

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(2) is not binding precedent of the Board.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. 8

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES ZAGUROLI, JR.

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Appeal No. 97-0750  
Application 08/329,219<sup>1</sup>

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ON BRIEF

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Before CALVERT, ABRAMS and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed October 26, 1994.

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This is a decision on appeal from the examiner's refusal to allow claims 1, 2, 6, 7 and 8 as amended in a paper filed concurrently with appellant's appeal brief on July 17, 1996.<sup>2</sup> Claims 3, 4 and 5, the only other claims pending in this application, have been objected to by the examiner, and are said to be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Appellant's invention relates to a self-adjusting lift table for supporting a number of load items at a variable height. On pages 1 and 2 of the specification, appellant indicates that the present invention is an improvement over the lift table seen in U.S. Patent No. 5,299,906 and, in particular, provides a lift table of the type described therein in which the load deflection characteristic is improved, and is easily matched to various load

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<sup>2</sup> Although it is clear from page 2 of the examiner's answer that the amendment filed with the appeal brief on July 17, 1996 has been considered and entered by the examiner, we note that this amendment has not been entered in the "Contents" section of the file wrapper, has not been assigned a paper number, or otherwise clerically entered. These oversights should be corrected in any further prosecution of the application before the examiner.

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item/part densities. These improvements are brought about by including an adjustably compressed auxiliary bellows in fluid communication with the load platform supporting bellows in a

conventional lift table, like that of U.S. Patent No. 5,299,906. Appellant's invention also relates to a method of supporting a load of parts utilizing the lift table noted above. Claims 1 and 7 are representative of the subject matter on appeal and a copy of those claims, as they appear in the Appendix to appellant's brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness of the claimed subject matter are:

Grassl et al. (Grassl)	4,461,444	July 24, 1984
Richter et al. (Richter)	5,193,788	Mar. 16, 1993

Claims 1, 2 and 6 through 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Grassl in view of Richter.

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Claim 6 stands additionally rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

Reference is made to the examiner's answer (Paper No. 7, mailed August 30, 1996) for the examiner's full reasoning in support of the above-noted rejections and to appellant's brief (Paper No. 6, filed July 17, 1996) for appellant's arguments thereagainst.

#### OPINION

Our evaluation of the issues raised in this appeal has included a careful assessment of appellant's specification and claims, the applied prior art references and the respective positions advanced by appellant and the examiner. As a consequence of our review, we have come to the conclusion, for the reasons which follow, that the examiner's rejection of the appealed claims under 35 U.S.C. § 103 will not be sustained. In addition, we will also not sustain the examiner's rejection of claim 6 under 35 U.S.C. § 112, first paragraph.

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Looking to the examiner's rejection of claims 1, 2 and 6 through 8 under 35 U.S.C. § 103, we must agree with appellant (brief, pages 5-7) that the examiner's combination of Grassl and Richter is based on hindsight reasoning derived only from appellant's disclosure and not on the fair teachings of the prior

art references themselves. Given the significant differences in the devices and fluid systems involved in Grassl and Richter, and the disparate objectives sought to be achieved by these references, we see no way that one of ordinary skill in the art would have been led to their combination as proposed by the examiner in the rejection before us on appeal. Moreover, contrary to the examiner's factual findings, we find no disclosure in Richter of "means to adjust the compressive forces in the form of clamping plates and adjustable screws" (answer, page 4). Thus, the decision of the examiner rejecting claims 1, 2 and 6 through 8 under 35 U.S.C. § 103 relying on Grassl and Richter must be reversed.

With regard to the examiner's rejection of claim 6 under 35 U.S.C. § 112, first paragraph, we note that this issue

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was first raised in the final rejection (Paper No. 4) in a slightly different form (i.e., as relating to new matter), but has nonetheless been specifically responded to in appellant's brief at page 5, where appellant presents arguments to support the proposition that the original disclosure was adequate to support claim 6. Thus, the mere fact that the examiner has now denominated this rejection as a "NEW GROUND" of rejection in the

answer did not, in our view, compel appellant to respond by way of a reply brief, when such issue had already been treated in the brief. In reviewing this rejection, we have considered the originally-filed disclosure of appellant's application from the perspective of one of ordinary skill in the art. With such perspective, we must agree with appellant (brief, page 5) that the artisan, considering Figures 1 and 2 of the application and the fact that the invention therein is specifically indicated to be an improvement over U.S. Patent No. 5,299,906, would have understood that the scissors linkage members (20, 22) are pivotally connected to the platform (12) and base (16) at one end only, as clearly evident from Figures 1 and 2, and that the opposite end of each of the link members is supported by a roller (as in U.S. Patent No. 5,299,906 and as depicted by phantom

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circles seen in Figure 1 of the application drawings) so as to permit the load platform (12) to be moved up and down with respect to the base (16), as is repeatedly indicated in the originally-filed specification and claims to be the desired operation of the lift table.

Based on the foregoing, we consider that appellant's disclosure, as filed, is sufficiently complete to enable one of ordinary skill in the art to make and use the claimed invention without undue experimentation. See In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). See also In re Scarborough, 500 F.2d 560, 566, 182 USPQ 298, 303 (CCPA 1974). Thus, the enablement requirement in the first paragraph of 35 U.S.C. § 112 is met and we will therefore not sustain the examiner's rejection of appealed claim 6 under 35 U.S.C. § 112, first paragraph.

As is apparent from our comments above, the decision of the examiner rejecting appealed claims 1, 2 and 6 through 8 under 35 U.S.C. § 103 and claim 6 under 35 U.S.C. § 112, first paragraph, is reversed.

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REVERSED

IAN A. CALVERT )  
Administrative Patent Judge )  
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NEAL E. ABRAMS )  
Administrative Patent Judge )  
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CHARLES E. FRANKFORT )  
Administrative Patent Judge )

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

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APPENDED CLAIMS

1. A lift table for supporting a number of load items at a variable height comprising:

a generally planar load platform adapted to receive load items thereon;

a base;

support means supporting said load platform above said base for up and down movement;

said support means including a main air spring containing a volume of compressed air and bearing the weight of said platform and load items to cause said platform to move downwardly on said base with increasing total weight of said load items; and

an auxiliary expandable reservoir in fluid communication with said main air spring and containing an air volume connected to said main air spring air volume, said auxiliary reservoir expansible under pressure but not bearing the weight of said platform or load items so that said auxiliary reservoir is not compressed thereby;

whereby a compressibility of said main air spring corresponds to a total air volume of said main air spring and said auxiliary air reservoir, but only the main air spring is compressed by the weight of said platform and load items.

7. A method of supporting a load of parts on a platform so as to cause said platform to rise with removal of each part or fall with adding a part, comprising the steps of mounting a readily compressible main enclosure filled with a gas so that said main enclosure is loaded with the weight of said platform and said parts;

connecting the interior of said enclosure with the interior of an auxiliary reservoir, said reservoir being expansible by the gas pressure thereby communicated from said main enclosure to said auxiliary reservoir; and,

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resiliently exerting an adjustable compressive force on the exterior of said auxiliary reservoir to vary an

expandability of said auxiliary reservoir by the exertion of said gas pressure communicated from said main enclosure so as to cause a variation in the vertical movement of said platform caused by removing or adding a part onto said platform.