

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANATOMAGE, INC.,

Petitioner,

v.

SIRONA DENTAL SYSTEMS GMBH,

Patent Owner.

Case IPR2015-01057
Patent 6,319,006 B1

Before MEREDITH C. PETRAVICK, BENJAMIN D. M. WOOD, and
BRIAN P. MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

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

I. INTRODUCTION

Anatomage, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–10 (all claims) of U.S. Patent No. 6,319,006 B1 (Ex. 1001, “the ’006 patent”). Paper 1 (“Petition” or “Pet.”). Sirona Dental Systems GmbH (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 9 (“Prelim. Resp.”). On October 20, 2015, we instituted an *inter partes* review of claims 1–7, 9, and 10 of the ’006 patent. Paper 11.

Petitioner supports its challenge with a Declaration of Dr. Richard A. Kraut, D.D.S. (Ex. 1002) and a Supplemental Declaration of Dr. Kraut (Ex. 1022).

After institution, Patent Owner filed a Response (Paper 20, “PO Resp.”) and a Contingent Motion to Amend claims 1–7 of the ’006 patent (Paper 21, “MTA”). Patent Owner supports its Response and MTA with a Declaration of Dr. Douglas Erickson, D.D.S., M.S. (Ex. 2002) and a Supplemental Declaration of Dr. Erickson (Ex. 2033).

Petitioner filed a Reply (Paper 23, “Reply”) and Opposition to Patent Owner’s MTA (Paper 24, “MTA Opp.”). Patent Owner filed a Reply to Petitioner’s Opposition to Patent Owner’s MTA. Paper 27 (“MTA Reply”).

Petitioner filed Observations on Cross-Examination Testimony of Dr. Erickson. Paper 34 (“Observations”). Patent Owner filed a Response to Petitioner’s Observations. Paper 36 (“Resp. Observations”).

An oral hearing was held on August 9, 2016, and a transcript of the oral hearing is of record. Paper 40 (“Tr.”). After the oral hearing, Petitioner filed a Notice of Citations to Evidence (Paper 38), and Patent Owner filed a Response (Paper 39).

For the reasons that follow, based on our review of the complete trial

record, we determine Petitioner has not shown by a preponderance of the evidence that claims 1–7, 9, and 10 of the '006 patent are unpatentable.

A. Related Proceedings

The parties identify the following as related district court proceedings regarding the '006 patent: *Sirona Dental Systems GmbH v. Anatomage, Inc.*, No. 1:14-cv-00540-LPS (D. Del.), filed April 24, 2014; *Sirona Dental Systems GmbH v. Dental Wings Inc.*, No. 1:14-cv-00460-LPS (D. Del.), filed April 11, 2014; *Sirona Dental Systems GmbH v. Dentsply IH Inc.*, No. 1:14-cv-00538-LPS (D. Del.), filed April 24, 2014; *Sirona Dental Systems GmbH v. OnDemand3D Technology Inc.*, No. 1:14-cv-00539-LPS (D. Del.), filed April 24, 2014; *Sirona Dental Systems GmbH v. 3Shape*, No. 1:15-cv-00278-LPS (D. Del.), filed March 30, 2015. Pet. 2–3; Paper 5, 2–3.

We note that we instituted *inter partes* reviews of claims 1–10 of the '006 patent in IPR2015-01190 and IPR2016-00481. Final Written Decisions have not yet been entered in either of those two cases.

B. Asserted Grounds of Unpatentability

We instituted an *inter partes* review of claims 1–7, 9, and 10 on the following grounds of unpatentability under 35 U.S.C. §§ 102 and 103:

Reference[s]	Statutory Basis	Challenged Claims
Mushabac ¹	§ 102	1–4and 9–10
Mushabac and Poirier ²	§ 103	5
Mushabac and Weese ³	§ 103	6 and 7

C. The '006 Patent

The '006 patent, titled “Method for Producing a Drill Assistance Device for a Tooth Implant,” issued November 20, 2001, from an application filed October 31, 2000.⁴ Ex. 1001. The '006 patent is directed to a method for producing a drill assistance device (also referred to as a drill template) for use in tooth implant surgery. *Id.* at Abstract. The object of the claimed method is “to precisely place a pilot hole” in the drill template, where the pilot hole is “aligned relative to the teeth that still remain in the jaw.” *Id.* at 1:6–9; *see id.* at 2:6–10 (“a drill assistance device that will allow the exact drilling of a pilot hole for a tooth implant in relation to the teeth that still remain in the jaw”).

