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| 26161 | 7590 | 04/18/2011 | EXAMINER | |
| FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022 | | | MATTHEWS, WILLIAM H | |
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIMITRI AZAR

Appeal 2009-010272
Application 11/415,688
Technology Center 3700

Before JOHN C. KERINS, STEVEN D.A. McCARTHY, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Dimitri Azar (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 1-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with written description and enablement

requirements.¹ We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to vision prostheses.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A vision prosthesis comprising:
an intra-ocular lens system having focal length that varies in response to a change in an index of refraction, the intra-ocular lens system comprising a lens element with no moving parts; and
a controller for causing a change in the focal length thereof, the extent of the change being dependent on an estimate of a distance to an object of regard.

OPINION

Written Description Rejection

In light of the Appellant's arguments and the Examiner's position, the determinative issue for this ground of rejection is whether the Examiner has presented sufficient evidence or reasons in order to find that a person having ordinary skill in the art would not have recognized that the written description of the invention, as filed, provides support for the claims.

The Examiner asserts that the Specification only describes a lens with no moving parts as compared to the claims that recite an intraocular lens system comprising a lens element with no moving parts. Ans. 3 and *see*

¹ The Examiner withdrew the rejection of claims 1-20 under 35 U.S.C. § 112, second paragraph. Ans. 2.

Ans. 4-5. The Examiner posits that the term “lens element” is broader than “lens” and, as such, may be interpreted as lens or any part or element related to a lens. Ans. 4. The Examiner further posits that since the Specification describes the vision prosthesis as comprising multiple lens element parts which move and move relative to one another, it is unclear how a lens element may comprise no moving parts. Ans. 4.

The Appellant contends that the Examiner’s interpretation of “lens element” is inconsistent with the plain meaning and how a person having ordinary skill in the art would understand the claim. App. Br. 4. Appellant argues that, when reading the claim limitation directed to the “intra-ocular lens system,” the term “lens element” is intended to indicate that the lens is an “element” of the “intra-ocular lens system.” *Id.* Thus, Appellant argues that the “lens element” “is simply one of possibly many elements of an intra-ocular lens system that happens to be a ‘lens’.” *Id.* The Appellant counters that the Examiner’s position that the “lens element” should be interpreted as related or attached to a lens, should not be so, but rather should “simply be other elements of claim 1’s ‘intra-ocular lens system’.” App. Br. 5. As such, Appellant asserts that the proper interpretation for the claimed intra-ocular lens system would be a system that could include many other elements, some of which may or may not have moving parts, but the system “would always include a ‘lens element with no moving parts’.” *Id.*

We note that there is a strong presumption that an adequate written description of the claimed invention is present in the Specification as filed. The Examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims. *See In re*

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