

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HALYARD HEALTH, INC.,
Petitioner,

v.

KIRN MEDICAL DESIGN, L.L.C.,
Patent Owner.

Case IPR2017-01990
Patent 6,631,715 B2

Before PATRICK R. SCANLON, JAMES A. WORTH, and
JAMES J. MAYBERRY, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314 and 37 C.F.R. § 42.108

I. INTRODUCTION

Halyard Health, Inc. (“Petitioner”)¹ filed a Petition (Paper 3, “Pet.”) requesting an *inter partes* review of claim 18 of U.S. Patent No. 6,631,715 B2 (Ex. 1001, “the ’715 patent”). Kirn Medical Design, LLC (“Patent Owner”)² filed a Preliminary Response (Paper 8, “Prelim. Resp.”). Pursuant to our authorization via email, Petitioner filed a Reply to Preliminary Response (Paper 11, “Reply”). Also pursuant to our authorization (*see* Ex. 2009), Patent Owner filed a Sur-Reply to Petitioner’s Reply (Paper 14, “Sur-Reply”).

Institution of *inter partes* review is discretionary. *See* 35 U.S.C. § 314(a); 37 C.F.R. § 42.108(a). Under the circumstances of this case, for the reasons explained below, we exercise our discretion to not institute an *inter partes* review as to claim 18 of the ’715 patent.

II. BACKGROUND

A. *Related Matters*

The parties indicate that the ’715 patent is at issue in the following related case: *Applied Med. Tech., Inc. v. Corpak Medsystems, Inc.*,

¹ Halyard Health, Inc. is the sole remaining Petitioner in this proceeding. Corpak Medsystems, Inc., an original Petitioner, dissolved as of December 31, 2017, thereby ending its involvement in this proceeding. *See* Paper 12, 1.

² The Mandatory Notices provided by Applied Medical Technology, Inc. (“AMT”) identify Kirn Medical Design, L.L.C. (“Kirn”) as the owner of the ’715 patent and AMT as the exclusive licensee of the ’715 patent, and both entities as real parties-in-interest in this proceeding. Paper 5, 2. In addition, AMT has provided a statement from Kirn confirming that AMT is the exclusive licensee of the ’715 patent and consenting to AMT defending the ’715 patent in this proceeding. *Id.* at 6. Both AMT and Kirn have given power of attorney to counsel of record. Paper 6, Paper 13.

No. 1:16-cv-02190 (N.D. Ohio). Pet. 9; Paper 5, 2. Claim 18 of the '715 patent was challenged in IPR2017-00646—an earlier-filed *inter partes* review proceeding in which the Board denied institution. Pet. 13–14; *see also* Ex. 1013 (providing the Decision on Institution for IPR2017-00646).

B. The '715 patent

The '715 patent, titled “Magnetic Nasal Tube Bridle System and Related Method,” issued on October 14, 2003. Ex. 1001, (45), (54). The '715 patent “relates generally to systems for placing and securing a nasal tube; and more particularly to such a system which utilizes magnets in the placement of a bridle used in combination with a receiver to secure the nasal tube.” *Id.* at 1:8–12.

In one embodiment, flexible member 10 is used to secure a nasal tube in a patient. *Id.* at 4:16–17. Flexible member 10 is a soft, flexible tube having magnet 13 attached to end portion 12. *Id.* at 4:23–26, Fig. 1. In addition, flexible member 10 is long enough to be able to loop around the patient’s nasal septum so that each end of flexible member 10 extends through a respective nare or nostril of the patient. *Id.* at 4:17–21, Fig. 7d.

Magnetic probe 20 is inserted into a nare to attract magnet 13 and retrieve end portion 12 of flexible member 10. *Id.* at 4:54–56. Magnetic probe 20 is a rigid or semi-rigid cylinder having magnet 21 attached to first end portion 22. *Id.* at 4:57–61, Fig. 3. The polarity of magnet 21 is opposite the polarity of magnet 13 so that the two magnets attract. *Id.* at 5:1–4.

A method of placing and securing a nasal tube in a patient includes inserting the tube into a nare of the patient’s nose, inserting end portion 12 of flexible member 10 into a first nare, inserting magnetic probe 20 into a second nare to attract end portion 12, and removing magnetic probe 20 so as

to retrieve end portion 12 through the second nare. *Id.* at 6:19–28, Figs. 7a–7c. Specifically, end portion 12 (and thus magnet 13) is inserted into the first nare beyond the posterior border of nasal septum N through the choanal aperture. *Id.* at 6:34–40, Fig. 7b. When magnetic probe 20 is inserted similarly into the second nare, it attracts and connects with magnet 13 of flexible member 10, thus allowing end portion 12 to be retrieved through the second nare. *Id.* at 6:47–52. That is, magnetic probe 20 is withdrawn from the second nare, thereby pulling magnetically coupled flexible member 10 “into the first nare and out through the second nare.” *Id.* at 6:60–64, Fig. 7c.

This process results in flexible member 10 being looped posteriorly around nasal septum N (*id.* at 6:64–66), as shown in Figure 7d of the '715 patent, which is reproduced below.

