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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/095,355	03/31/2005	Richard Golden	GOL-10403/16	4510
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GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			MAI, HAO D	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD GOLDEN

Appeal 2010-001401
Application 11/095,355
Technology Center 3700

Before JENNIFER D. BAHR, EDWARD A. BROWN¹ and
MICHAEL L. HOELTER, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

¹ Judge Brown has been substituted for Judge Silverberg who is no longer a member of the Board.

STATEMENT OF THE CASE

Appellant has filed a Request for Rehearing (hereafter “Req. Reh’g.”) under 37 C.F.R. § 41.52 of the Decision on Appeal (“Decision”) regarding the rejection of claims 1-5, 8 and 9 under 35 U.S.C. § 102(b).

We do not modify our opinion.

THE REQUEST FOR REHEARING

Appellant seeks rehearing of that part of the Decision affirming the rejection of claims 1-5, 8 and 9 as being anticipated by Nation (Req. Reh’g. 1). Appellant seeks reconsideration based on the contention that the Board is in error “that the device in Nation is not in fact the structural equal to the recitations of claim 1...and further that the device in Nation is, in any event, capable of removing a tooth or root tip” (Req. Reh’g. 2). We address Appellant’s contention below.

ANALYSIS

A request for rehearing must state with particularity the points believed to have been misapprehended or overlooked. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the briefs are not permitted in the request for rehearing. 37 C.F.R. § 41.52(a)(1). A request for rehearing is not an opportunity to express disagreement with a decision. The proper course for an applicant dissatisfied with a Board decision is to seek judicial review, not to file a request for rehearing to re-argue issues that have already been decided. *See* 35 U.S.C. §§ 141, 145.

Appellant argues claims 1-5, 8 and 9 as a group “referencing in particular claim 1 as being representative of the group” (Req. Reh’g. 1).

All of Appellant's arguments are directed to claim 1 which we address below.

Appellant initially contends that the Board's Decision is in error because "no suggestion or inference is provided that the design in Nation be modified for any other application" other than to "grip cylindrical or hexagonal objects of different sizes" (Req. Reh'g. 2). Appellant's contention addresses the "functional and/or applicational aspects" of Nation, not its structure (Req. Reh'g. 2, see also 3-4). It has long been settled that claims directed to an article or apparatus must be distinguished from the prior art in terms of structure rather than function (see *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). *Schreiber*, cited in the Examiner's Answer and referenced by the Board in the Decision, also provides instruction that a "reference may be from an entirely different field of endeavor than that of the claimed invention or may be directed to an entirely different problem from the one addressed by the inventor, yet the reference will still anticipate if it explicitly or inherently discloses every limitation recited in the claims" (Ans. 5; Decision 4-5; *Schreiber* 128 F.3d at 1478). The Examiner found that "Nation teaches all the structural limitations of the claim" and the Board sustained this finding (Ans. 7, see also 4; Decision 4-5). No structural modification of Nation was undertaken to reach this result. Accordingly, Appellant's contention is not persuasive.

Appellant also "submits that the Board has respectively misapprehended both the distinguishing aspects of the pointed jaw and pad support recited" (Req. Reh'g. 2). More specifically, Appellant contends that "the upturned nose 9 of lower jaw 5 is not an arcuate and pointed jaw

exhibiting a substantially pointed end” and that the upper jaw 6 in Nation “is not positioned opposite the surfaces of the pointed jaw” (Req. Reh’g. 3).

Addressing Appellant's contention regarding the pointed jaw and upturned nose 9 first, the Board’s Decision indicated that the “Examiner does not generally reference or state that Nation’s nose 9 is pointed,” instead the Board’s Decision reiterated the Examiner’s reliance on Nation’s outermost serration as “exhibiting a substantially pointed end” (Decision 5). The Board’s Decision stated that “Appellant does not address the Examiner’s reference to Nation’s serrated end” and as such, “Appellant’s rebuttal to a position not taken by the Examiner is not persuasive” (Decision 5). In the present Request for Rehearing, Appellant continues to address upturned nose 9, which was not relied on by the Examiner, and Appellant continues to fail to address the outermost serration which the Examiner did rely on. Accordingly, Appellant’s contentions directed to nose 9 are not persuasive and Appellant has not shown how the Board’s Decision misapprehended the distinguishing aspect of the pointed jaw as asserted.

Addressing now Appellant’s contention that the upper jaw 6 of Nation “is not positioned opposite the surfaces of the pointed jaw” (Req. Reh’g. 3), we note that Appellant does not provide a definition of “opposite” in the Specification. As such, this term is provided its ordinary and customary meaning consistent with its use in the Specification and by the Examiner (*DSW, Inc. v. Shoe Pavilion, Inc.*, 537 F.3d 1342, 1347 (Fed. Cir. 2008) (“[A]bsent contravening evidence from the specification or prosecution history, plain and unambiguous claim language controls the construction analysis”). The Board’s Decision addresses the opposite location of the pad support with respect to the arcuate jaw and further notes that Nation’s Figure

2 illustrates support 12 arrayed opposite the pointed jaw (Decision 4). In view of the above, Appellant has not indicated how Nation's support is not opposite the pointed jaw as claimed. Accordingly, Appellant has not shown how the Board's Decision misapprehended the distinguishing aspect of the oppositely located support.

