

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FREDERICK LICCIARDI

Appeal 2008-4792
Application 11/104,799
Technology Center 3700

Decided: January 15, 2009

Before DEMETRA J. MILLS, RICHARD M. LEBOVITZ, and JEFFREY
N. FREDMAN, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1, 3-10, 13, 15-20, 24, 25, 27, 29, and 30. Jurisdiction for the appeal is under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

The claims are directed to a speculum having an imaging device. A speculum is medical device that allows a physician to dilate a body orifice to present a larger field of view (Spec. 1: ¶ 2). An exemplary speculum has two blades (Spec. 5-6: ¶¶ 14-15; Fig. 1). The imaging device is rotatably attached to a distal end of a speculum blade. The imaging device can be for ultrasound, x-ray, infra-red, etc. (*id.* at 5: ¶ 13).

Claims 1, 3-10, 13, 15-20, 24, 25, 27, 29, and 30 are appealed.¹ The claims stand rejected by the Examiner as follows:

1) Claims 1, 3-10, and 25 under 35 U.S.C. § 102(e) as anticipated by Wong (US 6,960,166 B1, Nov. 1, 2005) (Ans. 3) and

2) Claims 13, 15-20, 24, and 27, 29, and 30 under 35 U.S.C. § 103(s) as obvious in view of Wong and Rakocz (US 6,276,934 B1, Aug. 21, 2001) (Ans. 3).

Claim 1 is representative of the rejected claims and reads as follows:

1. An apparatus, comprising:

a speculum including first and second blades which, when the speculum is in a first configuration, are insertable into a body orifice, the first and second blades being movably coupled to one another for movement from the first configuration to a second configuration in which the first and second blades are separated from one another to expand the body orifice; and

a first imaging device rotatably attached to a distal end of the first blade.

¹ The Examiner included claim 28 in the rejection. However, claim 28 was canceled and is not pending.

ISSUE

Does Wong describe a speculum with “a first imaging device rotatably attached to a distal end of the first blade” as recited in independent claim 1?

LEGAL PRINCIPLES

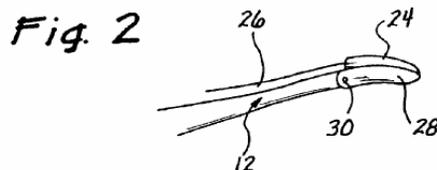
During examination proceedings, claim terms are given “the broadest reasonable meaning . . . in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997)

The term “a” is an indefinite article which is customary interpreted to mean “at least one”, permitting the inclusion of additional elements which are not recited in the claim. *KCJ Corp. v. Kinetic Concepts Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000).

FINDINGS OF FACT (FF)

The Wong patent

1. Wong describes a speculum equipped with an ultrasound probe (Wong, Abstract).
2. Wong's Figure 2, reproduced below, shows a speculum having an ultrasound probe attached to a hinged portion of a speculum blade.



Wong's Figure 2 shows a speculum having an ultrasound probe attached to it.

3. A "distal hinged portion **28** of the blade **12**" is "pivotally attached to the remaining blade portion" by a hinge **30** (*see* Wong, at col. 5, ll. 18-20). The ultrasound probe **24** with power cord **26** is mounted to the distal hinged portion **28** (*id.* at col. 5, ll. 34-42).

4. The blade **12** has two distal ends: a distal end of the hinged portion **28** and a distal end of the "remaining blade portion" to which the hinge **30** is attached.

5. Wong states that the arrangement shown in Figure 2 permits the direction of the probe to be physically adjusted and maneuvered when in use (Wong, at col. 5, ll. 20-23; at col. 3, ll. 31-37).

Comparison between the prior art and Wong

6. Claim 1 is directed to a speculum "including first and second blades" which are "movably coupled to one another."

7. "[A] first imaging device is rotatably attached to a distal end of the first blade."

8. Appellant does not dispute that Wong's speculum meets the limitations of claim 1 (*see* FF6) of a speculum with first and second blades which are movably coupled.

9. Appellant also does not dispute that Wong's ultrasound probe (FF1-2) is an "imaging device" as required by claim 1 (*see* FF7).

ANTICIPATION BY WONG

The issue in this rejection is whether Wong describes a speculum with an ultrasound probe "rotatably attached to a distal end of" the first speculum

blade as recited in claim 1. As shown in Figure 2 of Wong, an ultrasound probe **24** is mounted on “a distal hinged portion of the blade **12**” (FF3; Wong, at col. 5, ll. 18-20). This portion contains the probe **24** and is “pivotally attached to the remaining blade portion” at its distal end (FF3-4).

