

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

W. L. GORE & ASSOCIATES, INC.,
Petitioner,

v.

LIFEPOR T SCIENCES LLC,
Patent Owner.

Case IPR2014-01319
Patent 6,117,167

Before PHILLIP J. KAUFFMAN, BENJAMIN D. M. WOOD, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

W. L. Gore & Associates, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–82 (all the claims) of U.S. Patent No. 6,117,167 (“the ’167 patent”). Paper 1 (“Pet.”). Patent Owner, LifePort Sciences LLC (“Patent Owner”), did not file a Preliminary Response. We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition, based on the evidence and arguments before us, and for purposes of this Decision to institute an *inter partes* review, we determine that there is a reasonable likelihood that the petitioner will prevail in establishing that claims 1–82 are not patentable.

A. Related Proceedings

Petitioner states that the ’167 patent is involved in a pending district court case, *LifePort Sciences LLC v. W.L. Gore & Associates Inc.*, No. 1:12-cv-01792 (D. Del. 2012). Pet. 1.

Patent Owner also identifies as a related proceeding a pending district court case titled *Lifeport Sciences LLC v. Endologix, Inc.*, No. 1:12-cv-01791 (D. Del. 2012)¹. Paper 6, 2.

Petitioner also has filed another petition seeking *inter partes* review of the ’167 patent on grounds and references different from those in this proceeding. The other petition is assigned case IPR2014-01320.

¹ Based on the Amended Complaint filed by LifePort Sciences LLC on August 12, 2014, and the original Complaint filed by LifePort Sciences LLC on December 28, 2012, the ’167 patent also is involved in this district court case.

B. The '167 Patent

The '167 patent is titled “Endoluminal Prosthesis and System for Joining.” The invention disclosed in the '167 patent relates to a bifurcated endoluminal prosthesis for use in a bifurcated blood vessel, such as the infrarenal portion of a mammalian aortic artery where it bifurcates to the common iliac arteries. Ex. 1001, col. 1, ll. 18–21. The disclosed invention also includes a connecting structure for connecting, for example, a stent that forms part of an endoluminal prosthesis to another stent. *Id.* at col. 1, ll. 21–24. Figures 1A and 1B are reproduced below.²

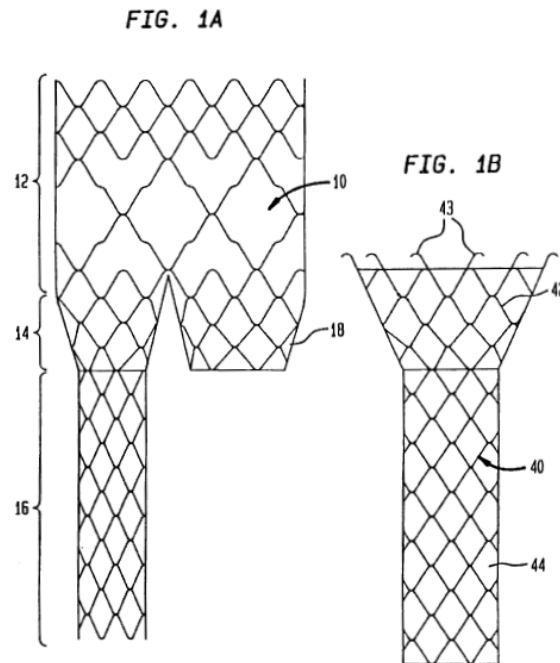


Figure 1A illustrates a bifurcated intraluminal stent; Figure 1B illustrates another stent, which is adapted to be connected to the bifurcated stent in Figure 1A.

As shown in Figure 1A , and as described in the Specification (*see* Ex. 1001, col. 8, ll. 50–54) bifurcated stent 10 comprises a wire skeleton constructed in four

² The Figures use the designation “1A” and “1B” while the description in the Specification refers to these Figures as “1a” and “1b.”

separate parts: proximal part 12; first frustoconical part 14; first distal part 16; and second frustoconical part 18. Proximal part 12, first and second frustoconical parts 14, 18, and first distal part 16 may each be covered with a tubular graft layer of a biocompatible woven fabric, as shown in Figures 5, 6 and 7, for use as an endoluminal prosthesis. *Id.* at col. 8, ll. 54–58; col. 10, ll. 30–33.

In medical uses where it is required, a second prosthesis comprising second stent 40, as shown in Figure 1B, may be used. The second stent 40 includes a wire skeleton comprising proximal frustoconical part 42 and distal part 44. Distal part 44 of second stent 40 also may be covered with a tubular graft layer of a biocompatible fabric. Ex. 1001, col. 11, ll. 15–23. Frustoconical proximal part 42 may be formed with circumferentially spaced barbs or hooks 43, as shown in Figure 1B, which engage in the wire skeleton of the second frustoconical part 18 of the bifurcated stent 10. *Id.* at col. 11, ll. 44–48. Both stent 10 and stent 40 may be made from a shape memory alloy. *E.g., id.* at col. 8, ll. 64–66.

In use, the second prosthesis is compressed radially inwards and is inserted into position using a catheter. *Id.* at col. 11, ll. 31–33. Frustoconical proximal part 42 is guided, in the radially compressed state, into second frustoconical part 18 of bifurcated stent 10. The catheter is then withdrawn allowing second stent 40 to re-expand towards its remembered configuration until distal part 14 engages the endoluminal surface of the other common iliac artery, and the outer surface of frustoconical proximal part 42 engages the interior surface of second frustoconical part 18 of bifurcated stent 10. *Id.* at col. 11, ll. 31–42. In this connected position, stent 10 and stent 40 are locked together to define a continuous lumen through the two stents and resist longitudinal separation. *Id.* at col. 11, ll. 52–54.

C. Representative Claim

The '167 Patent contains 82 claims. Claims 1–5, 13, 31–33, 51, 52, 71 and 72 are independent claims. Independent claims 1–5 and 72 claim a “stent joining means for adjoining a first endoluminal stent to a second endoluminal stent to define a continuous lumen through the first and second endoluminal stents.” Independent claims 13, 31, 32, 52 and 71 claim an “endoluminal prosthesis system.” Independent claims 33 and 51 claim a “system for joining endoluminal prosthesis segments in a vessel.”

Claim 1 is representative of the claimed invention and is reproduced below.

1. A stent joining means for joining a first endoluminal stent to a second endoluminal stent to define a continuous lumen through the first and second endoluminal stents, said stent joining means comprising:

a male engaging portion on said first endoluminal stent which has an outer surface and can be compressed radially inwardly, wherein said male engaging portion is flared radially outwardly towards a proximal end; and

a female portion on said second endoluminal stent cooperating with said male engaging portion, said female portion having an inner surface;

wherein said first endoluminal stent and said second endoluminal stent consist of a shape memory alloy and the male engaging portion can be entered into the female portion in a radially compressed state and thereafter expanded in the female portion and wherein said outer surface of the male engaging portion and said inner surface of the female portion are inter-engaged to resist longitudinal movement to prevent separation of the first and second endoluminal stents in service.

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