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Paper 12
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEART FAILURE TECHNOLOGIES, LLC
Petitioner

v.

CARDIOKINETIX, INC.
Patent Owner

Case IPR2013-00183
Patent 7,582,051

Before THOMAS L. GIANNETTI, MICHAEL J. FITZPATRICK, and SCOTT E. KAMHOLZ, *Administrative Patent Judges.*

KAMHOLZ, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Heart Failure Technologies, LLC ("Petitioner") filed a petition to institute an *inter partes* review of claims 1 and 10 of U.S. Patent 7,582,051 (the "'051 patent"). Paper 4 ("Pet."). Patent Owner CardioKinetix, Inc. timely filed a preliminary response. Paper 10 ("Prelim. Resp."). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

> THRESHOLD.—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 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.

Petitioner presents the following grounds of unpatentability (Pet. 3):

References	**Basis**	**Claims challenged**
Murphy (Ex. 1002),[1] Khairkhahan (Ex. 1004),[2] and Lane (Ex. 1006)[3]	§ 103	1, 10
Murphy, Khairkhahan, and Salahieh (Ex. 1007)[4]	§ 103	1, 10
Lesh (Ex. 1003),[5] Khairkhahan, Nikolic (Ex. 1005),[6] and Lane	§ 103	1, 10
Lesh, Khairkhahan, Nikolic, and Salahieh	§ 103	1, 10

[1] U.S. Patent 7,485,088 B2.
[2] U.S. Pre-Grant Publication US 2002/0111647 A1.
[3] U.S. Patent 7,717,955 B2.
[4] U.S. Pre-Grant Publication US 2005/0137688 A1.
[5] U.S. Patent 6,152,144.
[6] U.S. Pre-Grant Publication US 2003/0050685 A1.

We determine that the record before us does not demonstrate that there is a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim. We consequently deny the petition and decline to institute an *inter partes* review of the '051 patent.

B. The Invention

The '051 patent (Ex. 1001) is entitled "Peripheral Seal for a Ventricular Partitioning Device," and relates generally to a device used to divide a heart chamber into a productive portion and a non-productive portion. Abstr. The device finds particular application in patients having hearts with weakened walls or enlarged chambers, due to various forms of congestive heart failure. Col. 2, ll. 38-45. Partitioning relieves stress on the weakened wall tissue and reduces chamber volume, thereby improving the heart function measurement known as ejection fraction. *Id.*

Figure 1 of the '051 patent is reproduced below:

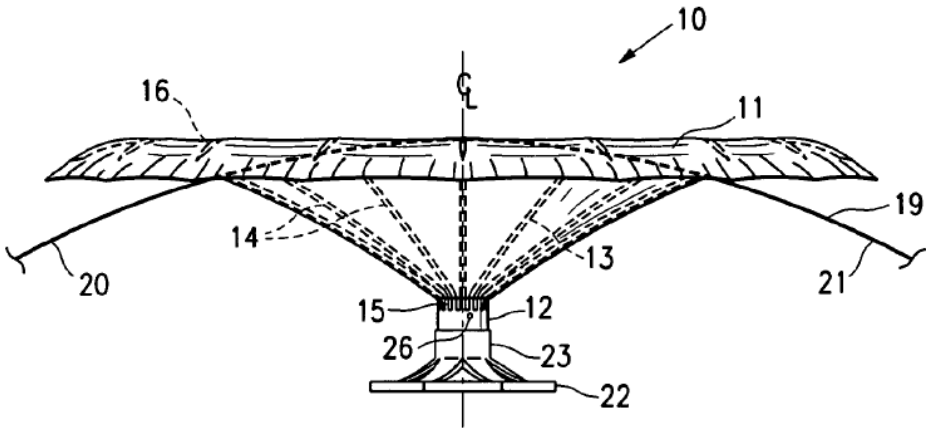

FIG. 1

Figure 1 illustrates partitioning device 10. The device includes an expandable frame 13 formed from ribs 14 that extend from hub 12 to free proximal ends 16. Col. 5, ll. 45-51. Partitioning membrane 11 is secured to the frame and is unfurled when the free proximal ends expand radially. *Id.* at ll. 53-54. When

unfurled, the membrane presents a pressure receiving surface 17 (the undersurface, not indicated in Fig. 1). *Id.* at ll. 53-55. The membrane has a peripheral edge 18 (also not indicated in Fig. 1) that may have serrations. *Id.* at ll. 57-58. A continuous expansive strand 19 extends around the periphery of the membrane on the undersurface. *Id.* at 59-60. The strand applies pressure to the membrane to seal the periphery to the wall of the ventricular chamber. *Id.* at 60-63. The strand is biased outwardly and ensures that folds or wrinkles are not formed when the device is expanded for deployment. Col. 3, l. 66 to col. 4, l. 2.

Claim 1 illustrates the claimed subject matter and is reproduced below:

> 1. A device for treating a patient by partitioning a chamber of the patient's heart into a primary productive portion and a secondary non-productive portion, the device comprising:
>
> an expandable frame formed of a plurality of ribs having distal ends secured to a central hub and free, outwardly flared, proximal ends,
>
> a pressure receiving membrane formed at least in part of flexible material, the membrane forming a recess in an expanded, deployed configuration, wherein the membrane comprises a loose and flexible peripheral region configured to seal to a ventricular wall surface to partition the ventricle and create the secondary non-productive portion, wherein the flexible peripheral region of the membrane comprises notched serrations; and
>
> an outwardly biased member which is secured to the membrane at a position that is radially inward from the loose peripheral region of the membrane, wherein the outwardly biased member is configured to stiffen at least a portion of the membrane so as to reduce wrinkling of the membrane so that the peripheral region of the

> membrane may seal against a ventricular wall surface defining in part the heart chamber.

C. Claim Construction

Consistent with the statute and the legislative history of the AIA, the Board will interpret claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012); 37 CFR § 42.100(b). Petitioner does not propose any constructions deviating from this standard. Pet. 5. Patent Owner directs no comments to claim construction in the Preliminary Response.

II. ANALYSIS

A. Overview

Petitioner contends that claims 1 and 10 are (1) obvious over Murphy and Khairkhahan in combination with either Lane or Salahieh, and (2) obvious over Lesh, Khairkhahan, and Nikolic, also in combination with either Lane or Salahieh. Pet. 3; *see* chart supra.

B. Obviousness of claims 1 and 10 over Murphy, Khairkhahan, and Lane

Petitioner's presentation of this challenge appears at pages 5-17 of the petition.

Murphy describes a device and method for reshaping a ventricle that has non-viable tissue in its wall. Col. 6, l. 65–col. 7, l. 7. The ventricle is reshaped by "imbricating" it, meaning that edges of the ventricle wall having non-viable tissue between them are brought together so that the non-viable tissue is excluded. *Id*.

Figure 2b of Murphy is reproduced below:

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