

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN D. ESKSURI, JAMES G. HANSEN,
BRIAN J. LOWE, and JOHN M.K. DANIEL

Appeal 2008-2015
Application 10/159,079
Technology Center 3700

Decided: August 12, 2008

Before DONALD E. ADAMS, ERIC GRIMES, and MELANIE L.
MCOLLUM, *Administrative Patent Judges*.

McCOLLUM, *Administrative Patent Judge*.

DECISION ON APPEAL

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

STATEMENT OF THE CASE

Claims 1-4, 6-9, 12, 16-20, 22-25, 28, 32, and 33 are on appeal. Claims 5, 11, 13-15, 21, 27, and 29-31 are also pending but have been withdrawn from consideration by the Examiner. We will focus on claim 1, the broadest claim on appeal, which reads as follows:

1. A guidewire for use in a medical procedure, comprising:
an elongated core wire having a proximal section and a distal section;

a distal stop disposed about the distal section of said elongated core wire, the distal stop comprising an enlarged outer diameter portion of the elongated core wire; and

a proximal stop fixed to and about a portion of said elongated core wire proximal the distal stop, the proximal stop comprising a polymeric member configured to deform when an intravascular device is advanced thereon.

Claims 1-4, 6-8, 12, 16-20, 22-24, 28, 32, and 33 stand rejected under 35 U.S.C. § 103(a) as obvious over Boylan (US 6,602,272 B2, Aug. 5, 2003) in view of Kletschka (US 6,443,926 B1, Sep. 3, 2002).

Claims 9 and 25 stand rejected under 35 U.S.C. § 103(a) as obvious over Boylan in view of Kletschka and Hinohara (US 5,465,733, Nov. 14, 1995).

The Examiner relies on Boylan for disclosing “a guidewire 18 with a distal stop in the form of a sphere 56 fixed thereto, . . . wherein guidewire 18 is disposed in a restraining sheath or ‘intravascular device’ 46” (Ans. 3).

The Examiner relies on Kletschka for teaching “an elastomeric O-ring 130 disposed on a proximal end of a guidewire 44 so that a user can longitudinally slide guidewire 44 relative to a catheter wall 148” (*id.*). The Examiner concludes that it would have been obvious “to have provided a

proximal stop in the form of an elastomeric O-ring, as taught by Kletschka, on the Boylan et al. guidewire, to prevent fluid from leaking and to allow a user to slide guidewire 18 relative to the wall of intravascular device 46” (*id.*). The Examiner argues that Kletschka’s O-ring “seal 130 is fixed or ‘attached’ to a proximal portion of core wire 44 otherwise it would not work for its intended purpose of preventing fluid leakage” (*id.* at 5).

Appellants argue that the “combination of Boylan et al. and Kletschka does not teach or disclose ‘a proximal stop *fixed to and about* a portion of said elongated core wire’” (Amended App. Br. 6). In particular, Appellants argue that, “[f]rom the Figures and corresponding description in Kletschka, there is nothing that teaches or would suggest that the seal (130) in Figures 14-22 is ‘fixed to and about’ the guidewire” (*id.* at 6-7). “Furthermore, nowhere else in the Specification does Kletschka teach or suggest the seal being fixed to or attached to the guidewire. In fact, according to Figures 21 and 22, it appears that seal (130) is attached to the catheter (148) and not to the guidewire (44).” (*Id.* at 7.)

ISSUE

The issue is whether the Examiner has set forth a *prima facie* case that Kletschka’s O-ring seal constitutes a proximal stop fixed to and about a wire.

FINDINGS OF FACT

1. Kletschka describes an angioplasty device comprising a catheter containing a guidewire 44, the catheter being connected at its distal end to a trap/barrier 38 for “prevent[ing] physiologically significant particles from leaving the treatment site” (Kletschka, col. 6, ll. 23-48).

2. In Figures 14, Kletschka depicts a trap catheter having a seal 130, “such as an elastomeric O-ring . . . , that prevents fluid from leaking through the guidewire port 34 and that allows the guidewire 44 to move relative to the catheter wall 148” (*id.* at col. 14, ll. 1-25).

3. Kletschka states that an O-ring is “particularly desirable because the user can slide the guidewire 44 longitudinally relative to the catheter” (*id.* at col. 14, ll. 25-28).

