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not written for publication and is not binding
precedent of the Board

Paper No. 57

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRAMPTON E. ELLIS, III

Appeal No. 2004-0131
Application 08/462,531

ON BRIEF

Before GARRIS, TIMM, and PAWLIKOWSKI, Administrative Patent
Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 2, 3, 4, 6, 7, 8, 9, 15-22, and 24-32. We note that on page 2 of the brief, appellant indicates that an after final amendment was filed on December 3, 2002, proposing the cancellation of claim 23. On page 2 of the answer, the examiner has indicated entry of this amendment; hence, claim 23 is canceled.

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A copy of independent claims 2 and 17 is set forth in the attached appendix.¹

The examiner relies upon the following references as evidence of unpatentability:

Novitske	3,416,174	Dec. 17, 1968
Hlustik	4,272,858	June 16, 1981
Stewart et al. (Stewart)	4,759,136	July 26, 1988
Pasternak	4,858,340	Aug. 22, 1989

As a preliminary matter, we observe that it is disputed as to the particular rejections involved in this appeal. Beginning at the bottom of page 7 of the brief, appellant states that the examiner's objection to the specification² is based upon an inadequate written description, yet the rejection of the claims appears to be directed to lack of enablement³.

At the bottom of page 6 of the answer, the examiner states that the specification lacks in both the written description requirement and the enablement requirement.

The rejection of the claims set forth on page 5 of the answer is therefore under 35 U.S.C. § 112, first paragraph, written description and enablement. We therefore address both enablement and written description in this appeal.

¹ The copy of claim 2 from appellant's brief does not include the changes made in the entered amendment filed on December 11, 2002. The correct copy of claim 2 is in our attached Appendix.

² See page 3 of the answer.

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Therefore, the issues in this appeal are:

- I. Whether there is lack of written description support for claims 2-4, 6-9, 15-22, and 24-32 under 35 U.S.C. § 112, first paragraph.
- II. Whether the specification is enabling for claims 2-4, 6-9, 15-22, and 24-32, under 35 U.S.C. 35 U.S.C. § 112, first paragraph.
- III. Whether claims 2-4, 6-9, 15-22, and 24-32 are indefinite under 35 U.S.C. § 112, second paragraph.
- IV. Whether claims 2-4, 6-9, 15-22, and 24-32 are properly rejected under 35 U.S.C. § 103 as being unpatentable over Hlustik in view of Pasternak or Novitske, and further in view of Stewart.

OPINION

- I. The 35 U.S.C. § 112, First Paragraph, Rejection (written description)

The Federal Circuit has held that adequate written description support for an applicant's claim limitation exists even though it was not set forth "in haec verba" in the specification. In re Wright, 866 F.2d 422, 425, 9 USPQ2d 1649, 1651 (Fed. Cir. 1989). There is no requirement under Section 112 that the subject matter of a claim be described literally in the disclosure. In re Lukach, 442 F.2d 967, 969, 169 USPQ 795, 796 (CCPA 1971).

Also, in the case of In re Kaslow, 707 F.2d 1366, 217 USPQ

³ See page 4 of the answer.

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1089 (Fed. Cir. 1983), the examiner concluded that the claim as amended was not disclosed in the specification and that the claims were therefore drawn to new matter. The Federal Circuit affirmed, quoting the Board's statement of the law with approval:

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor 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.

Id. at 1375, 217 USPQ at 1096. See also, In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976); In re Ruschig, 379 F.2d 990, 996, 154 USPQ 118, 123 (CCPA 1967).

In the instant case, the examiner objects to the specification and rejects the claims 2-4, 6-9, 15-22 and 24-32, stating that "[t]he combination of a shoe sole with side portions with a greater thickness than the thickness of a middle portion and a midsole with varying densities has not been disclosed."⁴ Answer, pages 3-4. The examiner states that there is no guidance in the specification as how two totally different embodiments, one of a shoe sole and one of a shoe midsole, would be combined.⁵

We consider here, the issue of whether the disclosure of the application as originally filed, reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter. Here, the later claimed subject matter is directed to a shoe having a shoe sole having the combination of (1) side portions with a greater thickness than the thickness of the middle portion and (2) a midsole with varying densities. See claim 2, particularly the text in bold, in the attached Appendix.

⁴ This statement goes to the issue regarding the written description requirement.

