

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WALDA B. LIPSON and CARL YURDIN

Appeal No. 97-1438
Application 08/339,142¹

ON BRIEF

Before COHEN, FRANKFORT and STAAB, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This appeal involves claims 1, 3, 5, and 10 through 24. Claims 6 through 9, the only other claims remaining in the application, stand objected to by the examiner. However,

¹ Application for patent filed November 14, 1994. According to appellants, the application is a continuation-in-part of Application 07/902,964, filed June 23, 1992, now abandoned, which is a continuation-in-part of Application 08/098,687, filed July 28, 1992, now abandoned, which is a continuation-in-part of Application 08/200,858, filed February 22, 1994, now abandoned.

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these latter claims would be allowable, according to the
examiner

(Paper No. 17), when the amendment filed January 21, 1997 is
entered subsequent to this appeal.

Appellants' invention pertains to a portable limb support
device. An understanding of the invention can be derived from
a reading of exemplary claim 1, a copy of which appears in the
appendix on page 16 of the brief (Paper No. 13).

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

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|----------------|-----------|---------------|
| Barnes | 1,632,160 | Jun. 14, 1927 |
| Lechner | 4,681,309 | Jul. 21, 1987 |
| Lipson | 5,000,168 | Mar. 19, 1991 |
| Meals | 5,111,808 | May 12, 1992 |
| Simmons et al. | 5,111,983 | May 12, |
| 1992 | | |
| (Simmons) | | |

The following rejections are before us for review.

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Claims 1, 3, 5, 10 through 13, and 16 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Barnes.

Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Simmons.

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Lechner.

Claims 21 through 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Meals.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the answer (Paper No. 15), while the complete statement of appellants' argument can be found in the brief (Paper No. 13).

OPINION

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In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered

appellants' specification and claims,² the applied patents,³ and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We reverse each of the examiner's rejections of appellants' claims under 35 U.S.C. § 103. Our reasoning appears below.

² We understand the claimed subject matter but make note of the following matters which are deserving of attention during any further prosecution before the examiner. The "at least one follower" and "a fastener" of claim 5 should conform with the positively recited "cam follower" of claim 1 and "adjustable fastener" of claim 3, respectively. The language "upper limb supporter" (claim 19) and "lower limb supporter" (claim 20) should conform with the language of parent claims 17 and 18, respectively.

³ In our evaluation of the applied patents, we have considered all of the disclosure of each patent 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).

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Claim 1, the sole independent claim on appeal, is drawn to a portable limb support device comprising, inter alia, "a plastic-fabricated upper-half that possesses an upper and lower extension", "a plastic-fabricated bottom-half that also possesses an upper and lower extension", the upper-half connected directly to the bottom half, one of the bottom-half's upper extension and the upper-half's lower extension having at least one notched load-bearing cam surface and the other of the bottom-half's upper extension and the upper half's lower extension having a cam follower, and with the cam follower being repositionable along the cam surface such that the upper-half can be repositioned and locked in at least one of an inclined, declined, and leveled position.

Reading the language of claim 1 in view of the underlying disclosure, we readily understand the claim as clearly setting forth a device comprising an upper-half and a lower-half, i.e., two parts, that when directly connected to one another, make up the whole of the device claimed.

We turn now to the Lipson and Barnes patents, applied by

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the examiner as evidence of obviousness in rejecting independent claim 1.

The Lipson document discloses a portable multi-positional human limb supporter comprising a limb support means 26, support members 18, 20, and base 10, with the support members being separate components that are slidable and pivotable relative to the limb support means and the base. Based upon this latter assessment, it is our opinion that one of ordinary skill in the art would have appreciated the Lipson patent as teaching four relatively movable components. Additionally, we note that each support member (Fig. 6a) includes a slit 56 and bolt 58 for adjustment in the height of the support member (column 8, lines 11 through 23).

The Barnes reference teaches a body adjuster having a main frame B with both an adjustable head rest and body support C and adjustable arms support devices D thereon. The support C includes rack rails 24, 25 and pawl 20 to effect support adjustment, while devices D include a stud 69 and slot 64 arrangement for vertical adjustment and a loop strap 60 for

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slidable adjustment relative to an end cross member 11 of the main frame B.

In our opinion, the portable limb support device of appellants' claim 1 would not have been obvious based upon the combined teachings of Lipson and Barnes. The evidence of obviousness simply does not provide a suggestion for the claimed portable limb support device comprising two plastic-fabricated halves connected directly to one another by a notched load bearing cam surface and cam follower arrangement, allowing repositioning of the upper half and locking thereof in at least one of an inclined, declined, and leveled position. At best, the Barnes document would have been suggestive of the addition of a head supporting frame C for use with the arm or leg support of Lipson. As to the Simmons (strap 28), Lechner (cushion 70), and Meals (blanket support frame 18) references, we find that these documents do not overcome the noted deficiency of the Lipson patent, in particular. Since the evidence proffered by the examiner does not support a conclusion of obviousness, the respective rejections of the claims on appeal must be reversed.

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In summary, this panel of the board has:

reversed the rejection of claims 1, 3, 5, 10 through 13, and 16 through 20 under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Barnes;

reversed the rejection of claim 14 under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Simmons;

reversed the rejection of claim 15 under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Lechner; and

reversed the rejection of claims 21 through 24 under 35 U.S.C. § 103 as being unpatentable over Lipson in view of Meals.

The decision of the examiner is reversed.

REVERSED

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| IRWIN CHARLES COHEN |) |) |
| Administrative Patent Judge |) | |
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| CHARLES E. FRANKFORT |) | |
| Administrative Patent Judge |) | APPEALS AND |
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| LAWRENCE J. STAAB |) | |
| Administrative Patent Judge |) | |

ICC/kis

George A. Skoler
DORSEY & WHITNEY
220 South Sixth Street
Minneapolis, MN 55402

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