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Paper No. 8
April 21, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDWARDS LIFESCIENCES CORPORATION,
Petitioner,

v.

BOSTON SCIENTIFIC SCIMED, INC.,
Patent Owner.

Case IPR2017-00072
Patent 6,915,560 B2

Before NEIL T. POWELL, JAMES A. TARTAL, and
STACY B. MARGOLIES, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

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

I. INTRODUCTION

Edwards Lifesciences Corporation ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting institution of *inter partes* review of claims 1, 2, 6, 8–11, 14, 15, 17–19, 23, 25–28, 31, 33–35, 37, 39, and 40 of U.S. Patent No. 6,915,560 B2 (Ex. 1001, "the '560 patent"). Boston Scientific Scimed, Inc. ("Patent Owner") filed a Corrected Preliminary Response (Paper 7, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted "unless . . . the information presented in the petition . . . 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." *See also* 37 C.F.R. § 42.4(a).

For the reasons below, based on the circumstances of this case, we exercise our discretion under 35 U.S.C. § 325(d) to deny the Petition and, therefore, decline to institute *inter partes* review.

II. BACKGROUND

A. The '560 Patent

The '560 patent, titled "Apparatus for Contracting, Loading or Crimping Self-Expanding and Balloon Expandable Stent Devices," issued July 12, 2005, from U.S. Application No. 10/444,807 (the '807 application), filed May 23, 2003. Ex. 1001. The '807 application was a division of U.S. Application No. 09/966,686, filed on October 1, 2001 (issued as U.S. Patent No. 6,823,576), which was a continuation of U.S. Application No. 09/401,218 (the '218 application), filed on September 22, 1999 (issued as U.S. Patent No. 6,360,577). *Id.* The '560 patent generally relates to a device "capable of crimping a stent uniformly while minimizing the distortion of and scoring and marking of the stent due to crimping."

Ex. 1001, 2:26–29. Petitioner contends that the alleged "AAPA [Applicant Admitted Prior Art] depicted in Figure 1 and described at 1:62–2:21 of the '560 patent is prior art." Pet. 36.

Figure 1 of the '560 patent is reproduced below.

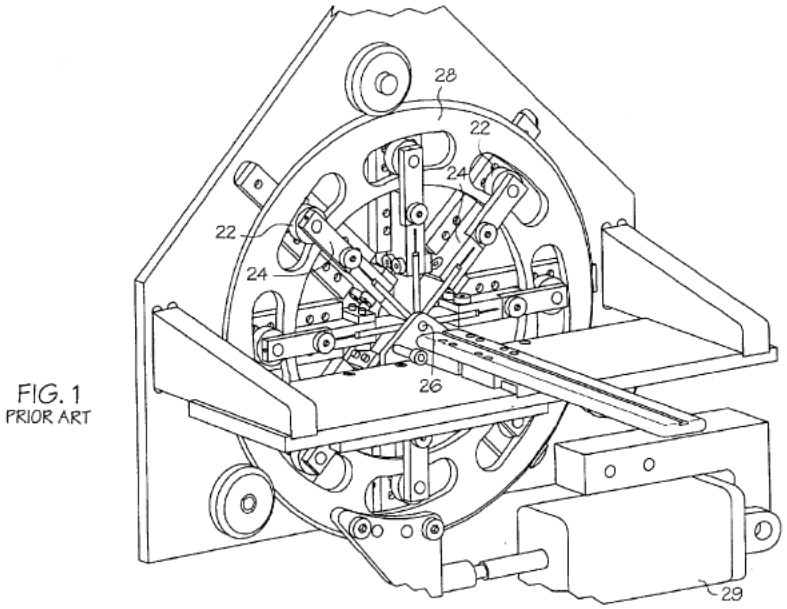

FIG. 1
PRIOR ART

Figure 1 illustrates a perspective view of a stent crimper, with the words "PRIOR ART" appearing under the label "FIG. 1." Ex. 1001, 3:58. According to Patent Owner, Figure 1 of the '560 patent was not labeled "PRIOR ART" when filed in the parent '218 application on September 22, 1999, but rather, the label was added during prosecution of the '218 application in a May 23, 2000, filing by the applicant in response to an Examiner request dated February 23, 2000. Prelim. Resp. 8 n.1 (citing Ex. 2010, 61, 81). Patent Owner also contends that, prior to the date the Petition was filed, Patent Owner informed Petitioner, as part of district court proceedings concerning the '560 patent, that the stent crimper illustrated in Figure 1 of the '560 patent was developed by Boston Scientific and was not commercialized. *Id.* at 10 (citing Ex. 2011, 23; Ex. 2012, 3).