⁵ This statement goes the issue of enablement.

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Beginning on page 9 of the brief, appellant disagrees with the examiner's position. Appellant refers to the original specification at page 108, lines 17-20, which provides the following:

It should be noted that shoe soles using a combination both of sole thickness greater than the theoretically ideal stability plane and of midsole densities variations like those just described are also possible but not shown.

Appellant states that, thus, there is a clear disclosure of the combination of a shoe sole with a greater thickness in a side portion and a midsole with varying densities, in the original specification.

Also, appellant relies upon the Stewart Declaration. Appellant argues that Stewart states that a person of ordinary skill in the art would immediately understand that the application, as originally filed, disclosed a shoe sole, as shown in Figs. 4-5 and 28, having side portions with greater thicknesses, and also having a midsole, as shown in figures 6, 29, 30, and 32, wherein the midsole portion has density/firmness variations. The selected thicknesses are implemented based upon the theoretically ideal stability plane (degree of stability desired). The selected firmness variations are implemented also based upon the desired degree of stability. Brief, pages 13-14. See also the Stewart Declaration, paragraphs 5-20. We also refer to pages 8-28 of the brief, wherein the appellant provides a detailed discussion on this point.

For the reasons set forth in the brief and the Declaration, we agree with appellant's position. We discuss several passages of the original specification in support of our conclusion, below.

We first refer to the original specification at page 108, lines 17-20, as pointed out by appellant, supra, repeated below:

It should be noted that shoe soles using a

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combination both of sole thickness greater than the theoretically ideal stability plane and of midsole densities variations like those just described are also possible but not shown.

The above passage clearly conveys to the skilled artisan the concept of combining both appellant's sole thickness selection technique with appellant's midsole densities selection technique in forming appellant's shoe sole invention.

We note that Figures 4, 5, and 28 depict variations in sole thicknesses, whereas Figures 6, 29, 30, and 32 depict variation in midsole densities.

As pointed out by appellant on page 14 of the brief, how to select the degree of thickness and the degree of firmness/density is adequately described in the specification. Appellant concludes that selecting a combination of both a specific degree of thickness and a specific degree of firmness is therefore also adequately described. Brief, pages 13-14. We agree for the following reasons.

The following passages describe how sole thickness is selected, and how midsole density variation is selected.

With regard to shoe sole thickness variation, Figure 4 is an example of variation in shoe sole thickness. The specification discloses that preferred shoe sole embodiments are sufficiently firm to provide the wearer's foot with the structural support necessary to maintain normal pronation and supination, as if the wearer's foot were bare. Specification, page 54, lines 21-24. The preferred shoe sole embodiments include the structural and material flexibility to deform in parallel to the natural deformation of the wearer's foot sole as if it were bare and unaffected by any of the abnormal foot biomechanics created by rigid conventional shoe sole.

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Specification, page 58, lines 14-18. The shoe sole sides are sufficiently flexible to bend out easily when the shoes are put on the wearer's feet and therefore the shoe soles gently hold the side of the wearer's foot sole when on, providing the equivalent of custom fit in a mass produced shoe sole. Specification, page 73, lines 21-26.

The amount of any shoe sole side portions coplanar with the theoretically ideal stability plane is determined by the degree of shoe sole stability desired and the shoe sole weight and bulk required to provide said stability. The amount of coplanar contoured sides that is provided for the shoe sole is that which is sufficient to maintain intact the firm stability of the wearer's foot throughout the range of foot inversion and eversion motion typical of the use for which the shoe is intended and also typical of the kind of wear, such as normal or excessive pronator, for which the shoe is intended. Specification, page 79, line 20 through page 80, line 3.

With regard to midsole density, Figure 6 depicts a frontal or transverse plane cross section in the heel area. Figure 6 shows that variations in shoe midsole density can provide similar but reduced effects to the variations in shoe sole thickness described in Figures 4 and 5. The density variations are measured in durometers on a Shore A scale to include 5 percent to 10 percent and from 11 percent up to 25 percent. The density variations are located preferably at least in that part of the contoured side which becomes the wearer's body weight load-bearing during the full range of inversion and eversion, which is sideways or lateral foot motion. Specification, page 56, lines 3-18. Density variations can and do, also occur in other layers than the midsole area, of the shoe sole, such as the bottom sole and the inner sole, and can occur in any combination and in symmetrical or asymmetrical patterns between layers or between

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frontal or transverse plane cross sections. Specification, page 56, lines 19-25. The exact material density of the shoe sole sides will be determined empirically for individuals and groups using standard biomechanical techniques of gait analysis to determine those combinations that best provide the barefoot stability. Specification, page 57, line 25 through page 58, line 3.

