

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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK KURZEJA, RONALD N. BRISSETTE, JIM HAWKINS,
CHRIS KEENEY, CHRISTOS KYRTSOS, JACK DARRIN OATES
and TOM SANKO

Appeal No. 2003-1569
Application No. 09/783,466

ON BRIEF

Before FRANKFORT, STAAB and MCQUADE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Patrick Kurzeja et al. originally took this appeal from the final rejection (Paper No. 5) of claims 1, 2 and 5 through 12.¹ As the appellants have since canceled claim 12, and amended claims 1, 2 and 8, the appeal now involves claims 1, 2 and 5 through 11, all of the claims currently pending in the application.

¹ Through an apparent oversight, the examiner mistakenly rejected canceled claims 3 and 4 in the final rejection.

THE INVENTION

The invention relates to "universal joints with a shock absorbing material between the yokes and the respective bearings" (specification, page 1). Representative claims 1 and 11 read as follows:

1. A universal joint comprising:

a cross member having two opposed pairs of trunions all lying in a same plane, each trunion having a bearing cup mounted thereupon;

a pair of yokes each having a pair of bores for mounting each of said yokes to each of said opposed pairs of trunions by way of said bearing cup mounted thereupon at positions spaced ninety degrees relative to each other; and

a shock absorbing system for dissipating shock and torsional vibration between at least one of said yokes and at least one of said bearing cups, said shock absorbing system including an elastomeric cylindrical element positioned between an outer peripheral surface of said bearing cup and an inner peripheral surface of said yoke, said cylindrical elastomeric member preventing contact between said radially outer periphery of said bearing cup and said inner periphery of said yoke bore, and said cylindrical elastomeric member not extending beyond the axial extent of said bearing cup.

11. A universal joint as recited in claim 1, wherein said cylindrical sleeve has a cylindrical inner bore, said cylindrical inner bore closely receiving said outer peripheral surface of said bearing cup, such that said bearing cup has an end cross-sectional area which does not align with a portion of said cylindrical sleeve.

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THE REJECTION

Claims 1, 2 and 5 through 11 stand rejected under 35 U.S.C. § 112, first paragraph, as being based on a specification which fails to comply with the written description requirement.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 13 and 16) and the examiner's answer (Paper No. 15) for the respective positions of the appellants and examiner regarding the merits of this rejection.²

DISCUSSION

The test for compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventors had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983). The content of the drawings may also be considered in determining compliance with the written description requirement. Id.

² In the final rejection, claims 1, 2 and 5 through 11 also stood rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The examiner has since withdrawn this rejection (see page 3 in the answer).

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According to the examiner, the disclosure of the instant application does not provide the requisite support for the subject matter now recited in independent claims 1 and 8, and dependent claims 2, 5 through 7 and 9 through 11, because:

[t]here does not appear to be a written description of the following limitations in the application as filed.

Claims 1 & 8: "said cylindrical elastomeric member preventing contact between said radially outer periphery of said bearing cup and said inner periphery of said yoke bore"

Claims 1 & 8: "said cylindrical elastomeric member not extending beyond the axial extent of said bearing cup"

Claim 11: all limitations therein [answer, page 4].³

The remarks in the answer accompanying this explanation indicate that much of the examiner's concern stems from the rough sketch quality of the application drawings originally filed by the appellants.

The original specification in the instant application (see pages 4 and 5) expressly describes the outer surfaces of the bearing cups as "cylindrical," the bores in the yokes as "cylindrical," and the elastomeric members or elements as "cylindrical" and respectively seated between a cylindrical outer

³ Although the claim limitations quoted by the examiner do appear in claim 1, they do not appear in exactly the same form in claim 8 due to apparent typographic errors which are deserving of correction.

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surface of a bearing cup and a cylindrical bore of a yoke for "cushioning" the area between the two. Taken in conjunction with these descriptions, and notwithstanding its poor caliber, original Figure 2 fairly shows that (1) the cylindrical elastomeric members would prevent contact between the radially outer peripheries of the bearing cups and the inner peripheries of the yoke bores adjacent thereto, (2) the cylindrical elastomeric members do not extend beyond the axial extent of the bearing cups, and (3) the cylindrical sleeves, i.e., the cylindrical elastomeric members,⁴ have cylindrical inner bores closely receiving the outer peripheral surfaces of the bearing cups such that the bearing cups have end cross-sectional areas which do not align with portions of the cylindrical sleeves. Although the examiner's criticisms of original Figure 2 are well taken, the examiner has not cogently explained, and it is not apparent, why a person of ordinary skill in the art would regard the inconsistencies in the drawing as being anything more than imprecise freehand depictions of the structural features at issue in claims 1, 8 and 11. Viewed in this light, the disclosure of the application as originally filed would reasonably convey to

⁴ The appealed claims are replete with minor instances of inconsistent terminology which should be corrected in the event of further prosecution.

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the artisan that the appellants had possession at that time of the subject matter recited in the appealed claims.

Accordingly, we shall not sustain the standing 35 U.S.C. § 112, first paragraph, rejection of claims 1, 2 and 5 through 11.

Finally, it is noted that on page 12 in the main brief the appellants appear to raise as an issue in this appeal the 35 U.S.C. § 132 objection set forth in the final rejection. To the extent that this objection is inconsistent with our decision on the merits of the foregoing rejection of claims 1, 2 and 5 through 11, it should be withdrawn by the examiner.

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SUMMARY

The decision of the examiner to reject claims 1, 2 and 5 through 11 is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JOHN P. MCQUADE)	
Administrative Patent Judge)	

JPM/gjh

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