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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/031,628	02/14/2008	Kyle P. Moore	END6213USNP/070330	2913
92223	7590	02/18/2010	EXAMINER	
K&L Gates LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15222			SMITH, SCOTT A	
			ART UNIT	PAPER NUMBER
			3721	
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			02/18/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 12/031,628	<b>Applicant(s)</b> MOORE ET AL.	
	<b>Examiner</b> Scott A. Smith	<b>Art Unit</b> 3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 14 February 2008.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-3, 5-16 and 18-20 is/are rejected.
- 7)  Claim(s) 4 and 17 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 14 February 2008 is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a)  All    b)  Some \*    c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 10/9/08(2); 5/18/09(2).
- 4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Alesi et al. '130

Alesi et al. '130 discloses a disposable loading unit (10) for attachment to a surgical cutting and stapling apparatus, said disposable loading unit (10) comprising: a carrier (20); a staple cartridge (44) supported in said carrier (20); an anvil assembly (64) movably coupled to said carrier (20) for selective movable travel between open and closed positions (fig.: 6) relative to said staple cartridge (44); an axial drive assembly (80, 84) supported within said carrier (44) to move in a distal direction from a start position to an end position (figs.: 6, 11 and 12) through said carrier (20) and said staple cartridge (44) and in a proximal direction from said end position to said start position (paragraph [0037]); a motor (86) supported within said carrier (20) and interfacing with said axial drive assembly (80, 84) to drive said axial drive assembly (80, 84) in said distal and proximal directions; and a battery (98a- 98c) supported within said carrier (20) and coupled to said motor (86) for supplying power thereto.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 2, 3, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alesi et al. '130 in view of Shippert '200.

Alesi et al. '130 lacks the movable battery. Shippert '200 discloses a surgical instrument comprising a movable battery as claimed. In view of the teachings of Shippert '200, it would have been obvious to one skilled in the art to provide the stapler of Alesi et al. '130 with the movable battery as claimed in order to provide for a simple on/off switch for powering the device.

6. Claims 5-7, 13, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alesi et al. '130 in view of Viola et al. '847.

Alesi et al. '130 lacks the indicator. Viola et al. '847 discloses a surgical instrument comprising an indicator for various functions. In view of the teachings of Viola et al. '847, it would have been obvious to one skilled in the art to provide the stapler of Alesi et al. '130 with the indicator as claimed in order to reveal the position of the anvil or drive element of the device.

7. Claims 8, 9, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alesi et al. '130 in view of US Patent Publication 2006/0217729, hereinafter Eskridge et al. '729.

Alesi et al. '130 lacks the motor current limiter. Eskridge et al. '729 discloses a surgical device comprising a motor current limiter. In view of the teachings of Eskridge et al. '729, it would have been obvious to one skilled in the art to provide the device of Alesi et al. '130 with a means for stopping the motor due to excessive resistance by the drive or excessive current from the motor.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alesi et al. '130 in view of Shippert '200 and Eskridge et al. '729.

It would have been obvious to one skilled in the art to provide the stapler of Alesi et al. '130 with the movable battery as claimed, as taught by Shippert '200 for the reasons as set forth above, and to provide the device of Alesi et al. '130 with a means for stopping the motor as taught by Eskridge et al. '729 for the reasons as set forth above.

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