Baxter*, 656 F.2d 679, 686 (CCPA 1981); *compare University of California v. Eli Lilly and Co.*, 119 F.3d 1559, 1573 (Fed. Cir. 1997)(in a claim encompassing a “cDNA having” an unspecified sequence, “[t]he word ‘having’ still permitted inclusion of other moieties.”) *with In re Deuel*, 51 F.3d 1552, 1555, 1558 (claims 5 and 7 to a “cDNA . . . having the recited sequence” defined “the precise cDNA molecules”).

We find Wells would have disclosed to one of ordinary skill in this art, with reference to Figs. 2 and 4*b*, sterile container 4 having two chambers 6, 8 connected through fluid channel 18, wherein sterile access to second chamber 8 is through opening 15 in cup shaped extension 14 that is covered by membrane 17. Wells, e.g., col. 3, l. 43 to col. 4, l. 6, and col. 5, ll. 35-38. The opening 15 receives “syringe needles to permit fluids to be injected into” chamber 8 “or withdrawn therefrom.” *Id.* col. 3, ll. 60-64; see also, e.g., col. 4, ll. 31-34, and col. 5, l. 66, to col. 6, l. 2. Wells discloses that the

sterile chamber can be used for separation of different substances by centrifugation. In a preferred embodiment, a fibrinogen pellet is separated from plasma and the pellet is extracted from the bottom of chamber 8 with a syringe. *Id.*, e.g., col. 1, ll. 5-10, col. 2, ll. 29-43, and col. 5, l. 58 to col. 6, l. 2.

We find Zolnierczyk would have disclosed to one of ordinary skill in this art, with reference to Figs. 1, 3, 5, and 7-10, bag or container 22, 122 “subdivided into a major chamber” 24, 125 and “a [generally cylindrical] smaller chamber” 36, 132 “which is not originally in communication with the first chamber” 24, 125. Zolnierczyk, e.g., col. 1, l. 57 to col. 2, l. 15, col. 4, ll. 34-55, and col. 7, ll. 22-31. The smaller chamber can include “a combination interior needle sheath, guide and holder permitting desired safety and operational features” and “[b]ayonet locks or the like may also be utilized to insure retention of the needle with respect to the bag.” *Id.*, e.g., col. 2, ll. 25-36.

In Figs. 1, 3, and 5, generally cylindrical smaller chamber 36 has circular sidewall 38 and end portion 40, and includes a separately formed needle guide and membrane piecing element 50 which has upper body portion 52 terminating in pointed end 54 with tip 56. Zolnierczyk col. 4, ll. 45-63, and col. 5, ll. 23-51. Needle and tube assembly 64 includes needle or spike 66, finger gripping handle portion 68, and supply tube 70, wherein needle or spike 66 is joined in “conventional manner to an open end portion of” tube 70 within handle 68 as illustrated. *Id.* col. 5, ll. 3-14. In use, Needle assembly 66 is inserted through end wall 40 until handle portion 68 is against end wall 40 and needle shank 76 lies within cylindrical opening 60

in the center of holder 50. Then, needle assembly 64 and guide 50 are pushed as a unit causing tip 56 of guide 50 to pierce membrane 46 between chamber 36 and major chamber 24. *Id.* col. 5, ll. 15-60, col. 6, ll. 15-33, and col. 9, ll. 8-29, and Figs. 1, 3, and 5.

In Figs. 7-10, bag 122 has locating collar 138 with rounded exterior circular edge 140 and center area 136 on bottom end wall 134 of cylindrical sterilizing chamber 132 and locking collar 142 with slots 144, 146, wherein “[f]unctionally, the upper flange 142 may be thought of as a holding and locking flange with the lower flange 138 being considered a locating or guiding flange.” Zolnierczyk col. 7, ll. 22-46. Spike and holder assembly 150 includes holder 152 and needle or spike 160 with shank portion 158, with holder 152 “serving to located a fluid administration” tube 156 therewithin as illustrated, which “resembles its counterparts in FIGS. 1-6.” *Id.* col. 7, ll. 47-54. Opposed bayonet locks 162 include offset legs 164 and axially extending prongs 166. *Id.* col. 7, ll. 54-60. In similar manner as shown in Figs. 1, 3, and 5, in use, holder 152 is aligned with chamber 132 and pushed through end wall 134 at center area 136 until holder 152 is against end wall 134, wherein “[g]uiding and centering of the needle is thereafter achieved by engagement between the exterior edges 140 of the locating flange 138 and the inside surfaces of the prongs 166.” Then, an axial, compressive force is applied through holder 152 on chamber 132, and the point of spike 160 pierces membrane 148. “With this action, the prongs 166 of holder 152 have engage the set of enlarged width slots 44 [sic, 144],” and twisting assembly 150 “move[s] the prongs 166 into the narrower slots

146, thereby firmly locking the unit against accidental displacement." *Id.* col. 7, l. 61 to col. 8, l. 21.

