

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 41

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS OETIKER

Appeal No. 96-4146
Application 08/087,118¹

HEARD: JANUARY 13, 1997

Before SCHAFER, Vice Chief Administrative Patent Judge,
McCANDLISH, Senior Administrative Patent Judge, and LYDDANE,
Administrative Patent Judge.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's rejection of claims 1 through 59 in this application for

¹ Application filed July 1, 1993, for Reissue of U.S. Patent No. 4,237,584, based on Application 05/915,466, filed June 14, 1978. According to appellant, Reissue Application 087,118 is a continuation of Application 07/857,956, filed March 26, 1992, now abandoned.

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reissuing appellant's Patent No. 4,237,584. No other claims are pending in the application.

The invention disclosed in appellant's '584 patent relates to a hose clamp (defined as a clamp structure in the original patent claims and the reissue application claims before us on appeal) in the form of a band having formations (16, 24) for securing the free ends of the band together such that the band encircles the hose or other hose-like object. The clamping band is also formed with a deformable ear (21) which is contractible by use of a tool to tighten the band around the hose. A radially offset portion (21c) of the deformable ear defines a circumferential gap. According to original patent claim 1, a means forming a part of the clamp "effectively bridges the gap to prevent squeezing out of any material of the hose-like object into the gap."

A copy of the appealed claims is appended to this decision. In the appended claims, the added subject matter has been underlined, and the deleted subject matter has been bracketed pursuant to the requirements of 37 CFR § 1.121(e) and 37 CFR § 1.173 to show the additions and deletions made to the original patent.²

² In the copy of the appealed claims appended to appellant's main brief, appellant has omitted the underlining and bracketing required by 37 CFR §§ 1.121(e) and 1.173. The omission of the underlining and bracketing

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Appellant's '584 patent was granted on December 9, 1980 with 42 claims, of which claims 1, 31, 38 and 39 are independent claims. The reissue proceedings culminating in this appeal commenced with the filing of appellant's parent reissue application Serial No. 857,956 on March 26, 1992. The claims in the parent ultimately were finally rejected under 35 U.S.C. § 251. Rather than appealing that rejection, appellant elected to file the continuation reissue application now before us.

In appellant's parent and continuation applications, extensive amendments were made to a number of the original patent claims including all of the independent claims in the original patent. Several new claims were also added to the parent and continuation reissue applications as filed. In addition, a total of five reissue declarations were filed: (1) the declaration which was filed with the parent reissue application on March 26, 1992, (2) a supplemental declaration filed in the parent reissue application on January 22, 1993 with an amendment in response to the examiner's rejection under § 251 in the first office action, (3) the declaration which was filed with the subject continuation reissue application on July 1, 1993, (4) a supplemental declaration filed in the continuation application with an

precludes a comparison of the old and new claims as provided for in 37 CFR § 1.173.

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amendment on March 7, 1994 in response to the examiner's rejection under § 251 in the first office action in the continuation, and (5) a further supplemental declaration filed in the continuation application with an amendment on October 5, 1994 in response to the examiner's rejection under § 251 in the office action dated May 9, 1994. All of these reissue declarations were subscribed by the named inventor, Hans Oetiker.

In the declarations filed with the parent reissue application and the instant, continuation application, appellant has averred that he erroneously claimed "more or less" than he had a right to claim in his original patent. In particular, in the reissue declaration which accompanied the parent application, appellant states:

[t]hat I verily believe the original patent to be wholly or partly inoperative or invalid by reason of claiming more or less than I had the right to claim in the aforesaid patent by failing to claim certain details of the clamp structure shown in Figures 1-10, now set forth in claims 43-51, dependent directly and indirectly on original patent claim 1 and in additional claims 52-56, and by failing to specify in claims 1 and 31 that the gap underneath the ear is bridged by the substantially full band width of the underlying band portion as shown in Figures 5 and 10 and as also described in column 6, lines 58-68 and column 8, lines 42-45. [Emphasis added.]

Similarly in the reissue declaration which accompanied the instant continuation application, appellant states:

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[t]hat I verily believe the original patent to be wholly or partly inoperative or invalid by reason of claiming more or less than I had the right to claim in the aforesaid patent by failing to claim certain details of the clamp structure shown and disclosed in said patent and by reason of some informalities in the claims, as will become more apparent from the following. [Emphasis added.]

Claims 1 through 59 stand rejected under 35 U.S.C. § 251 "as being based on a defective reissue declaration" (answer, page 5³). All of the other rejections introduced by the examiner in the examination of this continuation reissue application, including the rejection of claims 39, 52, 53 and 56 under 35 U.S.C. § 102(b), have been withdrawn by the examiner prior to this appeal. Accordingly, the only issue before us is the propriety of the examiner's rejection under § 251.

In support of his rejection under § 251, the examiner states on page 5 of the answer that the reissue declaration which accompanied the instant application is defective because it "fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required under 37 CFR § 1.175(a)(5)." Implicit in this ground for the rejection is the position that the other reissue declarations do not rectify the shortcomings of the reissue declaration which accompanied the

³ In numbering the pages in his answer, the examiner skipped the page following page 2. The page numbers referred to in this decision are those as numbered by the examiner.

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instant application. In the unnumbered page following page 2 of the answer (see note 3), the examiner specifically held that the statement of the error in the supplemental declaration filed March 7, 1994 was unacceptable.

The examiner also considers the reissue declarations to be defective because, as noted on page 3 of the answer, certain amendments were made to claims 1, 17, 25 and 39 after the last supplemental declaration was filed in the subject application and therefore were not addressed in any of the reissue declarations. The examiner particularly considers the last supplemental declaration filed October 5, 1994 to be defective because it does not address amendments made to claims 39 and 52 subsequent to the amendatory paper filed March 7, 1994. The examiner also considers the supplemental declaration filed October 5, 1994 to be deficient because it contains an incorrect statement of the amendment made to claim 18. Reference is made to the examiner's answer for further details of his rejection.

In support of his position that the standing § 251 rejection should be reversed, appellant argues:

The PTO's promulgation and/or interpretation and implementation of 37 C.F.R. § 1.175, especially by those responsible in each Group for reissue procedures is in clear conflict with the statutory intent, not to mention the plain, simple language of the statute which does not support nor even suggest the chicanery of the PTO's present procedural impediments to anyone seeking

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to invoke the benefits of the remedial provisions of § 251. In the absence of evidence to the contrary at this time, it must be assumed that the present implementation of § 251 by 37 C.F.R. § 1.175 by those responsible in the different Groups represents the official policy of the PTO, [Main brief, page 10.]

As we understand appellant's position as quoted *supra*, appellant contends that the Commissioner of the Patent and Trademark Office (PTO) exceeded his authority under 35 U.S.C. § 6(a) in establishing the regulations in 37 CFR § 1.175(a). Appellant is also understood to contend that in applying § 251 of the patent statute and § 1.175(a) of the Federal regulations, the examiner exceeded the authority conferred upon him by Title 35 of the patent statute and Title 37 of the Federal regulations by imposing unreasonable requirements not required by the statute or the regulations.

With particular regard to the language "more or less" used to describe the statutory error in the reissue declarations which accompanied the parent and continuation reissue applications, appellant contends on page 21 of the main brief that the use of this equivocal statement in its disjunctive form not only corresponds to the "exact language of the statute but had [sic, has] been accepted for many years and is quite adequate and proper for reissue applications."

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Finally, in traversing the examiner's "objection to the reissue declaration for failure to particularly specify the errors relied upon, as required under 37 C.F.R. § 1.175(a)(5)" (main brief, page 21), appellant argues *inter alia*:

The contention of defectiveness of the reissue declaration on that ground is not only misplaced but indicative of the harassment to which reissue applicants are subjected under the present PTO practices. It is simply unreasonable to demand of an applicant more than fifteen (15) years later to remember how an error occurred. Moreover, it should be self-evident that the error(s) would have never occurred if there had been an awareness at the time it or they did occur. How can anyone specify how the error occurred when no awareness existed at the time? Equally irrelevant is how or when the defects were discovered because the statute does not say anything pertaining to timeliness of an applicant's action. *In re Oda, supra*. In the instant continuation application as also in the parent application, the declarations accompanying the originally filed application papers point out that the defects were noticed by applicant's attorney who reviewed the "original patent" for possible infringement in the course of a "recent review" which had been authorized by applicant "several months" prior to the filing of the original reissue application. This is all that is necessary to qualify for a reissue patent [emphasis in the original; main brief, pages 21-22].

