

United States Court of Appeals
for the Federal Circuit

NOBEL BIOCARE SERVICES AG,
Appellant

v.

INSTRADENT USA, INC.,
Appellee

2017-2256

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2015-
01786.

Decided: September 13, 2018

JOHN B. SGANGA, JR., Knobbe, Martens, Olson & Bear,
LLP, Irvine, CA, argued for appellant. Also represented
by MICHELLE ARMOND, SHEILA N. SWAROOP.

JUSTIN EDWIN GRAY, Foley & Lardner LLP, San
Diego, CA, argued for appellee. Also represented by
NICOLA ANTHONY PISANO, JOSE L. PATINO.

Before PROST, *Chief Judge*, LOURIE and CHEN, *Circuit
Judges*.

LOURIE, *Circuit Judge*.

Nobel Biocare Services AG (“Nobel”) appeals from the decision of the U.S. Patent and Trademark Office (“PTO”) Patent Trial and Appeal Board (“the Board”) in an *inter partes* review (“IPR”) holding claims 1–5 and 19 of U.S. Patent 8,714,977 (“the ’977 patent”) unpatentable. See *Instradent USA, Inc. v. Nobel Biocare Servs. AG*, No. IPR2015-01786, 2017 Pat. App. LEXIS 8329 (P.T.A.B. Feb. 15, 2017) (“*Board Decision*”); *Instradent USA, Inc. v. Nobel Biocare Servs. AG*, No. IPR2015-01786, 2017 WL 1969639 (P.T.A.B. May 10, 2017) (“*Rehearing Decision*”). Because the Board did not err in its anticipation finding, we affirm.

BACKGROUND

I

Nobel owns the ’977 patent directed to dental implants. The ’977 patent explains that a “feature of the invention” is that “the coronally tapered aspect [of the implant] is designed to allow elastic expansion of the bone while inserting the wider area of the coronally tapered aspect inside the bone and after insertion of the narrow area of the coronally tapered aspect the bone relapses to cover the coronally tapered aspect.” ’977 patent col. 5 l. 66–col. 6 l. 4; see also *id.* col. 2 ll. 62–66, col. 12 ll. 51–57. The ’977 patent further states:

In another preferred embodiment illustrated in FIG. 12 the coronally tapered region **85** is placed inside the bone so the bone can grow above this region. The tapered region **90** is below the bone level **91**. *The height of the coronally tapered region 85 is 0.5–4 mm.* Preferably the height is 1–3 mm and for most cases 1.3–2.5 mm depending on the diameter of the implant.

Id. col. 12 ll. 10–16 (emphasis added).

Claim 1 is illustrative and reads as follows:

A dental implant comprising:

a body;

a coronal region of the body, the coronal region having a frustoconical shape wherein a diameter of an apical end of the coronal region is larger than a diameter of a coronal end of the coronal region;

an apical region of the body, the apical region having a core with a tapered region wherein a diameter of an apical end of the core is smaller than a diameter of a coronal end of the core and the apical end of the core is substantially flat; and

a pair of helical threads extending from the body along at least a portion of the apical region, each of the threads comprising an apical side, a coronal side, and a lateral edge connecting the apical side and the coronal side, a base connecting the threads to the core, a thread height defined between the lateral edge and the base, the lateral edge having a variable width that is expanded along a segment in the direction of the coronal end of the apical region, so that a least width of the lateral edge of the threads is adjacent the apical end of the apical region and a greatest width of the lateral edge of the threads is adjacent the coronal end of the apical region, and the threads having a variable height that is expanded substantially along the segment of the implant in the direction of the apical end of the apical region, so that a least height of the threads is adjacent the coronal end of the apical region and a greatest height at apical end of the apical region; and

a bone tap, wherein the helical threads starts at said bone tap and said substantially flat apical end of the core;

wherein each of the helical threads have a thread step that is defined as a distance along a longitudinal axis of the dental implant covered by a complete rotation of the dental implant, the thread step is between 1.5-2.5 mm.

Id. col. 17 l. 51–col. 18 l. 18 (emphasis added). Claim 2 depends from claim 1 and contains the additional limitation “wherein the coronal region has a surface configured to be in contact with bone.” *Id.* col. 18 ll. 19–20.

The application that led to the '977 patent claims priority from, *inter alia*, a PCT application filed on May 23, 2004. The undisputed critical date for purposes of pre-AIA 35 U.S.C. § 102(b) (2006)¹ is May 23, 2003. The '977 patent lists Ophir Fromovich, Yuval Jacoby, Nitzan Bichacho, and Ben-Zion Karmon as the inventors.

II

In or about the early 1990s, named inventor Fromovich founded Alpha-Bio Tech Ltd. (“ABT”), which sold dental implants and related goods. He also served as ABT’s CEO. In his capacity at ABT, Fromovich conducted dentist trainings and attended industry trade shows and conferences, including the International Dental Show (“IDS”) Conference held in Cologne, Germany. At the IDS Conference dental manufacturers would showcase their products and distribute written materials describing their

¹ Because the application that led to the '977 patent was filed before March 16, 2013, the pre-Leahy–Smith America Invents Act (“AIA”), Pub L. No. 112-29, 125 Stat. 284 (2011), version of § 102 applies.

products. Nobel acquired ABT and its intellectual property rights in 2008.

III

On October 27, 2014, the U.S. International Trade Commission (“ITC”) instituted an investigation of Intradent USA, Inc.’s (“Intradent”) Drive CM dental implants based on a complaint filed by Nobel alleging violations of 19 U.S.C. § 1337 by reason of importation of an implant product that infringes the ’977 patent and U.S. Patent 8,764,443. Intradent alleged, *inter alia*, that claims 1–5 and 19 of the ’977 patent were not infringed and were anticipated by an ABT “Product Catalog” with the date “March 2003” on the cover (“ABT Catalog”). J.A. 1718–75.

The ABT Catalog discloses SPI dental implant screws of various sizes, including a 5 mm implant. J.A. 1732. The 5 mm SPI implant is illustrated as follows:

SPI implant 5mmd



Id. Below the illustration of the 5 mm SPI screw is the following description: “Implant surface: ‘Hybrid’ design 2/3 apically S.L.A. (macro) 20-40 μ + (micro) 2 μ , 1/3 coronary *Acid Etched* 5-10 μ . *Increases clot retention and is conducive to bone healing.*” *Id.* (emphases added).

Another portion of the ABT Catalog with the heading “Wide platform implant analog for \varnothing 5 and \varnothing 6mmd” states: “It is possible to use the normal platform on all implants including [sic] the \varnothing 5 or \varnothing 6mmd implants. See illustration above.” J.A. 1746. The illustration above includes:

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