4. Kletschka Figures 21 and 22 are reproduced below:

FIG. 21

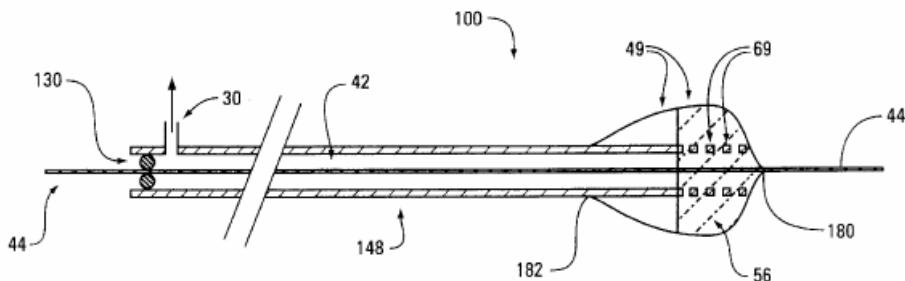
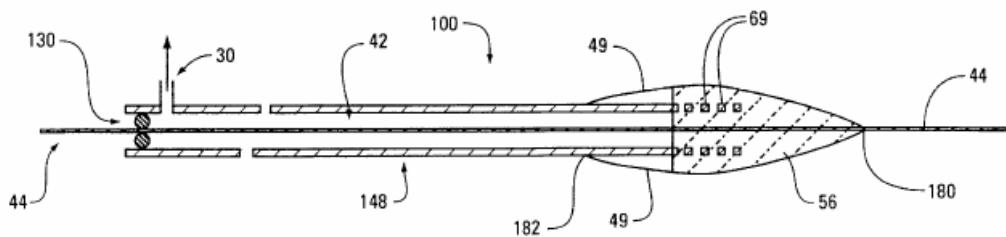


FIG. 22



These Figures depict views of a trap catheter, “in which the trap 38 is actuated by a translation between the guidewire 44 and the catheter wall 148” (*id.* at col. 15, ll. 22-25).

5. In Figures 21 and 22, “a first end **180** of the struts **49** is connected to the guidewire **44** and a second end **182** of the struts **49** is attached to the catheter wall **148**. Translating the guidewire **44** (i.e., moving the guidewire in an axial direction) relative to the catheter wall **148** biases the first end **180** away from the end **182**.” (*Id.* at col. 15, ll. 25-30.)

6. Figures 21 and 22 also show that, when the guidewire is moved axially, seal 130 appears to stay in place relative to catheter wall 148, specifically next to suction port 30, and therefore appears to move relative to the guidewire (*id.* at Fig. 21-22).

ANALYSIS

As argued by Appellants, Figures 21 and 22 appear to show that, when the guidewire is moved axially, the guidewire moves relative to the seal (Findings of Fact 4-6), indicating that seal 130 is not fixed to the guidewire. In response, the Examiner argues that seal 130 is fixed to the wire or “it would not work for its intended purpose of preventing fluid leakage” (Ans. 5). We disagree. Instead, we agree with Appellants that the Examiner has not set forth a *prima facie* case that Kletschka’s O-ring seal constitutes a proximal stop fixed to and about a wire as is required by claim 1. Therefore, we reverse the obviousness rejection of claim 1 and of claims 2-4, 6-8, 12, 16-20, 22-24, 28, 32, and 33, which depend from claim 1.

Claims 9 and 25 ultimately depend from claim 1. We have already concluded that the Examiner has not set forth a *prima facie* case that Boylan and Kletschka render claim 1 obvious. The Examiner relies on Hinohara for limitations recited in dependent claims, and has not pointed to any disclosure

in this references that would make up for the deficiencies discussed above (Ans. 4). Thus, we conclude that the Examiner has not set forth a prima facie case that claims 9 and 25 would have been obvious. We therefore reverse the obviousness rejections of these claims.

CONCLUSION

The Examiner has not shown that the claims would have been obvious to a person of ordinary skill in the art based on the applied references. We therefore reverse the obviousness rejections of claims 1-4, 6-9, 12, 16-20, 22-25, 28, 32, and 33.

REVERSED

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