We have carefully considered the issues raised in this appeal together with the examiner's remarks and appellant's arguments, including those outlined *supra*. However, we find no reversible error in the examiner's rejection of the appealed

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claims. We will therefore sustain the standing rejection of the appealed claims under § 251.

The circumstances justifying reissue of a defective patent are stated in 35 U.S.C. § 251 as follows:

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

None of the reissue declarations filed in the parent application or the instant, continuation application states that the error for which the reissue is sought resides in a defective specification or drawing. Instead, the only statutory error alleged in the reissue declarations focuses on the scope of the original patent claims in appellant's '584 patent.

The expression "more or less than he had a right to claim" in § 251 refers to two different, alternative types of correctable reissuable error involving the scope of the subject matter claimed in the original patent. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 882 F.2d 1556, 1564-65, 11 USPQ2d 1750, 1757

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(Fed. Cir. 1989). The *Hewlett-Packard* court described these alternatives as follows:

On the first part, the precedent of this court is that the expression "less than he had a right to claim" generally refers to the scope of a claim. See, e.g., *In re Wessler*, 367 F.2d at 847, 151 USPQ at 346 (patentee claimed "less than he had right to claim" and sought "reissue to enlarge the *scope* of the patent claims"); *In re Handel*, 312 F.2d 943, 945-46 n.2, 136 USPQ 460, 462 n.2 (CCPA 1963) (statutory sense of "less" is subject matter included within the claims). Thus, that provision covers the situation where the claims in the patent are narrower than the prior art would have required the patentee to claim and the patentee seeks broader claims. Conversely, the alternative that the patentee claimed "more . . . than he had a right to claim" comes into play where a claim is too broad in scope in view of the prior art or the specification and the patentee seeks narrower claims. [*Id.* at 1564-65, 11 USPQ2d at 1757].

By equivocally stating that the error was one of claiming "more or less" than he had a right to claim in the original patent without choosing one of the two different types of reissuable error in any of the reissue declarations, appellant raises two major issues: (1) whether such an equivocal statement of the error is sufficient as a matter of law to support reissuance of the original patent and (2) assuming arguendo that it is, whether the outcome of the decision on this appeal is somehow altered as a result of stating the error in the alternative as appellant has done here.

Appellant cites no authority to support his argument on page 21 of the main brief that the equivocal statement "more or less" is "adequate and proper for reissue applications." Furthermore, the examiner's viewpoint and interpretation of this language are not binding upon us.

Contrary to appellant's argument that the equivocal language is adequate, the public is entitled to be put on notice as to the particular error which a patentee seeks to correct by reissue without in some way imposing a degree of uncertainty as to the specific nature of that error. *See, generally, In re Graff*, 111 F.3d 874, 877, 42 USPQ2d 1471, 1473-1474 (Fed. Cir. 1997). In the present case, however, appellant's use of the disjunctive language "more or less" in the reissue declarations which accompanied the parent and continuation applications, does not exclude the possibility that, despite the statutory prohibition in § 251 against a broadening reissue in the application at bar,⁴ appellant is seeking a broadened reissue.⁵ Because of this disjunctive language, the public has inadequate notice as to the specific type of error and is left with the uncertainty as to

⁴ According to the fourth paragraph of § 251, no reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent. In the present case, appellant's parent reissue application was filed long after this two-year period.

⁵ See our new ground of rejection *infra*.

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whether the pending application is for a broadened reissue or a narrowed reissue.

In our view, the part of § 251 dealing with the error is not intended to merely be repeated verbatim in its entirety in a reissue declaration or oath. Compliance with the reissue section of the statute should not become a meaningless exercise of merely parroting the provisions of § 251 without indicating which of the reissuable errors an applicant seeks to overcome by way of a reissue. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 882 F.2d at 1565, 11 USPQ2d at 1758 (“[A] reissue applicant does not make a *prima facie* case of error in conduct merely by submitting a sworn statement which parrots the statutory language.”). Thus, merely repeating the disjunctive statutory language (i.e., “more or less”), as appellant has done here, improperly creates an ambiguity which deprives the PTO and the public of appropriate notice as to the specific type of error which the patentee seeks to correct by a reissue.

While appellant may gain the benefit of avoiding an unequivocal admission that he claimed more than he had a right to claim in the original patent by using the equivocal language “more or less” in the reissue declarations, he may not do so at the expense of depriving the examiner and the public of an

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unequivocal statement of the specific error for which the reissue is sought. Having failed to positively and unequivocally specify the statutory error for which a reissued patent is sought in any of the reissue declarations, appellant has not satisfied the provisions of § 251. For this reason alone, the examiner's rejection of the appealed claims under § 251 is sustainable.

Admittedly, appellant's counsel states on page 19 of the main brief that appellant is "seeking a narrowed reissue patent" Appellant's counsel further suggests on page 26 of the main brief that statements made by him over his signature during prosecution be considered "as if made under oath."

Statements made by appellant's counsel over his signature but not under oath or declaration are not acceptable as a substitute for or a supplement to the oath or declaration required under 37 CFR § 1.175(a). The necessity for such an oath or declaration is absolute. See *In re Amos*, 953 F.2d 613, 616, 21 USPQ2d 1271, 1273 (Fed. Cir. 1991). See, also, *Green v. The Rich Iron Co. Inc.*, 944 F.2d 852, 853, 20 USPQ2d 1075, 1076 (Fed. Cir. 1991) ("The implementing regulations require reissue applicants to file a statement under oath or declaration . . .").

Even if it is assumed arguendo that stating the alleged error regarding the scope of the original patent claims in the

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alternative (i.e., "more or less") without specifying which of the two types of error appellant seeks to correct somehow satisfies the requirements of § 251, the outcome of this appeal is not altered. If, on the one hand, it is assumed that the error is one in which appellant claimed less than he had a right to claim in the patent, the rejection under § 251 must stand because appellant's reissue parent application identified *supra* was filed more than two years after the grant of the original patent. Appellant is therefore barred from obtaining a broadened reissue. See note 4 *supra*.

If, on the other hand, it is assumed that the error is one in which appellant claimed more than he had a right to claim in the patent, the § 251 rejection still must stand because appellant has not complied with 37 CFR § 1.175(a)(1)-(3) and (5) for reasons stated *infra*. Thus, for either alternative appellant cannot prevail on the record before us, requiring us to affirm the examiner's rejection under § 251.

Our next order of business is to address appellant's argument concerning the propriety of the Commissioner's "promulgation" of 37 CFR § 1.175(a) as quoted *supra*. The only relief which may arise from appellant's contention that the promulgation or establishment of these regulations is "in clear

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conflict with the statutory intent" (main brief, page 10) is to have them declared invalid to dispense with the need to comply with them. We obviously lack the authority to do so.

Nothing in Title 35 of the patent statute or Title 37 of the patent regulations empowers this Board to rule on the validity of any regulations formally established by the Commissioner of the PTO under the authority conferred on him by 35 U.S.C. § 6. Certainly, nothing in the patent statute or the patent regulations empowers this Board to rule on the issue of whether the Commissioner exceeded his authority under the statute in establishing 37 CFR § 1.175 or any other regulation, for that matter.

Indeed, the regulations or rules of practice, as they are often called, in Title 37 of the Code are binding on this Board unless and until they are held invalid by a properly constituted higher authority. See *Ex parte Miller*, 124 USPQ 419, 423 (Bd. App. 1959). Furthermore, these regulations have the effect of law until declared invalid by a properly constituted authority. E.g., *In re Van Ornum*, 686 F.2d 937, 944, 214 USPQ 761, 767 (CCPA 1982). *Piel v. Falkner*, 426 F.2d 412, 415, 165 USPQ 708, 710 (CCPA 1970).

