

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCLARENT, INC.,
Petitioner,

v.

FORD ALBRITTON, IV,
Patent Owner.

Case IPR2018-00268
Patent 9,011,412 B2

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

MARSCHALL, *Administrative Patent Judge*.

DECISION
Denying *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Acclarent, Inc. (“Petitioner”) filed a Petition for *inter partes* review of claims 8–13 of U.S. Patent No. 9,011,412 B2 (Ex. 1001, “the ’412 patent”). Paper 1 (“Pet.”), 24. Ford Albritton, IV (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. For the reasons set forth below, we conclude that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner will prevail in showing the unpatentability of claims 8–13. Accordingly, we decline to institute an *inter partes* review.

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, 2016). Pet. 5; Paper 4, 2. Claims 1–7 and 14–20 of the ’412 patent—not challenged here—are the subject of a pending *inter partes* review, IPR2017-00498, instituted on July 10, 2017. *Id.*

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:

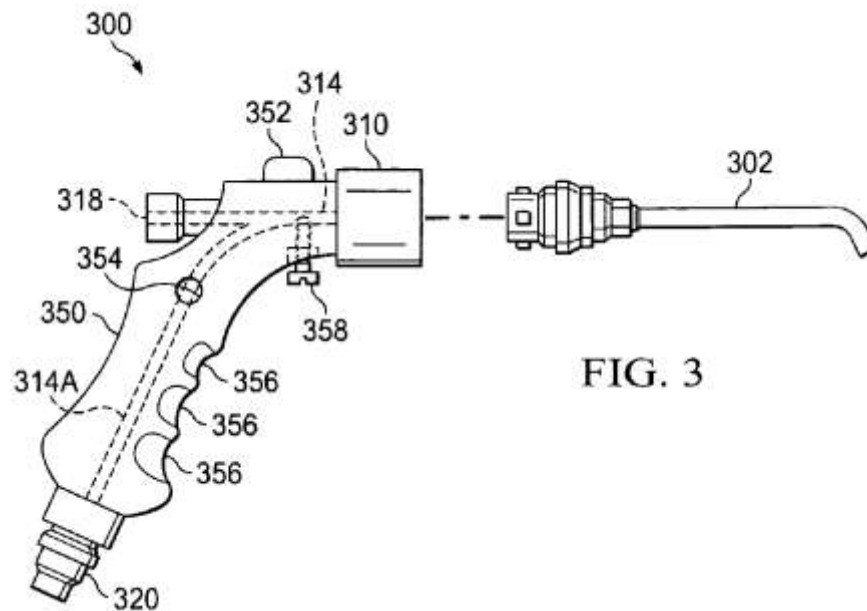


Figure 3 shows surgical catheter 300 having handle 350 and guide 302. *Id.* at 3:51–56. Handle 350 includes opening 318, through which working devices, such as “an endoscope, guidewire or other working device may be inserted.” *Id.* at 4:4–9. Attaching a suction source at handle coupling 320 provides 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 inserted 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, claim 8 is independent and is reproduced below:

8. A method comprising:

inserting a guide catheter through an external body passage of a subject, wherein the guide catheter comprises a substantially rigid shaft, a proximal opening, a distal opening and a lumen extending between the proximal opening and the distal opening;

coupling a source of suction to the lumen through the handle;

inserting a working device through a handle opening in a handle coupled to the guide catheter and into the lumen of the guide catheter;

controlling a position of the guide catheter using the handle that is formed to allow the position of the guide catheter to be controlled by some or all of three fingers of a hand, while substantially simultaneously manipulating the working device with a thumb and index finger of the hand via a portion of the working device immediately adjacent to the handle opening; and

controlling the position of the guide catheter using the handle, while substantially simultaneously controlling, by one of the thumb or index finger, an amount of suction coupled to the distal opening of the lumen.

Ex. 1001, 6:34–55.

D. The Prior Art

Petitioner relies on the following prior art references:

Reference	Date	Exhibit No.
U.S. Patent Pub. No. 2007/0250105 A1 issued to Ressemann et al. (“Ressemann”)	Oct. 25, 2007	1006
U.S. Patent No. 8,747,389 B2 issued to Goldfarb et al. (“Goldfarb”)	June 10, 2014	1007
U.S. Patent Pub. No. 2006/0063973 A1 issued to Makower et al. (“Makower”)	Mar. 23, 2006	1008
U.S. Patent No. 4,915,691 issued to Jones et al. (“Jones”)	Apr. 10, 1990	1009

E. Asserted Grounds of Unpatentability

Petitioner challenges claims 8–13 based on the following grounds (Pet. 24):

Ground No.	Reference(s)	Basis	Challenged Claims
1	Ressemann and Goldfarb	§ 103	8 and 11–13
2	Makower and Jones	§ 103	8–13

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.