The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JORGEN K. SMEDEGAARD,
KIM STEENGAARD and HENNING MUNK EJLERSEN

_____

Appeal No. 2001-2669
Application 09/043,950

_____

HEARD: September 19, 2002

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Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Jorgen K. Smedegaard et al. appeal from the final rejection of claims 1 through 3, all of the claims pending in the application.

THE INVENTION

The invention relates to "injection needles mounted in needle hubs, the needles having an injection part with a skin piercing obliquely cut end and being fastened in the needle hub

for mounting on a syringe" (specification, page 1).

Representative claim 1 reads as follows:

1. A needle assembly comprising an injection needle and a needle hub mountable on a syringe, wherein said hub includes a center portion securing said injection needle in said hub, wherein said needle has an injection part projecting axially from said center portion and terminating in a skin piercing obliquely cut end, where the length of the injection part lies in the interval 4-6 mm.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Crossman 5,015,235 May 14, 1991

Rufenacht & Latchaw, "Table 5. Conversion Chart for MM, Inch, French, and Gauge," p. 256, (Rufenacht)[1]

THE REJECTIONS

Claims 1 and 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Crossman.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Crossman in view of Rufenacht.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 13 and 16) and to the examiner's final

[1] Although the copy of the Rufenacht reference which is of record does not bear a publication date, the appellants do not dispute that it is prior art with respect to the claimed invention.

rejection and answer (Paper Nos. 8 and 14) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.[2]

DISCUSSION

I. The 35 U.S.C. § 102(b) rejection

Crossman discloses a hypodermic needle assembly comprising a stainless steel needle 11 having a obliquely cut, skin-piercing end 18, a molded plastic needle hub 12 having a central bore firmly bonded to the needle, and a plurality of molded plastic depth adjusters 15. Of the relationship between these elements, Crossman teaches that

> [i]n the example being described, the needle 11 projects 12.5 mm from the end of the hub 12 and it is not easy to control the depth to which the needle is inserted in the patient.
>
> Accordingly, . . . a depth adjuster 15 can be fitted around the hub as shown in FIG. 2, which shows that a cylindrical end 19 of the adjuster extends beyond the hub towards the point of the needle and is spaced from it and effectively limits the extent to which the needle can be inserted in the patient. . . .
>
> Alternative adjusters 15 are provided with different lengths of the cylindrical portion 19 so that, by choosing the appropriate adjuster, and fitting it over the hub before the needle is inserted, the

[2] According to the examiner (see page 6 in the answer), the inclusion of claim 2 in the statement of the 35 U.S.C. § 102(b) rejection set forth in the final rejection stems from a typographical error.

> desired extent of insertion can be achieved without difficulty. FIG. 2 shows one adjuster in solid lines and an alternative adjuster in chain lines which would restrict the extent of penetration of the needle to 4 mm. The solid line adjuster 15 would allow penetration up to 8 mm [column 2, lines 5 through 29].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

As indicated above, claim 1 requires the needle assembly recited therein to comprise a needle and a hub having a center portion securing the needle in the hub, wherein "said needle has an injection part projecting axially from said center portion and terminating in a skin piercing obliquely cut end, where the length of the injection part lies in the interval 4-6 mm." The appellants' specification explains that the 4-6 mm length reduces the risk of off-target injections intended for the sub-cutis layer, and also enables the use of thin and thin walled needles

with a reduced risk of cracking. The examiner's position that Crossman meets these claim limitations rests on the proposition that Crossman's hub 12 and depth adjuster 15 together constitute a hub as recited in claim 1, and that the portion of Crossman's needle 11 projecting beyond the cylindrical end of the adjuster constitutes an injection part projecting axially from the center portion of the hub, which injection part would have a length of 4 mm in the case of the adjuster shown in phantom (chain) lines in Crossman's Figure 2. This analysis is unsound, however, for at least two reasons.

To begin with, Crossman's description of hub 12 and adjuster 15 as separate elements belies any notion that a person of ordinary skill in the art would view the adjuster as part of the hub. The examiner's interpretation to the contrary runs counter to the express teachings of the reference. The injection part of the needle 11 projecting axially from the center portion of the hub 12 has a length of 12.5 mm, not 4-6 mm as called for in claim 1.

Furthermore, even if Crossman's adjuster 15 were considered to be a component of the hub, the length of the part of the needle 11 projecting axially from the hub center portion which secures the needle would still be 12.5 mm, not 4 mm as asserted

by the examiner. Given the spatial relationship between the needle 11, hub 12 and adjuster 15 shown in Crossman's Figure 2, a person of ordinary skill in the art would not view the adjuster as a part of the center portion of the hub which secures the needle as recited in claim 1.

Thus, Crossman does not disclose each and every element of the needle assembly set forth in claim 1. Consequently, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of claim 1, and dependent claim 3, as being anticipated by Crossman.

II. The 35 U.S.C. § 103(a) rejection

In addition to not teaching a needle assembly meeting the above noted limitations in claim 1, Crossman would not have suggested same to a person having ordinary skill in the art. As the Rufenacht reference does not cure this deficiency, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 2, which depends from claim 1, as being unpatentable over Crossman in view of Rufenacht.

SUMMARY

The decision of the examiner to reject claims 1 through 3 is reversed.

REVERSED

CHARLES E. FRANKFORT Administrative Patent Judge	)	
	)	BOARD OF PATENT
	)	APPEALS AND
JOHN P. MCQUADE Administrative Patent Judge	)	INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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