

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARTHREX, INC. and SMITH & NEPHEW, INC.,
Petitioner,

v.

VITE TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2016-00382
Patent 6,168,598 B1

Before WILLIAM V. SAINDON, BARRY L. GROSSMAN, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.104

I. INTRODUCTION

Petitioner filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 21, 25–27, 29, 30, 38 and 39 of U.S. Patent No. 6,168,598 B1 (Ex. 1001, “the ’598 patent”). Patent Owner filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). 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.” 35 U.S.C. § 314(a). Petitioner has shown a reasonable likelihood that it would prevail with respect to at least one of the claims, and, accordingly, we institute an *inter partes* review as set forth in the Order included with this Decision.

This is a decision to institute an *inter partes* review under 35 U.S.C. § 314. The Board has not made a final determination on the patentability of the challenged claims. Any finding or construction herein is *preliminary* and based on the record before us at this institution stage.

A. Related Proceedings

The parties identify two district court lawsuits involving the ’598 patent, or a continuation thereof: (i) *Vite Techs., LLC v. Arthrex, Inc.*, No. 1:14-cv-01506 (D. Del.); and (ii) *Vite Techs., LLC v. Smith & Nephew, Inc.*, No. 1:14-cv-01507 (D. Del.). Pet. 3; Paper 5, 1. Petitioner also identifies as related proceedings *Vite Techs., LLC v. DePuy Mitek, LLC*, No. 1:14-cv-14697 (D. Mass.); and *Vite Techs., LLC v. DePuy Synthes Sales, Inc.*, No. 1:14-cv-14699 (D. Mass.). Pet. 3; Paper 5, 1.

The parties identify *ex parte* reexamination 90/013,580 as involving the ’598 patent. Pet. 4; Paper 5, 1.

The parties also identify IPR2016-00381, challenging related U.S. Patent No. 6,648,598. Pet. 4; Paper 5, 1.

B. The '598 Patent

The '598 patent is directed to a surgical anchor “provided with one or more anchor holes distributed around the head of the anchor.” Ex. 1001, Abstract. The anchor holes are “inclined to allow attachment of one or more sutures to the anchor either before, during or after the anchor is seated in a bone.” *Id.* The holes are “chamfered,” and smoothed, which reduces “friction and abrasion to soft tissue or suture material.” *Id.* Figures 1 and 2 of the '598 patent is reproduced below:

