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| EDWARDS LIFESCIENCES CORPORATION<br>LEGAL DEPARTMENT<br>ONE EDWARDS WAY<br>IRVINE, CA 92614 |             |                      | SCHILLINGER, ANN M  |                  |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DERRICK JOHNSON, VAN HUYNH, and  
QINGGANG ZENG

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Appeal 2021-000311  
Application 15/591,915  
Technology Center 3700

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Before STEFAN STAICOVICI, EDWARD A. BROWN, and  
WILLIAM A. CAPP, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner’s decision in the Final Office Action (dated Dec. 10, 2019, hereinafter “Final Act.”) rejecting claims 1–4, 11–14, 21–25, and 27–32 under 35 U.S.C.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Edwards Lifesciences Corporation is identified as the real party in interest in Appellant’s Appeal Brief (filed May 8, 2020, hereinafter “Appeal Br.”). Appeal Br. 1.

§ 102(a)(2) as being anticipated by Huynh.<sup>2,3</sup> We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

## SUMMARY OF DECISION

We REVERSE.

## INVENTION

Appellant’s invention is directed “to a prosthetic heart valve having increased flow area for enhanced flow.” Spec. para. 2.

Claims 1 and 11 are independent. Claim 1 is illustrative of the claimed invention and reads as follows:

1. A flexible prosthetic heart valve, comprising:
  - a first cloth-covered undulating rod-like wireform formed into a continuous shape having alternating cusps and commissures around a periphery;
  - a second cloth-covered undulating rod-like wireform formed into a continuous shape having alternating cusps and commissures around a periphery, the cusps and commissures of the first and second wireforms being circumferentially aligned with one another; and
  - a plurality of flexible leaflets having outer edges sandwiched between the cusps of the first and second cloth-covered undulating wireforms, and
  - wherein the heart valve has no rigid annular components that prevent radial expansion of the aligned cusps of the first and second cloth-covered undulating wireforms.

Appeal Br. 14 (Claims App.).

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<sup>2</sup> Huynh et al., US 5,928,281, issued July 27, 1999.

<sup>3</sup> Claims 5–7, 15–17, 26, and 33 are withdrawn and claims 8–10 and 18–20 are canceled. Final Act. 1; Appeal Br. 14–18 (Claims App.).

## ANALYSIS

The Examiner finds Huynh discloses “a flexible prosthetic heart valve” including, *inter alia*, “a first cloth-covered undulating rod-like wireform [99]” and “a second cloth-covered undulating rod-like wireform [54].” Final Act. 6 (citing Huynh, col. 7, ll. 4–12, col. 13, ll. 25–60, Fig. 1).

Appellant argues that Huynh’s element 99 “refers to the cloth top edge of the stent assembly 56 which is not an ‘undulating rod-like wireform formed into a continuous shape having alternating cusps and commissures around a periphery.’” Appeal Br. 4. According to Appellant, “one cannot separate the top edge 99 from the larger stent 56.” *Id.*

The Examiner responds that “the Huynh reference has been interpreted such that element 99, *alone*, is the first cloth-covered undulating rod-like wireform.” Examiner’s Answer (dated Aug. 27, 2020, hereinafter “Ans.”) 4 (emphasis added). The Examiner explains that the term “wireform” is explicitly defined in paragraph 41 of Appellant’s Specification to mean “an elongated rod-like structure formed into a continuous shape defining a circumference around a flow orifice for supporting flexible leaflets.” *Id.* at 3. The Examiner further explains that although the term “rod-like” has not been defined by the Specification, nonetheless, “the term has been given its broadest, reasonable interpretation, which is an elongated structure with a shape similar to a stick, wand, staff, or the like.” *Id.* (citing Random House Unabridged Dictionary<sup>©</sup>, Random House, Inc. 2020; <https://www.dictionary.com/browse/rod#>). Thus, according to the Examiner,

Element 99 of Huynh reads on the [S]pecification’s definition of “wireform” because it is an elongated construction with a shape similar to a stick, wand, staff, or the like (please see Fig. 1 of

Huynh); element 99 is continuous or unbroken along its periphery (Fig. 1 of Huynh); and it defines a lower circumference around the bottom of the wireform that forms an opening for blood flow through the leaflets (Fig. 1 and col. 17, lines 54-65 of Huynh).