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Accordingly, as part of our review of the examiner's adverse decision in this case, we are required on the record before us to determine if appellant has complied with the provisions of 37 CFR § 1.175(a). In fact, our reviewing court has expressly required this Board to determine whether an appellant has satisfied not only the requirements of 35 U.S.C. § 251, but also the requirements of 37 CFR § 1.175. *In re Wilder*, 736 F.2d 1516, 1518, 222 USPQ 369, 370 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 1209 (1985) ("The first order of business for the board and for this court is to determine whether appellants have satisfied the requirements of 35 USC §251 and 37 CFR 1.175."). As explained by the court in *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 882 F.2d at 1565, 11 USPQ2d at 1758:

[T]he statutory provision has been implemented and expanded by the PTO regulations . . . which require an oath or declaration with respect to both aspects of error under section 251 and further require an explanation as to how and when the error in conduct arose and how and when it was discovered.

Furthermore, in *Ball Corp. v. United States*, 729 F.2d 1429, 1435, 221 USPQ 289, 293-294 (Fed Cir. 1984), the court emphasized the requirement that a reissue be adequately supported not by the circumstances detailed in 35 U.S.C. § 251, but also the circumstances detailed in 37 CFR § 1.175:

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Reissue is an extraordinary procedure and must be adequately supported by the circumstances detailed in 35 U.S.C. §251 (1976)⁷ and in the implementing regulations, 37 C.F.R. §1.175 (1982). [Footnote omitted.]

In accordance with 37 CFR § 1.175(a)(1), the reissue oath or declaration must state the reasons why an applicant verily believes the original patent to be wholly or partly inoperative or invalid. In accordance with 37 CFR § 1.175(a)(3), the reissue oath or declaration must specify the excess or insufficiency in the claims where the applicant considers the original patent to be inoperative or invalid by reason of claiming more or less than he had a right to claim in the patent, and in accordance with 37 CFR § 1.175(a)(5), the reissue oath or declaration must specify the errors relied upon, and how they arose or occurred.

According to *In re Wittry*, 489 F.2d 1299, 1302, 180 USPQ 320, 323 (CCPA 1974), the explanation of the errors in the original patent claims must be reasonable. In short, the reissue oath or declaration must satisfy the requirements of 37 CFR § 1.175(a) with a reasonable degree of specificity.

Commencing on page 11 of the main brief, appellant has complained about various requirements imposed by the examiner under § 1.175(a) at various stages of the examination of the parent application and the instant application, such as the duty to disclose information material to patentability (see page 11 of

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the main brief), the "requirement to explain the effect on the scope of the claims" (main brief, page 13) and the requirement regarding identification of documents in the reissue declaration as set forth on page 13 of the main brief. To the extent that appellant may be contending in substance that these requirements represent an improper PTO "policy" (see, for example, pages 10 and 11 of the main brief) and that the examiner's conduct was improper in making these demands under § 1.175(a), such matters are obviously beyond the scope of our authority to decide. See, generally, *In re Mindick*, 371 F.2d 892, 894, 152 USPQ 566, 568 (CCPA 1967). This Board reviews the patentability decisions made by a primary examiner. 35 U.S.C. § 7(4). It does not evaluate the correctness or error, or even the wisdom of policies of the Examining Corps.

More importantly, the requirements noted *supra*, which are the subject of appellant's complaint commencing on page 11 of the main brief, have been withdrawn by the examiner prior to this appeal. The question of the validity of these withdrawn requirements is therefore moot. Thus, our focus in this appeal is on the current grounds of rejection set forth in the examiner's answer and on the requirements set forth in 37 CFR § 1.175(a).

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In the instant application as filed, amendments were made to the original patent claims 1, 2, 4, 9, 14, 15, 17, 18, 22, 25 through 28, 31, 35, 36, 38, and 39, and new reissue claims 43 through 57 were added. During the course of prosecution of the instant application, amendments were made to new claims 43 and 52, additional amendments were made to claims 1, 17, 25 and 39, and new claims 58 and 59 were added.

In the second paragraph of the reissue declaration which accompanied the instant application, we are told by appellant that under his authorization, his attorney reviewed the original patent "in connection with possible litigation involving infringement to determine [the] adequacy of coverage by the [original] claims in the patent and compliance with statutory requirements." In the same paragraph, appellant states that "[u]pon review . . . he advised me of the desirability to file a reissue application and explained to me the contemplated changes."

Nowhere in any of the reissue declarations which were filed in the instant application and the parent application does appellant state that those "contemplated changes" were intended to rectify the reissuable error of having claimed more than he had a right to claim or even the reissuable error of having

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claimed less than he had a right to claim. This deficiency alone is sufficient reason to sustain the § 251 rejection.

In the declaration which accompanied the instant application, appellant commences the third paragraph by stating that "[t]he errors which were discovered in the course of the aforementioned review by my attorney and those which were discovered as a result of the prosecution of the [parent] reissue application . . . are as follows:" However, rather than describing or explaining the errors correctable by a reissue, appellant simply describes the amendments made to the original claims in the patent and the subject matter of the new claims added in the instant, reissue application together with certain reasons for making the amendments and adding the new claims.

In particular, appellant states in the third paragraph of the declaration which accompanied the instant application that the following amendments were made to claims 1, 22, 31 and 38 to "*improve the form*" (emphasis added) of these claims: amending claim 1 to recite "that it is the diametric dimension of the clamp structure rather than the band means which is produced by deformation of the ear means" (emphasis in the original),⁶

⁶ This amendment is open to two alternative interpretations. First, it could be interpreted as narrowing claim 1 in the sense that it requires the diametric dimension of the entire clamp structure to be reduced, not just the band means alone. Second, it could be interpreted as broadening claim 1 in the sense that the claim no longer specifically

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further amending claim 1 to recite that the diametric reduction of the clamp structure "is to be without projection in the internal surface of the clamp structure" (emphasis in the original), amending claim 22 "by referring to terminology as used in claim 20," amending claim 31 to include "changes discussed in connection with claim 1," specifically by "referring to reducing the diametric dimension of the clamp structure and by referring to the absence of internal projections in the internal surface of the clamp structure" (emphasis in the original), amending claim 38 "in a manner similar to claim 1 by referring to the clamp structure and the absence of projections in the internal surface of the clamp structure" (emphasis in the original), and amending claim 39 "in a manner similar to claim 38."

Appellant further avers in the third paragraph of the reissue declaration which accompanied the instant application that claim 1 was further amended "to point out what is meant by effectively bridging the gap which, according to the original disclosure, is to take place by substantially the full band width of the inner band portion," that claim 2 was amended "to avoid redundancy with claim 3," that claim 4 was amended "to correct an

requires the diametric dimension of the band means to be reduced. These interpretations are also applicable to similar amendments made to claims 31 and 38. However, since this issue has not been raised by the examiner or briefed by appellant, we shall not entertain it now at this late stage of the proceedings.

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informality noted by the Examiner," that claim 9 was amended "to avoid multiple dependency of this claim," that claim 14 was amended "to change its dependency from claim 13 to claim 3, necessitated by the change in dependency of claim 4," that claim 15 was amended "to avoid any question of lack of antecedent," that claim 17 was amended "to avoid duplication with claim 18," that claims 25 and 36 were amended "to eliminate multiple dependency," that claims 26 and 28 were amended "to provide correspondence in terminology between parent and dependent claim [sic, claims]," that claim 31 was further amended "to add the limitations of the connecting and tightening means," that claim 31 was further amended "to include the limitations how the further means are formed by sliding engagement of one part of at least approximately fork-shaped configuration and by specifying the location of the further means so that the gap is bridged by at least nearly the full band width of the underlying band portion," and that claims 25, 27 and 43 were amended "to avoid any question of compliance with 35 U.S.C. § 112, second paragraph."

In the third paragraph of the reissue declaration which accompanied the instant application, appellant avers that the new reissue claims 43 through 51 were added "to cover some of the disclosed details in conjunction with claim 1" and further that

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the new reissue claims 43 through 57 were added "to provide a more complete coverage of the mentioned details of my invention, previously believed inadequately covered by the claims of the original patent."