The examiner asserts that selecting a combination of density and thickness is not supported by the specification. The examiner, on page 4 of the answer, refers to the passage of the specification found on page 108, lines 17-20, as a passage that "provides no guidance/enablement as to how such a combination would be made or how the 'midsole' would be incorporated into the sole." The examiner focuses on the word "possible" in this passage to suggest conjecture regarding this combination of density and thickness. Answer, page 7.

In response, appellant, on page 11 of the brief, refers to the Stewart declaration wherein it is pointed out that the skilled person is aware that a shoe sole for an athletic shoe generally contains an outersole and a midsole and that thus a skilled person would conclude from a review of Figures 4-5 and 28 that the depicted shoe sole would include at least an outersole and a midsole, even though these component parts of the shoe sole are not explicitly shown in these figures. See paragraph 7 of the Stewart declaration.

In response, on page 8 of the answer, the examiner argues that the midsole does not contact the ground as disclosed and shown in the figures. The examiner also argues that the Stewart Declaration appears to be an opinion of one individual with no factual basis. We disagree.

As pointed out on page 16 of the brief, the skilled person need only take the midsole shown in Figure 6 and add a lower

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ground-contacting the outersole portion that provides an increased thickness in a sole side. We observe that the examiner, in response to this particular explanation by appellant, does not provide a persuasive rebuttal, i.e., does not explain why this would not be routine to the skilled artisan. The examiner merely asserts that appellant's figures depict a sole that is not conventional and that the Stewart Declaration is directed to conventional soles. The examiner states "[i]t is not clear how "conventional" knowledge can be used to modify an unconventional midsole. Answer, page 7. The examiner discusses how the midsole depicted in some of figures is shown as touching the ground, and queries how a midsole would be incorporated into a sole when the midsole has a bottom surface that contacts the ground. Answer, pages 7-8. Such comments do not demonstrate that it would not be routine for the skilled artisan to combine a midsole and a sole in making a shoe.

We find that the specification makes clear that Figures 6, 29, 30, and 32 represent midsole embodiments. Whether or not the drawings do or do not include a lower line depicting the ground is immaterial to this fact. The skilled artisan understands the meaning of a midsole portion of a shoe, and understands the meaning of a sole portion of a shoe. As discussed in the Stewart Declaration, paragraph 12, the skilled person need only take the midsole shown in Figure 6, and insert it into the shoe sole of one of figures 4-5 and 28 such that a lower ground-contacting portion of the shoe sole remains, and then make the remaining lower, ground contacting portion an outersole portion.

On page 8 of the answer, the examiner also states that the Stewart declaration is not entitled to any weight (answer page 8). We disagree for the following reasons.

Firstly, the examiner refers to the case of In re Lindell, 385 F. 2d 453, 155 USPQ 521 (CCPA 1967), in support of his

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position that expert testimony is not entitled to any weight. This is incorrect. First, the legal issue of obviousness is at issue in In re Lindell, not the written description requirement. Secondly, the court stated in this case that while "some weight ought to be given to a persuasively supported statement of one skilled in the art on what was not obvious to him, the court determined that legitimate inferences from the art of record are too strong to be affected by weight to which instant affidavit is entitled. Id. at USPQ 521, 524. Hence, the court did not determine that expert testimony is not entitled to any weight; rather, the court weighed the affidavit evidence against the art of record, and determined that the art of record outweighed the affidavit evidence.

We note that in demonstrating whether the written description requirement is satisfied, an applicant is not limited to the specification. For example, in Martin v. Mayer, 823 F.2d 500, 503, 3 USPQ2d 1333, 1336 (Fed. Cir. 1987), the Federal Circuit considered expert testimony in determining whether the written description requirement was satisfied. The Court stated, "there is no rigorous rule excluding expert testimony in an interference." Martin v. Mayer, 823 F.2d at 504, 3 USPQ2d at 1336. We therefore do weigh the evidence set forth in the Stewart Declaration, in the manner discussed, supra.