Appellant also contends that error occurred because "the dental pliers design recited in claim 1 and depicted in Fig. 2 would be completely unsuitable and, in any event, wholly ineffective in gripping and rotating a cylindrical or hex shaped pipe" (Req. Reh'g. 3). Appellant does not indicate where this argument was previously set forth in the briefs; nevertheless, we will address it. Appellant confuses the issue here; the issue to be addressed is whether Nation's device is "capable of removing teeth from a patient's gum line and bone" as claimed (see Ans. 4), not whether Appellant's dental pliers can function as a pipe wrench. Accordingly, this contention is not persuasive.

Appellant recommends that the Board consider "a more detailed and sophisticated explanation of the structure and operation of the dental pliers" which is presently available on Applicant's website (Req. Reh'g. 4). However, any arguments or information on this website which is duplicative of that in Appellant's briefs has already been considered while any arguments or information on this website not already raised in Appellant's briefs are not to be considered without a showing of good cause (37 C.F.R. § 41.52(a)(1)). As no showing of good cause has been presented, we do not address this website.

Appellant also contends that Nation's wrench is not "an acceptable structural substitute [for Appellant's dental pliers] to be employed in the

removal of a tooth or root tip” (Req. Reh’g. 4-5). Without addressing whether this argument was previously raised in the briefs or not, it is sufficient to note that the Board’s Decision did not address the substitution of Nation’s wrench for Appellant’s pliers. Instead the Board’s Decision sustained the Examiner’s rejection that Appellant’s claims, as currently proposed, are anticipated by Nation. We further note that Appellant, in this contention, does not identify any particularities that are believed to have been misapprehended or overlooked by the Board. Accordingly, this contention is not persuasive.

Based on the record presented, Appellant’s Request has not persuaded us that the Board erred in sustaining the anticipation rejection of claims 1-5, 8 and 9 in view of Nation.

ORDER

Upon consideration of Appellants’ request for rehearing and for reasons given, it is ordered that the decision affirming the rejection of claims 1-5, 8 and 9 under 35 U.S.C. § 102(b) as being anticipated by Nation shall not be modified.

REHEARING DENIED

Klh

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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Before JENNIFER D. BAHR, FRED A. SILVERBERG and
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HOELTER, *Administrative Patent Judge*.

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
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REQUEST FOR REHEARING

Applicant is in receipt of the Decision on Appeal dated October 21, 2011 by the Board of Patent Appeals and Interferences. In response to the Decision, Applicant hereby submits this Request for Rehearing, limited to the affirmation of the Examiner's rejection of claims 1-5, 8 and 9 and referencing in particular claim 1 as being representative of the group. Specifically, Applicant respectfully requests that the Appeal Board revisit the affirmation of the Examiner's prior rejection of claim 1 as being anticipated by Nation.

The Board's remarks on pages 3-5 of the Decision analyzes the issue as to whether Nation discloses a pad-shaped support opposite from and extending crosswise to a pointed jaw exhibiting a substantially pointed end. As part of the Boards analysis, the Examiner's position was upheld that the functional recitations of lines 11-18 of claim 1 be afforded no weight in comparison to the description in Nation, the Board further agreeing with the Examiner's statement that the wrench as disclosed by Nation is capable of removing a tooth or root tip in the manner described. Applicant respectfully submits that the Board is in error on both counts, i.e. that the device in Nation is not in fact the structural equal to the recitations of claim 1 (insofar as the pad support is at a minimum not arrayed opposite the pointed jaw and inner surfaces as structurally required by the claim) and further that the device in Nation is, in any event, capable of removing a tooth or root tip.

Addressing initially the functional and/or applicational aspects of each design, the device in Nation is disclosed as being formed in a manner whereby they are adapted to grip cylindrical or hexagonal objects of different sizes without the necessity of any adjustment of the parts of the tool (see page 1, lines 5-8). Beyond this, no suggestion or inference is provided that the design in Nation be modified for any other application (the subsequent comments on lines 84-90 limited to the suggestion that the details of construction in Nation are amenable to change without any specific suggestion).

Next addressing the structural and accompanying functional/procedural recitations of claim 1, Applicant submits that the Board has respectively misapprehended both the distinguishing aspects of the pointed jaw and pad support recited (in comparison to Nation), as well as the weight which should have been accorded to the limiting and

defining aspects set forth in the subsequent recitations of lines 11-18 in claim 1. For the reasons previously stated, the upturned nose 9 of lower jaw 5 is not an arcuate and pointed jaw exhibiting a substantially pointed end (see at 38 in Fig. 2). Further, the upper jaw 6 in Nation with the V-notched walls 12/13 (this again disclosed for gripping about a circumferential location of a pipe 14 held between the upper jaw 6 and the lower jaw 9) is not positioned opposite the surfaces of the pointed jaw (see recitations of lines 9-10 in claim 1 as well as again side profile of Fig. 2).

