

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCLARENT, INC.,
Petitioner,

v.

FORD ALBRITTON, IV,
Patent Owner.

Case IPR2017-00498
Patent 9,011,412 B2

Before JOSIAH C. COCKS, BEVERLY M. BUNTING, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Acclarent, Inc. (“Petitioner”) filed a Petition for *inter partes* review of claims 1–7 and 14–20 of U.S. Patent No. 9,011,412 B2 (Ex. 1001, “the ’412 patent”). Paper 1 (“Pet.”), 19. Ford Albritton, IV (“Patent Owner”) filed a Preliminary Response. Paper 11 (“Prelim. Resp.”). We instituted trial as to all of the claims challenged by Petitioner, claims 1–7 and 14–20, and on all grounds set forth in the Petition. Paper 12 (“Institution Decision” or “Inst. Dec.”). After institution of trial, Patent Owner filed a Patent Owner’s Response (Paper 20, “PO Resp.”), and Petitioner filed a Petitioner’s Reply (Paper 22, “Pet. Reply”). Patent Owner further filed a Motion to Exclude Evidence (Paper 29), and Petitioner filed an Opposition to the Motion (Paper 32). Oral argument was conducted on April 24, 2018. Paper 39 (“Tr.”). After oral argument, the parties submitted briefs on the issue of whether any challenged claims cover Figure 2 of the ’412 patent. Papers 37, 38.¹

We have jurisdiction under 35 U.S.C. §§ 6(b) and 318(a). Having considered the evidence and arguments of both parties, we conclude that Petitioner has not met its burden of showing, by a preponderance of the evidence, that any of claims 1–7 and 14–20 are unpatentable.

A. *Related Matters*

Petitioner and Patent Owner identify the following proceeding in the U.S. District Court for the Northern District of Texas as a related matter:
Dr. Ford Albritton IV v. Acclarent, Inc., No. 3:16-cv-03340-D (filed Dec. 1,

¹ We need not reach this issue, as the outcome in this Decision and analysis below in favor of Patent Owner remains the same even if the claims cover Figure 2 of the ’412 patent, as alleged by Petitioner. Paper 37, 1–3.

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2016). Pet. 5; Paper 6, 2. Another proceeding, filed by Acclarent on December 1, 2016 and alleging invalidity of the '412 patent, was dismissed without prejudice on December 2, 2016. Pet. 5; *Acclarent Inc. v. Ford Albritton IV*, No. 5:16-cv-06919 (N.D. Cal.). In addition, Petitioner filed IPR2018-00268, challenging claims 8–13 of the '412 patent, which are not at issue here. *Acclarent, Inc. v. Ford Albritton, IV*, IPR2018-00268 (filed Dec. 1, 2017) (Paper 1). We denied institution in IPR2018-00268 on May 31, 2018. *See id.* Paper 10. Petitioner filed a request for rehearing on June 18, 2018, which remains pending. *Id.* at Paper 11.

B. The '412 Patent

The '412 patent is titled “APPARATUS, SYSTEM AND METHOD FOR MANIPULATING A SURGICAL CATHETER AND WORKING DEVICE WITH A SINGLE HAND.” Ex. 1001, (54). The '412 patent describes the functions performed by the handle structure in the following manner:

The handle has a structure to allow a position of the guide catheter to be controlled by some or all of three fingers of one hand of an operator of the handle. The structure of the handle is adapted to permit the operator to position a thumb and index finger of the hand to manipulate a working device inserted into the lumen of the guide catheter, where the working device is manipulable via a portion of the working device immediately adjacent to the handle.

Id. at Abstract.

Figure 3 of the '412 patent is reproduced below:

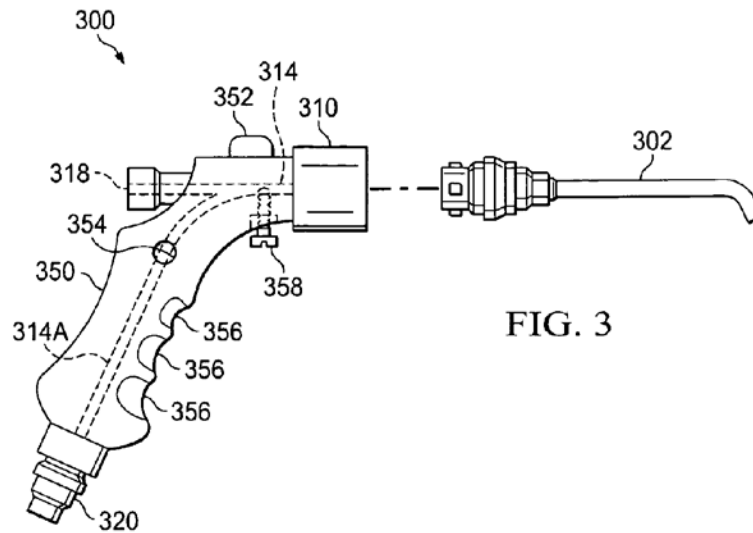


FIG. 3

Figure 3 shows surgical catheter 300 having handle 350 and guide 302. *Id.* at 3:51–56. Handle 350 includes opening 318, through which working devices, such as “an endoscope, guidewire or other working device, may be inserted.” *Id.* at 4:4–9. Attaching a suction source at handle coupling 320 provides suction at the distal end of guide 302. *Id.* at 4:12–15. Opening 354 on handle 350 allows “the user to control the amount of suction present at the distal end of the guide 302.” *Id.* at 4:18–21.

The specification explains that the user holds handle 350 using “some or all of the small finger, the ring finger and the middle finger,” while “[t]he fore finger and thumb are left free to manipulate a working device into the opening 318.” *Id.* at 4:62–5:3. The upper and lower portions of handle 350 form an angle that facilitates manipulation of the working device while simultaneously allowing the remaining fingers to control the position of guide 302. *Id.* at 5:8–18, 5:23–33.

C. Claims

Of the challenged claims, claims 1 and 14 are independent. Claim 1 is illustrative and is reproduced below:

1. A system, comprising:

a guide catheter insertable through an external body passage of a subject, said guide catheter having a substantially rigid shaft, a proximal opening, a distal opening and a lumen extending between the proximal opening and the distal opening;

a handle coupled to the guide catheter, the handle having a handle opening, a handle coupling and a structure, wherein the structure is configured to allow a position of the guide catheter to be controlled by some or all of three fingers of one hand of an operator of the handle, and wherein the handle coupling is configured to couple a source of suction to the lumen; and

a working device adapted to be insertable through the handle opening into the lumen of the guide catheter,

wherein the structure of the handle is adapted to permit the operator to position a thumb and index finger of the hand to manipulate the working device via a portion of the working device immediately adjacent to the handle opening and to control, by one of the thumb or index finger, an amount of suction coupled to the distal opening of the lumen.

Ex. 1001, 5:57–6:12.

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