The method includes steps for determining i) the optimal bore hole to be drilled into a person’s jaw based on an X-ray of the jaw, and ii) a pilot

¹ Mushabac, U.S. Patent No. 5,562,448, filed August 9, 1991, issued October 8, 1996. Ex. 1003 (“Mushabac”).

² Poirier, U.S. Patent No. 5,725,376, filed February 26, 1997, issued March 10, 1998. Ex. 1008 (“Poirier”).

³ Weese et al., *An Approach to 2D/3D Registration of a Vertebra in 2D X-ray Fluoroscopies with 3D CT Images*, CVR-Med-MRCAS’97, 1205 LECTURE NOTES IN COMPUTER SCIENCE 119 (1997). Ex. 1009 (“Weese”).

⁴ The '006 patent claims foreign application priority to a German patent application, DE 19952962, filed November 3, 1999. Ex. 1001, 1 (30).

hole in the drill template. “[M]easured data records,” derived from the X-ray and from a three-dimensional (“3-D”) optical measuring of the visible surfaces of the person’s jaw and teeth, are “correlated” to define the optimal location, angle, and depth of the pilot hole. *Id.* at 2:16–28. The ’006 patent generally describes use of a Computer-Aided Design/Computer-Aided Manufacturing (“CAD/CAM”) machine to generate the measured data records and define a pilot hole in the drill template. *Id.* at 4:37–41. The location, angle, and orientation of the pilot hole in the drill template may be determined to correspond to the optimal bore hole to be drilled into the person’s jaw. *Id.* at 3:19–22, 4:55–62.

Figure 5 of the ’006 patent is reproduced below.

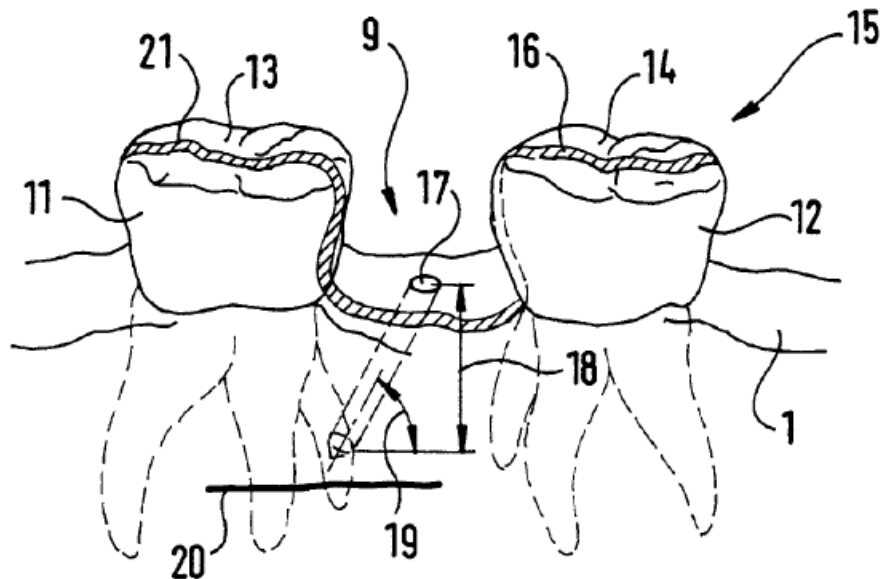


Figure 5, above, shows teeth 11 and 12 adjacent implant position 9. *Id.* at 4:23–31. In preparation for implant surgery, drill template 16 is attached to the surfaces of teeth 11 and 12 and includes pilot hole 17, which is positioned over the implant position and set at angle 19. *Id.* at 4:51–58. Depth 18 corresponds to the desired depth of the bore hole, defined to avoid

nerve 20. *Id.* at 2:39–45, 4:58–62. “The dentist determines the depth of the bore hole 18 based on the correlation of the measured data records from x-ray picture 5 . . . and transfers the depth to the drill template as a stop.” *Id.* at 4:58–62.