We find Kling would have disclosed to one of ordinary skill in this art, with reference to Figs. 2 and 4*a-e*, a guide for injection syringes which have a tube-shaped sleeve 1 having tongue 6 with catch 7 which holds a syringe body 5, and stop element 11, wherein the length of travel of the syringe body 5 and needle within sleeve 1 to stop 11 "corresponds to the desired depth of the injection." Kling col. 2, l. 29 to col. 3, l. 57. Sleeve 1 and syringe body 5 are illustrated as separate components that are integrated for use, and the "possibility" of molding these components together is disclosed. Figs. 4*a-e* and 5.

We find Dalto would have disclosed to one of ordinary skill in this art, with reference to Fig. 1, an injection syringe guide with penetration depth adjustment, wherein syringe 2 is separate from and situated within tubular body 4 which further includes frustoconical base 1 having adjustment screw 3 that is positioned within body 4 based on the desired depth of penetration. Dalto, e.g., Abstract, col. 1, ll. 9-31, and col. 1, l. 65 to col. 2, l. 36, and col. 2, ll. 64-67. The syringe guide includes "thrust spring" 9 "to enable the needle to be plunged into the skin" to a "determined depth." *Id.* col. 1, ll. 32-46, and col. 2, ll. 7-36.

We first consider the ground of rejection of claims 9 through 12 over the combined teachings of Wells, Kling, and Dalto. We determine the combined teachings of the references, the scope of which we determined above, provide convincing evidence supporting the Examiner's case that the claimed invention encompassed by these claims, as we interpreted them

above, would have been prima facie obviousness to one of ordinary skill in the medical technology arts familiar with injecting or extracting biological materials into and out of sterile containers. The Examiner finds Wells would have taught a kit of a syringe or cannula and a sterile container which differs from the claimed kit in not disclosing guides for the syringe or cannula that can be used with the container. The Examiner relies on Kling and Dalto for the disclosure therein of tubular guides to adjust the depth of penetration of a syringe or cannula. In this respect, the Examiner determines one of ordinary skill in the art would have been motivated to use the adjustable guides of Kling and Dalto with the syringe or cannula taught by Wells to obtain a desired penetration of Wells' sterile chamber 8 to a desired depth by the syringe or cannula while eliminating manual manipulation of the syringe or cannula for the purpose of safely using the container and syringe or cannula as disclosed by these references. With respect to claim 12, the Examiner further determines that the inclusion of guides of different lengths in the kit would have been within the ordinary skill in the art. Ans. 5-6, 9, and 11-12.

Accordingly, we are of the opinion that the Examiner has established that, prima facie, one of ordinary skill in this art routinely following the combined teachings of Wells, Kling, and Dalto would have reasonably arrived at the claimed kit encompassed by claims 9 through 12, including each and every limitation thereof arranged as required therein, without recourse to Appellants' Specification. *See, e.g., KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007) (a patent claiming a combination of elements known in the prior art is obvious if the improvement is no more than the predictable use of the prior art elements according to their

established functions); *In re Kahn*, 441 F.3d 977, 985-88 (Fed. Cir. 2006); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“[T]he test [for obviousness] is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”); *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985) (skill is presumed on the part of one of ordinary skill in the art).

Therefore, we again consider the record as a whole in light of Appellants’ contentions.³ Appellants do not dispute that Wells would have suggested a kit of a container to one of ordinary skill in this art. Appellants contend that neither Kling nor Dalto disclose guides “separable from a cannula” as each show the syringe attached to the guide. App. Br. 24-25. Appellants contend that one of ordinary skill in the art “would not be motivated to combine the syringes of Kling or Dalto with the centrifuge of Wells,” arguing Kling’s combination of guide and syringe does not allow withdrawal of fluids because the syringe “can only move forward” in the guide, and Dalto’s combination of guide and syringe “would require more force than necessary for withdrawing fluids using a regular syringe.” *Id.* 25. Thus, Appellants argue that the Examiner’s proposed modification would render Wells’ container unsatisfactory for its intended purpose. *Id.* 25-26. Appellants further contend the references would not be combined because “[a]s recited in claim 9, a kit for use in producing a physiological product is disclosed” and the use of the skin-penetrating “syringes of Kling and Dalto

³ An appeal, whether on brief or heard, is decided on the record. 37 C.F.R. § 41.37(c)(1)(vii)(2005) provides in pertinent part: “Any arguments or authorities not included in the brief or reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown.”

are unable or problematic in withdrawing material from containers.” *Id.* 26. Appellants further argue in this respect that Dalto’s syringe is driven into the skin by a spring in the guide and Wells’ container “is not the type of device for which an automated, spring-loaded syringe would even be used.” Reply Br. 1-2. Similarly, Appellants argue Kling’s guide applies “pressure to the skin” and is “designed to reduce pain associated with an injection.” *Id.* 2. With respect to claim 11, Appellants contend that the guides of Kling and Dalto are not “hollow tubes” as claimed. App. Br. 26-27. Appellants contend the combination of references does not suggest a kit with at least two hollow tube cannula guides as claimed in claim 12. *Id.* 27.