*Id.* at 4.

It is well settled that “[p]rior art references may be ‘indicative of what all those skilled in the art generally believe a certain term means . . . [and] can often help to demonstrate how a disputed term is used by those skilled in the art.’” *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999) (quoting *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996)). “Accordingly, the PTO’s interpretation of claim terms should not be so broad that it conflicts with the meaning given to *identical terms* in other patents from analogous art.” *Id.* (emphasis added). In this case, Lam (US 6,539,984 B2, issued Apr. 1, 2003) and Carpentier (US 7,871,435 B2, issued Jan. 18, 2011) demonstrate how the term “wireform” is employed by a person of ordinary skill in the art. In particular, Lam discloses a “wireform” as a bent “wire” structure and Carpentier discloses a “wireform” as a bent, machined, or molded “wire-like” structure. *See* Lam, col. 4, ll. 14–18, Fig. 1; Carpentier, col. 10, ll. 2–15, Figs. 5A, 5C. Hence, a skilled artisan employs the term “wireform” to mean a bent, machined, or molded “wire” or “wire-like” structure. Such a construction is consistent with Appellant’s Specification, which describes a “wireform” as an “elongated rod-like structure,” i.e., wire or wire-like, “formed into a continuous shape,” i.e., machined or molded. Spec., para. 41; *Compare* Spec., Fig. 16 *with*, Lam, Fig. 1 and Carpentier, Fig. 5C.

In contrast, Huynh's element 99, which the Examiner equates to a "wireform," is merely the *edge* of stent structure 56, and does not constitute a bent, machined, or molded "wire" or "wire-like" structure. *See* Huynh, col. 16, ll. 18–22, Fig. 17. Although we appreciate that element 99 has a "wire" or "wire-like" shape, this does not mean that it constitutes a bent, machined, or molded "wire" or "wire-like" structure. Moreover, Huynh describes element 54 as a "wireform" and illustrates element 54 as a "wire" or "wire-like" structure, whereas element 56, which includes edge 99, is described as a "support stent." *See id.*, col. 7, ll. 5–6, Fig. 1; Compare Spec., Fig. 16 *with*, Huynh, Fig. 1. Thus, Huynh employs the term "wireform" to describe a "wire" or "wire-like" structure in the same manner as Lam, Carpentier, and Appellant's Specification. To describe Huynh's element 99 in the same manner is inconsistent with the understanding of a skilled artisan and Appellant's Specification.

As such, for the foregoing reasons, the Examiner's interpretation, which relies on the view that Huynh's element 99 constitutes a "wireform," is unreasonably broad in view of a skilled artisan's use of the term "wireform," and, thus, the Examiner's claim construction is flawed. Hence, Huynh's element 99 does not constitute a "wireform," as called for by each of independent claims 1 and 11.

Accordingly, we do not sustain the rejection under 35 U.S.C. § 102(a)(2) of independent claims 1 and 11, and their respective dependent claims 2–4, 12–14, 21–25, and 27–32, as anticipated by Huynh.

CONCLUSION

| <b>Claim(s)<br/>Rejected</b>   | <b>35 U.S.C. §</b> | <b>Reference(s)/<br/>Basis</b> | <b>Affirmed</b> | <b>Reversed</b>             |
|--------------------------------|--------------------|--------------------------------|-----------------|-----------------------------|
| 1-4, 11-14,<br>21-25,<br>27-32 | 102(a)(2)          | Huynh                          |                 | 1-4, 11-14,<br>21-25, 27-32 |

REVERSED