Claim 1 of the ’006 patent is illustrative and reproduced below.

1. Method for producing a drill assistance device for a tooth implant in a person’s jaw, comprising the following process steps:

taking an x-ray picture of the jaw and compiling a corresponding measured data record,

carrying out a three-dimensional optical measuring of the visible surfaces of the jaw and of the teeth and compiling a corresponding measured data record,

correlating the measured data records from the x-ray picture and from the measured data records of the three-dimensional optical measuring,

determinating the optimal bore hole for the implant, based on the x-ray picture, and

determinating a pilot hole in a drill template relative to surfaces of the neighboring teeth based on the x-ray picture and optical measurement.

II. ANALYSIS

A. Claim Construction

We construe claim terms of an unexpired patent according to their broadest reasonable interpretation in light of the patent specification. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under the broadest reasonable interpretation standard, we assign claim terms their ordinary and customary meaning, as understood by one of ordinary skill in the art, in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the specification with

reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We determine that only the following claim term requires explicit construction for purposes of this Decision. *See, e.g., Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’” (quotation omitted)).

“carrying out a three-dimensional optical measuring of the visible surfaces of the jaw and of the teeth”

Petitioner argues that the claim phrase “a three-dimensional optical measuring” should be construed to mean “a visual representation of the actual physical proportions of” the visible surfaces of the jaw and teeth. Pet. 11–12. Petitioner argues that the claim phrase should be construed as a “visual representation,” because a 3-D image allows a dentist to see the visible proportions of a patient’s mouth and the structures therein. *Id.* at 12 (citing Ex. 1001, 2:51–60). Petitioner further argues that the 3-D image is a visual representation of the actual physical proportions of the jaw and teeth inside the patient’s mouth. *Id.* (citing Ex. 1001, 2:33–35).

Patent Owner responds that it concurs with our construction of the quoted claim phrase in the Decision to Institute. Resp. 15–16. In the Decision to Institute we construed the quoted claim phrase as “using light to measure the visible surfaces of the jaw and teeth in three dimensions.” Paper 11, 8. Petitioner does not comment on our construction or address the quoted claim phrase in its Reply. *See* Reply 2–7.

Petitioner’s proposed construction reads the words “three-dimensional optical measuring” out of the recited method step, and it fails to preserve the

distinction between taking an X-ray picture and carrying out a 3-D optical (light based⁵) measuring. Claim 1 requires both “taking an x-ray picture of the jaw” and “carrying out a three-dimensional optical measuring” of the jaw and teeth. Ex. 1001, 5:5–8. The x-ray can be “a panoramic tomography picture, a tomosynthetic image or . . . [a] computer tomography [CT]” image. *Id.* at 2:46–48. Such x-ray techniques image the internal, non-visible structures of the jaw. Ex. 1002 ¶¶ 25–26. The ’006 patent distinguishes the step of taking an x-ray from the step of carrying out a 3-D optical measuring, and it describes 3-D optical measuring as generating an “optical image” of the “visible surfaces . . . visible proportions . . . and visible structures” of the teeth and jaw. Ex. 1001, 2:49–62.⁶ Figure 2 of the ’006 patent depicts 3-D optical image 10 of the visible surfaces of a molar “measured using a three-dimensional system of coordinates.” *Id.* at 3:50–56. The ’006 patent does not further describe the details of carrying out the 3-D optical measuring step.