We are not persuaded of error in the Examiner’s position by Appellants’ contentions. We disagree with Appellants that one of ordinary skill in the art would not have combined the references and thence have been led thereby to the claimed invention. Both Kling and Dalto disclose tubular guides for syringes that are separate from the syringe prior to receiving the syringe, as well as from Wells’ sterile container, and have a hollow section to receive the syringe, which is all that claims 9 and 11 require as we interpreted them above. Indeed, one of ordinary skill in this art would recognize from Kling and Dalto that the syringes can be inserted into the guides at the time of use, and this person would use the guides provided in the claimed kit in the same manner. We further find no disclosure in either Kling or Dalto from which one of ordinary skill in this would have reasonably inferred that the functioning of the guides involving “forward”

See also Manual of Patent Examining Procedure §§ 1205.02 and 1209 (8th ed., Rev. 3, August 2005; 1200-14 and 1200-48).

movement of the syringe therein would prevent the well known functioning of the plunger of a syringe in withdrawing fluids from a container in the manner that a syringe is used by Wells. Indeed, Appellants do not support their contentions with argument or evidence establishing inoperability in this respect, and thus, have not established that the use of the guides would render Well's container unsatisfactory for its intended purpose.

Furthermore, Wells provides a membrane over the opening in the container sufficient to ensure the sterility thereof, and teaches the use of a syringe to pierce that membrane to inject or withdraw fluids and other material from the container. We determine that one of ordinary skill in this art would have recognized that puncturing skin is similar to puncturing such a membrane, and, in this respect, would thus have further recognized that the guides of Kling and Dalto could be used to puncture the membrane and that the spring in Dalto's guide would assist in puncturing the membrane. Finally, one of ordinary skill in this art would have known that syringe dimensions including its needle or cannula and the depth of penetration of the syringe needle or cannula in a container to extract biological materials therefrom are not standardized in the art and thus, would have reasonably included different size syringe guides in a kit to accommodate syringes, needles, and cannulas of different dimensions.

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of Wells, Kling, and Dalto with Appellants' countervailing evidence of and argument for nonobviousness and conclude

that the claimed invention encompassed by appealed claims 9 through 12 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

Considering now the ground of rejection of claims 9 and 10 over the combined teachings of Wells and Zolnierczyk, the Examiner addresses the difference of the absence of syringe or cannula guides in the teachings of Wells with the contention that Zolnierczyk teaches a needle or cannula 160 having prongs 166 and a holder body 64, 152 as “guides which inherently limit the depth to which the needle can be inserted into a chamber (132) upon engagement with the bag (122).” In this respect, the Examiner determines it would have been obvious to use these teachings for precise control of needle insertion in the Wells’ container. Ans. 5. The Examiner further contends Zolnierczyk does not teach guides separate from the cannula and determines it would have been obvious to separate prongs 166 from holder 152 and needle, or separate holder 152 from the needle and prongs 166 because “making integral (one piece) or separable (two-part) would be a matter of obvious engineering choice.” *Id.* 5.

Appellants contend that Zolnierczyk’s “prongs and holder body do not determine the depth of the needle in the sterilization chamber . . . [because] the depth within the chamber is determined by the chamber itself and its side walls.” App. Br. 17-18 and 21-22; Reply Br. 1. In this respect, Appellants further contend Zolnierczyk’s prongs are used “to lock the assembly in place.” App. Br. 18. Thus, Appellants contend that “[t]here is simply no reason . . . to make the holder 154 [sic, 152] adjustable . . . because the length of the needle must be determined with regard to the length of sterilizing chamber 132 to ensure proper operation.” Reply Br. 1.

We determine that one of ordinary skill in this art would have recognized from Zolnierczyk's teachings that the extent needle or spike 66, 160 can penetrate into first chamber 36, 132 in order for the bag to operate as disclosed is determined from the dimensions of that chamber. The length of needle or spike 66, 160 so determined extends from handle 68, 152 in needle assemblies 64, 150, which handle 68, 152 covers the connection of needles or spikes 66, 160 with tubes 70, 156. This person would have recognized that the needle is guided by the components of chamber 36, 112 and prongs 166, and that handle 68, 152 in contacting the end wall of chambers 36, 112 acts therewith to stop the forward movement of the needle or spike. We further determine that this person would have recognized that prongs 166 of bayonet locks 162 of needle assembly 150 engage corresponding slots thus locking the needle assembly 150 in place for bag operation, but do not limit penetration. *See above* pp. 6-7. Wells teaches extracting a pellet of fibrinogen from the bottom of container chamber 8 with a syringe without means to center or limit the penetration of the syringe other than the structure of the syringe. *See above* p. 6.