In summary, the specification, as discussed above, adequately provides written description support for the invention as now claimed. We emphasize that, as stated, supra, the Federal Circuit has held that adequate written description support for an applicant's claim limitation exists even though it was not set forth "in haec verba" in the specification. In re Wright, 866 F.2d 422, 425, 9 USPQ2d 1649, 1651 (Fed. Cir. 1989). There is no requirement under Section 112 that the subject matter of a claim be described literally in the disclosure. In re Lukach, 442 F.2d

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967, 969, 169 USPQ 795, 796 (CCPA 1971).

In view of the above, we determine that there is written description support for claims 2-4, 6-9, 15-22, and 24-32 under 35 U.S.C. § 112, first paragraph, and therefore, we reverse the objection to the specification and rejection of these claims under 35 U.S.C. § 112, first paragraph (written description).

II. The 35 U.S.C. § 112, First Paragraph, Rejection (enablement)

The first paragraph of 35 U.S.C. § 112, with regard to enablement, requires that the specification enable a person having ordinary skill in the art to make and use the claimed invention. Further, enablement requires that the specification teaches those having ordinary skill in the art to make and use the invention without "undue experimentation." In re Vaeck, 947 F.2d 488, 495-96, 20 USPQ2d 1483, 1444-45 (Fed. Cir. 1991). Also, it is well settled that the examiner has the burden of providing a reasonable explanation, supported by the record as a whole, why the assertions as to the scope of objective enablement set forth in the specification are in doubt, including reasons why the description of the invention in the specification would not have enabled one of ordinary skill in this art to practice the claimed invention without undue experimentation, in order to establish a prima facie case under the enablement requirement of the first paragraph of § 112. In re Wright, 999 F.2d 157, 1561, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993); In re Marzocchi, 439 F.2d 220, 223-24, 169 USPQ 367, 369-70 (CCPA 1971). We determine that the examiner has not met this burden for the following reasons.

As mentioned in Section I, supra, in the instant case, the examiner objects to the specification and rejects the claims 2-4, 6-9, 15-22 and 24-32, stating that "[t]he combination of a shoe

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sole with side portions with a greater thickness than the thickness of a middle portion and a midsole with varying densities has not been disclosed." Answer, pages 3-4. The examiner states that there is no guidance in the specification as how two totally different embodiments, one of a shoe sole and one of a shoe midsole, would be combined.

We have already determined that the specification provides adequate written description support, supra. The examiner, in his position on the allegedly inadequate written description support, insufficiently explains how this inadequacy would not have enabled one of ordinary skill in this art to practice the claimed invention without undue experimentation. We make this determination based upon our position set forth in Section I, above. In view of this, we determine that the examiner has failed to meet the required burden.

We therefore reverse the objection to the specification and rejection of claims 2-4, 6-9, 15-22, and 24-32 under 35 U.S.C. § 112, first paragraph (enablement).

III. The 35 U.S.C. § 112, second paragraph, rejection

The examiner bears the initial burden of presenting a prima facie case of unpatentability, whether the rejection is based on prior art or any other ground. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The requirement under 35 U.S.C. § 112, second paragraph, is only that the claims set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). The definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and the application disclosure as it would be interpreted by one of

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ordinary skill in the art. See In re Angstadt, 537 F.2d 498, 501, 190 USPQ 214, 217 (CCPA 1976). Here, we determine that the examiner has not met this burden for the following reasons.

On page 5 of the answer, the examiner asserts that these claims are indefinite because of the lack of disclosure regarding the combination of elements of midsole density variations and sole thickness variations. The examiner states that because there is no guidance as to how these elements would be combined in a single shoe, the examiner states it is not clear as to what structural limitations appellant intends to encompass with the claimed language.

We refer to our determinations regarding our written description and enablement analysis made above in Section I and in Section II. For these same reasons, we reverse the 35 U.S.C. § 112, second paragraph, rejection of claims 2-4, 6-9, 15-22, and 24-32.

IV. The 35 U.S.C. § 103 rejection⁶

The examiner's position regarding this rejection is set forth on pages 5 and 6 of the answer and also on pages 9-11 of the answer. We refer to these pages of the answer in regard to the examiner's position.

