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DEKEL PATENT LTD., DAVID KLEIN BEIT HAROF'IM 18 MENUHA VENAHALA STREET, ROOM 27 REHOVOT, 76209 ISRAEL			NEWTON, ALEXANDRA L	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAN ROTTENBERG and  
OMER SHEZIFI

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Appeal 2018-001912  
Application 14/118,234  
Technology Center 3700

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Before MICHAEL L. HOELTER, MICHAEL J. FITZPATRICK, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Decision rejecting claims 1–5, 7, 9–13, and 15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

### CLAIMED SUBJECT MATTER

Claims 1 and 15 are independent, with claims 2–5, 7, and 9–13 depending from claim 1. Claim 1 is reproduced below:

1. A device comprising:

an endoscopic sleeve comprising a tubular member from which extend a plurality of spaced projecting elements, each of which has an initial position, said projecting elements being bendable towards both proximal and distal directions of said tubular member, wherein a force (insertion force) required to bend said projecting elements from said initial positions towards the proximal direction is less than a force (extraction force) required to bend said projecting elements from said initial positions towards the distal direction and a distance all around an outer periphery of said projecting elements decreases as the extraction force increases, and wherein said projecting elements comprise sets of projecting elements, each set spaced axially from one another, and wherein adjacent sets of projecting elements comprise a more proximal set of projecting elements and a more distal set of projecting elements, and the more proximal set of projecting elements is hindered in bending towards said distal direction by abutting against the more distal set of projecting elements.

### REJECTIONS

1. Claims 1–5, 10, 11, 13, and 15 are rejected under 35 U.S.C. § 102(a) as anticipated by Axon (US 2013/0090527 A1, published April 11, 2013), or in the alternative, as unpatentable under 35 U.S.C. § 103(a) over Axon.

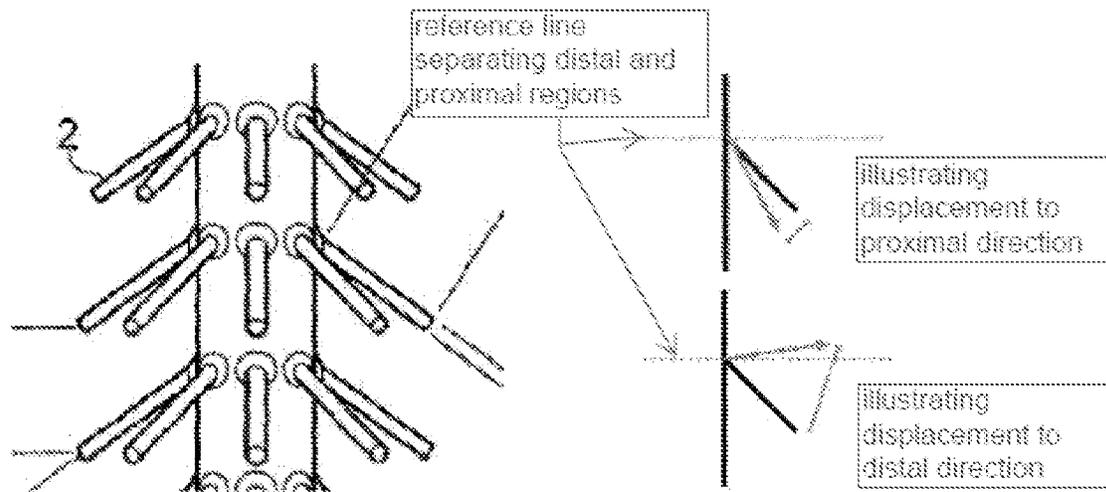
2. Claims 7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Axon and Rottenberg (WO 00/13736, published Mar. 16, 2000).

3. Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Axon and Tilson (US 2011/0087070 A1, published Apr. 14, 2011).

#### OPINION

The Examiner finds that Axon teaches “projecting elements” each having “an initial position” that are “bendable towards both proximal and distal directions,” such that “a force . . . required to bend said projecting elements from said initial positions towards the proximal direction is less than a force . . . required to bend said projecting elements from said initial positions towards the distal direction,” as required by claim 1. Final Act. 2—3. Claim 15 is a method of using the device recited in claim 1, and specifically requires the elements of the apparatus recited in claim 1.

The Examiner explains that “the position shown in FIG. 1 [of Axon] . . . is the initial position” and asserts that “[i]t is obvious to one of ordinary skill in the art that any force that bends the already proximally-angled projections more towards the proximal direction is negligible compared to the force require to bend the projections *past 90° toward the distal direction.*” *Id.* at 7 (emphasis added); *see also* Ans. 2 (“i.e. past 90° distally”). That is, the Examiner reads the “force . . . required to bend said projecting elements from said initial positions towards the distal direction” recited in claim 1 as that required to bend the projecting elements into the distal region of the tubular member. The Examiner provides an illustration of this interpretation applied to Axon’s Figure 1 in the Answer, which is reproduced below with our annotations for purposes of explanation.



The illustrations above, from page 6 of the Answer, are a fragmentary portion of Axon’s Figure 1, which is a side view of an endoscope cover, and a corresponding depiction of the proximal and distal displacement of Axon’s projecting elements with the addition of our annotations in red.

Appellants dispute the Examiner’s reading of the claim. Appeal Br. 9–11. Appellants contend, for example, that there is no reason to believe that a different force is required to bend Axon’s projecting elements toward the proximal direction than to the distal direction. *Id.* at 11.

The Examiner makes no finding that a different force is required to bend Axon’s projecting elements *from their initial positions* (i.e., their positions shown in Fig. 1) toward the proximal direction versus the distal direction. Rather, as explained above, the Examiner reads the recitation in claim 1 of “a force . . . required to bend said projecting elements from said initial positions towards the distal direction” as the force required to bend those projecting elements from their initial positions (shown in Fig. 1) past a perpendicular position (shown as the “reference line” in the annotated figure reproduced above) to the distal region of the tubular member. The Examiner’s reading of the claim is incorrect. Because the Examiner does

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not present any findings or rationale addressing the proper requirements of this limitation, the Examiner erred in rejecting claims 1–5, 7, 9–13, and 15.

DECISION

We REVERSE the Examiner’s decision to reject claims 1–5, 7, 9–13, and 15.

REVERSED