

The opinion in support of the decision being entered today was **not** written for publication and is **not** precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** ELEHUE KAWIKA FREEMON

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Appeal No. 2004-1315  
Application No. 09/815,191

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ON BRIEF

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Before DELMENDO, JEFFREY T. SMITH 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 7-20, which are all the claims pending in this application.

A copy of each of claims 7 and 20 is set forth below:

7. A snowboard brake assembly [12] for a snowboard system [10] comprising:

a. support member [140] consisting of a predetermined height and geometric shape, having a predetermined number of vertical centered apertures [144] and furthermore incorporated within its edge a

support hinge member [140a] of a predetermined length, height and inside diameter and

b. furthermore rotating within the support hinge member [140a] a snowboard brake assembly [12] consisting of a single irregular angled shaped lever arm member therefore [90] having a predetermined number of legs-section of various lengths and furthermore disclosing a pre-stressed torsion spring member [190] located about one leg-section and

c. whereby the torsion spring [190] communicating with the lever arm member [90] providing means of a mechanical transmission for snowboard braking.

20. The mechanical brake of claim 19 wherein having the first [90a] and third [90c] legs-sections parallel and furthermore having the second leg-section [90b] as a common axis whereas the first [90a] and third [90c] legs-sections extend into moderately divergent planes forming a "Oblique U" whereby the third leg-section [90a] being the highest elevated upon a flatted plane, and furthermore communicating with the third leg-section [90c] a fourth leg-section [90d] angled and perpendicular to the plane of the second and third leg-section and furthermore parallel to the first leg-section [90a], and furthermore having about the second leg-section [90b] the torsion spring member [190] and hinge member [140a], respectively.

On page 5 of the brief, appellant states that claims 7-20 stand or fall together. Hence, we consider claim 7 in this appeal, and, additionally, claim 20 (for the 35 U.S.C. § 112, second paragraph, indefiniteness rejection).

Claim 20 stands rejected under 35 U.S.C. § 112, second paragraph (indefiniteness).

Claims 7-20 stand rejected under 35 U.S.C. § 103 as being obvious over Klubitschko in view of Renaud-Goud.

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

Klubitschko	4,366,968	Jan. 04, 1983
Renaud-Goud	5,551,721	Sep. 03, 1996

#### OPINION

I. The 35 U.S.C. § 112, second paragraph (indefiniteness) rejection

On page 3 of the answer, the examiner states that there is no antecedent basis for "the first [90a] and third [90c] leg-sections" in lines 1-2 of claim 20, and for the phrase "the second leg-section [90b]" in line 2 of claim 20.

Upon our review of pages 1-32 of appellant's brief, we cannot find any argument rebutting this 35 U.S.C. § 112, second paragraph, rejection.

We therefore, pro forma, affirm this rejection.

II. The 35 U.S.C. § 103 rejection of claims 7-20

We refer to pages 3-6 of the answer regarding the examiner's position in this rejection and we also refer to pages 6-8 of the answer regarding the examiner's rebuttal to appellant's arguments regarding this rejection.

To summarize, the examiner's position is that Klubitschko teaches the use of a brake, including a support member 14 (Figure 2) having a predetermined number of vertical centered apertures (Figure 1, not labeled). Answer, pages 3-4.

The examiner states that within an edge of the support member 14 is a support hinge member 16, shown in Figure 2. This corresponds with appellant's component a of claim 7. The examiner states that rotating within the support hinge member 16

is a brake assembly consisting of a single irregular angled shaped lever arm member 17-20 (shown in Figure 1). This aspect of the teachings of Klubitschko relates to component b of appellant's claim 7, except for the claimed "pre-stressed torsion spring member [190] located about one leg-section." The examiner relies upon Renaud-Goud for teaching a brake, for a vehicle sliding on snow, comprising a binding assembly consisting of several components which include a pre-stressed torsion spring member 35, depicted in Figure 1 of Renaud-Goud.