Rather, and as is clearly shown in side perspective and side plan views Figs. 1-2 of Nation, the nose end projection 9 of the lower jaw 5 is forwardly offset relative to the inwardly offset portion 7 with V notch surfaces 12/13 of the upper jaw 6 (this is in fact necessary in order to grip a cylindrical or hexagonal object in the manner depicted in Fig. 2 of Nation and so that sufficient loading forces are exerted across an enhanced circumferential range of the pipe or the like). Beyond this clear structural distinction from what is recited in claim 1, and reversing the analysis laid out in the Examiner's Answer and the Board's decision, the dental pliers design recited in claim 1 and depicted in Fig. 2 would be completely unsuitable and, in any event, wholly ineffective in gripping and rotating a cylindrical or hex shaped pipe given again that the pointed jaw 38 with inner surfaces is arrayed opposite the width extending and pad support 42.

Addressing next the recitations of lines 11-18 of claim 1, and while acknowledging the Examiner's position as affirmed by the Board that functional recitations as a general proposition are not afforded significant weight in determining the structural distinctiveness of the claim, Applicant respectfully submits that such language is capable of imparting sufficient explanation and definition to the preceding structural

recitations, this in order to adequately clarify and distinguish those positive structural recitations from the teachings of the cited prior art.

In the present instance, the sophisticated dental pliers appliance of claim 1 recites a lever type tool for effectuating removal of a tooth or root tip from a patient's bridge. Succeeding Figs. 4-5 in the present disclosure provide an adequate explanation of the operation of the pliers appliance, however a more detailed and sophisticated explanation of the structure and operation of the dental pliers appliance is available on Applicant's website www.physicsforceps.com and which is strongly recommended the Board review in order to gain an honest appreciation of the present invention as recited in claim 1.

In conclusion, Applicant respectfully again submits that the offset forward end of the lower jaw 5 relative to the V notched surface of the upper jaw 6 in Nation differs structurally from the recitation in claim 1 of the crosswise extending surface of the pad support being arrayed opposite the surfaces associated with the (pointed) jaw. Applicant further again respectfully submits that the extended recitations of lines 11-18 in claim 1 should not be considered to be merely weightless functional language, rather this language is submitted to provide both definition and detail to the foregoing structural recitations of lines 1-10 which is supportive of the differences vis a vis Nation and the other cited references.

In closing, and upon revisiting the description of the pipe wrench in Nation in comparison to the design and operation of the dental pliers appliance as recited in claim 1 (and as depicted operationally on the www.physicsforceps.com website), Applicant would honestly ask what individual would be willing to accept a dentist/oral surgeon substituting a wrench such as disclosed in Nation for that recited in the present

application, and as constituting an acceptable structural substitute to be employed in the removal of a tooth or root tip. Let alone the terrifying thought of any dental professional attempting to manipulate the wrench design of Nation in the effort to remove a tooth, it is further noted that, in further instances of a root tip, these are typically embedded within the patients bridge and gum (as a result of the upper tooth portion breaking off), and Applicant cannot begin to fathom the idea of a device such as Nation being manipulated in a way that it can grasp the embedded root tip (again lower jaw 5 has no substantially pointed tip and which can further be manipulated in the manner disclosed).

For the above reasons, Applicant respectfully requests that the Board afford a second look at the decision taken as to claim 1 affirming the Examiner's prior rejection and further asks that the Examiner's rejection as to this claim group be reversed for the reasons previously given.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 07-1180.

Dated: December 8, 2011

Respectfully submitted,

Electronic signature: /Douglas J. McEvoy/
Douglas J. McEvoy

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Electronic Acknowledgement Receipt

EFS ID:	11569276
Application Number:	11095355
International Application Number:	
Confirmation Number:	4510
Title of Invention:	Dental pliers design with offsetting jaw and pad elements for assisting in removing upper and lower teeth and method for removing teeth utilizing the dental plier design
First Named Inventor/Applicant Name:	Richard Golden
Customer Number:	25006
Filer:	Douglas James McEvoy/Teri Tomayko
Filer Authorized By:	Douglas James McEvoy
Attorney Docket Number:	GOL-10403/16
Receipt Date:	08-DEC-2011
Filing Date:	31-MAR-2005
Time Stamp:	10:06:18
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Rehearing of BPAI Decision	REQUEST-FOR-REHEARING.pdf	34819 <small>06c72681235d732115bbc1aa9d54150e665e3182</small>	no	5

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New International Application Filed with the USPTO as a Receiving Office

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Before JENNIFER D. BAHR, FRED A. SILVERBERG and
MICHAEL L. HOELTER, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a), from a final rejection of claims 1-9. We have jurisdiction under 35 U.S.C. § 6(b).

WE AFFIRM-IN-PART.

The Claimed Subject Matter

The claimed subject matter is directed to dental pliers having a first jaw portion and a second and offsetting handle portion to more quickly and efficiently extract a tooth from a patient's mouth (Spec. 1:13-18).