On this record, we agree with the Examiner that one of ordinary skill in this art routinely following the combined teaching of Wells and Zolnierczyk would have modified the teachings of Wells to use needle or spike assembly 64, 150 of Zolnierczyk in place of Wells' syringe to inject or withdraw fluids from Wells' sterile container chamber 8. We do so because needle or spike 66, 160 would pierce membrane 17 of opening 15 of extension 14 of the container by manually pushing the needle assemblies through the membrane to any extent until either the handle 68, 152 are

against extension 14 or needles 66, 160 strike the bottom of the container, as would be the case with Well's syringe. In this arrangement, handle 68, 152 in contacting extension 14 acts therewith to stop the forward movement of the needle or spike. A kit containing Wells' container and Zolnierczyk's needle or spike assembly 64, 150 differs from the claimed kits encompassed by the claims in that handle 68, 152 is not separate from needle or spike 66, 160.

In this respect, We disagree with the Examiner that one of ordinary skill in this art would have been led by the combined teachings of Wells and Zolnierczyk to provide a separate handle 68, 152, separate from spike 66, 160 and tube 70, 156, in a kit with Wells' container. Indeed, this person would have recognized from Zolnierczyk that not only does handle 68, 152 act to limit the penetration of needle or spike 66, 160 in a container but it covers the connection between spike 66, 160 and tube 70, 156. Thus, on this record, we agree with Appellants that the references provide no reason to make handle 68, 152 adjustable and thus, provide it separately in a kit.

Accordingly, we are of the opinion that one of ordinary skill in this art routinely following the combined teachings of Wells and Zolnierczyk would have arrived at a kit containing Wells' container and Zolnierczyk's needle or spike assembly, but not a claimed kit containing Wells' container and a guide for a syringe or cannula separate from the syringe or cannula as encompassed by claims 9 and 10. *See, e.g., Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1050-54 (Fed. Cir. 1988).

Therefore, in the absence of a prima facie case of obviousness we reverse the ground of rejection of claims 9 and 10 over Wells in view of Zolnierczyk under 35 U.S.C. § 103(a).

We also fail to find a prima facie case of obviousness in the ground of rejection of claims 9 through 12 over the combined teachings of Zolnierczyk, Kling, and Dalto. The Examiner finds fluid communication between the first and second chambers of Zolnierczyk's bag is provided by "a pierceable membrane." Ans. 7. The Examiner determines the bag and needle or spike assembly 64, 150 of Zolnierczyk differ from the claimed kit in that handle 68, 152 is not separable from needle or spike 66, 160 in needle or spike assembly 64, 150. The Examiner thus determines that the separable guides for adjusting the penetration of a cannula or syringe taught by Kling and Dalto would have suggested to one of ordinary skill in this art that it would have been obvious to adjust the penetration of needle or spike 66, 160 by employing Kling's tubular guide or Dalto's adjustable guide. Ans. 7-8. Appellants rely on contentions concerning Zolnierczyk made with respect to the prior ground of rejection and further contend that Kling and Dalto do not disclose or suggest the features missing from Zolnierczyk.

We agree with Appellants. We determined above that one of ordinary skill in this art would not be led by the combination of Zolnierczyk and Wells to a kit with a guide for a syringe or cannula separate from Zolnierczyk's needle or spike assembly. We further find no disclosure or suggestion in the combined teachings of Zolnierczyk, Kling, and Dalto which would lead one of ordinary skill in the art to such a modification of Zolnierczyk's needle or spike assembly. Indeed, both Kling and Dalto

Appeal 2007-3661
Application 10/106,248

discloses separate guides for syringes which, as disclosed therein, do not have a handle, and such teachings of separate guides do not provide the motivation to separate the handle from the rest of Zolnierczyk's needle or spike assembly.

Therefore, in the absence of a prima facie case of obviousness we reverse the ground of rejection of claims 9 through 12 over Zolnierczyk in view of Kling or Dalto under 35 U.S.C. § 103(a).

In summary, we have affirmed the ground of rejection of claims 9 through 12 over Wells in view of Kling or Dalto and have reversed the grounds of rejection of claims 9 and 10 over Wells in view of Zolnierczyk and of claims 9 through 12 over Zolnierczyk in view of Kling or Dalto.

The Primary Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

PL Initial
sld

CLARK & BRODY
1090 VERMONT AVENUE, NW
SUITE 250
WASHINGTON, DC 20005