

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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JEAN-PIERRE ARTUS

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Appeal No. 2001-0181  
Application No. 09/195,999

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ON BRIEF

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Before COHEN, STAAB, and McQUADE, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 10 through 19. Claims 3 through 9 stand withdrawn from consideration by the examiner; 37 CFR § 1.142(b). These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to an alpine ski boot. A basic understanding of the invention can be derived from a

Appeal No. 2001-0181  
Application No. 09/195,999

reading of exemplary claim 1, a copy of which appears in the APPENDIX to the brief (Paper No. 15).

As evidence of obviousness, the examiner has applied the documents listed below:

Spier	3,807,062	Apr. 30,
1974		
Wittmann et al.	4,907,353	Mar. 13,
1990 (Wittmann)		

The following rejections are before us for review.

Claims 1 and 10 through 19 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1, 12 through 16, 18, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wittmann.

Claims 10, 11, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wittmann, as applied above, further in view of Spier.

Appeal No. 2001-0181  
Application No. 09/195,999

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 18), while the complete statement of appellant's argument can be found in the brief (Paper No. 15).

#### OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,<sup>1</sup> and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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<sup>1</sup> In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

The indefiniteness rejection

We do not sustain the rejection of claims 1 and 10 through 19 under 35 U.S.C. § 112, second paragraph, as being indefinite.

As set forth in the answer (page 3), the examiner is of the view that the phrase "semi-rigid intermediate zone" in claim 1 is vague and indefinite.<sup>2</sup>

When we assess the language "semi-rigid intermediate zone" in the context used in claim 1, and in light of the underlying specification, it does not appear to us that the recitation at issue is vague and indefinite, as now explained. As claimed, the "semi-rigid intermediate zone" is understood to be a portion of the intermediate sole that is intermediate the rigid extremities. This is consistent with the

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<sup>2</sup> The examiner acknowledges that the phrase "intermediate flexible zone" was a typographical error in the final rejection. Notwithstanding this error, we can fairly assess the indefiniteness rejection, taking into account the argument advanced in the brief (pages 4 and 5) relative to the language of claim 1 concerning the intermediate zone.

Appeal No. 2001-0181  
Application No. 09/195,999

specification (pages 3 and 6) which describes the first embodiment (elected species of Figs. 1 through 3; Paper No. 5) as including an intermediate sole having a flexible intermediate zone, with the intermediate sole being made of a semi-rigid plastic and comprising the intermediate flexible portion 6. In light of the above, we conclude that the recitation of a "semi-rigid intermediate zone" in claim 1 is definite in meaning, and would be understood by those versed in the art.

The obviousness rejections

We do not sustain the rejection of claims 1, 12 through 16, 18, and 19 under 35 U.S.C. § 103 as being unpatentable over Wittmann as well as the rejection of claims 10, 11, and 17 under 35 U.S.C. § 103 as being unpatentable over Wittmann and Spier.

Claim 1 is explicitly addressed to an alpine ski boot with the feature, inter alia, of "an intermediate sole (2) comprising a semi-rigid intermediate zone (6) to which are

Appeal No. 2001-0181  
Application No. 09/195,999

attached rigid extremities (7,8) extending beyond the upper at the front and rear, against which holding elements of a standard alpine ski binding interface."

As evidence of obviousness, the examiner applies the patent to Wittmann which is exclusively focused upon a cross-country ski boot, not an alpine ski boot as now claimed. Other than by reliance upon impermissible hindsight and appellant's own disclosure, it is quite clear to this panel of the Board that the Wittmann teaching, in and of itself, would not have been suggestive of converting a cross-country ski boot to an alpine ski boot by the inclusion of an intermediate sole comprising a semi-rigid intermediate zone to which are attached rigid extremities extending beyond its upper at the front and rear, against which holding elements of a standard alpine ski binding would interface, as set forth in appellant's claim 1. Since the evidence applied by the examiner does not support a conclusion of obviousness as to independent claim 1, the rejection of appellant's claims cannot be sustained. As to the Spier reference, it likewise

Appeal No. 2001-0181  
Application No. 09/195,999

addresses a boot other than an alpine ski boot and clearly does not overcome the deficiency of the Wittmann document.

In summary, this panel of the board has not sustained any of the rejections on appeal.

The decision of the examiner is reversed.

Appeal No. 2001-0181  
Application No. 09/195,999

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
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	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

ICC/lbg

Appeal No. 2001-0181  
Application No. 09/195,999

JOHN MOETTELI, BUGNION S.A.  
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1211 GENEVA  
SWITZERLAND

**RETURN TO LESLEY**

COHEN

APPEAL NO. 2001--0181 - JUDGE

APPLICATION NO. 09/195,999

APJ COHEN

APJ STAAB

APJ McQUADE

DECISION: **REVERSED**

Prepared By:

**DRAFT TYPED:** 19 Nov 02

**FINAL TYPED:**