Petitioner’s proposed construction includes any visual representation of the visible surfaces of the jaw and teeth, regardless of the manner in which that visual representation is carried out. For example, Petitioner’s

⁵ “[I]nvolving the use of light-sensitive devices to acquire information for a computer.” Ex. 2001, 5 (right column).

⁶ Petitioner and Dr. Kraut criticize the sufficiency of the description of 3-D optical measuring in the ’006 patent (Pet. 11–12; Ex. 1002 ¶ 44), but the question of whether the ’006 patent satisfies the written description and enablement requirements of 35 U.S.C. § 112, first paragraph is not before us. *See* 35 U.S.C. § 311(b) (“A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent *only* on a ground that could be raised under section 102 or 103 and *only* on the basis of prior art consisting of patents or printed publications.” (emphasis added)).

definition arguably includes mechanically measuring the physical dimensions of a plaster model of a patient's jaw and teeth to create a visual representation. Different measuring techniques exist for generating a "visual representation" of the jaw and teeth, but the '006 patent expressly recites carrying out a "3-D optical measuring." Petitioner's proposed construction is not consistent with the claim language or the specification of the '006 patent, because the proposed construction does not reflect the recited step of carrying out a "three-dimensional optical measuring" of the visible surfaces of a patient's jaw and teeth using a three-dimensional coordinate system.

Therefore, based on our review of the complete record, we maintain our construction of the phrase "carrying out a three-dimensional optical measuring of the visible surfaces of the jaw and teeth" from the Decision to Institute, as "using light to measure the visible surfaces of the jaw and teeth in three dimensions."

B. Asserted Anticipation of Claims 1–4, 9, and 10 by Mushabac

Petitioner argues that Mushabac (Ex. 1003) discloses every limitation of claims 1–4, 9, and 10 of the '606 patent and, therefore, anticipates the claims pursuant to 35 U.S.C. § 102. Pet. 14, 17–33. Mushabac issued more than one year before the U.S. application date of the '006 patent and is prior art under 35 U.S.C. § 102(b) (pre-AIA). Petitioner supports its argument with citations to Mushabac, asserted to correspond to each limitation of the claims, and with Dr. Kraut's Declaration. *Id.* at 17–33 (citing Ex. 1003, Figs. 1, 25, 28; Ex. 1002 ¶¶ 70–108).

1. Mushabac

Mushabac Figure 25 depicts a computer monitor used to aid a dental surgeon and is reproduced below. Ex. 1003, Fig. 25.

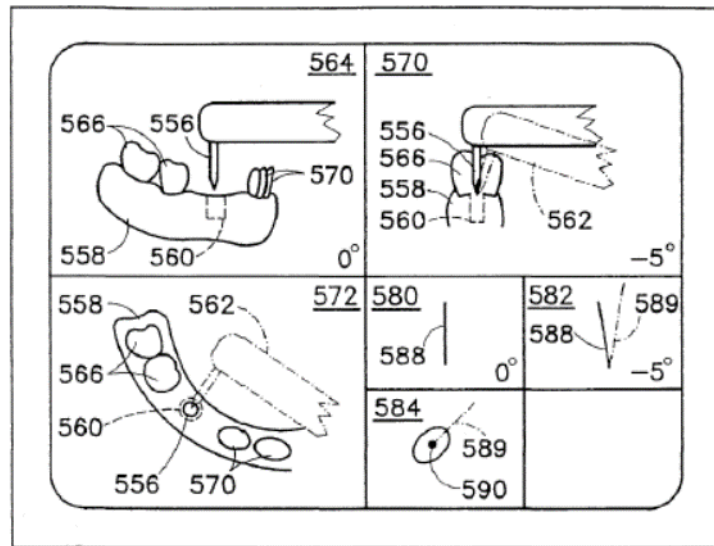


FIG.25

The two left-hand quadrants of Mushabac Figure 25, above, depict an implant position between molars 566 and front teeth 568 [labelled 570⁷]. *Id.* at 24:43–49. Area 560 is the bore hole to be drilled into jaw bone 558. *Id.* at 24:35–39.

