

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte DAVID K. SWANSON, ROBERT BURNSIDE,
JAMES G. WHAYNE, and DORIN PANESCU

Appeal 2008-4300
Application 10/303,079
Technology Center 1600

Decided: December 16, 2008

Before LANCE LEONARD BARRY, DEMETRA J. MILLS, and
RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

REQUEST FOR REHEARING

This is a Request for Rehearing under 37 CFR § 41.52(a).

The following claims are representative.

38. A tissue treatment method, comprising:
 initiating a tissue coagulation procedure;
 monitoring impedance at at least two different frequencies during the
tissue coagulation procedure; and
 adjusting the tissue coagulation procedure in response to the
monitored impedance at at least two different frequencies being indicative of
a viable tissue to non-viable tissue transition.

41. A tissue treatment method as claimed in claim 38, further comprising the
step of:
adjusting the tissue coagulation procedure while continuing to coagulate
tissue in response to the monitored impedance at at least two different
frequencies being indicative of a loss of tissue contact.

44. A tissue treatment method as claimed in claim 38, wherein the step of
initiating a tissue coagulation procedure comprises supplying ultrasonic
energy to the tissue.

45. A tissue treatment method as claimed in claim 38, wherein the step of
initiating a tissue coagulation procedure comprises initiating a cryogenic
tissue coagulation procedure.

Cited References

Koch	US 4,474,179	Oct. 2, 1984
Nardella	US 5,713,896	Feb. 3, 1998
Behl et al	US 5,954,717	Sep. 21, 1999
Edwards	US 5,964,755	Oct. 12, 1999

This is a decision on Appellants' Request for Rehearing of our earlier Decision entered September 24, 2008. Initially, we note that Appellants are not asking us to reconsider our decision with respect to the anticipation rejection of claims 29, 31, 34, and 37 over Koch, or the rejection of claims 29, 30, and 31 over Behl.

Appellants request that we revisit our rejection of claim 41 as set forth in the discussion of claims 32, 33 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Behl in view of Nardella, and the rejection of claims 44 and 45 with respect to the rejection of claims 35, 36, 44, 45 under 35 U.S.C. § 103(a) as being unpatentable over Behl in view of Edwards. (Reh'g, 3-4.)

The basis of the request is Appellants' disagreement with the Board's finding that Appellants had not complied with the requirement of 37 CFR § 1.37(c)(vii) (2006) (Any claim argued separately should be placed under a subheading identifying the claim by number).

According to Appellants, specific substantive arguments for claims 41, 44 and 45 as required under 1.37(c)(vii) (2006) were set forth in the arguments section of the Brief, at page 24, albeit not under a separate heading. (Reh'g, 3-4.)

We acknowledge that we reversed the anticipation rejection of claim 38 over Behl. Since claims 41, 44 and 45 are dependent upon claim 38, and therefore incorporate all their limitations, we reverse the rejection of these claims over Behl in view of Nardella, and Behl in view of Edwards as the Examiner did not explain how the additional references compensated for their deficiencies in Behl.

Thus we reverse the rejection of claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Behl in view of Nardella, and the rejection of claims 44 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Behl in view of Edwards.

The request for rehearing is granted.

Appeal 2008-4300
Application 10/303,079

GRANTED

cdc

HENRICKS SLAVIN AND HOLMES LLP
SUITE 200
840 APOLLO STREET
EL SEGUNDO CA 90245