The examiner concludes that it would have been obvious to have modified the lever arm member (17-20 of Figure 1) of Klubitschko to comprise a torsion spring, as shown in Renaud-Goud, to provide elastic return to the operative braking position, as taught by Renaud-Goud, in column 4, lines 24-26. In summary, the examiner's position is that it would have been obvious to modify the lever arm member 17-20 of Klubitschko such that it includes a torsion spring.

On pages 12-23 of the brief, appellant describes his snowboard brake assembly, but, as pointed out by the examiner on page 7 of the answer, the features that appellant describes are not recited in the instant claims. For example, on page 12 of the brief, appellant argues that the support member [140] is non-moving, yet this aspect is not recited in claim 7. As another example, on page 14 of the brief, appellant argues that his invention has a single cylinder evenly shaped cavity on one side. These aspects of appellant's invention are not recited in the claims (see claim 7, reproduced below, for emphasis):

7. A snowboard brake assembly [12] for a snowboard system [10] comprising:
  - a. support member [140] consisting of a predetermined height and geometric shape, having a predetermined number of vertical centered apertures

[144] and furthermore incorporated within its edge a support hinge member [140a] of a predetermined length, height and inside diameter and

b. furthermore rotating within the support hinge member [140a] a snowboard brake assembly [12] consisting of a single irregular angled shaped lever arm member therefore [90] having a predetermined number of legs-section of various lengths and furthermore disclosing a pre-stressed torsion spring member [190] located about one leg-section and

c. whereby the torsion spring [190] communicating with the lever arm member [90] providing means of a mechanical transmission for snowboard braking.

As discussed, supra, the examiner has explained (and we agree) how Klubitschko suggests components a, b, and c, as recited in claim 7. With regard to the claimed torsion spring, the examiner's position is set forth on pages 3-5 of the answer.

Beginning on page 24 of the brief, appellant argues that the applied art does not teach or suggest his claimed torsion spring. Again, the limitations that appellant argues are not claimed. Claim 7 requires "a pre-stressed torsion spring member [190] located about one leg-section". This spring communicates with lever arm [90]. We note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 320, 322 (Fed. Cir. 1999). Here, on page 24 of the brief, while appellant argues (1) certain structural limitations (such as shape) regarding the torsion spring and (2) how the spring is positioned relative to other components (such as legs/arms), the aforementioned claim language does not require such limitations. We therefore agree with the examiner's explanation of pre-stressed torsion spring 35 of Renaud-Goud as set forth on page 4 of the answer, and the examiner's rebuttal made on page 7 of the

answer, wherein the examiner correctly states that appellant argues certain features which are not claimed.

We additionally point out that, as admitted by appellant on page 16 of the brief, Klubitschko teaches the use of a coil bending spring that influences pedal 14 (pedal 14 is depicted in Figures 1 and 2). See column 2, lines 46-55 of Klubitschko. As discussed above, appellant's claim 7 does not recite a particular design of the spring. Claim 7 recites that the spring member is located about one leg-section and that it communicates with the lever arm member. Although appellant asserts that the design of the torsion spring of Klubitschko is unknown, column 2, lines 46-55 of Klubitschko teaches that the use of "a coiled bending spring" influences pedal 14. Appellant does not present specific arguments that such a teaching does not suggest "a pre-stressed torsion spring member [190] located about one leg-section". Although the examiner discusses Renaud-Goud (discussed above) regarding the teaching of a torsion spring, it is noteworthy to point out appellant's admission of the use of a coil bending spring found in Klubitschko.

With regard to the other arguments presented by appellant, we refer to the examiner's rebuttal as set forth on pages 6-8 of the answer. Here, the examiner correctly points out that the intended use is not a distinguishing characteristic of the claim rather the structural aspects are of import. We note that it has been held that a process of use limitation, as recited in the preamble of the claim, has no significance in a product claim. Cf. In re Wiggins, 397 F.2d 356, 359 n.4, 158 USPQ 199, 201-202 n. 4 (CCPA 1968).

In view of the above, we therefore affirm the rejection.

III. Conclusion

Each of the rejections is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

ROMULO H. DELMENDO )  
Administrative Patent Judge )  
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)BOARD OF PATENT  
) APPEALS AND  
JEFFREY T. SMITH ) INTERFERENCES  
Administrative Patent Judge )  
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