2. *Analysis of Claim 1 – “visible surfaces of the jaw”*

Claim 1 of the '006 patent recites “carrying out a three-dimensional optical measuring of the *visible surfaces of the jaw* and of the teeth.” The Petition cites to sections in Mushabac that expressly disclose 3-D optical measuring of the visible surfaces of a patient’s “tooth” or “teeth,” but not the jaw. Pet. 21–22 (citing Ex. 1003, 10:38–42 (disclosing 3-D optical measuring of “an object such as a tooth”), 11:35–41 (“optically sensing or scanning the tooth surface”), 12:55–60 (“to display the tooth’s structure”),

⁷ Mushabac repeatedly describes “molars 566” and “front teeth 568.” Ex. 1003, 24:44–46, 24:49, 25:2. The parties agree that front teeth 568 are mislabelled as 570 in the two left-hand quadrants of Figure 25. Tr. 14:23–15:10.

16:5–12 (“visible three-dimensional surfaces of each such tooth”)).
Petitioner argues that Mushabac “makes clear” that a 3-D optical scanner “can be used to scan a patient’s . . . jaw,” but Petitioner’s supporting citation to Mushabac does not disclose an optical (light-based) measurement of a patient’s jaw. *Id.* at 22–23 (citing Ex. 1003, 24:53–56). The cited section of Mushabac discloses the use of a sharp stylus to pierce the patient’s gum and contact the jaw bone (contact digitization), as shown in the computer display of Figure 25 (jaw bone 558). *Id.* at 22–23 (citing Ex. 1003, 24:53–56 (disclosing the use of “stylus or probe member 52 . . . to digitize the surface of jaw bone 558”); Ex. 1002 ¶ 80).

Patent Owner argues that Mushabac discloses a 3-D optical measuring of the teeth but does not disclose a 3-D optical measuring of “the visible surfaces of the jaw,” as recited in claim 1. Resp. 35–36 (citing Ex. 1003, 24:53–65). Patent Owner correctly explains that probe 52 makes a mechanical measurement of the underlying jaw bone displayed in Figure 25:

[S]tylus member 52 is provided with a sharp stylus 574 (FIG. 1) having a length sufficient[ly] long to penetrate gum tissue and contact the bone surface. . . . [P]ractitioner repeats the procedure of piercing the gum tissue in a region about a desired implantation site and taking point data until enough data has been collected . . . to map . . . the entire surface of bone 558 [Fig. 25] about the implantation site.

Ex. 1003, 24:53–65. We agree with Patent Owner and find that the use of a sharp stylus to pierce the gum and take multiple data points via contact digitization of the jaw bone beneath the skin surface is not a 3-D optical measuring of the visible surfaces of a patient’s jaw.

Patent Owner further emphasizes that Mushabac Figure 25, the discussion of which is relied upon for support in the Petition, depicts only

jaw bone 558, not the visible surfaces of the jaw. Tr. 43:9–20. We agree. The display of jaw bone and teeth in Mushabac Figure 25 is consistent with Mushabac’s description of using contact digitization to measure the jaw bone and 3-D optical imaging to measure the visible surfaces of the teeth. Under cross-examination by Patent Owner’s counsel, Petitioner’s expert, Dr. Kraut, agreed that Mushabac discloses measuring the jaw bone by contact digitization, rather than by optical measurement as was done to measure the teeth.

Q. So would that be contact digitizing . . . the jawbone?

A. Yes.

Q. And that wouldn’t be optically measuring; right?

A. That’s contact. He’s optically doing the teeth, he’s contacting in the jaw.

Ex. 2023, 138:9–139:17.