In the first amendment filed March 7, 1994 in response to the first office action in the instant application, claims 39, 43 and 52 were amended, and new claims 58 and 59 were added.

The first supplemental declaration filed in the instant application along with the first amendment on March 7, 1994, does not address any changes in the original claims or any of the new claims. In this supplemental declaration appellant merely states that he did not claim in any of the claims in the instant reissue application less than he had a right to claim in the '584 patent. The significance of this statement or, more particularly, the lack of any meaningful significance of this statement, will be addressed later on.

The second supplemental declaration filed in the instant application on October 5, 1994, does not address the amendments made to claims 39 and 52 in the amendatory paper filed on the same date. Instead, this second supplemental declaration addresses the amendments made in the amendatory paper filed March 7, 1994. In particular, appellant avers in this second supplemental declaration that claim 39 was amended in the

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amendatory paper of March 7, 1994 "so as to avoid any misinterpretation and point out more clearly the difference between the present invention which seeks to avoid any leakages which are possible with the U.S. Patent 1,221,425 to Dremel." In addition, appellant avers in this second supplemental declaration that claim 52 was amended in the amendatory paper of March 7, 1994 "in a similar manner and for similar purposes."

In the second supplemental declaration filed October 5, 1994, appellant states that claim 4 was amended "to limit the dependency of claim 4 to only claim 3," that "claim 14 has been amended to be dependent on claim 3, to maintain a scope of protection not limited as a result of the amendment to claim 4," that "claim 17 was amended to include all of the limitations of prior claim 4 but dependent directly on claim 1, i.e., seeking a scope of protection which originally existed by the combination of only claims 1 and 4" and that "claim 18 was made dependent on claim 17 to obtain a scope of protection corresponding to original claims 1, 4, 13 and 18." Finally, in this second supplemental declaration, the only explanation offered for the addition of claims 58 and 59 is that they "were added . . . to obtain specific protection for the limitation [sic]."

No other explanations are offered in any of the reissue declarations filed in the instant application for the amendments

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to the original patent claims 1, 2, 4, 9, 14, 15, 17, 18, 22, 25 through 28, 31, 35, 36, 38 and 39, the addition of the new reissue claims 43 through 59 or the amendments to the newly added claims 43 and 52.

The reissue declaration filed with appellant's parent application and the supplemental declaration filed in the parent application present no additional reasons or explanations for the amendments to the original claims mentioned above or for the addition of the new claims. The supplemental declaration filed in the parent application does not even refer to any specific changes in the claimed subject matter, and the reissue declaration filed with the parent application merely states that certain amendments were made to claims 1, 31, 38, and 39 to improve the form of these claims, and that appellant claimed "more or less than I had a right to claim in the ['584] patent by failing to claim certain details" set forth in claims 43-56 and further "by failing to specify in claims 1 and 31 that the gap underneath the ear is bridged by the substantially full band width of the underlying band portion . . ." It is noteworthy that appellant has chosen not to reaffirm this statement in any of the reissue declarations filed in the instant application. Moreover, the reissue declarations fail to specify the reasons for these failures as required by 37 CFR § 1.175(a)(1). The mere

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statement that appellant failed to claim certain features simply begs the question.

From the foregoing it is evident that the reissue declarations filed in the parent application collectively are far less specific than the reissue declaration which accompanied the instant, continuation application. Thus, even considering them as part of the record before us, they do not rectify the deficiencies of the declarations filed in the instant application, which will now be discussed.

The reissue declarations filed in the instant application are defective for several reasons. In the first place, appellant does not allege in any of the reissue declarations that the original patent is believed to be wholly or partly inoperative or invalid because of his failure to improve the form of certain original patent claims or because of any of the other reasons stated in the declarations for making various amendments to the original patent claims. Likewise, appellant does not allege in any of the reissue declarations that the original patent is believed to be wholly or partly inoperative or invalid because of the reasons stated in the reissue declarations for adding the new reissue claims 43 through 59. Since appellant has chosen not to aver in any of the reissue declarations that the reasons given for the amendments to the original claims and the addition of the

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new claims are the reasons why he believes the original patent to be wholly or partly invalid, we shall not speculate about the matter.

For the foregoing reasons alone, the reissue declarations do not satisfy the requirements of 37 CFR § 1.175(a)(1). Furthermore, with reference to the language used in the declaration filed with the instant application, appellant even fails to expressly allege in any of the reissue declarations that a failure to "improve the form" of claims 1, 22, 31 and 38, to "point out what is meant by" certain language in claim 1, to "correct an informality" in claim 4, "to avoid multiple dependency" in claim 9, "to change [the] dependency" of claim 14, "to avoid any question of lack of antecedent" in claim 15, "to eliminate multiple dependency" in claims 25 and 36, "to provide correspondence between" each of the dependent claims 26 and 28 and its parent claim 2, and "to add [certain] limitations" to claim 31 constitute any error, let alone an excusable error correctable under § 251.

Furthermore, there is no statement in any of the reissue declarations that the actions specified in the second, third, fourth, fifth and sixth paragraphs in the supplemental declaration filed on October 5, 1994, are intended to overcome any error of any kind, let alone an error correctable under

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§ 251. In fact, the supplemental declaration filed October 5, 1994 makes no mention of any error as such.

A statement simply indicating the different actions taken with regard to the original patent claims as set forth in the reissue declaration which accompanied the instant application and the supplemental declaration filed October 5, 1994, is not tantamount to a statement specifying the errors relied upon. Moreover, merely describing the amendments to the original patent claims as appellant has done here does not amount to an explanation of the error itself. For this reason alone, the reissue declarations before us do not satisfy the requirement to specify the errors relied upon as set forth in 37 CFR § 1.175(a)(5).

Likewise, a statement simply indicating the actions taken as set forth in the reissue declaration which accompanied the instant application and the declaration filed October 5, 1994, is not tantamount to a statement specifying the excesses or insufficiencies in the claims. As a result, the reissue declarations before us also fail to meet the requirements of 37 CFR § 1.175(a)(3).

With particular regard to the amendments which are stated "to improve the form" of claims 1, 22, 31 and 38, we are not told in any of the reissue declarations what, if anything, was wrong

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or inappropriate with these claims in their original form. In other words, appellant has not stated how the form of the claim renders those claims "wholly or partly inoperative or invalid" as required by § 251. We also are not told in any of the reissue declarations why the form of these claims required improvement. Indeed, we are left to speculate as what appellant meant by the statement that the form of claims 1, 22, 31 and 38 is "improved" by the amendments made thereto.

Furthermore, with regard to certain amendments, such as some of the amendments to claim 31, appellant merely states the action that was taken (i.e., that certain limitations were added or included in the claim) without stating any reason for adding or including those limitations.

From the foregoing, it is evident that what is basically lacking is a reasonable explanation of any errors in the original patent claims as required by the court in *In re Witty*, 489 F.2d at 1302, 180 USPQ at 323. This deficiency alone is sufficient basis to sustain the § 251 rejection.

Furthermore, as stated in *Nupla Corp v. IXL Manufacturing Co.*, 114 F.3d 191, 194, 42 USPQ2d 1711, 1714 (Fed. Cir. 1997) "the 'error' must only be the 'claiming of more or less than he [or she] had a right to claim' for some *excusable* reason"

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(emphasis added). Therefore, the explanation of the error must not only be reasonable, but also must establish that the error occurred because of an excusable reason. In the present case, we are left to speculate as to what the excusable reason or reasons may be.

In addition, appellant in his reissue declarations has not asserted any difference in scope between the original patent claims and the claims presented in the instant reissue application. This failure is also a fatal defect as indicated in *In re Wittry*, 489 F.2d at 1302, 180 USPQ at 323.

Moreover, none of the reasons set forth in the reissue declarations for adding claims 43 through 59 justify a reissue. For example, appellant has chosen not to state in any of the reissue declarations that these claims were added as a hedge against possible invalidity of original claims. See *Ex parte Parks*, 30 USPQ2d 1234, 1237 (Bd. Pat. App. & Int. 1994) and authorities cited therein.