We observe that the examiner relies upon Hlustik for teaching appellant's claimed shoe/shoe sole except for teaching the "exact tapering of the side portions above the sidemost extent of the sides and density variations in the midsole". Answer, page 6. The examiner relies upon Pasternak or Novitske for teaching the claimed tapering. The examiner relies upon

⁶ We note that in the brief, appellant lists two 35 U.S.C. § 103 rejections. On page 5 of the answer, the examiner has combined these rejections into one, wherein Pasternak and Novitske are used in the alternative.

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Stewart for teaching the claimed density variation in the midsole. Answer page 6.

Appellant's position in connection with this rejection is set forth on pages 35-39 of the brief. We refer to this part of the brief regarding appellant's position.

It is disputed whether Figure 6 of Hlustik is a frontal plane cross section at the heel portion of a shoe (as depicted, for example, in appellant's figure 5). Appellant states that groove H (depicted in Hlustik's figure 7) is not depicted in Hlustik's figure 6. Appellant states that col. 32, lines 5-9, of Hlustik indicates that the heel portion of the shoe is formed with a peripheral groove H. Appellant concludes that figure 6 therefore cannot be a frontal plane cross-section in the heel area of Hlustik. As a result, appellant argues that numerous features of claims 2 and 17 are not taught in Hlustik. Brief, page 35.

On page 37 of the brief, appellant states that the groove H in Hlustik suggests that the outer midsole surface of the midsole L1 of Hlustik includes a convexly rounded portion on the midsole sides which is the exact opposite of the claimed concavely rounded portions of the outer midsole surface of the midsole as recited in claims 2 and 17. Appellant also states that to form the peripheral groove H in the heel area of the midsole L1 of Hlustik would require a reduction in the sole thickness in this area, which again teaches away from the feature of the present invention that requires an increase in the sole thickness on the side of the shoe sole in the heel area.

We find that the examiner is not fully responsive to appellant's aforementioned arguments. Answer, pages 9-11. The examiner does not specifically comment on appellant's argument regarding figure 6 of Hlustik. The examiner does refer the figure 7, and states that figure 7 "may be considered to be rear

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1/3 of the footwear and it appears that from figure 7 that at least the front portion of the heel area does not have a groove H therein." Answer, pages 9-10. The examiner then relies upon the teachings of the secondary references for any misgivings found in the Hlustik. Answer, pages 9-10.

We find that the examiner does not adequately explain how in fact, the sole of Hlustik satisfies each recited aspect of appellant's claims 2 and 17, outlined on pages 36 and 37 of appellant's brief.

Furthermore, we find that the disclosure of Stewart does not teach appellant's claimed invention of "a midsole comprising a first midsole portion located completely on one side of a centerline of said midsole, said first midsole portion having a first density or firmness, and a second midsole portion located completely on another side of a centerline of said midsole, said second midsole portion having a second density or firmness which is different than the density or firmness of said first midsole portion, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition". Stewart does not teach different density on each side of the centerline; rather, Stewart teaches that section 42 on each side has the same density and that section 44 on each side has the same density. This is not a teaching that one side has a different density than the other side. Hence, assuming *arguendo*, that Hlustik in view of Pasternak or Novitske, meets all the other claim limitations (which we are unconvinced that these references do so), Stewart does not cure the deficiency regarding midsole density variations as claimed.

For the reasons discussed above, we reverse the 35 U.S.C. §103 rejection.

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V. Conclusion

Each of the 35 U.S.C. §112 rejections is reversed.
The 35 U.S.C. §103 rejection is reversed.

REVERSED

Bradley R. Garris)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
)	APPEALS AND
CATHERINE TIMM)	INTERFERENCES
Administrative Patent Judge)	
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BAP/cam

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APPENDIX

2. A shoe having a shoe sole suitable for use in an athletic shoe, the shoe sole comprising:

a sole inner surface for supporting the foot of an intended wearer;

a sole outer surface;

a heel portion at a location substantially corresponding to a heel of the intended wearer's foot;

a forefoot portion at a location substantially corresponding to a forefoot of the intended wearer's foot;

a midtarsal portion at a location corresponding to an area of the sole between the heel portion and the forefoot portion;
and

a bottom sole;

a midsole defined by an inner midsole surface and an outer midsole surface;

the heel, midtarsal, and forefoot portions having a sole middle portion, a sole medial side located medially to the sole middle portion, and a sole lateral side located laterally to the sole middle portion,

the midsole having a middle midsole portion, a midsole side located medially to the middle midsole portion and a lateral midsole side located laterally to the middle midsole portion,

the inner midsole surface located in each of the medial and lateral midsole sides comprising a convexly rounded portion, as viewed in a heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition, the convexity existing with respect to a portion of the midsole directly adjacent to the convexly rounded portion of the inner midsole surface, and

