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BGL/Cook - Chicago PO BOX 10395 CHICAGO, IL 60610			LOUIS, RICHARD G	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DARIN G. SCHAEFFER

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Appeal 2012-009282  
Application 10/984,416  
Technology Center 3700

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Before DONALD E. ADAMS, JEFFREY N. FREDMAN, and  
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

PAULRAJ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal<sup>1</sup> under 35 U.S.C. § 134 involving claims to a stent graft system. The Examiner rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

*Background*

The Specification “relates to a branch vessel stent for use in connection with a fenestrated stent graft device for placement in a vessel of a body” (Spec. ¶ 16). The Specification describes the use of “[p]ositional indicators 43, such as radiopaque markers, [that] may be attached to or

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<sup>1</sup> Appellant identifies the Real Party in Interest as Cook Incorporated (*see* App. Br. 1).

integral with the stent and/or graft material, and may be placed at positions on the branch vessel prosthesis **11** to indicate the proximal end **30**, the flaring portion **36** and/or the distal end **32**" (*id.*, ¶ 75). "Preferably, a positional marker **43** is placed so as to indicate that portion of the branch vessel prosthesis **11** that generally aligns with the fenestration **7**" (*id.*).

*The Claims*

Claims 1–4, 6, 7, 10, 11, 13, 15–21, 24, and 25 are under appeal.

Independent claim 1 is representative, and reads as follows:

1. A stent graft system for intraluminal deployment in an aorta and a branch vessel comprising:
  - an aorta stent graft with a fenestration configured to be aligned with a branch vessel;
  - a branch vessel prosthesis having proximal and distal ends, and further having a flaring portion and a tubular portion, wherein, when deployed, the flaring portion is retained within the aorta stent graft, and the tubular portion is configured to extend through the fenestration and into the branch vessel; and
  - a first positional indicator positioned between the tubular portion and the flaring portion of the branch vessel prosthesis that aligns with the fenestration during deployment,wherein the branch vessel prosthesis comprises an undeployed state prior to flaring of the flaring portion, and further comprises a deployed state in which the flaring portion is flared outward relative to the tubular portion,
  - wherein the first positional indicator indicates a bending portion of the branch vessel prosthesis that comprises one of a "V" shaped-segment, a "W" shaped-segment, and an "S" shaped-segment in at least the undeployed state.

*The Issues*

The Examiner rejected the claims as follows:

- I. Claim 25 under 35 U.S.C. § 112, ¶ 1 for failing to comply with the written description requirement.
- II. Claim 25 under 35 U.S.C. § 112, ¶ 1 for failing to comply with the enablement requirement.
- III. Claims 1–4, 6, 7, 21, and 24 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Vardi '429,<sup>2</sup> Thompson,<sup>3</sup> and Frantzen.<sup>4</sup>
- IV. Claims 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Vardi '429, Thompson, Frantzen, and Burney.<sup>5</sup>
- V. Claims 13 and 15–20 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Vardi '429, Thompson, Frantzen, and Vardi '483.<sup>6</sup>

Appellant does not present any arguments for the rejections of claim 25 under § 112, ¶ 1. We therefore summarily affirm those rejections and will not discuss them further.

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<sup>2</sup> Vardi et al., US 6,210,429 B1, issued Apr. 3, 2001.

<sup>3</sup> Thompson et al., US 2004/0254627 A1, published Dec. 16, 2004.

<sup>4</sup> Frantzen, US 6,293,966 B1, issued Sep. 25, 2001. The Examiner entered a new ground of rejection for claim 21 based on the same combination of Vardi '429, Thompson, and Frantzen (Ans. 4). In accordance with 37 C.F.R. § 41.39(b)(2), Appellant has chosen to maintain the appeal as to that rejection by addressing it in the Reply Brief (Reply Br. 6).

<sup>5</sup> Burney et al., US 6,056,700, issued May 2, 2000.

<sup>6</sup> Vardi et al., US 6,692,483 B2, issued Feb. 17, 2004.

## ANALYSIS

With respect to the obviousness rejections, the Examiner finds that

Vardi '429 discloses positional indicators located at a variety of locations including at the proximal and distal ends and surrounding the fenestration on the aorta stent 12, and at the proximal and distal ends of the tubular portion of the branch vessel as well as on the flaring portion 18. (See Col. 6 Line 61-Col. 7 Line 4, Col. 7, Lines 28-38, and Col. 8, Lines 48-54).

(Ans. 6). The Examiner also relies upon Figure 5 of Vardi '429 as “showing two rows of positional indicators 56 seemingly adjacent to one another,” and asserts that “it appears from the disclosure one of these two rows of indicators 56 is disposed on the proximal end of the tubular member while the other is disposed on the flared portion” (*id.* at 7). The Examiner acknowledges that “Vardi '429 fails to disclose positional indicators disposed between the tubular portion and the flaring portion of the branch vessel prosthesis that align with the fenestration during deployment,” but relies upon Thompson’s teaching of

a related prosthesis comprising positional indicators 40 disposed between a tubular portion 22 and a flaring portion 24 of a prosthesis wherein the indicators 40 align with a fenestration during deployment. The flaring portion 24 is considered to comprise the outer portion of the cantilever member 32 since this is the portion that flares outwardly away from the stent body. Said indicators 40 allow a physician to precisely determine the position of the portion

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