What appellant seems to have overlooked is that while § 251 should be liberally construed, not every event or circumstance that might be labeled an "error" is correctable by reissue. In *re Weiler*, 790 F.2d 1576, 1579, 229 USPQ 673, 675 (Fed. Cir. 1986). As explained in *Weiler*, 790 F.2d at 1582, 229 USPQ at 667:

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The reissue statute was not enacted as a panacea for all patent prosecution problems, nor as a grant to the patentee of a second opportunity to prosecute *de novo* his original application.

Indeed, as set forth in *In re Amos*, 953 F.2d at 616, 21 USPQ2d at 1273, only four different defects are correctable under § 251:

First, an asserted defect may arise from an error in the specification. *In re Salem*, 553 F.2d 676, 679, 193 USPQ 513, 516 (CCPA 1977) (reissue permitted to correct specification term "polyvalent anions" to clearly-implied "source of polyvalent anions"). Second, the patentee may correct a defective drawing. The final two reasons for which the patentee may seek reissue concern original claims subsequently discovered to have been either too narrow or too broad. *In re Handel*, 312 F.2d 943, 948, 136 USPQ 460, 464 (CCPA 1963) (purpose of statute is to permit limitations to be added to, or removed from, claims). The basis for seeking narrowing reissue has generally been the belated discovery of partially-invalidating prior art. *In re Harita*, 847 F.2d 801, 805, 6 USPQ2d 1930, 1932 (Fed. Cir. 1988).

In the case at bar, appellant does not allege a defect in the specification or the drawing of the original patent. Furthermore, appellant is barred from obtaining a broadened reissue for the reasons stated *supra*. This leaves only the defect in which the error resides in overclaiming the invention in the original patent. Yet, none of the changes to the original patent claims are stated in any of the reissue declarations to correct this error by narrowing the original claims. Indeed, appellant even fails to specifically aver that the amendments to

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the original claims narrow the original claims. Appellant also fails to aver in any of the reissue declarations that he is seeking a narrowing reissue, let alone the particular basis for seeking a narrowing reissue.

In the final analysis, the reissue declarations do not contain a reasonable explanation of the only error correctable in the instant reissue application, namely the discovery that the claims in the original patent were too broad for some excusable reason. We could guess that appellant is seeking a narrowing reissue. However, we choose not to do so especially in view of our new rejection introduced under 37 CFR § 1.196(b) as set forth *infra*.

Appellant also has not stated in any of the reissue declarations how any errors, which appellant relies upon, arose

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or occurred as required in 37 CFR § 1.175(a)(5). Appellant dismisses this requirement out of hand on the ground the "[a]fter more than fifteen (15) years since [first making a disclosure of his invention to his U.S. attorney], I decline to speculate how the error exactly arose" (original reissue declaration filed June 2, 1993, page 3). Through his counsel appellant reinforces this position by arguing on page 22 of his main brief that "[i]t is simply unreasonable to demand of an applicant more than fifteen (15) years later to remember how an error occurred." Appellant goes on to argue on page 22 of his main brief that it is "irrelevant" as to how or when the defects were discovered "because the statute does not say anything pertaining to timeliness of an applicant's action."

Notwithstanding appellant's arguments and averments as outlined *supra*, we are aware of no legal authority, and appellant has cited none, which allows appellant to discharge his burden of complying with 37 CFR § 1.175(a)(5) or, for that matter, any other provision of § 1.175(a) by claiming lack of recollection. Certainly, a patentee seeking a reissue may not claim lack of knowledge to evade the requirements of 37 CFR § 1.1.75(a)(5) where his attorney may be knowledgeable about the facts or at least is in a position to refresh his recollection by reviewing

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records available to him. It stands to reason that the reissue oath or declaration must be made by an informed person.

In any case, neither Title 35 of the patent statute nor Title 37 of the federal regulations excuses compliance with 37 CFR § 1.175(a)(5) for lack of recollection as to how the errors arose or occurred. On the record before us, therefore, appellant's alleged lack of recollection in effect represents a failure of proof which is fatal to appellant's case.

Furthermore, we fail to understand what appellant's first disclosure of his invention to his attorney more than fifteen years prior to filing for a reissue has to do with the occurrence of the errors and how they occurred, where as here the errors apparently lie in the scope of the original patent claims.

In addition, we have difficulty in reconciling appellant's averments and arguments regarding lack of recollection with the following remarks made by appellant's counsel in the paragraph bridging pages 12 and 13 of the amendatory paper filed August 10, 1995:

At the time of the prosecution applicant did not have knowledge of the prior art submitted on July 1, 1993 in this case under 37 C.F.R. § 1.56 which included, for example, **U.S. Patent 1,221,452 to Dremel** which, brought to the attention of the Examiner, resulted in a § 102(b) rejection (see Office Action of January 25, 1994, paragraph 6) that was overcome by the claim amendments and arguments of the March 7, 1994 Amendment. Lack of knowledge of a prior art patent

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which was not cited in the prosecution of the original application is a classic example for a reissue patent.

From the remarks of appellant's counsel as quoted *supra* it appears that an error of claiming the invention too broadly in original patent claim 39 and in the new reissue patent claims 52, 53 and 56 (which were all the subject of the examiner's rejection under 35 U.S.C. § 102(b)) occurred because of the lack of prior knowledge of the Dremel patent. Yet, for reasons not known to us, appellant chose not to aver in any declaration in the record before us that an error resided in overclaiming the invention in claims 39, 52, 53 and 56 because of the lack of prior knowledge of the Dremel patent. Indeed, the only mention of the Dremel patent is found in the second supplemental declaration filed October 5, 1994 which as noted *supra* merely states that claim 39 was amended in the amendatory paper of March 7, 1994 "so as to avoid any misinterpretation and point out more clearly the difference between the present invention which seeks to avoid any leakages which are possible with the U.S. Patent 1,221,425 to Dremel." With regard to claim 52, this supplemental declaration merely states that this claim was amended in the amendatory paper of March 7, 1994 "in a similar manner and for similar purposes."

By volunteering narrowing amendments to claims 39, 52, 53 and 56 to overcome the examiner's § 102(b) rejection based on the

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Dremel patent, appellant has implicitly conceded that he overclaimed in this respect. See *Nupla Corp.*, 114 F.3d at 195, 42 USPQ at 1715. Because the examiner rejected original patent claim 39 on Dremel, appellant arguably knew in what way the original patent overclaimed. *Id.*

Yet, appellant failed to explain in the supplemental declaration filed October 5, 1994 the source of the overclaiming error (e.g., his lack of awareness of the Dremel patent), or that the error was non-deceptive and otherwise excusable. Such a failure to explain that the overclaiming error was non-deceptive and otherwise excusable in itself is fatal. See *Nupla Corp.*, 114 F.3d at 195, 42 USPQ2d at 1715.

Once again, we are not unmindful of the suggestion by appellant's counsel on page 26 of the main brief that statements made by him over his signature during prosecution be considered "as if made under oath." However, as noted *supra*, statements made by appellant's counsel over his signature but not under oath or declaration are not acceptable as a substitute for or supplement to the oath or declaration required under 37 CFR § 1.175(a). As previously noted, the necessity for such an oath or declaration is absolute. *In re Amos*, 953 F.2d at 616, 21

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USPQ2d at 1273 and *Green v. The Rich Iron Co. Inc.*, 944 F.2d at 853, 20 USPQ2d at 1076.

In view of the foregoing, appellant has not satisfied the requirement in 37 CFR § 1.175(a)(5) regarding a statement specifying how the errors arose or occurred. This requirement cannot be dismissed as being "irrelevant" as argued on page 22 of the main brief. It obviously assists the examiner to determine if an alleged error or defect is one that is correctable under § 251. This failure alone is also sufficient basis for sustaining the § 251 rejection.

