NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

IN RE INCEPT LLC,
Appellant

2025-1900

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. 16/886,099.

Decided: September 17, 2026

PETER S. DARDI, Christensen Fonder Dardi & Herbert, PLLC, Maple Grove, MN, for appellant. Also represented by CASEY ALLEN KNISER, Law Office of Casey A. Kniser LLC, Chicago, IL.

JUSTIN BOVA, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, for appellee John A. Squires. Also represented by SARAH E. CRAVEN, NICHOLAS THEODORE MATICH, IV, ROBERT J. MCMANUS.

Before MOORE, *Chief Judge*, CUNNINGHAM, *Circuit Judge* and KOVNER, *District Judge*.[1]

PER CURIAM.

Incept LLC ("Incept") appeals the Patent Trial and Appeal Board's decision affirming an examiner's rejection of claim 1 of U.S. Patent Application No. 16/886,099 ("the '099 application") as unpatentable under 35 U.S.C.§ 103. *Ex parte Bean*, No. 2024-003619, 2024 WL 5193610, at *5–8 (P.T.A.B. Dec. 20, 2024) ("*Decision*"); *Ex parte Bean*, No. 2024-003619, 2025 WL 1329066 (P.T.A.B. Apr. 30, 2025) ("*Decision Denying Rehearing*"). For the reasons below, we *vacate* and *remand*.

I. BACKGROUND

The '099 application is entitled "Anchoring Strain Relief Member." J.A. 39. Claim 1 recites:

> 1. A medical catheter having a proximal end and a distal end, the catheter comprising
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> > a catheter shaft having a catheter lumen, a catheter inner surface, and a catheter outer surface separated from the catheter inner surface by a catheter wall thickness,
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> > a hub attached to the proximal end of the catheter shaft, and
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> > an anchoring strain relief member distal to the hub, joined to the catheter outer surface, and comprising a sealing portion that comprises a plurality of ridges, each ridge having a ridge tip and a ridge height defined by a distance from the ridge tip to a

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[1] Honorable Rachel P. Kovner, District Judge, United States District Court for the Eastern District of New York, sitting by designation.

> catheter central axis, the distance being measured perpendicular to the central axis, *wherein each ridge forms a flow barrier between the catheter outer surface along a circumference at the ridge and the top of that ridge* and *wherein the sealing portion is not tapered, is reverse tapered or has no more than about a 1.5 degree forward taper* in the proximal to distal direction.

J.A. 604 (emphases added).

On July 1, 2024, the examiner rejected claims 1–3, 5, 11, 15–22, and 32[2] of the '099 application as obvious over Thomspon Smith[3] alone. J.A. 644, 646. On appeal, Incept[4] challenges only the Board's rejection of claim 1. Appellant's Br. 10. Specifically, the examiner found that Thomspon Smith discloses every limitation of claim 1 except for the taper angle of the sealing portion of the claimed medical catheter. J.A. 648–51. Although "it appear[ed]" to the examiner "that *Thom[sp]on Smith*'s strain relief's ridges together may be forwardly tapered," the examiner conceded that Thomspon Smith "does not expressly state that [the strain relief member] is forwardly tapered" nor "state the degree of that forward taper." J.A. 649.

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[2] The Board notes that "[i]t is unclear from the record whether the Examiner intended to include claim 14 in this new ground of rejection," *Decision* at *5 n.6. Whether claim 14 is included in this rejection is irrelevant for purposes of this appeal.

[3] U.S. Patent App. Pub. No. 2019/0015644 A1 ("Thomspon Smith"). J.A. 741–69.

[4] In the proceedings below, Incept was identified as the real party in interest. *See Decision Denying Rehearing* at *1 n.1. For simplicity, we refer to Incept in place of the named inventors in discussing the prior proceedings.

Nevertheless, the examiner determined that any dimensional difference between claim 1 and Thomspon Smith's device failed to impart a patentable distinction as Incept "attribute[d] no special attribute, function, or performance to the claimed **range** of taper." J.A. 650–51.

The examiner also concluded that the language of claim 1 provided two locational limitations for the claimed "flow barrier"—the barrier must be "(1) anywhere 'between the catheter outer surface . . . and the top of that ridge;' and (2) the position from (1) is located anywhere 'along a circumference at the ridge.'" J.A. 653. The examiner subsequently found that Thomspon Smith's strain relief member with ridges forms a "flow barrier" within the location described by the claim. J.A. 654.

