

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOACHIM GRIFKA

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Appeal No. 96-2454  
Application No. 08/052,737<sup>1</sup>

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HEARD: March 2, 1998

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Before CALVERT, ABRAMS and McQUADE, *Administrative Patent Judges*.  
ABRAMS, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is an appeal from the decision of the examiner finally rejecting claims 1 through 6 and 8 through 20, which constitute all of the claims of record in the application.<sup>2</sup>

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<sup>1</sup>Application for patent filed April 27, 1993.

<sup>2</sup>Paper No. 7 erroneously states that claims 1 through 20 are finally rejected. The Examiner's Answer (Paper No. 18) is correct, however.

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The appellant's invention is directed to a knee joint orthosis. The subject matter before us on appeal is illustrated by reference to claim 1, which can be found in an appendix to the Appellant's Supplemental Reply Brief.

#### **THE REJECTION**

Claims 1 through 6 and 8 through 20 stand rejected under 35 U.S.C. § 112, first paragraph.<sup>3</sup>

The rejection is explained in the Examiner's Answers.

The opposing viewpoints of the appellant are set forth in the Briefs.

#### **OPINION**

The examiner has raised two issues with regard to the specification, which result in the rejection of the claims under the first paragraph of Section 112. The first of these is with regard to the recitation in independent claim 19 and dependent claim 20 (which depends from claim 1) of the limitation that "an elastic device permanently limits movement of the joint splint in

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<sup>3</sup>A rejection under 35 U.S.C. § 112, second paragraph, was overcome by an amendment subsequent to the final rejection (Examiner's Answer, page 1).

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a direction of its shortening." As we understand the examiner's position, it is that this device is not described in the specification in such a manner as to enable one to make and use the invention. The appellant, of course, argues that such is not the case, and he points out various reasons why one of ordinary skill in the art would have had no trouble making and using the invention. We find ourselves in agreement with the appellant.

Beginning on page 7 of the appellant's specification there is a description of telescopic tubes 13 and 14, which concludes on page 8 with the explanation that the telescopic parts of the rigid joint splints can be connected to each other by means of an inner elastic lining or a stretch stop. It is our opinion that one of ordinary skill in the art would have understood from this explanation that it is within the scope of the appellant's invention to attach the two tubes together by means of an elastic element which stretches when the elements are moved apart and which functions to limit the extent of such movement. The requirement of Section 112 is that the disclosure must be sufficiently complete to enable one of ordinary skill in the art to make the invention without undue experimentation; every detail need not be set forth if the skill in the art is such that the disclosure enables one to make the invention. See *In re Gaubert*,

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524 F.2d 1222, 1226, 187 USPQ 664, 667 (CCPA 1975). We are of the view that such is the case here, for in addition to the inner elastic element specifically mentioned in the text, from our perspective other arrangements, such as elastic means external of the telescopic tubes, would have been apparent to the artisan.

The second issue raised by the examiner is that there is no support in the specification for the requirement in claim 1 that each joint splint be coupled at its lower end to the lower leg part "via a lower pivotal point." While we agree with the examiner that the written description is lacking an explicit statement that this is the case, we are persuaded by the appellant's arguments that such would have been apparent to one of ordinary skill in the art. We arrive at this conclusion by applying the principles of geometry. Given that the point of rotation of the lower leg about the wearer's knee is beneath and forward of the point of rotation of the joint splints, in order for the joint splints to move rearwardly behind the knee when the knee is bent they must telescopically shorten and must pivot with respect to both of the parts to which they are attached. It is impossible to have such knee movement if the lower attachment point does not allow the rigid joint splints to pivot with respect to the lower leg part, and one of ordinary skill would

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have recognized this as a requirement in order for the device to function in the intended manner. Such a double pivoting attachment, which is necessary in this type of device, is graphically illustrated in Figure 4 of the Brooks patent, cited by the appellant in the Information Disclosure Statement (Paper No. 2).

The rejection is not sustained.

The decision of the examiner is reversed.

**REVERSED**

IAN A. CALVERT	)	
Administrative Patent Judge)	)	
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	)	
NEAL E. ABRAMS	)	BOARD OF PATENT
Administrative Patent Judge)	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge)	)	

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