

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte TIMOTHY A. ABRAHAMSON

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Appeal No. 2001-0549  
Application No. 08/761,422

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ON BRIEF

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Before COHEN, ABRAMS, and STAAB, *Administrative Patent Judges*.  
STAAB, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's final rejection of claims 1-20, all the claims currently pending in the application.

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Appellant's invention pertains to a catheter hub anchoring device. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the appendix to appellant's brief.

The single reference cited by the examiner in the final rejection is:

Gereg	4,351,331	Sept. 28, 1982
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Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gereg.

#### *Discussion*

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444,

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221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Gereg pertains to a endotracheal tube holder and bite block. A holding assembly 2 comprises a bite block 19 having a flange integrally formed therewith. A central hole 13 goes through the bite block for receiving an endotracheal tube 14. The bite block has an opening on one side of the block and a thinned down section forming a living hinge on the other side of the block. The holder is intended to be slipped over the endotracheal tube after the tube is in place in a patient's mouth. To do this, the flange is squeezed by the user at locations 5 and 6 on the flange to enlarge the side opening of the block. The block is then passed laterally over the tube, whereupon the flange is squeezed by the user at locations 10 and 11 on the flange to cause the side opening to close and the central hole to frictionally engage the tube 14. The holding assembly is provided with locking means 17, 18 (see Figure 4) to hold the holding assembly in tight engagement with the tube. A

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strap or band 20 may be threaded through openings 12 in the flange and passed around the patient's ears or around the entire head to keep the holding assembly in place.

Among the claim limitations argued by appellant as distinguishing over Gereg is the requirement found in each of the independent claims on appeal that the elongated catheter comprises an elongated tubular catheter body portion having distal and proximal end portions, and a hub member attached to the body portion at the proximal end portion thereof. In rejecting the appealed claims as being anticipated by Gereg, the examiner reads the claimed elongated tubular catheter on Gereg's endotracheal tube 14, and the claimed hub member on Gereg's bite block 19. Appellant argues (brief, page 5) that the bit block of Gereg is not attached to the proximal end portion of the endotracheal tube, but rather is attached to the tube 14 at a point that is intermediate or between the ends thereof. In response, the examiner takes the position (answer, pages 3-4) that "in Gereg, the 'body portion' [of the tube] can be

considered the portion that is proximal, or in front of, the hub in figure 2, and thus the hub member [i.e., bite block] is attached to the proximal end portion of the body portion of the catheter."

Initially, we note the examiner's comment on page 3 of the answer to the effect that appellant's hub member as shown in Figure 7 is located intermediate the ends of the catheter as a whole.<sup>1</sup> While this may be true, appellant's claims call for the hub member to be attached to the proximal end *of the body portion* of the catheter, which body portion corresponds to element 12 in Figures 7 and 10.<sup>2</sup> Bearing this in mind, the examiner's attempt to arbitrarily reconstruct Gereg in light of appellant's claim language is unreasonable and driven by hindsight, particularly when the claim language in question is interpreted in a manner consistent with the specification and

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<sup>1</sup>Appellant's catheter assembly as a whole includes body portion 12, hub member 16 and extension members 18 and 20.

<sup>2</sup>See the paragraph spanning pages 9 and 10 of appellant's specification, as well as Figures 7 and 10, where the hub member 12 is clearly described and shown as being secured to the proximal end of the body portion 12 of the catheter assembly.

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construed as those skilled in the art would construe it (see *In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990); *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983)). Like appellant, we view the tube holder and bite block of Gereg as being positioned *intermediate* the ends of the tube 14; that is, between the distal end of the tube (shown in the lower right corner of Figure 2) and the proximal end of the tube (shown leading up and away from the bite block in Figure 2). Accordingly, we can think of no circumstances under which the artisan, consistent with the appellant's specification, would construe the bit block and endotracheal tube arrangement of Gereg as corresponding to the claimed hub member attached to the proximal end portion of the body portion of the catheter.

Since Gereg does not meet this claim limitation found in each of the independent claims on appeal, it is unnecessary for

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us to consider the other limitations argued by appellant as also  
distinguishing over Gereg.

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The decision of the examiner is reversed.

*REVERSED*

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

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