Furthermore, the case law of our reviewing court requires a reissue application to include declarations to specify every difference between the original and reissue claims. *In re Constant*, 3 USPQ2d 1479, 1480 (Fed. Cir. 1987) and *Nupla Corp.*, 114 F.3d at 193, 42 USPQ2d at 1713. Indeed, the court stated in *Nupla Corp.*, 114 F.3d at 195, 42 USPQ2d at 1715 that "[t]he reissue regulations require full explanation of each 'excess'" under 37 CFR § 1.175(a)(3). This requirement has not been met in the present case.

With particular regard to claim 17, none of the reissue declarations mentions the amendment filed August 10, 1995 adding the limitation "arranged in two rows of the band means near one

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end thereof." In fact, no declaration was filed after the filing of the second supplemental declaration on October 5, 1994.

With regard to claim 25, none of the reissue declarations mentions the amendment filed February 26, 1996 changing "rib-like projection means" to "rib-like projections."

With regard to claim 31 as filed with the instant application, none of the reissue declarations mentions the amendment in line 14 adding the phrase "into the gap" to recite that the diametric dimension of the clamp structure is reduced without the external projection of the hose-like object into the gap, the amendment in line 16 changing "ends thereof" to "band end portions," the deletion of the phrase "diametric dimension thereof" from the expression "devoid of any step or sudden change in the internal diametric dimension thereof," and the amendment to line 30 deleting the phrase "and at the same time" from the last clause of the claim commencing on line 28.

With regard to claim 39, none of the reissue declarations mentions the amendment filed February 26, 1996 adding the phrase "connect the open ends" in line 4 and further adding the phrase "while leaving an internally open gap" in lines 5 and 6.

In view of the foregoing, appellant has not satisfied the requirement in 37 CFR § 1.175(a)(3) regarding the specification of the excesses or insufficiencies.

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Appellant's first supplemental declaration filed March 7, 1994 does nothing to rectify the deficiencies noted *supra* or to otherwise clarify the nature of the error for which reissue is sought. The basic question before us is not whether appellant has claimed more or less than he had a right to claim in any of the claims of the instant *reissue* application. Instead, as far as claim scope is concerned, the reissue statute provides for the correction of overclaiming or underclaiming in the original patent, not the reissue application.

In emphasizing this point the court ruled in *Nupla Corp.*, 114 F.3d at 195, 42 USPQ2d at 1714-15 that "[t]he reissue procedure is only available to correct error in claims in patents *as originally issued*" (emphasis added). The reissue procedure therefore is not available to correct errors in new claims added to the reissue application at the time of filing the reissue application or subsequently during examination of the reissue application. Thus, there is no basis in § 251 for amending the newly added claim 52 (see the amendment filed March 7, 1994) to apparently correct an overclaiming error.

For the foregoing reasons, we will sustain the examiner's § 251 rejection of claims 1 through 59. However, in view of the additional reasons which we have introduced in support of this

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rejection, we herewith designate our affirmance of this rejection as a new ground of rejection under 37 CFR § 1.196(b).

Under 37 CFR § 1.196(b), the following new ground of rejection is entered against claims 31 through 35, 52 through 56 and 59:

Claims 31 through 35, 52 through 56 and 59 are rejected under 35 U.S.C. § 251 as being broadened claims in a reissue having an effective parent application filing date outside of the two-year statutory period.

As noted *supra*, 35 U.S.C. § 251 provides that no reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

A claim of a reissue is considered to enlarge the scope of the claims of the patent if it broader than such claims in any respect, even though it may be narrower in other respects or, in other words, if it contains within its scope any conceivable apparatus or process which would not have infringed the original patent. *In re Ruth*, 278 F.2d 729, 730, 126 USPQ 155, 156 (CCPA 1960). *See also Ball Corp. v. United States*, 729 F.2d at 1438, 221 USPQ at 296 and *In re Self*, 671 F.2d 1344, 1346, 213 USPQ 1, 3 (CCPA 1982) which cite *Ruth* with approval. In *Ball Corp*, 729

F.2d at 1438, 221 USPQ at 296, the court emphasized that if the reissue claims are broader than the original patent claims, the reissue must be sought within two years after the grant of the original patent.

Claim 31 as amended, although narrowed in certain respects, has been broadened in not just one respect, but in at least two respects. First, claim 31 has been broadened by the deletion of the phrase "diametric dimension thereof" in line 20 so that the claim no longer recites the reduction of the diametric dimension of the clamp structure is devoid of any step or sudden change in the internal diametric dimension of the clamp structure, but instead now merely recites that the reduction of the diametric dimension of the clamp structure is devoid of any step or sudden change in the internal surface of the clamping band means. Therefore, to literally infringe this claim as amended, it is no longer necessary that the internal diametric dimension itself be devoid of any step or sudden change upon the reduction of the diametric dimension of the clamp structure.

Second, claim 31 has been broadened by the deletion of the phrase "and at the same time" in line 30 so that the claim no longer recites that the diametric dimension of the clamp structure is reduced "while maintaining an internal circular configuration of the band means . . . and at the same time

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effectively bridging the gap . . .” Therefore, to literally infringe this claim as amended, it is no longer necessary that the gap be bridged at the same time that the internal circular configuration of the band means is maintained upon reduction of the diametric dimension of the clamp structure.

Claims 32 through 35 which depend directly or indirectly from claim 31 encompass the subject matter of claim 31 and therefore have been broadened in same respect as outlined *supra* with respect to claim 31. The broadened limitations of claim 31 have not been restored to their original context or to a more limited context by any of these dependent claims.

Turning now to our new rejection of claim 52, this claim does not expressly recite the deformable ear or ear means for reducing the diametric dimension of the clamp structure. Instead, this claim merely recites that a “further means” reduces the diametric dimension of the clamp structure. The only other independent claim in the ‘584 patent which does not specifically recite the deformable ear or ear means is claim 39. Since original claim 39 and newly added reissue claim 52 are comparable in scope in this respect, our comparison of claim 52 is with claim 39 to determine if claim 52 has been broadened with respect to subject matter claimed in the original patent.

According to our review, claim 52 is broader than original claim 39 in several respects. First, claim 52 does not recite that the band means has "open ends" as recited in claim 39. Instead, claim 52 more broadly refers to "band portions," which may or may not be "ends."

Second, claim 52 does not recite that the means for tightening the clamp structure about the hose-like object specifically is "operable to contract the band means" as recited in claim 39.

Third, claim 52 does not recite that the tongue-like extension or tongue-like part, as it is also called in claim 52,⁷ is at one of the ends of the band means, let alone one of the open band ends as recited in claim 39. Instead, claim 52 more broadly recites that the tongue-like extension or part is in one of the "band portions" which may or may not be an "end."

Fourth, claim 52 does not recite that the centrally disposed recess is in one of the ends of the band means, let alone an open end of the band means as recited in claim 39. Instead, claim 52 more broadly recites that the centrally disposed recess is in

⁷ Claim 52 calls for "a centrally disposed tongue-like part" in lines 17-18 and thereafter refers to "said tongue-like extension" in line 22. Strict antecedent basis is therefore lacking for the recitation of "said tongue-like extension," a matter which deserves correction in the event of further prosecution before the examiner.

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"one of the overlapping band portions," which may or may not be an "end."

Claims 53 through 56 and 59 which depend directly or indirectly from claim 52 encompass the subject matter of claim 52 and therefore have been broadened in same respect as outlined *supra* with respect to claim 52. The broadened limitations of claim 52 have not been restored to the context of claim 39 or to a more limited context by any of these dependent claims.

In view of the foregoing, the examiner's decision rejecting the appealed claims is affirmed. As noted *supra*, this affirmance has been designated as a new ground of rejection under 37 CFR § 1.196(b). In addition, an additional new ground of rejection has been entered against claims 31 through 35, 52 through 56 and 59 pursuant to the provisions of 37 CFR § 1.196(b).

Any request for reconsideration or modification of this decision by the Board of Patent Appeals and Interferences based upon the same record must be filed within one month from the date hereof. 37 CFR § 1.197.

With respect to the new rejections under 37 CFR § 1.196(b), should appellant elect the alternate option under that rule to prosecute further before the Primary Examiner by way of amendment or showing of facts, or both, not previously of

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record, a shortened statutory period for making such response is hereby set to expire two months from the date of this decision.