Incept appealed the examiner's rejections to the Board. *Decision* at *1. The Board reversed the examiner's rejection of claims 2, 3, 5, 11, 15–22, and 32, but affirmed the examiner's rejection of claim 1 as obvious over Thomspon Smith alone. *Id.* at *8. The Board found that "there [wa]s no dispute that the strain relief member of Thomspon Smith's medical catheter includes the claimed structure except for the specific taper angle," *id.* at *6, and agreed with the examiner that it would have been obvious to modify Thomspon Smith's strain relief member to meet the taper angle limitation of claim 1, *id.* at *6–7. Incept requested rehearing, arguing that the Board overlooked or misunderstood a dispute regarding the construction of "flow barrier" and that Thomspon Smith additionally does not teach a "flow barrier." J.A. 730–32. The Board subsequently denied Incept's rehearing request. *Decision Denying Rehearing* at *1. The Board agreed with the examiner's construction of "flow barrier," stating that the claim "does not require sealing of the catheter outer surface to the ridges, but rather, recites the position of the flow barrier between the catheter and the top of the ridge." *Id.* at *3. According to the Board's and the examiner's construction, the "flow barrier" limitation reads on "any solid structure

in the prior art device which is positioned within the bounds of the claimed location." *Id.* at *4 (emphasis omitted). The Board rejected Incept's construction—"a flow barrier at the interface of the catheter outer surface that extends to the top of the ridge," *id.*; *see* J.A. 730–31, and stated that "the [e]xaminer's finding that a fluid would not be able to flow through the disclosed solid, annular, end of [the catheter's] strain relief member is reasonable." *Decision Denying Rehearing* at *4. The Board also maintained its position on the taper angle argument. *Id.* at *5–6.

Incept timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

II. STANDARD OF REVIEW

We review de novo the Board's claim construction. *In re NTP, Inc.*, 654 F.3d 1268, 1273 (Fed. Cir. 2011). "We review the Board's ultimate determination of obviousness de novo and its underlying factual determinations for substantial evidence." *PersonalWeb Techs., LLC v. Apple, Inc.*, 917 F.3d 1376, 1381 (Fed. Cir. 2019) (internal quotation marks omitted). Substantial evidence is "less than the weight of the evidence but more than a mere scintilla of evidence." *In re Mouttet*, 686 F.3d 1322, 1331 (Fed. Cir. 2012) (citation omitted).

III. DISCUSSION

Incept argues that the Board erred in finding claim 1 of the '099 application unpatentable as obvious over Thomspon Smith because (1) the Board adopted a construction of "flow barrier" that was not supported by the intrinsic evidence, Appellant's Br. 18–24; and (2) the Board and examiner did not make a prima facie case of obviousness under Thomspon Smith alone, *id.* at 24–48. We address each argument in turn.

A.

Incept argues that the Board's construction of "flow barrier" is inconsistent with the claim language and the specification. *Id.* at 19–22. Incept also argues that the Board's construction would not block all flow paths and would therefore defeat the purpose of the claimed invention of claim 1. *Id.* at 22–24. The Director of the Patent Office argues that the claim language and specification support the Board's construction of "flow barrier." Appellee's Br. 18–23. We agree with Incept.

During examination, "the [Patent Office] must give claims their broadest reasonable construction consistent with the specification." *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). The broadest reasonable construction consistent with the specification requires that "the [B]oard must always consider the claims in light of the specification and teachings in the underlying patent." *In re: Power Integrations, Inc.*, 884 F.3d 1370, 1375 (Fed. Cir. 2018) (internal citation and quotation marks omitted). "[T]he Board cannot construe the claims so broadly that its constructions are *unreasonable* under general claim construction principles." *In re: Smith Int'l, Inc.*, 871 F.3d 1375, 1382 (Fed. Cir. 2017) (citation omitted).

The claim language itself supports an interpretation of "flow barrier" that must block flow from the catheter outer surface to the top of the ridge. Here, claim 1 of the '099 application claims a medical catheter with three main components: a catheter shaft, a hub, and an anchoring strain relief member. J.A. 604. In relevant part, the claim requires that the anchoring strain relief member is "joined to the catheter outer surface" and contains "a sealing portion that comprises a plurality of ridges . . . wherein each ridge forms a flow barrier between the catheter outer surface along a circumference at the ridge and the top of that ridge." *Id.* The claim language explicitly requires that each ridge *forms* a flow barrier between two points (the

catheter outer surface and the top of the ridge). Additionally, the claim describes the catheter outer surface as a component of the catheter shaft, and as being "separated from the catheter inner surface by a catheter wall thickness." *Id.* Under the language of claim 1, the ridges make up the sealing portion of the claimed anchoring strain relief member. J.A. 604. Accordingly, even the broadest reasonable interpretation of the claim language requires flow to be blocked from the catheter outer surface to the top of the ridge.

The specification further supports this interpretation of "flow barrier." The specification uses the term "flow barrier" in a passage that, like the claim language, requires that a ridge "forms a flow barrier between the catheter outer surface and the top of the ridge." J.A. 41 ll. 23–24. Apart from this use of the term flow barrier, the specification also repeatedly describes the invention as a medical catheter comprising a strain relief member that is capable of sealing and anchoring with a hemostatic valve or other elastomeric material. *See* J.A. 39 ll. 26–28 ("[T]he invention pertains to a medical catheter that comprises a strain relief member that provide[s] a gripping surface in a sealing area to provide resistance to movement and radial compression while promoting a seal when compressed against a deformable material."); *see, e.g.*, J.A. 48 ll. 3–5 ("In an improvement adapted from such familiar methods, however, the anchoring strain relief member in the devices described herein may be used as a sealing and gripping surface."). In sum, the specification requires that the ridges that make up the sealing portion of the strain relief member be capable of sealing and anchoring.

