SUMMARY JUDGMENT – INVALIDITY OF '404 AND '888

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If an Inflatable Device is Not Required, Then the Claims Are Invalid

Inflatable Bone Tamp

minus Inflatable

= Bone Tamp

= Prior Art

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If an Inflatable Device is Not Required, Then the Claims Are Invalid

- Olerud anticipates claims 1, 3, 8, 9, 10 and 12 of the '404 Patent
- Edeland anticipates claims 1, 3, 8, 9, and 10 of the '404 Patent
- Edeland, Olerud and/or Kennedy render obvious all of the asserted claims

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Invalidity Legal Principles

- Construe claims the same way for invalidity and infringement purposes
  - Only get to DOT's invalidity motion if the claims do not require a balloon
- Claims are construed to uphold their validity
  - If claims were not limited to a balloon, they would be plainly invalid
    - They would be covered by the prior art -- conventional bone tamps

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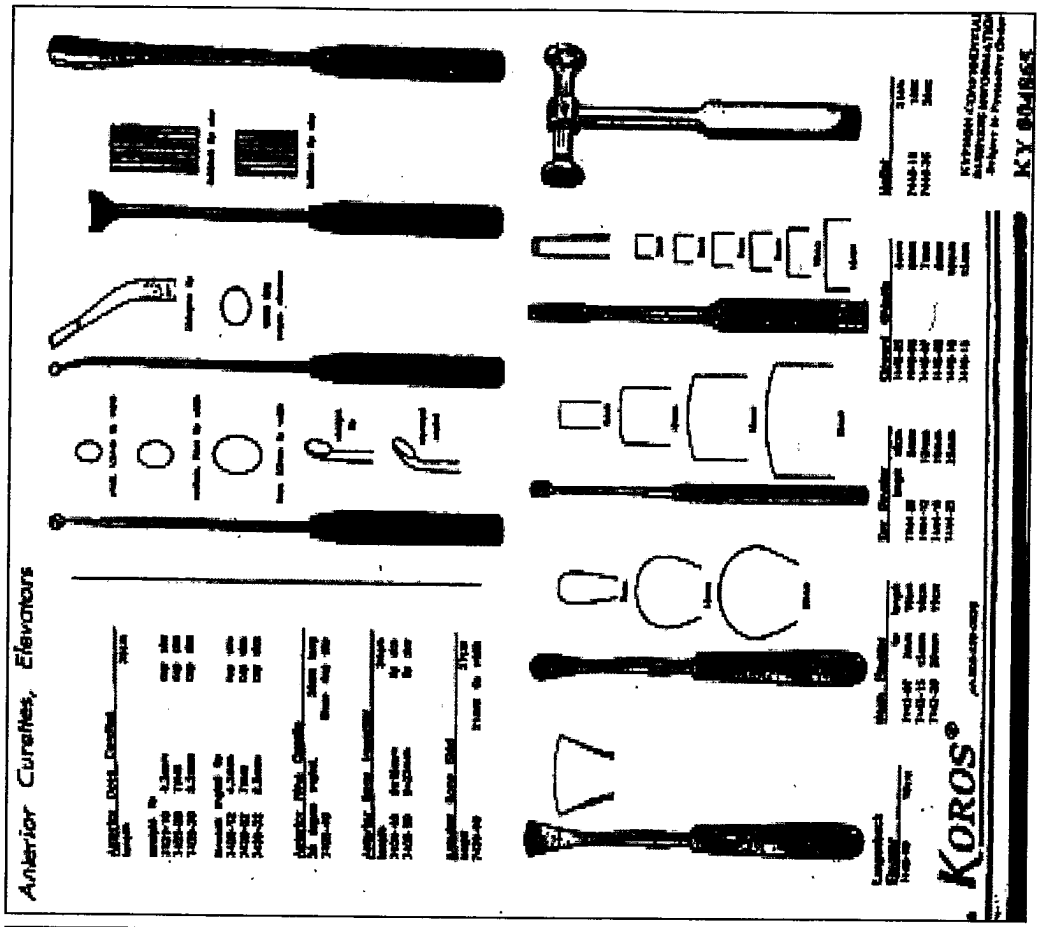
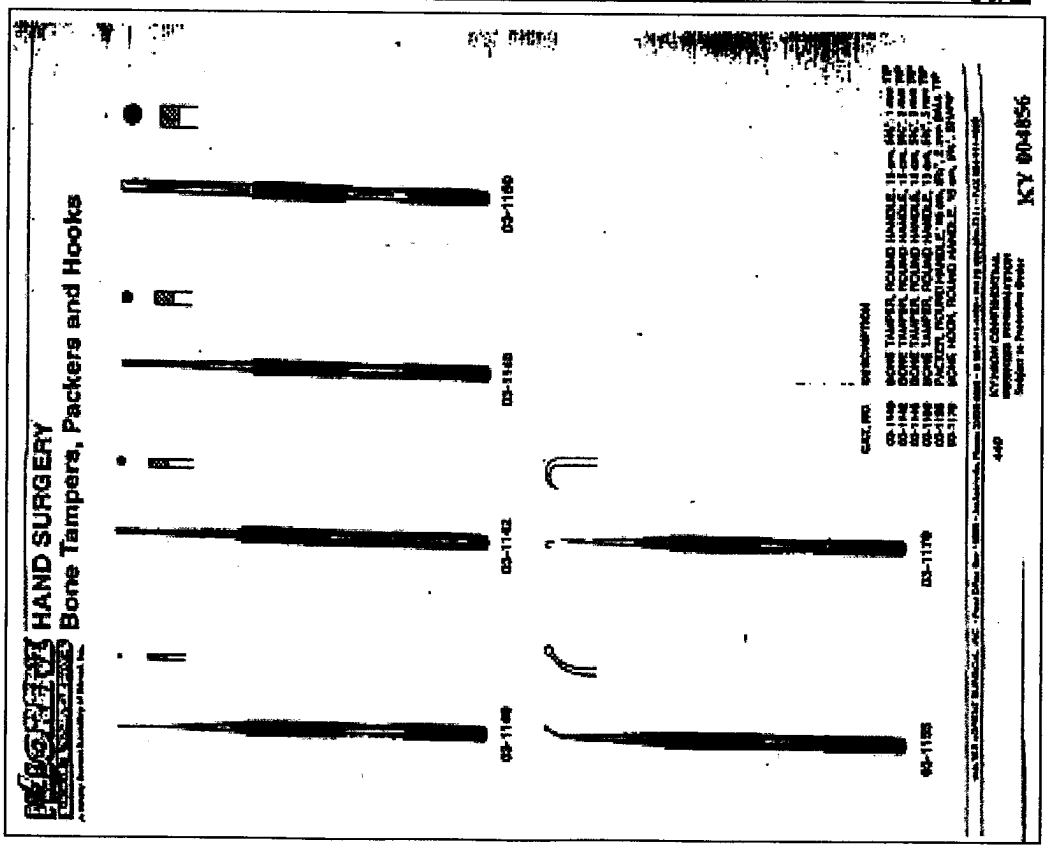
CONVENTIONAL BONE TAMPS





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Edeland and Olerud Contain The Same Disclosures

- an instrument is introduced into the bone
- the pressure of the instrument compacts cancellous bone on its way to, and in the process of, reducing the fracture
- bone filler such as a ceramic calcium phosphate or bone paste is introduced into the void

- (i.e forms a passage)
- (i.e. compacts to increase the volume of the passage)
- (i.e. fills the passage with flowable material capable of setting to a hardened condition)

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