Petitioner’s Reply tacks into the wind, arguing that “it is inconceivable . . . that a dentist could pass the optical scanner over the teeth in Mushabac without also capturing the patient’s jaw.” Reply 17. Petitioner argues that “[a] POSA⁸ would know that the jaw is *necessarily scanned* in Mushabac because a clinician would want as much diagnostic data as

⁸ The parties agree that, for purposes of this IPR proceeding, a person of ordinary skill in the art of dental implants (“POSA”) would hold a Doctor of Dental Surgery (D.D.S.) degree from an accredited university program and at least three years of residency training as an oral surgeon or two years of residency training as a periodontist or two years of residency training as a prosthodontist. Pet. 9 (citing Ex. 1002 ¶¶ 19–24); PO Resp. 9. To the extent necessary, we apply this definition of a POSA to our analysis in this Decision.

possible.” *Id.* (emphasis added).⁹ Petitioner’s Reply cites to cross-examination testimony of Petitioner’s expert, Dr. Kraut, in support of Petitioner’s belated inherency argument. Reply 17 (citing Ex. 2023, 135:17-136:6 (“if you’re missing the teeth, you’ve got to [optically measure] the jaw—if you look at the images [Mushabac] produces, he’s got teeth and [the] jaw.”)). We are not persuaded. The testimony cited by Petitioner is undercut by the cross-examination testimony cited by Patent Owner, quoted in the previous paragraph, to which we attach great weight. Ex. 2023, 138:9–139:7.

Petitioner cites to cross-examination testimony of Dr. Erickson that “it’s possible” a POSA would have known an optical scanner could be used to scan the jaw. Reply 18 (citing Ex. 1017, 371:11–16). Dr. Erickson’s testimony regarding the possible use of Mushabac’s 3-D optical scanner to measure the visible surfaces of a patient’s jaw (e.g., the gum) does not satisfy the “necessarily present” standard for inherency. *See Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991) (holding that, to establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference.”); *id.* at 1269 (“Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”) (quoting *In re Oelrich*,

⁹ Petitioner’s inherency argument was not articulated in the Petition or explained in Dr. Kraut’s Declaration. *See* Pet. 21–23; Ex. 1002 ¶ 80 (“The Mushabac Patent makes clear that its 3D optical scanner can be used to scan a patient’s teeth, as well as the jaw.”); Tr. 11:8–16, 12:14–13:1.

666 F.2d 578, 581 (C.C.P.A. 1981))). Therefore, we are not persuaded that Dr. Erickson's cited testimony supports Petitioner's inherency argument.

Petitioner also tries to link the description of Mushabac's Figure 31 embodiment, which depicts teeth and gum, to Mushabac's Figure 25 embodiment, which does not depict the gum.

The gum is a visible surface of the patient's jaw (Ex. 1017, Erickson Tr., at 369:15-370:6) and would not be captured by an x-ray device (*Id.* at 333:19-334:17 ("... it would be very difficult to see that on a regular x-ray")). Therefore, the gums of the patient *must necessarily be measured* by the optical scanner in Mushabac, which is the only other imaging device disclosed besides the x-ray device (Ex. 1003 at Fig. 1, 4:3-13).

Reply 18–19 (emphasis added). Petitioner's argument is not persuasive. Patent Owner's counsel effectively articulated the problem with Petitioner's inherency position at oral argument:

[T]hey are looking at an embodiment that has no gum surface [Fig. 25] saying, well, you would inherently put the gums in that figure, even though it is not there, and then you would inherently measure that gum surface using a specific type of measurement, which is not specifically described in Mushabac. That can't be an anticipation ground.

Tr. 46:17–23. We agree with Patent Owner. Furthermore, Mushabac references optical data, pantograph data, "and/or" X-ray data generating techniques, but there is no express disclosure that the gum surface in Figure 31 is generated using 3-D optical data generation as opposed to some other technique. Ex. 1003, 28:16–20. The possible use of Mushabac's 3-D optical scanner to measure the visible surfaces of a patient's jaw (e.g., gum

634 in Figure 31) does not satisfy the “necessarily present” standard for inherency.¹⁰

For the reasons given above, we determine that Petitioner has not satisfied its burden of proving that Mushabac inherently anticipates claim 1 of the ’006 patent by a preponderance of the evidence.