The specification's description of the structures that form the claimed flow barrier further supports Incept's proposed construction. The specification explicitly describes the nature of the connection between the elastomeric member and sealing portion of the anchoring strain relief member as having no "flow of fluid from a distal end to a

proximal end of the member when the member is in a sealing position," which is accomplished by the anchoring strain relief member being "part of, or attached to, the catheter so that there is a fluid-tight seal between the strain relief member and elastomeric sealing member." J.A. 53 ll. 8–12. The Board's construction—"each ridge is a solid structure positioned somewhere between the catheter outer surface and the top of the ridge"—allows for fluid channels between the flow barrier and the catheter outer surface, which is inconsistent with the description of flow barrier set forth in the specification. Appellee's Br. 19–20 (cleaned up); *see In re: Smith Int'l*, 871 F.3d at 1382–83 ("The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is not whether the specification proscribes or precludes some broad reading of the claim term adopted by the examiner . . . . It is an interpretation that corresponds with what and how the inventor describes his invention in the specification."). Contrary to the Board's construction, the specification supports an interpretation of "flow barrier" that must block flow between the catheter outer surface and the top of the ridge.

The Director's argument that Incept used more specific language in a portion of the specification and in two dependent claims, thereby demonstrating that Incept knew how to claim a fluid-tight seal, is similarly unavailing. Appellee's Br. 20–21. Instead, the dependent claims the Director relies on are more in line with Incept's construction than with the Board's construction. The Director cites original claim 3, which recites "[t]he medical catheter of claim 1 wherein the sealing portion is free of fluid channels," J.A. 58. The Director also cites amended claim 22, which recites "[t]he method of claim 21 wherein the sealing portion is sealingly engaged *against an elastomeric sealing member of a hemostatic valve* forming a fluid tight seal," J.A. 396 (emphasis added). Appellee's Br. 21. Claim 3 was subsequently amended to add additional language "when

the sealing portion is in a sealing position *with an elastomeric member*." J.A. 393 (emphasis added). These dependent claims are directed to configurations of the claimed invention in which an elastomeric member is in contact with the plurality of ridges that make up the sealing portion of the claimed strain relief member. Accordingly, the dependent claims do not support the Board's construction.

Finally, the Director's statement that Incept's arguments are based on the use of the claimed catheter in an unclaimed nested configuration is incorrect. Appellee's Br. 21–22. According to the Director, construing flow barrier to require a solid surface that spans from the catheter outer surface to the top of the ridge along a circumference at the location of the ridge improperly relies on the way the claimed structure will be put to use. *Id.* (citing first *Edgewell Pers. Care Brands, LLC v. Munchkin, Inc.*, 998 F.3d 917, 922 (Fed. Cir. 2021), then *Paragon Sols., LLC v. Timex Corp.*, 566 F.3d 1075, 1091 (Fed. Cir. 2009)). We disagree. Embodiments of the '099 application include a sealing portion of the strain relief member, and the junction between the sealing portion and the elastomeric member is described as fluid-tight regardless of whether the device is explicitly described as being used in a nested configuration. J.A. 39–42, 53. Contrary to the Director's arguments, construing "flow barrier" consistent with the teachings of the specification does not require the introduction of functional limitations. Construing flow barrier to mean a solid surface that spans from the catheter outer surface to the top of the ridge along a circumference at the location of the ridge describes the location at which the flow barrier exists, regardless of the specific configuration in which the invention is used. Accordingly, we disagree with the Board's construction of "flow barrier" and construe a "flow barrier" to be a solid surface that spans from the catheter outer surface to the top of the ridge along a circumference at the location of the ridge.

B.

The Board's incorrect construction of "flow barrier" impaired its obviousness analysis. Specifically, the Board found that claim 1 was unpatentable over Thomspon Smith because it would have been obvious to modify Thomspon Smith's strain relief member to include the taper angle of claim 1. *Decision* at *5. The Board's conclusion was based on the understanding that "the *only difference* between the prior art and the claim[ ] was a recitation of relative dimensions of the claimed device." *Id.* (emphasis added); *see also id.* at 6 ("There is no dispute that the strain relief member of Thomspon Smith's medical catheter includes the claimed structure except for the specific taper angle . . . ."); *Decision Denying Rehearing* at *8 ("claim 1 does not recite anything structurally distinct from the structure of Thomspon Smith aside from the difference in[ ] the forward taper angle."). Because the Board reached this predicate assumption under an incorrect construction of flow barrier, we do not reach the Board's obviousness conclusion, vacate the Board's decision, and remand this case for the Board to consider the patentability of claim 1 under the construction provided in this opinion.

III. CONCLUSION

We have considered the parties' remaining arguments and find them unpersuasive. We *vacate* the Board's decision and *remand* for further proceedings consistent with this opinion.

VACATED AND REMANDED

COSTS

Costs to Incept.