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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
18/930,183	10/29/2024	David John Onushko	2001.3357101	3963

11050 7590 07/23/2026

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EXAMINER	
RESTAINO, ANDREW PETER	

ART UNIT	PAPER NUMBER
3771	

NOTIFICATION DATE	DELIVERY MODE
07/23/2026	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

BSC.USPTO@stwiplaw.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 18/930,183	**Applicant(s)** Onushko et al.	
	Examiner Andrew Restaino	**Art Unit** 3771	**AIA (First Inventor to File) Status** Yes

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 July 2026 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☑ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires ____ months from the mailing date of the final rejection.
   b) ☑ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection.The current period for reply expires ____ months from the mailing date of *the prior Advisory Action* or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.
   Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANTS FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37CFR 41.37(a).

AMENDMENTS

3. ☑ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   a) ☑ They raise new issues that would require further consideration and/or search (see NOTE below);
   b) ☐ They raise the issue of new matter (see NOTE below);
   c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☑ For purposes of appeal, the proposed amendment(s):(a) ☑ will not be entered; or (b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____
9. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
10. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
11. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

12. ☑ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
13. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
14. ☐ Other: _____.

STATUS OF CLAIMS

15. The status of the claim(s) is (or will be) as follows:
    Claim(s) allowed:_____.
    Claim(s) objected to:_____.
    Claim(s) rejected:1-18 and 20.
    Claim(s) withdrawn from consideration:_____.

/Andrew Restaino/ Primary Examiner, Art Unit 3771	

Continuation of 3. NOTE: The proposed amendments filed July 13, 2026 will not be entered as the amendments raise new issues that would require additional time for further search and consideration beyond the time allotted; specifically the amendments of claim 13 narrow down the structure of the spacer assembly.

Continuation of REQUEST FOR RECONSIDERATION/OTHER 12. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant's arguments filed July 13, 2026 have been considered but are not deemed persuasive. Applicant's arguments are based on arguments which have been addressed in the final office action and herein. More specifically:

With respect to Applicant's argument that "Perszyk does not teach that the intermediate outer member 240 approximates the inner diameter of the lumen" and "Perszyk does not teach that the intermediate outer member 240 approximates the inner diameter of the lumen", Perszyk states in paragraph [0028] wherein the outer diameter of the distal outer member 208 approximates the inner diameter of the lumen, and states in paragraph [0058] wherein the intermediate outer member 240 has the same diameter as the distal outer member 208; therefore, the intermediate outer member 240 has an outer diameter that approximates the inner diameter of the lumen. The Examiner contends that with the intermediate outer member 240 being modified to be a plurality of beads, it would be obvious and well within the purview of one of ordinary skill in the art to have the beads assume the same outer diameter as the intermediate outer member 240; therefore, the modified device encompasses wherein the plurality of bead members has the claimed outer diameter.
With respect to Applicant's argument that "A simple-substitution rationale requires that the substituted element perform the same function so as to yield a predictable result. See MPEP § 2143(B). Substituting Chin's or Douk's shiftable, sub-lumen stiffening beads for Perszyk's coil and then enlarging them to approximate the lumen does not preserve their function; it changes their principle of operation and renders them unsatisfactory for their intended purpose of providing variable, controllable stiffness. A proposed modification that changes a reference's principle of operation, or that renders the reference unsatisfactory for its intended purpose, does not support a conclusion of obviousness.", there is no evidence that suggests the device of Perszyk would not operate as intended with the bead members. Applicant has not provided any evidence to prove the modified device would not operate as intended. Merely, saying that the modification would result in the inoperability of the device is not sufficient to show inoperability of the device. Furthermore, the examiner notes that the arguments of the attorney can not take place of evidence. See In Re Schulze, 346, F.2d 600,602, 145 USPQ 716, 718 (CCPA 1965).