Independent claim 1 is illustrative of the claims on appeal and is reproduced below:

1. A dental pliers appliance for removing teeth from a patient's gum line and bone through the application of a rotating motion, said appliance comprising:
 - a first handle and a pivotally connected second handle, each of said first and second handles including a user grasping portion;
 - said first handle terminating in an arcuate and pointed jaw exhibiting a substantially pointed end and a plurality of inwardly facing and serrated surfaces, said second handle terminating in an opposingly arrayed and elongate pad-shaped support, said pad-shaped support being rigidly mounted to said second handle and extending in a crosswise direction relative to an extending direction of said jaw, said pad-shaped support exhibiting a fixed cross wise extending support surface arrayed opposite said serrated surfaces associated with said jaw; and
 - said support adapted to contact an outer surface associated with a patient's mouth below the gum line, said jaw applying in abutting fashion such that said serrated surfaces contact against an inwardly facing side of a tooth and opposite said outer surface location associated with said support, a pointed edge associated with said jaw penetrating a predetermined embedded distance below the gum line and against the tooth, said handles being rotated in an outward fashion away from the patient's gum line, applying a rotating force to the tooth, and to forcibly dislodge the tooth from the patient's gum line

and bone about a pivot point of rotation proximate an edge location of the patient's gum line and bone and against which said support is applied.

References Relied on by the Examiner

Nation	US 1,782,364	Nov. 18, 1930
Lukase	US 5,122,058	Jun. 16, 1992

The Rejections on Appeal¹

1. Claims 1-5, 8 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Nation (Ans. 4).
2. Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nation and Lukase (Ans. 5).

ISSUE

Does Nation disclose pliers having a pad-shaped support opposite from and extending crosswise to a pointed jaw exhibiting a substantially pointed end?

ANALYSIS

Claims 1-5, 8 and 9 as being anticipated by Nation

Appellant argues claims 1 and 9 as a group (App. Br. 6-8). As such, we select claim 1 as representative of the group. Appellant also argues claims 2-5 and 8 separately (Reply Br. 3). 37 C.F.R. § 41.37(c)(1)(vii).

¹ The Examiner has withdrawn the rejection of claims 1 and 3 under 35 U.S.C. § 102(b) in view of Shaffer and the Examiner has withdrawn the rejection of claims 1-3 and 9 under 35 U.S.C. § 103(a) in view of Scott and Nation (Ans. 3).

Claim 1

Claim 1 requires a pad-shaped support opposite an arcuate jaw, the pad extending “in a crosswise direction relative to an extending direction of said jaw.” The Examiner states that Nation discloses an “elongated pad-shaped support 12” and that this support and Nation’s opposite serrated surfaces 11 “substantially form a cross” (Ans. 4, *see also* 6). Appellant contends that Nation “does not teach or suggest a crosswise extending pad...which is arrayed opposite the serrated surfaces” and that Nation’s element 12 cited by the Examiner is actually “an inverted V shaped notch associated with offset portion 7 and for gripping the cylindrical object” (App. Br. 7, Reply Br. 1-2). Nation’s element 12 is described as a “forward wall” of a V-shaped notch and Nation’s Figures 1-3 disclose this wall as extending in a direction that is opposite from and crosswise “relative to an extending direction of said jaw” (i.e. Nation’s jaw 5) as claimed (Nation, p. 1, ll. 61-64 and Figs. 1-3). Accordingly, the Examiner’s identification of Nation’s wall 12 as corresponding to Appellant’s claimed “elongate pad-shaped support” which extends opposite from and crosswise to Appellant’s jaw is reasonable. Appellant’s contention that Nation lacks this teaching is not persuasive.

Appellant also contends that Nation’s pad support is not “adapted to contact” the patient’s mouth or the patient’s tooth as claimed (App. Br. 7). Appellant contends that the Examiner’s citation to Nation’s pliers ‘is in error since it quite simply is incapable of operating to remove a tooth or root tip in the manner described’ (App. Br. 7-8, *see also* Reply Br. 2-3). The Examiner states that this functional language, and in fact, all of lines 11-18 of claim 1, are directed to an intended use (Ans. 6). Referencing *In re*

Schreiber, the Examiner states that “[i]f the prior art structure is capable of performing the intended use, then it meets the claims” (Ans. 5 referencing *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). We agree with the Examiner’s statement that “the wrench as disclosed by Nation is *capable* of removing a tooth or root tip in the manner as described” (Ans. 7) (italics in original). Appellant’s unsupported argument that “it is impossible” for Nation’s pliers to perform as claimed is not persuasive given the example of different teeth sizes provided by the Examiner (Reply Br. 3; Ans. 7).

Claim 1 further requires a “pointed jaw exhibiting a substantially pointed end.” The Examiner states that Nation discloses a “pointed jaw” noting that “the most outer serration ends in a peak exhibiting a substantially pointed end” (Ans. 4, *see also* 7). Appellant does not address the Examiner’s reference to Nation’s serrated end and instead contends that Nation’s lower “jaw 5 identified by the Examiner does not terminate in a substantially pointed end 9 as generally referenced” and that Nation’s “flattened nose 9 of the lower jaw 5...in any event is not a pointed jaw” (Reply Br. 1-2). The Examiner does not generally reference or state that Nation’s nose 9 is pointed (which Appellant disputes) and consequently, Appellant’s rebuttal to a position not taken by the Examiner is not persuasive. Accordingly, we sustain the Examiner’s rejection of claim 1 as being anticipated by Nation.