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

Because we have designated our affirmance of the examiner's § 251 rejection as a new ground of rejection under 37 CFR § 1.196(b) and because we have introduced an additional new ground of rejection of claims 31 through 35, 52 through 56 and 59 under 37 CFR § 1.196(b), our decision herein is not considered final for the purpose of judicial review. The only options available to appellant at this time with regard to our decision are, as indicated *supra*, to seek reconsideration under 37 CFR § 1.197(b), or to have the matter considered by the examiner provided an appropriate amendment, further reissue declaration and/or showing of facts is submitted.

AFFIRMED - 37 CFR § 1.196(b)

RICHARD E. SCHAFER, Vice Chief)	
Administrative Patent Judge)	
)	
)	
)	
HARRISON E. McCANDLISH)	BOARD OF PATENT
Senior Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
WILLIAM E. LYDDANE)	

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Administrative Patent Judge)

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APPENDIX

1. A clamp structure for clamping a hose-like object onto a circular support member, which comprises clamping band means having open ends and deformable ear means adapted to contract the band means upon deformation thereof and leaving an at least narrow gap in the circumferential direction of the band means upon deformation of the ear means, characterized in that for purposes of reducing the diametric dimension of the [band means] clamp structure by deformation of the ear means without internal projection in the internal surface of the clamp structure and without [the] external projection of the hose-like object, further means are provided in the clamp structure enabling relative movement of the open band ends to [of] reduce the diametric dimension of the band means without internal projection or step-like offset in the inner diametric dimension of the [band] clamp structure while retaining a circular configuration of the band means and at the same time effectively bridging the gap by substantially the full band width to prevent squeezing out of any material of the hose-like object into the gap.

2. A clamp structure according to claim 1, characterized in that the further means include radially inwardly

directed rib-like projection means in the band means providing in effect a clamping action [over the entire circumference thereof].

3. A clamp structure according to claim 2, characterized in that the band means has lateral areas and the rib-like projection means are formed by a substantially central rib-like projection extending substantially from one end of the band means to at least near the other end thereof, a section of the band means being devoid of a central rib-like projection and being provided thereat with lateral rib-like projections within the two lateral areas of the band means and overlapping said central rib-like projection at one side in the circumferential direction.

4. A clamp structure according to claim [1, 2 or] 3, characterized by fastening means for fastening together the free ends of the band means, said fastening means including radially outwardly directed tooth-like means extending in the circumferential direction and arranged in two rows of the band means near one end thereof and complementary cut-outs provided in a corresponding portion of the clamp structure overlying said tooth-like means in the installed condition of the clamp structure and receiving said tooth-like means.

5. A clamp structure according to claim 4, characterized in that said further means include a tongue-like

extension at one end of the band means forming a continuation of the central rib-like projection.

6. A clamp structure according to claim 5, characterized in that the other end of said band means is fork-shaped having two fork-like portions with a recess therebetween, the tongue-like extension being received between the fork-like portions in the installed condition of the clamp structure, and the fork-like portions being provided with said lateral rib-like projections.

7. A clamp structure according to claim 6, characterized in that the ear means is provided in a clamping member separate from the band means and is provided with said cut-outs near both ends thereof cooperating with two sets of tooth-like means provided in corresponding places in said band means.

8. A clamp structure according to claim 4, characterized in that said ear means is provided with a groove extending in the circumferential direction.

9. A clamp structure according to claim[s] 1, [2, or 3,] characterized in that said further means include a tongue-like extension at one end of the band means.

10. A clamp structure according to claim 9, characterized in that the other end of said band means is fork-

shaped having two fork-like portions with a recess therebetween, the tongue-like extension being received between the fork-like portions in the installed condition of the clamp structure, and the fork-like portions being provided with lateral rib-like projections.

11. A clamp structure according to claim 4, characterized in that the ear means is provided in a clamping member separate from the band means and provided with said cut-outs near both ends thereof cooperating with two sets of tooth-like means provided in corresponding places in said band means.

12. A clamp structure according to claim 11, characterized in that said ear means is provided with a groove extending in the circumferential direction.

13. A clamp structure according to claim 4, characterized in that said clamp structure is in one piece and includes the ear means.

14. A clamp structure according to claim [13] 3, characterized in that said lateral rib-like projections are provided in the band means spaced a predetermined distance from the ear means on the side thereof opposite said other end.

15. A clamping structure according to claim 14, characterized by a radially outwardly extending punched-out section in the center of the band means within the area thereof

of the lateral projections to receive the end of [said] a tongue-like extension of said further means when said clamp structure is installed.

16. A clamp structure according to claim 15, characterized in that said lateral rib-like projections extend from the end of said punched-out section in overlapping relationship to the central rib-like projection over a predetermined distance in the direction away from said ear means.

17. A clamp structure according to claim [16] 1, characterized by fastening means for connecting together the free ends of the band means, said fastening means including radially outwardly directed tooth-like means extending in the circumferential direction and arranged in two rows of the band means near one end thereof and complementary cut-outs provided in a corresponding portion of the clamp structure overlying said tooth means in the installed condition of the clamp structure and receiving said tooth-like means [in that said tooth-like means have end surfaces which slope in the radially outer direction away from the corresponding end of the band means so that the radially innermost part of each surface is closer to the respective band end than the radially outermost part thereof].

18. A clamp structure according to claim [13] 17, characterized in that said tooth-like means have end surfaces

which slope in the radially outer direction away from the corresponding end of the band means so that the radially innermost part of each surface is closer to the respective band end than the radially outermost part thereof.

19. A clamp structure according to claim 4, characterized in that said tooth-like means have end surfaces which slope in the radially outer direction away from the corresponding end of the band means so that the radially innermost part of each surface is closer to the respective band end than the radially outermost part thereof.

20. A clamp structure according to claims 1, 2 or 3, characterized in that said further means include a wedge shaped insert means of relatively inelastic material, said ear means being provided in a separate clamping member having inwardly projecting hook-like ends adapted to engage in corresponding openings of the band means, said insert means being in direct contact with its inner curved configuration with the hose-like object and extending a predetermined distance over the circumference of the hose-like object, and the band means being in contact with any free part of the hose-like object not covered by said insert means and with a major portion of the outer circumference of the insert means so that the band means, upon being engaged by the hook-like ends of the clamping member and

upon contraction of the ear means, exerts a clamping pressure directly onto the hose-like object where it is in direct contact therewith and indirectly by way of the insert means which it is in indirect contact therewith.

21. A clamp structure according to claim 20, characterized in that said insert means is made of polyvinyl chloride.

22. A clamp structure according to claim 20, characterized in that said insert means is provided with aperture means to receive the inwardly projecting hook-like ends [extending ends of the hook-like projections].

23. A clamp structure according to claim 22, characterized in that the aperture means are recesses in the insert means.

24. A clamp structure according to claim 22, characterized in that the aperture means extends clear through the insert means in the radial direction.

25. A clamp structure [with rib-like projections] according to [claims 1, 2 or 3] claim 1 with rib-like projections, characterized in that the rib-like projections are provided with narrow slots extending transversely thereof at least within a certain part thereof.

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26. A clamp structure [with rib-like projections] according to claim 4, characterized in that the rib-like projection[s] means are provided with narrow slots extending transversely thereof at least within a certain part thereof.

27. A clamp structure [with rib-like projections] according to claim 11 with rib-like projection means, characterized in that the rib-like projections are provided with narrow slots extending transversely thereof at least within a certain part thereof.