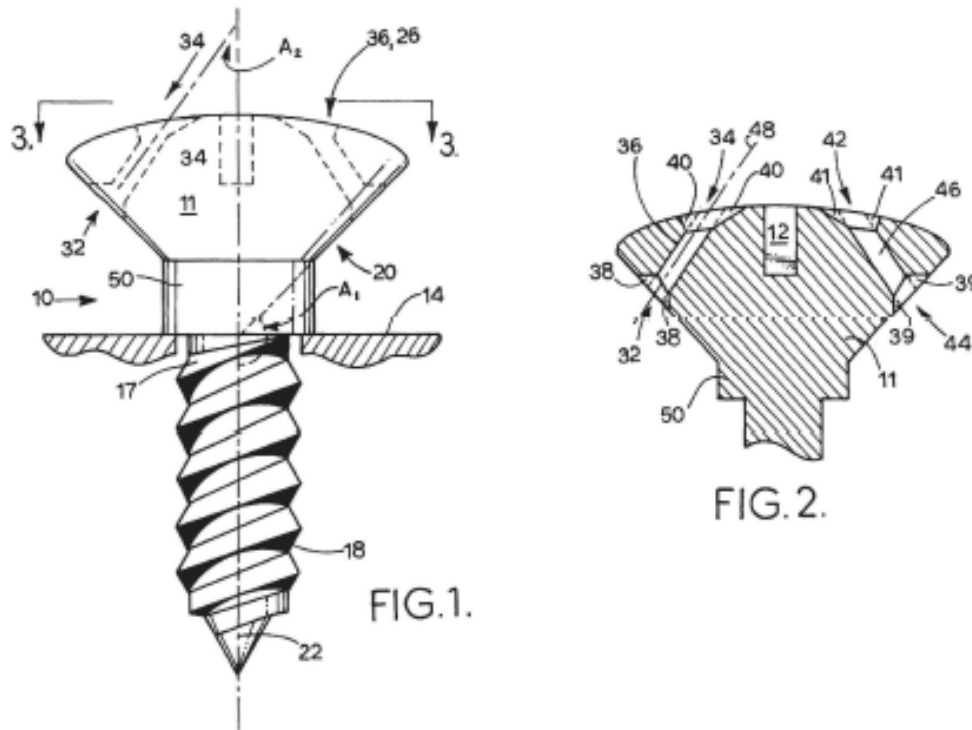


Figure 1 of the '598 patent depicts surgical anchor 10 having head 11 and securing end 18. Securing end 18 secures anchor 10 into bone.

Ex. 1001, 3:64–67. As shown in Figure 1, anchor 10 is a threaded, self-

tapping screw with shoulder 50, which delineates head 11 from shank 17. *Id.* at 4:4–5. Head 11 may include a means for accommodating a drive tool, such as drive socket 12 for securing anchor 10. Lower surface 20 of head 11 may describe an angle A_1 between 90° and 150° from axis 22. *Id.* at 4:22–23.

Anchor 10 includes anchor points 24, 26, 28 and 30 (*see* Figure 3). Each anchor point has an upper aperture and a lower aperture. For example, anchor hole 36 includes upper aperture 34 and lower aperture 32. Anchor holes 25, 29, 36 and 46 may be inclined at an angle A_2 between 0° and 75° from axis 22. *Id.* at 4:34–36. The angle of inclination, the diameter of the anchor holes, and the shape of head 11 are selected to accommodate the surgical task and a surgeon's choice of needle. The object is to secure the anchor, leaving sufficient space between lower aperture 32 and bone 14 for the surgeon to easily secure a suture through the anchor holes. *Id.* at 4:36–41. Each aperture of each anchor hole is chamfered to accommodate surgical needles and to reduce abrasion of the suture or soft tissue. *Id.* at 2:56–67. As shown in Figure 2, with respect to anchor hole 36, for example, chamfer 38 widens lower aperture 32, and chamfer 40 widens upper aperture 34. *Id.* at 4:47–51.

C. The Challenged Claims

Among the challenged claims, claim 21 is the sole independent claim. It is reproduced below as a representative claim:

21. An anchor body having a long axis;
a head at a first end of the long axis to accommodate a tool for securing or driving the anchor body to bone; and
an anchor hole through the head, the anchor hole having an upper aperture and a lower aperture, one of said upper and lower apertures including a chamfer, the anchor hole having a longitudinal axis that is oriented at an angle with respect to a long axis of the body.

D. Asserted Grounds and Prior Art

Petitioner asserts the following grounds:

| Reference(s) | Basis |
|------------------------------|------------------|
| Zang ¹ | §§ 102(b), § 103 |
| Huebner ² | § 102(e) |
| Paulos ³ and Zang | § 103 |
| Reed ⁴ and Zang | § 103 |

Petitioner also relies on the declaration testimony of F. Alan Barber, M.D. Ex. 1003.

II. ANALYSIS

A. Patent Owner's Preliminary Response

Patent Owner does not offer substantive arguments in its Preliminary Response regarding claim construction or the asserted grounds. Instead, Patent Owner alleges that “the issues raised [in the Petition] have been rendered moot” by pending *ex parte* reexamination No. 90/013,580 (“the

¹ WO 95/22930, published Aug. 31, 1995 (Ex. 1004).

² U.S. Pat. No. 5,868,789, issued Feb. 9, 1999 (Ex. 1005).

³ U.S. Pat. No. 4,988,351, issued Jan. 29, 1991 (Ex. 1021).

⁴ U.S. Pat. No. 5,868,749, issued Feb. 9, 1999 (Ex. 1022).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.