Claims 2, 4, 5 and 8

Claims 2, 4, 5 and 8 each depend from claim 1. Claim 2 further requires a support surface “comprising an ergonomic configuration substantially matching that of the patient’s gum.” Claim 4 is directed to a “center point of rotation.” Claims 5 and 8 are directed to an appliance that is

configured for “dislodging a selected tooth” or “dislodging a fragmented tooth”. The Examiner states and we agree that these claims “recite limitations that are very broad either structurally or functionally” and that Nation teaches these limitations or that “Nation’s wrench is functionally capable of” performing these limitations (Ans. 8). Appellant’s arguments to the contrary are not persuasive (*see* App. Br. 8, Reply Br. 3). Accordingly, we sustain the Examiner’s rejection of claims 2, 4, 5 and 8.

Claim 3

Claim 3 depends from claim 1 and further requires a pin extending through the first and second handles where they intersect and that the second handle “extends through” an aperture in the first handle. The Examiner defines “through” as “past” or “over the surface of” and concludes that since Nation’s handles extend past or over the surface of each other, Nation teaches this limitation (Ans. 8). Appellant contends that “Nation does not teach the second jaw extending through an aperture in the first jaw” and secured by a pin (App. Br. 8, Reply Br. 3).

Claims are construed with an eye toward giving effect to all terms in the claim. *Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006). *See also Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions which render phrases in claims superfluous). Using either of the Examiner’s definitions for the term “through” would render the claim term “aperture” superfluous because in either usage, “aperture” would only identify where the second handle extends past or over the surface of the first handle rather than identifying an opening into which the second handle “extends” as claimed. We find that the word “through,” consistent with Appellant’s Specification (*see* Spec.

8:15 to 9:5), includes “in at one end, side, or surface and out at the other: *to pass through a tunnel.*”² Nation illustrates one handle extending past or over the surface of another but does not disclose, either expressly or inherently, an aperture or thru-hole in the first handle that the second handle “extends through” as claimed. Accordingly, we reverse the Examiner’s rejection of claim 3.

Claims 6 and 7 as being unpatentable over Nation and Lukase

Claim 6 depends from claim 1. Claim 7 depends from claim 6. Claim 6 further requires first and second handles “exhibiting an angled side profile” while claim 7 further requires an “angled and mirrored side profile.” In combination with Nation, the Examiner relies on Lukase for disclosing “a dental pliers device having two handles 12/14 exhibiting angled and mirrored side profiles” (Ans. 5, *see also* 9 *referencing* Lukase Figs. 1-2). The Examiner states that it would have been obvious to modify Nation to incorporate “angled and mirrored side profiles to the two handles so that the user can apply an easy and effective rotating force” (Ans. 5). Appellant “repeats and re-avers the arguments presented against Nation in view of claim 1” and further contends that Lukase’s handles “are not angled in side profile (but rather which are planar as clearly shown in Fig. 2 of Lukase)” (App. Br. 10, Reply Br. 3-4). Lukase’s Figures 1 and 2 disclose planar handles 12 and 14 that are twisted such that the angle of these planar handles have an angled and mirrored side profile. Accordingly, Appellant’s contentions are not persuasive and the Examiner’s rejection of claims 6 and 7 is sustained.

² Webster’s Encyclopedic Unabridged Dictionary of the English Language 1480 (1989).

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CONCLUSION

Nation does disclose pliers having a pad-shaped support opposite from and extending crosswise to a pointed jaw exhibiting a substantially pointed end.

SUMMARY

The decision of the Examiner to reject claims 1, 2 and 4-9 is affirmed.
The decision of the Examiner to reject claim 3 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

MP



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TROY, MI 48007-7021

Appeal No: 2010-001401
Application: 11/095,355
Appellant: Richard Golden

Board of Patent Appeals and Interferences Docketing Notice

Application 11/095,355 was received from the Technology Center at the Board on November 16, 2009 and has been assigned Appeal No: 2010-001401.

A review of the file indicates that the following documents have been filed by appellant:

Appeal Brief filed on: May 08, 2009
Reply Brief filed on: September 25, 2009
Request for Hearing filed on: NONE

In all future communications regarding this appeal, please include both the application number and the appeal number.