3. Dependent Claims 2–4, 9, and 10

Dependent claims 2–4, 9, and 10 all depend directly or indirectly (claim 10) from claim 1. Because Petitioner has not satisfied its burden of proving that Mushabac anticipates claim 1, Petitioner’s assertion of anticipation necessarily fails for dependent claims 2–4, 9, and 10.

C. Asserted Obviousness of Claim 5 over Mushabac and Poirier

Claim 5 of the ’006 patent depends from claim 4, which depends from claim 1. Claim 5 recites a “ball shaped body” that is attached to a patient’s teeth and used as a reference marker for correlating the X-ray and 3-D optical images. Ex. 1001, 6:3–4. Petitioner relies on Poirier for its disclosure of “spherical” radio-opaque reference markers for correlating different dental images. Pet. 52–53 (citing Ex. 1008, 5:46–62). Petitioner does not rely on Poirier to cure the deficiency in Mushabac regarding

¹⁰ We further note the prior art Massen reference discloses an optical 3-D measuring probe “utilized to generate a three-dimensional image of a single tooth or a group teeth The measuring probe projects a particular pattern onto the single tooth or group of teeth . . . to be surveyed.” Ex. 1006, 4:14–19. Massen, therefore, provides an explicit example of a precise optical measuring technique known to a POSA to be capable of optically measuring an individual tooth without necessarily measuring the gum or other visible surfaces of a patient’s jaw.

disclosure of 3-D optical measuring of the visible surfaces of a patient's jaw. *Id.*; Reply 24.

Therefore, for the reasons given in Section II.B., above, we determine Petitioner has not satisfied its burden of proving by a preponderance of the evidence that the subject matter of claim 5 of the '006 patent would have been obvious to a person of ordinary skill in the art over Mushabac and Poirier pursuant to 35 U.S.C. § 103.

D. Asserted Obviousness of Claims 6 and 7 over Mushabac and Weese

Claim 6 of the '006 patent depends from claim 1 and recites “wherein the measured data records of the three-dimensional measurement are converted to a pseudo-x-ray picture.” Ex. 1001, 6:5–7. Claim 7 depends from claim 6 and recites “wherein the x-ray picture and the pseudo-x-ray picture are superimposed from several directions.” *Id.* at 6:10–12. The '006 patent describes conversion of measured data records of the 3-D optical image to a pseudo-x-ray “assuming standard x-ray absorption values.” *Id.* at 3:1–3.

Petitioner argues that the combination of Mushabac and Weese would have rendered claims 6 and 7 obvious to one of ordinary skill in the art. Pet. 56–59 (citing Ex. 1002 ¶¶ 202–216). Petitioner relies on Weese for its disclosure of the correlation of x-ray pictures with three-dimensional CT images in order to improve “the placement of pedicle screws in spine surgery.” *Id.* at 56 (citing Ex. 1009, 1). Petitioner does not rely on Weese to cure the deficiency in Mushabac regarding disclosure of 3-D optical measuring of the visible surfaces of a patient's jaw. *Id.* at 56–59; Reply 24–25.

Therefore, for the reasons given in Section II.B., above, we determine Petitioner has not satisfied its burden of proving by a preponderance of the evidence that the subject matter of claims 6 and 7 of the '006 patent would have been obvious to a person of ordinary skill in the art over Mushabac and Weese pursuant to 35 U.S.C. § 103.

III. MOTION TO AMEND

Patent Owner filed its MTA contingent on a determination that Petitioner has proved claims 1–7 to be unpatentable by a preponderance of the evidence. MTA, 1–2. We have determined Petitioner has not met its burden of proving the challenged claims unpatentable in this case. Therefore, Patent Owner's MTA is dismissed as moot.

IV. CONCLUSION

For the reasons given above, we determine Petitioner has not shown by a preponderance of the evidence that claims 1–7, 9, and 10 of the '006 patent are unpatentable.

This is a Final Written Decision. Parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

V. ORDER

It is

ORDERED that claims 1–7, 9, and 10 of the '006 patent have not been shown to be unpatentable by a preponderance of the evidence.

IPR2015-01057
Patent 6,319,006 B1

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