

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte JAMES M. WILCKO

Appeal No. 2002-0893
Application No. 09/480,604

ON BRIEF

Before COHEN, ABRAMS and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 11-15, 22-27, 33 and 34. In the final rejection (Paper No. 5), claims 6-10, 17-21, 29-32 and 35-49 were allowed and claims 2-5, 16 and 28 were objected to as depending from

form. Additionally, claim 15 was amended (Paper No. 11) to correct an informality (see page 2 of appellant's brief, Paper No. 10).

BACKGROUND

The appellant's invention relates to a set of endodontic instruments for use in performing root canal therapy on a tooth. Independent claim 1 is illustrative of the invention and reads as follows:

1. A set of endodontic instruments for use in performing root canal therapy on a tooth, each instrument having a proximal end and a distal end, a shaft extending from said proximal end to a location spaced from said proximal end toward said distal end, a cutting head at said location including a frusto-conical cutting surface having a base end and a second end spaced from said base end in the direction toward said distal end, said cutting surface tapering inwardly from said base end toward said second end, and a follower extending from said second end of said cutting surface to said distal end, the cutting surfaces of the instruments of said set having different lengths and different angles of taper between said base end and said second end thereof.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Martin et al. (Martin)	4,190,958	Mar. 4, 1980
Senia et al. (Senia)	4,850,867	Jul. 25, 1989

Claims 11 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Senia in view of Cossellu and Martin.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 12) for the examiner's complete reasoning in support of the rejections and to the brief and reply brief (Paper No. 13) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Senia, the jumping off point of the examiner's obviousness rejections, discloses an endodontic instrument comprising a non-cutting pilot segment 10, which responds to the follower recited in claim 1, a cutting segment 14 and a shaft segment 16. The examiner (answer, page 3) characterizes the cutting segment 14 as frusto-conical and appellant does not take issue with this characterization. The examiner concedes on page 4 of the answer that Senia does not specifically disclose a set of different sized

broaching portion 14. The examiner contends that Cossellu discloses that the length of the cutting head and the angle of the cutting surface with respect to the shaft axis (the angle of taper) varies from one instrument in the set to another (answer, page 4).

Appellant, on the other hand, argues that Cossellu provides no such disclosure. After carefully reviewing the disclosure of Cossellu and the respective positions of the examiner, as set forth on pages 5-6 and 7-8 of the answer, and of the appellant, as set forth on pages 6-8 of the brief, we find ourselves in agreement with appellant that Cossellu does not teach or suggest that the cutting heads (broaching portions) of the series of broaches have different lengths and angles of taper.

From our perspective, the disclosure of Cossellu in column 2, lines 42-53, and column 3, lines 36-40, conveys that the axial dimension D of the broaching portion is constant for all of the broaches of the series. The only dimensions that Cossellu clearly discloses as varying over the series are the diameter, the distance of the broaching portion 14 from the first coronal portion 12 and the distance of the broaching portion from the apical end 24.

As for the angle of taper of the broaching portion, Figure 2 clearly conveys that this is a constant for the entire series from broach 1 to broach 9. The examiner has

illustrate that the angle of taper varies between different broaches of the series. The examiner is correct that drawings can be relied upon to establish relationships between the various components which are *clearly* depicted therein. See, e.g., Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555,1565, 19 USPQ2d 1111, 1118 (Fed. Cir. 1991), In re Mraz, 455 F.2d 1069, 1072, 173 USPQ 25, 27 (CCPA 1972), In re Heinle, 342 F.2d 1001, 145 USPQ 131 (CCPA 1965) and In re Wolfensperger, 302 F.2d 950, 133 USPQ 537 (CCPA 1962). We observe, however, that the Cossellu drawings are not indicated as being to scale and are inconclusive as to whether or not the lengths and angles of taper of the blending portions 26 of the broaching portions are changing over the series, and thus cannot be relied upon for disclosure of these features. Moreover, even if the blending portion 26 of broach 9 does, in fact, differ in length or taper more gradually toward the shaft as compared with the blending portion 26 of broach 1, it is not apparent to us, given the dissimilarity between the frusto-conical cutting segment of Senia and the broaching portion of Cossellu, why this would have suggested any variation in the length and angle of taper of any portion of the cutting segment of Senia.

While it does appear that the total length of the broaching portion 14 of broach 9 is less than that of the broaching portion 14 of broach 1, the broaching portions of

of various of the broaching portions is intentional or simply the result of imprecision in the drawings.

For the foregoing reasons, we do not share the examiner's view that Cossellu would have provided any suggestion to provide a series of instruments as taught by Senia comprising cutting segments having cutting surfaces with different lengths and angles of taper between the base end and the second end thereof, as called for in claim 1. Accordingly, we shall not sustain the examiner's rejection of claim 1, or claims 12-15, 22-25, 27, 33 and 34 which depend therefrom, as being unpatentable over Senia in view of Cossellu.

We find nothing in the additional teachings of Martin which remedies the above-noted deficiency of the combination of Senia and Cossellu. Thus, we also shall not sustain the examiner's rejection of claims 11 and 26 as being unpatentable over Senia in view of Cossellu and Martin.

CONCLUSION



To summarize, the decision of the examiner to reject claims 1, 11-15, 22-27, 33 and 34 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JENNIFER D. BAHR)	
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