The mailing address for the Board is:

BOARD OF PATENT APPEALS AND INTERFERENCES
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By order of the Board of Patent Appeals and Interferences.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/095,355	03/31/2005	Richard Golden	GOL-10403/16	4510
25006	7590	11/12/2009	EXAMINER	
GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			MAI, HAO D	
			ART UNIT	PAPER NUMBER
			3732	
			MAIL DATE	DELIVERY MODE
			11/12/2009	PAPER

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The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
11095355	3/31/2005	GOLDEN, RICHARD	GOL-10403/16

GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C
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TROY, MI 48007-7021

EXAMINER

HAO D. MAI

ART UNIT	PAPER
3732	20091109

DATE MAILED:

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Commissioner for Patents

The Reply Brief filed 09/25/2009 has been noted, considered, and entered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

/Hao D Mai/
Examiner, Art Unit 3732

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Richard Golden

Application No.: 11/095,355

Confirmation No.: 4510

Filed: March 31, 2005

Art Unit: 3732

For: Dental Pliers Design With Offsetting Jaw And
Pad Elements For Assisting In Removing Upper
And Lower Teeth And Method For Removing
Teeth Utilizing The Dental Plier Design

Examiner: C. C. Stokes

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

Responsive to the Examiner' Answer dated July 30, 2009, Applicant replies as follows:

The Examiner states that the Nation 1,782,364 reference discloses a wrench appliance capable of removing teeth from a patient's gum line and bone through the application of a rotating motion. This is clearly and patently incorrect in that Nation explicitly teaches a pair of jaws formed for gripping cylindrical or hexagonal objects of different sizes (these further defined by example to include a cylindrical pipe 14).

Specifically, Nation grips and/or rotates an object (see pipe 14) engaged between the lower (identified as first) jaw 5 and upper (identified as second) jaw 6. The lower/first jaw 5 identified by the Examiner does not terminate in a substantially pointed end 9 as generally referenced. Rather, the upturned and flattened nose 9 of the lower jaw 5 does not even contact

the cylindrical object 14 and in any event is not a pointed jaw.

The upper jaw 6 (identified as the equivalent of the second jaw) further does not terminate in a pad-shaped support 12, this element in Nation actually being an inverted V shaped notch associated with offset portion 7 and for gripping the cylindrical object 14 to force the same into an inwardly located angle 10 formed in the lower jaw (see page 1, lines 68 et seq). As further specifically taught in Nation, the upper face of the enlarged portion 8 (this being part of the actual engaging surface associated with the first/lower jaw and not at all related to a pointed jaw) and the rearward wall 13 of the angle 11 in the upper/second jaw (again cited as the pad support) are disposed at converging angles to resist displacement of the pipe 14 in a rearward direction and to enable the serrated teeth 11 to bite into the wall of the pipe 14.

Given this clarification in the overt teachings of Nation, and in order to support the Examiner's position as to anticipation, Nation would at a minimum have to teach a pointed edge (which it doesn't have) which engages an inside surface of the patient's tooth below a patient's gum line and which, in combination with at crosswise pad support (not taught by the "V" inverted shaped notch with walls 13) contacting an outer surface of the mouth below the gum line. Further, and referring to Fig. 3, the width dimension of the upturned nose 9 (cited as the first handle pointed end) is actually somewhat greater than the total width of the inverted "V" notch (see inwardly offset portion 7), and which confused Applicant as to which handle 5 or 6 in Nation was in fact being relied upon as being the lower pad supporting handle.

To summarize, it is respectfully submitted that the illustrations and written description of Nation do not teach or suggest, or in any way support, a dental pliers constructed for outward pivoting removal of teeth and root tips. Rather, and as is made clear in the disclosure of Nation, it in fact teaches an adjustable wrench for exerting enhanced gripping of cylindrical/hexagonal

objects.

Given the above, Applicant disagrees with the Examiners' comments on page 5 regarding the functional capabilities of Nation. In particular, Applicant avers that it is impossible for the jaw 9 to contact its inwardly facing serrations 11 against the inside surface of the tooth, given further that the upturned and flat nose 9 prohibits what is supposed (but is in fact not) to be a pointed end for embedding below a gum line and engaging against an inner side of the tooth (see for example Figs. 4 and 5).

Addressing the dependent claims, and given the above explanation, the inverted V notch 7 and 13 in the upper jaw 6 in Nation clearly does not teach an ergonomically configured support surface substantially matching that of a patient's gum line and as is recited in claim 2.

The recitation of an aperture in the first handle with a second handle inserting through the aperture and being pin secured (claim 3) is also clearly not shown in Nation.

As to claim 4, Nation does not teach or suggest the a pad support surface (again referenced by inverted notch 7/13 in upper jaw 6) as defining a center point of rotation proximate and below an edge location of a gum line and bone associated with a tooth. Rather, and as referenced in Fig. 2 of Nation, the center point of rotation is, if anything, the coaxial center of the cylindrical object 14 as a feature of its explicit teachings.

As to claim 5, and given the above explanation, the wrench of Nation is not configured for engaging and dislodging a selected tooth located along a lower gum line and bone of a patient. Similarly, Nation is submitted as not configured for engaging and dislodging a fragmented tooth and associated root tip as recited in claim 8.

Addressing further Lukase (cited in combination with Nation against claims 6 and 7) Applicant repeats and re-avers the arguments presented against Nation in view of claim 1.

