

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RICHARD W. HOLDEN, II  
and  
ANTHONY W. WILLIAMS

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Appeal No. 98-2385  
Application 08/403,995<sup>1</sup>

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ON BRIEF

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Before FRANKFORT, STAAB, and CRAWFORD, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3 and 6 through 17. Claims 4 and 5, the only other claims pending in the application, have been indicated by the examiner to contain allowable subject matter, but currently stand

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<sup>1</sup> Application for patent filed March 14, 1995.

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objected to until they are rewritten in independent form.

Appellants' invention is directed to a reinforced catheter and to a method of making such catheter. Independent claims 1 and 17 are representative of the subject matter on appeal and a copy of those claims is attached to this decision.

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

Truckai	5,176,660	Jan. 5, 1993
Brown et al. (Brown)	5,334,169	Aug. 2, 1994 (filed May 11, 1992)

Claims 1 through 3, 6, 7 and 10 through 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Truckai.

Claims 1 through 3, 6 through 9, 13 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Brown.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the examiner's answer (Paper No. 13, mailed October 8, 1997) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 12, filed September 19, 1997) for appellants' arguments thereagainst.

OPINION

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

Like the examiner (answer, page 3), it is our understanding that claims 1 through 3 and 6 through 17 are to stand or fall together because appellants' brief does not include a statement that this grouping of claims does not stand or fall together. In fact, page 2 of the brief clearly characterizes claims 1 through 3 and 6 through 17 as constituting a "first group." Thus, in accordance with 37 CFR § 1.192(c)(7), we select claim 1 as being representative of the "first group."

Looking to the examiner's rejection of claims 1 through 3, 6, 7 and 10 through 17 under 35 U.S.C. § 102(b) as being anticipated by Truckai, we have carefully reviewed the patent to Truckai, but must agree with appellants' arguments on page 3 of the brief that there is no teaching in this reference of first and second sets of reinforcing filaments, wherein each of the sets is comprised of "equal and parallel spaced filament groups" and "each of said filament groups includes two or more parallel individual filaments," as set forth in independent claim 1 on appeal. Likewise, we must agree, with regard to method claim 17 on appeal, that Truckai does not disclose or teach providing "multiple reinforcing filament groups" over the base coat of a catheter wherein there is provided "two or more

parallel individual filaments in each reinforcing group.” Thus, we will not sustain the examiner’s rejection of independent claims 1 or 17, or of any of the claims which depend therefrom, under 35 U.S.C. § 102(b) as being anticipated by Truckai.

We reach a contrary conclusion with regard to the examiner’s rejection of claims 1 through 3, 6 through 9, 13 and 17 under 35 U.S.C. § 102(e) as being anticipated by Brown. As the examiner has correctly noted, when we look to the showing in Figure 6 of the Brown patent, we perceive a method of making a catheter and a product (i.e., Fig. 6f) that is identical to that set forth in the claims on appeal. More specifically, with respect to representative claim 1 on appeal, we note that Brown teaches a catheter comprising a main catheter body (21 in Fig. 6f), a first set of reinforcing filaments (applied at 28) extending in a clockwise manner, and a second set of reinforcing filaments (applied at 22) extending in a counterclockwise manner. As can be readily seen in Figure 6 of Brown, each of the first and second sets of reinforcing filaments is comprised of equal and parallel spaced filament groups, one dispensed from the upper end of each of the wrappers (22, 28) and one dispensed from the lower end of each of the wrappers, and wherein each of said filament groups includes two or more (three as seen in Fig. 6) parallel individual filaments. Thus, we sustain the examiner’s rejection of claim 1 under 35 U.S.C. § 102(e) as being anticipated by Brown, and note that (as per appellants’ grouping of the claims) claims 2, 3, 6 through 9, 13 and 17 fall with claim 1.

As a further point with regard to the Brown patent, we note that the arrangement of Figure 6, when considered with each filament of (23) and (29) constructed as in Figure 23 of the patent, would disclose and teach a catheter and a method of making the same which is substantially identical to that disclosed and claimed by appellants. Contrary to appellants' assertions on page 4 of their brief, the fact that the outside filaments in Figure 23 of Brown are wound or twisted around a central core filament does not mean that the outer filaments necessarily must be considered to be something other than "parallel individual filaments," as set forth in claims 1 and 17 on appeal. Webster's New World Dictionary, Second College Edition, Prentice Hall Press, 1986, defines "parallel" as "1. Extending in the same direction and at the same distance apart at every point, so as never to meet," and this is exactly what any given pair of the outside filaments seen in Figure 23 of Brown appears to do as they wind around the central filament therein. Thus, appellants' argument that the twisted filaments as taught in Figure 23 of Brown are "specifically excluded from the invention claimed by appellants," is incorrect.

It follows from the foregoing that the examiner's rejection of claims 1 through 3, 6, 7 and 10 through 17 under 35 U.S.C. § 102(b) as being anticipated by Truckai is reversed, while the examiner's rejection of claims 1 through 3, 6 through 9, 13 and 17 under 35 U.S.C. § 102(e) as being anticipated by Brown is affirmed.

The decision of the examiner, accordingly, is affirmed-in-part.

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

AFFIRMED-IN-PART

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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APPENDIX

1. A catheter comprising

a main catheter body;

a first set of reinforcing filaments embedded in walls of said main catheter body and extending in a clockwise manner; and

a second set of reinforcing filaments embedded in walls of said main catheter body and extending in a counterclockwise manner;

wherein said first set of reinforcing filaments is comprised of equal and parallel spaced filament groups and each of said filament groups includes two or more parallel individual filaments; and

wherein said second set of reinforcing filaments is comprised of equal and parallel spaced filament groups and each of said filament groups includes two or more parallel individual filaments.

17. A method of making a catheter comprising:

extruding a base coat of a main body of said catheter;

providing multiple reinforcing filament groups over said base coat; and

extruding a top coat of said main body of said catheter over said reinforcing filament groups;

the improvement comprising:

the use of two or more parallel individual filaments in each reinforcing filament group.