We find:

10. The term “pivot” as used by Wong means “rotates or swings.”²
11. Thus, Wong describes an “imaging device” (ultrasound probe **24**) which rotates (“pivotally attached”) and therefore is “rotatably attached” to the “distal end” of the remaining blade portion of Wong’s device (FF4), meeting the limitation of claim 1 of an imaging device “rotatably attached to a distal end of” a speculum blade. Appellants acknowledge this fact, stating that Wong’s probe **24** “is limited to pivoting about the hinged point” (App. Br. 5-6).

Appellant contends:

claim 1 recites an imaging device rotatably attached to the blade of the device whereas Wong discloses a transducer 24 connected to a blade portion 28 of the blade 12, wherein the rotatable element is the blade portion 12. The transducer 24 itself is not directly rotatable relative to the blade 12 of the Wong device.

(App. Br. 5).

This argument is not persuasive. Claim 1 recites that the “imaging device” is “rotatably attached to a distal end of the first blade.” Wong shows an imaging device which rotates with respect to *a distal end* of a portion of the blade 12 (FF3). There is no language in claim 1 that would require the device to be rotatably attached to the *distal-most* portion of the blade. To the contrary, the claim language utilizes the term “a” which is an indefinite

² The American Heritage Dictionary of the English Language 1000 (1976).

article that is reasonably interpreted to permit the inclusion of additional elements, including a distal end of the remaining blade portion in addition to the distal end of the hinged portion **28** (FF4). *KCJ Corp. v. Kinetic Concepts Inc.*, 223 F3d at 1356. That is, the claim does not exclude the blade from having more than one distal end. Under this reasonable interpretation, the probe **24** is clearly attached to a distal end of a blade and is rotatable relative to the remaining portion of the blade **12**, satisfying the limitations of claim 1.

Appellant also argues that “Wong’s hinged transducer configuration has a very limited degree of angular movement with respect to the speculum” (App. Br. 5). Appellant states that Wong’s probe **24** “is limited to pivoting about the hinged point” and is obstructed from rotating “about the hinge” (*id.* at 5-6). Appellant also asserts that “employing a distal portion of the speculum/blade comprising a hinged platform” as in Wong’s device “would compromise the utility of the device of claim 1” because it would “compromise a field of vision of a physician or user of the device” (Reply Br. 4).

Appellant appears to be reading claim limitations that do not appear in claim 1. Claim 1 states that the imaging device is “rotatably attached” to the first blade distal end. Contrary to Appellant’s argument, the claim does not specify a degree of rotation that would be necessary to meet the limitation. Giving the terms in a claim their broadest reasonable interpretation (*see In re Morris*, 127 F.3d at 1054), we interpret the phrase “rotatably attached” to encompass any degree of rotation by the imaging device. Wong’s ultrasound probe **24** is pivotally attached to blade **12** and therefore can rotate

around the blade, satisfying the “rotatably attached” limitation, irrespective of how much rotation it is capable of performing.

Appellant argues, but provides no reasonable basis for that assertion that the claim excludes the device from being mounted on hinged platform which is attached to “a” distal end of the blade (*see* Reply Br. 4). Appellant does not identify language in the claim which would restrict it from reading on the configuration described in the Wong patent.

For the reasons stated above, we affirm the rejection of claim 1.

OBVIOUSNESS REJECTION

Claims 13, 15-20, 24, 27, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Wong and Rakocz (Ans. 3).

The Examiner states that “Wong shows the claimed invention, as discussed above, except for a processing arrangement and an output arrangement and the imaging device being wireless” (Ans. 3). The Examiner finds that Rakocz teaches these missing features and that it “would have been obvious to . . . provide the apparatus of Wong with a processing arrangement and a display arrangement, as taught by Rakocz, so that the image may be controlled and viewed remotely” and “to utilize a wireless connection, in order to make the system less bulky and easier to use” (Ans. 4).

Appellant argues as he did for the rejection of claim 1, but does not further identify any infirmity with the Examiner’s findings and reason to combine the references with respect to the rejection of independent claim 13 and others (*see* App. Br. 6-7). As the Examiner had a reasonable basis for combining the prior art to make the subject matter of Claims 13, 15-20, 24,

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27, 29, and 30, we affirm the rejection of all the claims for the reasons given by the Examiner.

CONCLUSIONS OF LAW

Wong describes a speculum with “a first imaging device rotatably attached to a distal end of the first blade” as recited in independent claim 1. We affirm the anticipation rejection of claim 1. As separate arguments for the patentability of claims 3-10 and 25 were not provided, we affirm the rejection of these claims, as well. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We affirm the obviousness rejection of claims 13, 15-20, 24, and 27, 29, and 30.

TIME PERIOD

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

AFFIRMED

LP

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