Beyond that, claim 6 recites that the handles exhibit an angled side profile such that the appliance is configured for engaging and dislodging a selected tooth along an upper gum line and jaw bone. Such angled side profile is further shown in Figs. 7 and 8 of the present drawing illustrations and contrasts with the handles 12 and 14 in Lukase which are not angled in side profile (but rather which are planar as clearly shown in Fig. 2 of Lukase).

Although not addressed in Examiner's Answer, Applicant reiterates and re-avers the arguments presented in the Appeal Brief directed to Shaffer (cited under 35 USC 102(b) against claims 1 and 3), as well as claims 1-3 and 9 rejected under 103(a) over Scott in view of Nation.

Dated: September 25, 2009

Respectfully submitted,

Electronic signature: /Douglas J. McEvoy/

Douglas J. McEvoy

Registration No.: 34,385

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Attorney for Applicant

Electronic Acknowledgement Receipt

EFS ID:	6146470
Application Number:	11095355
International Application Number:	
Confirmation Number:	4510
Title of Invention:	Dental pliers design with offsetting jaw and pad elements for assisting in removing upper and lower teeth and method for removing teeth utilizing the dental plier design
First Named Inventor/Applicant Name:	Richard Golden
Customer Number:	25006
Filer:	Douglas James McEvoy/Teri Tomayko
Filer Authorized By:	Douglas James McEvoy
Attorney Docket Number:	GOL-10403/16
Receipt Date:	25-SEP-2009
Filing Date:	31-MAR-2005
Time Stamp:	13:35:00
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Reply Brief Filed	SCAN_MR_7072_000.pdf	110178 <small>bc113c5dd4040a16d08f3c3aff8172d9ae0fd 17f</small>	no	4

Warnings:

Information:

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If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.



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25006	7590	07/30/2009	EXAMINER	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 11/095,355

Filing Date: 03/31/2005

Appellant(s): Golden, Richard

Douglas J. McEvoy
For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed 05/08/2009 appealing from the Office Action mailed 10/15/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

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(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS - The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner in order to materially reduce or simplify the issues for appeal.

- Claim 1 and 3 under 35 U.S.C 102(b) by Shaffer
- Claims 1-3 and 9 under 35 U.S.C. 103(a) over Scott in view of Nation

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,782,364	NATION	11-1930
5,122,058	LUKASE ET AL.	6-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- i. **Claims 1-5 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Nation (1,782,364).**

Nation discloses a wrench appliance capable of removing teeth from a patient's gum line and bone through the application of rotating motion, said appliance comprising: a first handle 1 and a pivotally connected second handle 2, each of said first and second handles including a user grasping portion. The first handle 1 terminates in an arcuated (at surface 5) and pointed jaw exhibiting a plurality of inwardly facing and serrated surfaces 11. Note that the most outer serration ends in a peak exhibiting a substantially pointed end. The second handle terminates in an opposingly arrayed and elongate pad-shaped support 12, which is rigidly mounted to said handle. Note that the elongated pad-shaped support 12 and the serrated surfaces 11 substantially form a cross. As to claim 2, the support surface 12 is shown to comprise an ergonomic configuration with a curvature that can substantially match the patient's gum. As to claim 3, note the pivotal connection 4 comprising an aperture and a pin extending crosswise there through.

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As to the functional language in claims 1, 4-5, and 8-9, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be used does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). If the prior art structure is capable of performing the intended use, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed.Cir. 1997). In this case, Nation's wrench is capable of performing all the claimed functions. For example: the pad-shaped support 12 is capable of contacting an outer surface below the patient's gum line (claim 1); the jaw 9 is capable of contacting its serrated surfaces 11 against an inwardly facing side of a tooth (claim 1); the support is capable of defining a center point of rotation proximate and below an edge location of a gum line (claim 4), the wrench is capable of engaging and dislodging a selected tooth located along a lower gum line (claim 5), etc.

Regarding claim 9, Nation discloses all the claimed elements as detailed above.

ii. **Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nation (1,782,364) in view of Lukase et al. (5,122,058).**

Nation discloses the invention substantially as claimed. However, Nation fails to disclose the first and second handles exhibiting angled and mirrored side profiles. Lukase et al. disclose a dental pliers device having two handles 12/14 exhibiting angled and mirrored side profiles (Fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nation by incorporating angled and mirrored side profiles to the two handles so that the user can apply an easy and effective rotating force can be applied to the device as taught by Lukase et al.