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the outer midsole surface located in each of the medial and lateral midsole sides comprising a concavely rounded portion extending down from a level corresponding to a lowest point of the inner midsole surface, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition, the concavity existing with respect to an inner section of the midsole directly adjacent to the concavely rounded portion of the outer midsole surface;

each sole side having an uppermost portion that extends above the lowest point of the sole inner surface, as viewed in a heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

the midsole comprising a first midsole portion located completely on one side of a centerline of said midsole, said first midsole portion having a first density or firmness, and a second midsole portion located completely on another side of a centerline of said midsole, said second midsole portion having a second density or firmness which is different than the density or firmness of said first midsole portion, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

each midsole side comprises a sidemost section of the midsole defined by that portion of the midsole located outside of a straight vertical line drawn through the sidemost extent of the inner midsole surface of the midsole, as viewed in a frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

at least a part of the midsole extends into the sidemost section of each midsole side, as viewed in the heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

the part of the midsole that extends into the sidemost section of each midsole side further extends to above a lowermost point of the inner midsole surface of the midsole on the same sole side, as viewed in the heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

each sole side having a sole thickness between said sole inner and outer surfaces that is greater than a sole thickness between said sole inner and outer surface of the sole middle portion, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded

condition; and

the sole thickness between the sole inner surface and the sole outer surface increases gradually and substantially continuously from the uppermost point of each sole side through at least a substantial part of the uppermost portion of the sole side, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition.

17. A shoe having a shoe sole suitable for use in an athletic shoe, the shoe sole comprising:

a sole inner surface for supporting the foot of an intended wearer;

a sole outer surface;

a heel portion at a location substantially corresponding to a heel of the intended wearer's foot;

a forefoot portion at a location substantially corresponding to a forefoot of the intended wearer's foot;

a midtarsal portion at a location corresponding to an area of the sole between the heel portion and the forefoot portion;
and

a bottom sole and a midsole,

the midsole defined by an inner midsole surface and a outer midsole surface;

the heel, midtarsal, and forefoot portions having a sole middle portion, a sole medial side located medially to the sole middle portion, and a sole lateral side located laterally to the sole middle portion, each sole side defined by that portion of said sole located outside a vertical line extending through each sidemost extent of the sole inner surface, as viewed in a heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

the midsole having a middle midsole portion, a medial midsole side located medially to the middle midsole portion and a lateral midsole side located laterally to the middle midsole portion;

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the inner midsole surface of each of the midsole medial and lateral sides comprising a convexly rounded portion, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition, the convexity existing with respect to a section of the midsole directly adjacent to each convexly rounded portion of the inner midsole surface;

the outer midsole surface of each of the midsole medial and lateral sides comprising a concavely rounded portion, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition, the concavity existing with respect to an inner section of the midsole directly adjacent to the concavely rounded portion of the outer midsole surface;

the midsole comprising a first midsole portion located completely on one side of a centerline of said midsole, said first midsole portion having a first density or firmness, and a second midsole portion located completely on another side of a centerline of said midsole, said second midsole portion having a second density or firmness which is different than the density or firmness of said first midsole portion, as viewed in said heel portion frontal lane cross-section when the shoe sole is upright and in an unloaded condition;

each midsole side comprises a sidemost section of the midsole defined by that portion of the midsole located outside of a straight vertical line drawn through the sidemost extent of the inner midsole surface of the midsole, as viewed in a frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

at least a part of the midsole extends into the sidemost section of each midsole side, as viewed in the heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition;

the part of the midsole that extends into the sidemost section of each midsole side further extends to above a lowermost point of the inner midsole surface of the midsole on the same sole side, as viewed in the heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition; and

each sole side having a sole thickness that is greater than a sole thickness in the sole middle portion, as viewed in said heel portion frontal plane cross-section when the shoe sole is upright and in an unloaded condition.