28. A clamp structure according to claim 13, characterized in that the rib-like projection[s] means

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connecting together the open ends of the clamping band means and for tightening the clamp structure about the hose-like object, said connecting and tightening means including deformable ear means adapted to contract the band means upon deformation thereof and leaving an at least narrow gap in the circumferential direction of the band means [upon deformation of] underneath the ear means after the clamp is tightened about the hose-like object, characterized in that for purposes of reducing the diametric dimension of the clamp structure [band means] by deformation of the ear means without internal projection in the internal surface of the clamp structure and without the external projection of the hose-like object into the gap, further means are provided in the clamping band means within the area of [the] overlapping band end portions [ends thereof] which enable relative side-by-side overlapping movement of the [open] band [ends] end portions to reduce the diametric dimension of the clamp structure [band means] devoid of any step or sudden change in the internal [diametric dimension thereof] surface of the clamping band means while maintaining an internal circular configuration of the band means complementary to the outer diametric dimension of the object, said further means being formed in the area of the overlapping band portions by sliding engagement of one part of a width smaller than the width of the

clamping band means in a recess of another part of at least approximately fork-shaped configuration defining said recess, and said further means being so located in said clamping band means that the gap is bridged by at least nearly the full band width of the underlying band portion [and at the same time] to thereby effectively bridge[ing] the gap to prevent squeezing out of any material of the hose-like object into the gap.

32. A clamp structure according to claim 31, characterized in that rib-like projection means are provided in the band means which are formed by a substantially central rib-like projection extending substantially from one end of the band means to at least near the other end thereof, a section of the band means being devoid of a central rib-like projection and being provided thereat with lateral rib-like projections within lateral areas of the band means and overlapping said central rib-like projection in the circumferential direction.

33. A clamp structure with a rib-like projection according to claim 31, characterized in that said further means include a tongue-like extension at one end of the band means forming a continuation of the rib-like projection.

34. A clamp structure according to claim 33, characterized in that the other end of said band means is fork-shaped having two fork-like portions with a recess therebetween,

the tongue-like extension being received between the fork-like portions in the installed condition of the clamp structure, and the fork-like portions being provided with lateral rib-like projections.

35. A clamp structure according to claims 31, 32, 33 or 34, characterized in that the ear means is provided in a clamping member separate from the [bank] band means.

36. A clamp structure according to claim[s 31, 32, 33 or 34] 1, characterized in that the ear means is provided in a clamping member separate from the band means.

37. A clamp structure according to claim 32, characterized in that at least some of the rib-like projections are provided with narrow slots extending transversely thereof at least within a certain part thereof.

38. A clamp structure for clamping a hose-like object onto a circular support member, which comprises clamping band means having open ends and deformable ear means operable to contract the band means upon deformation thereof while leaving an at least narrow gap in the circumferential direction of the band means underneath the ear means upon deformation thereof, characterized in that for purposes of reducing the diametric dimension of the clamp structure [band means] by deformation of the ear means without internal projection in the internal surface

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of the clamp structure and without the external projection of the hose-like object, the band means comprises further means including a tongue-like extension at one band end operable to enter a generally centrally located recess in the other band end which is fork-shaped to enable a truly circular reduction in the diametric dimension of the band means effectively without step-like offset or internal projection in the circumferential direction of the inner surface of the band means by relative movement of the tongue-like extension of the one end to the fork-shaped other end while at the same time effectively bridging the gap underneath the ear means by the tongue-like extension to prevent displacement of the hose-like object into the gap.

39. A clamp structure for clamping a hose-like object onto a circular support member, which comprises clamping band means having open ends and means operable to connect the open ends to contract the band means while leaving an internally open gap, characterized in that for purposes of reducing the diametric dimension of the clamp structure [band means] without internal projection in the internal surface of the clamp structure, the band means comprises further means including a tongue-like extension at one band end operable to enter a generally centrally located recess in the other band end which is fork-shaped and defined by two lateral fork-shaped portions to enable a truly

circular reduction in the diametric dimension of the band means effectively without step-like offset or internal projection in the circumferential direction of the inner surface of the band means by relative movement of the tongue-like extension of the one end to the fork-shaped other end, and in that the internal clamping surfaces of said clamping band means, of said tongue-like extension and of said lateral fork-shaped portions are disposed coplanar within the entire circumference of the clamp structure while said gap is effectively bridged by the full band width to prevent squeezing out of any material of the hose-like object into the gap.

40. A clamp structure according to claims 38 or 39, characterized in that a substantially central rib-like indentation extending from said tongue-like extension to the area of the recess is provided in said band means while lateral rib-like indentations are provided in the fork-shaped band end which overlap with said central rib-like indentation in the circumferential direction of the band means.

41. A clamp structure according to claim 40, wherein said means operable to contract said band means is in one piece with said band means.

42. A clamp structure according to claim 40, wherein said means operable to contract said band means is a separate

member from said band means, and means in said band means and in said separate member for formlockingly connecting the separate member with said band means.

43. A clamp structure according to claim 1, characterized in that the further means includes a first part having a substantially fork-shaped configuration with two fork-like portions defining a recess between its two fork-like portions and a second part of substantially complementary shape to said recess and operable to enter said recess during said relative movement when the clamp structure is tightened.

44. A clamp structure according to claim 43, characterized in that said recess is open in the circumferential direction of the clamping band means in the direction toward said second part.

45. A clamp structure according to claim 43, characterized in that said first and second parts are located in the areas of the ends of the clamping band means.

46. A clamp structure according to claim 43, characterized in that said first part is located in the area of one end of the clamping band means.

47. A clamp structure according to claim 43, characterized in that the second part is located in the area of an end of the clamping band means.

48. A clamp structure according to claim 47, characterized in that the second part is located within the area of an overlapping band portion of the clamping band means.

49. A clamp structure according to claim 1, characterized in that said further means are so spaced in the circumferential direction from said ear means that the gap underneath the ear means is covered substantially by the full band width of an inner band portion of the clamping band means.

50. A clamp structure according to claim 1, characterized in that the further means includes a substantially fork-shaped part providing a central recess in one area of the clamping band means and a centrally disposed part in another area of the clamping band means which is operable to extend into the area of the recess of the substantially fork-shaped part.

51. A clamp structure according to claim 50, characterized in that said clamp structure is in one piece and includes the ear means.

52. A clamp structure for clamping a hose-like object onto a circular support member, which comprises open clamping band means having overlapping band portions and connecting and tightening means for connecting together said overlapping band portions of the clamping band means and for tightening the clamp structure about the hose-like object while leaving an internally

open gap, characterized in that further means are provided in the overlapping band portions of the clamping band means to enable a truly circular reduction in the diametric dimension of the clamp structure effectively without step-like offset or internal projection in the circumferential direction of the inner surface of the band means by relative movement of the band portions, said further means defining a centrally disposed recess of fork-like shape in one of the overlapping band portions which is defined by two spaced fork--shaped [sic] portions and which is open in the direction toward the end of said one band portion and a centrally disposed tongue-like part in the other of said overlapping band portions and of a shape substantially complementary to said recess so that said tongue-like part can enter said recess during said relative movement, and in that the internal clamping surfaces of said clamping band means, of said tongue-like extension and of said lateral fork-shaped portions are disposed coplanar within the entire circumference of the clamp structure while said gap is effectively bridged by the full band width to prevent squeezing out of any material of the hose-like object into the gap.

53. A clamp structure according to claim 52,
characterized in that said tightening means is included in a

separate member of the clamping band means which is connected to the remaining clamping band means by said connecting means.

54. A clamp structure according to claim 52, characterized in that said clamping band means is in one piece and includes said connecting and tightening means as well as said further means.

55. A clamp structure according to claim 54, characterized in that said further means is located in the area of the overlapping band portions.

56. A clamp structure according to claim 53, characterized in that the further means are located in the end areas of the remaining clamping band means.

57. A clamp structure according to claim 1, characterized by fastening means for fastening together the free ends of the band means, said fastening means including radially outwardly directed tooth-like means extending in the circumferential direction near one end thereof and complementary cut-outs provided in a corresponding portion of the clamp structure overlying said tooth-like means in the installed condition of the clamp structure and receiving said tooth-like means.

58. A clamp structure according to claim 39, characterized in that said tongue-like extension and said lateral

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fork-shaped portions at least partially mutually overlap, and in that the internal clamping surfaces of said tongue-like extension and of said fork-shaped portions are substantially coplanar over the entire length of overlap.

59. A clamp structure according to claim 52, characterized in that said tongue-like extension and said lateral fork-shaped portions at least partially mutually overlap, and in that the internal clamping surfaces of said tongue-like extension and of said fork-shaped portions are substantially coplanar over the entire length of overlap.