(10) Response to Argument**i. Claims 1-5 and 8-9 under 35 U.S.C 102(b) by Nation**

Regarding claim 1, the appellant argues that Nation does not teach or suggest a crosswise extending pad shaped support mounted to the second handle and which is arrayed opposite the serrated surfaces of the first arcuate and pointed jaw extending from the first handle as recited in claim 1. Base on Nation's Figures 1-3, the examiner maintains that the support 7/12 as shown is (1) pad-shaped; (2) rigidly mounted to the second handle 2; (3) extending in a crosswise direction relative to an extending direction of the opposite jaw which is best shown as a whole by reference numerals 5,9,10, 11; and (4) exhibiting a fixed crosswise extending surface (e.g. surface 12 or the curved outer side surface) that is arrayed opposite the serrated surfaces 11 of said jaw. The claim language "pad-shaped support" is given its broadest reasonable interpretation that the support has a shape of a pad. A pad is "a stuffed cushion" or "a metal plate" (www.dictionary.com); and there is really no established or conventional shape for such stuffed cushion or metal plate. Therefore it is reasonable to say that Nation's support 7/12 is pad-shaped. Furthermore, the support 7/12 is shown as being integrally formed with, and thus is rigidly mounted to, the second handle 2. As to the crosswise relationship, the definition for "crosswise" is "across", "transverse", or "forming a cross" (www.dictionary.com). Figure 3 of Nation shows the support (best shown by reference numeral 8 in Figure 3) being across, transverse, or forming a cross in relation with jaw 9/11. Finally, Figures 1-3 of Nation clearly show the support 7/12 being arrayed opposite from said serrated surfaces 11 of jaw 9/11.

Appellant further argues that Nation's wrench is not capable of operating to remove a tooth or root tip in the manner as described in the claim. Note that such claim language "said support adapted to contact an outer surface..." (lines 11-18 of claim 1) is intended use. It has

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been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). If the prior art structure is capable of performing the intended use, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed.Cir. 1997). See also *MPEP 2111.04 and 2114*. In this instant case, the examiner maintains that (1) Nation teaches all the structural limitations of the claim; and (2) the wrench as disclosed by Nation is *capable* of removing a tooth or root tip in the manner as described in the claim.

The examiner does not see any reason why a dentist or one of ordinary skill in the field - either it be the wrench/pliers field or the dental field - would not be able to use the wrench as disclosed by Nation to remove a tooth, e.g. a tooth of a human being or large mammal such as a horse, in the manner as described in the claim. The example of a horse's tooth is given in case Appellant argues the size of Nation's wrench being too big for a human patient.

Specifically with regard to claim 1, the Examiner maintains that Nation discloses a wrench with the support 12 that is capable of contacting an outer surface associated with a patient's mouth below the gum line, while the jaw 9/11 is capable of applying in abutting fashion such that the serrated surfaces 11 contact against an inwardly facing side of a tooth and opposite said outer surface location associated with said support. A pointed edge (e.g. the outermost pointed peak of serrations 11) associated with said jaw is capable of penetrating a predetermined embedded distance below the gum line and against the tooth. Said handles 1 and 2 are capable of being rotated in an outward fashion away from the patient's gum line, applying a rotating force to the tooth, and to forcibly dislodge the tooth from the patient's gum line and bone about a pivot point

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of rotation proximate an edge location of the patient's gum line and bone and against which said support is applied.

Regarding claim 3, the Appellant argues that Nation does not teach the second jaw extending through an aperture in the first jaw. The word "through" is defined as "in at one end, side, or surface and out at the other", "past", or "over the surface of" (www.dictionary.com). The examiner maintains that Nation show that the second handle 2 intersects the first handle at a point (area 3) in which it *extends through* the aperture 4 as shown in Figures 1-2. That is, given the definitions of "through", the second handle 2 at area 3 extends *from one side to another side* of aperture 4, or extends *past* aperture 4, or extends *over the surface* of aperture 4.

In response to Appellant's arguments regarding claims 2, 4-5, and 8, the examiner maintains that the claims recite limitations that are very broad either structurally or functionally. Regarding claim 2, the recited limitation "an ergonomic configuration matching that of the patient's gum" is very broad since there is no finite configuration for a "patient's gum". For example, one person's gum can have a configuration that is very different from that of another person; and the range of difference is even larger between a human's gum and a whale's gum. The claim language is given its broadest reasonable interpretation that Nation's support surface 12 has an ergonomic configuration, e.g. contours, that match a configuration or contours of a human or large mammal's gum. Regarding claim 4, the examiner maintains that the support 12 of Nation's wrench is functionally capable of defining a center point of rotation that is proximate and below an edge location of a gum line and bone associated with a given tooth when it is applied against such location of the gum line and rotational force is applied onto the gum/tooth via the wrench. Regarding claims 5 and 8, a dentist can certainly conclude that Nation's wrench, with its shape and size, is substantially capable of engaging and dislodging a selected

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tooth, or a fragmented tooth and its associated root tip, located along a lower gum line and jaw bone of a patient, e.g. a human or large mammal.

Regarding claim 9, the Examiner maintains that Nation discloses all the claimed elements as recited in the claim as detailed above with respect to claims 1 and 2.

ii. **Claims 6-7 under 35 U.S.C. 103(a) over Nation in view of Lukase**

Appellant argues that Lukase's handles 12 and 14 are not angled in side profile. The Examiner maintains that Figures 1-2 of Lukase clearly shows handles 12 and 14 each having a side profile that is angled (at twisting area).

In conclusion, there are no deficiencies found in view of the rejections and arguments stated above.

(11) Related Proceeding(s) Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Hao D Mai/
Examiner, Art Unit 3732

Conferees:

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

/Janet C. Baxter/
TC 3700 TQAS