Petitioner further contends (Pet. 36) that the following portion of the '560 patent describes the alleged Applicant Admitted Prior Art:

> A cam actuated stent crimper, shown in FIG. 1, employs a plurality of arc-shaped or curved slots with semi-circular ends, disposed such that each slot or cam engages a cam follower bearing 22. The arc-shaped or curved surfaces of the slots are inclined to be non-concentric relative to the axis of rotation 26, and therefore rotation of the cam plate 28 transmits equal radial displacements to the cam follower bearings 22, to simultaneously actuate a like number of linear bearings 24, which have their corresponding linear tracks or rails mounted on a fixed plate. As shown in FIG. 1 the cam plate rotary drive 29 comprises a pneumatic cylinder mounted on a pivot or trunnion, arranged with the cylinder rod connected rotatably to a short arm fixed rigidly to the cam plate. Accordingly, linear motion produced by the pneumatic cylinder translates into controllable arcs of motion of the circular cam plate, which has a projecting V-shaped profile on its outer edge in rolling engagement with three equally spaced rollers with mating inverse V-shaped profiles to provide precise rotatable support to the cam plate. Depending on the direction of rotation, the linear slides which each carry a radially disposed crimping blade, are either moved inwards to apply a crimping force to the stent, or outwards to release the stent. Also when crimping, depending on the degree of rotation of the cam plate, a specific radial crimping displacement may be obtained to match the diametral reduction required for any particular stent.

Ex. 1001, 1:62–2:21. The above description of Figure 1 does not state that the stent crimper illustrated in Figure 1 was known in the art.

According to Patent Owner, "[i]mproving upon the then existing crimping methods and devices, the '560 Patent discloses and claims an innovative crimper that includes both coupled and movable blades forming a variable-sized aperture that applies even forces while minimizing the distortion of the stent." Prelim. Resp. 5 (citing Ex. 1001, 2:26–29, 2:56–65).

Figure 4A of the ’560 patent is reproduced below.

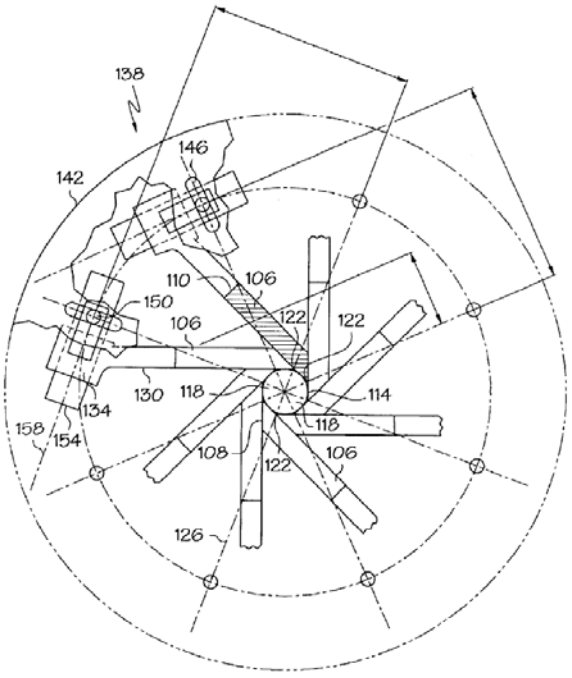

FIG. 4A

Figure 4A illustrates “a partial front view of an embodiment of the inventive apparatus.” Ex. 1001, 4:1–2. Actuation device 138 includes rotatable actuation plate 142 and eight coupled blades 106 disposed about reference circle 114 to form aperture 118. *See id.* at 4:46–49. “Each blade 106 is engaged to actuation plate 142 via a cam follower bearing 150 disposed in radial slot 146 and attached to mounting means in slotted end 134.” *Id.* at 5:19–21. “Each bearing 150 extends from a linear slide 154.” *Id.* at 5:22. Patent Owner further explains:

> In use, as an actuation plate 142 is rotated in a clockwise direction, the clockwise motion of the actuation plate is translated into linear motion of each linear slide 154 and blade 106 via bearing 150. ([Ex. 1001] at 5:46–62.) Each blade 106 moves outward in a direction parallel to the radial line 126, resulting in the opening of aperture 118. Conversely, as the actuation plate 142 is rotated in a counterclockwise direction,

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