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BGL/Cook - Chicago PO BOX 10395 CHICAGO, IL 60610			EXAMINER LYNCH, ROBERT A	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DUSAN PAVCNIK and KURT J. TEKULVE

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Appeal 2015-000159  
Application 12/533,731  
Technology Center 3700

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Before JILL D. HILL, JEFFREY A. STEPHENS, and  
PAUL J. KORNICZKY, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants<sup>1</sup> seek our review under 35 U.S.C. § 134(a) from the Examiner's Final Office Action ("Final Act.") rejecting claims 58–61 and 63–75. Claims 1–57 and 62 are canceled (App. Br. 10–11), and claims 76 and 77 are withdrawn from consideration (Final Act. 1). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> The real party in interest is identified as Cook Medical Technologies LLC. App. Br. 2.

*Claimed Subject Matter*

Claim 58, reproduced below, is illustrative of the claimed subject matter:

58. A closure device comprising:
- only one circumferential frame defining a single frame plane;
  - a first crossbar extending across the frame, the first crossbar having a central portion and terminal crossbar ends connectively linked to separate sites on the frame;
  - a bar-shaped first anchor containing two terminal first anchor ends and a central portion attached to the central portion of the first cross bar; and
  - a single sheet of biocompatible material, the sheet of biocompatible material having a periphery attached to the frame, wherein each of the frame, the first crossbar, and the first anchor comprises at least one flexible, substantially linear structure,
- wherein the first anchor is only indirectly connected to the frame via the first crossbar and
- wherein the first crossbar is configured to extend in an arc concave to the frame plane when deployed, and wherein the first anchor is configured to extend in an arc convex to the frame plane when deployed.

*Rejections*

1. Claims 58, 59, 63–66, 72, 74, and 75 stand rejected under 35 U.S.C. § 102(b) as anticipated by Marino et al. (US 2005/0065548 A1, published Mar. 24, 2005) (“Marino ’548”). Final Act. 3–5.
2. Claims 60, 61, and 67–71 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Marino ’548 and Marino et al. (US 6,206,907 B1, issued Mar. 27, 2001) (“Marino ’907”). Final Act. 6–8.

3. Claim 73 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Marino '548 and Chanduszeko (US 2004/0073242 A1, published Apr. 15, 2004). Final Act. 9.

### ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments (App. Br. 5–9; *see also* Reply Br. 2–3). We concur with Appellants' argument (App. Br. 6, 8) that independent claims 58, 70, and 74 each limit the number of frames to one, and that Marino '548 discloses closure devices with two frames.

The Examiner concludes that, because claim 58 uses the open-ended transitional phrase “comprising,” “claim 58 may be interpreted as being inclusive of an additional, unrecited delivery bar structure (48; *see* Marino, Fig. 3a above).” Ans. 4. Although the Examiner is correct that the transitional phrase “comprising” allows the claims to encompass a device with additional structures not recited in the claim, “[c]omprising’ is not a weasel word with which to abrogate claim limitations.” *Spectrum Int’l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1380 (Fed. Cir. 1998). Here, the independent claims are specifically limited to “only one circumferential frame” (claims 58 and 74) and “only one frame” (claim 70), and we do not interpret the transitional phrase “comprising” to reach into each limitation of the claims to broaden the scope of each limitation. For example, we decline to allow the term “comprising” to reach into the limitation “only one frame” such that the limitation is met by prior art having closure devices with more than one frame. *See Dippin’ Dots, Inc. v. Mosey*, 476 F.3d 1337, 1343 (Fed. Cir. 2007) (“The presumption raised by the term ‘comprising’ does not reach

into each of the six steps to render every word and phrase therein open-ended—especially where, as here, the patentee has narrowly defined the claim term it now seeks to have broadened.”).

Appellants’ Specification indicates that a frame must support a sheet of biocompatible material and be used to cover a septal opening, such as a patent foramen ovale (PFO). Spec. ¶ 77. Both of Marino ’548’s hoops 46 and 48 are covered with sheets of material and cover the septal opening. *See* Marino ’548 Fig. 3a, ¶¶ 46–47. Indeed, Figures 1–3 of Marino ’548 do not show any differences between hoop 48, which the Examiner calls an additional “delivery bar structure,” and hoop 46, which the Examiner identifies as the claimed “frame.” Ans. 3. Thus, hoop 46 must be considered an additional frame rather than an additional structure of the closure device not recited in the claim. Because claims 58, 70, and 74 are limited to only one frame, the Examiner’s rejections of these claims are in error. Accordingly, we do not sustain the rejection of claims 58 and 74 as anticipated by Marino ’548 and the rejection of claim 70 as obvious over Marino ’548 and Marino ’907.

The rejections of the dependent claims rely on the Examiner’s finding that Marino ’548 discloses “only one circumferential frame” as recited in independent claims 58 and 74, and teaches “only one frame” as recited in independent claim 70. Final Act. 4–9. Thus, for the same reasons as the independent claims, we do not sustain the rejections of dependent claims 59–61, 63–69, 71–73, and 75.

Appeal 2015-000159  
Application 12/533,731

DECISION

We reverse the Examiner's decision to reject claims 58–61 and 63–75.

REVERSED