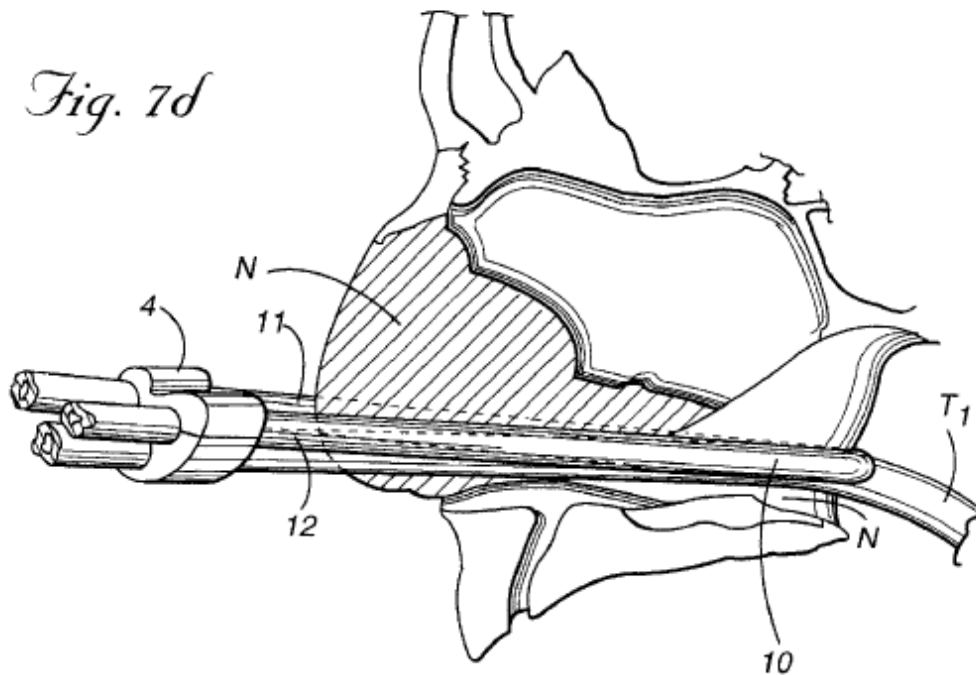
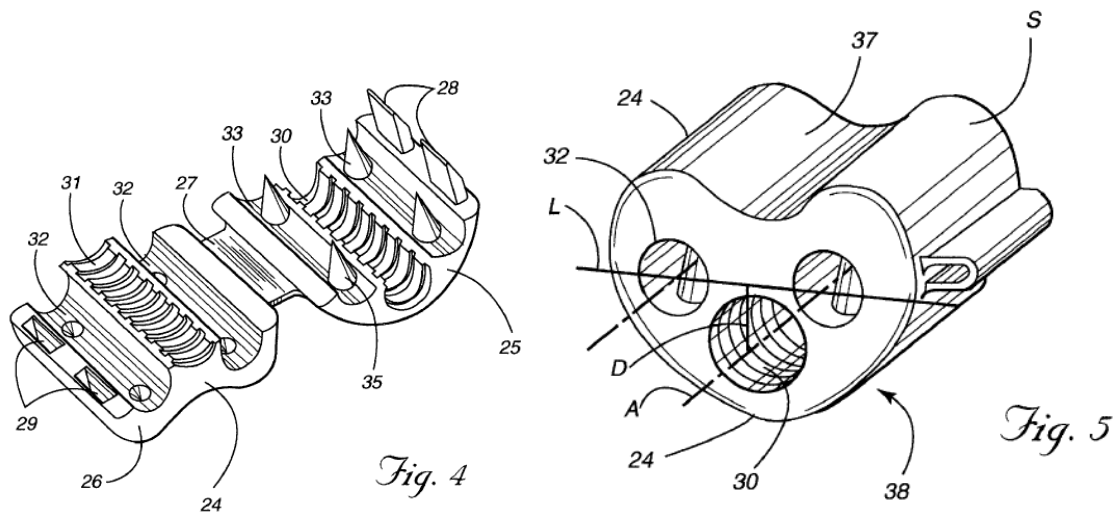


Figure 7d depicts flexible member 10 looped posteriorly around nasal septum N and magnetic probe 20 separated from end portion 12. *Id.* at 6:64–7:2. Receiver 24³ is secured to end portions 11, 12 of flexible member 10 and to nasal tube T₁, which is inserted into one of the patient's nares. *Id.* at 7:3–13, Fig. 7d.

Figures 4 and 5 of the '715 patent are reproduced below.



Figures 4 and 5 depict receiver 24 for securing nasal tube T₁ and end portions 11, 12 of flexible member 10, with Figure 4 showing receiver 24 in an open position for receiving the nasal tube and the flexible member ends. *Id.* at 3:56–58, 5:8–10. Receiver 24 comprises two members 25, 26 pivotally connected by living hinge 27. *Id.* at 5:11–15, Fig. 4. Snap-type locking hooks 28 extend from member 25, and mating holes 29 are formed in member 26 for firmly securing the members together over nasal tube T₁ and end portions 11, 12. *Id.* at 5:15–19, Fig. 4.

Receiver 24 includes first channel 30 formed in member 25 for receiving nasal tube T₁. *Id.* at 5:23–24, Figs. 4, 5. Channel 30 preferably

³ The receiver is misidentified in Figure 7d with reference numeral 4.

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