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13/092,426	04/22/2011	Mary Braun Leibold	MABLP0101USA	6535
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Jonathan A. Platt Renner, Otto, Boisselle & Sklar, LLP 19th Floor 1621 Euclid Ave. Cleveland, OH 44115			HICKS, VICTORIA J	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MARY BRAUN LEIBOLD

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Appeal 2019-002576  
Application 13/092,426  
Technology Center 3700

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Before MICHAEL L. HOELTER, BRETT C. MARTIN, and  
LEE L. STEPINA, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–4, 9, 10, 12, 14–20, and 24–27. Claims 5–8 were withdrawn and claims 11, 13, and 21–23 were canceled during prosecution. Appeal Br. 50–53. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Mary Braun Leibold. Appeal Br. 2.

### CLAIMED SUBJECT MATTER

The claims are directed “to a support for the ligaments and tendons of a joint.” Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An animal joint support for a horse's leg, comprising:  
an elastic sleeve including:  
a top end around a top opening; a bottom end around a bottom opening; and  
a central portion connecting the top end and the bottom end;  
wherein the bottom end includes a reduced elastic strength region around the bottom opening, the reduced elastic strength region having a lower elastic strength than the central portion;  
wherein the central portion has a constant diameter; and  
wherein the central portion has a length that is at least 75% of an overall length of the elastic sleeve.

### REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Bulley	US 4,926,851	May 22, 1990
Cropper	US 5,735,807	Apr. 7, 1998
Witzel	US 5,769,809	June 23, 1998
Schlomski	US 2010/0106070 A1	Apr. 29, 2010
Petterson	US 2010/0154366 A1	June 24, 2010

### REJECTIONS

Claims 1, 2, 9, 12, 14, 15, 19, and 24–26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petterson and Witzel. Ans. 3.

Claims 3, 4, 10, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petterson, Witzel, and Schlomski. Ans. 10.

Claims 16–18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petterson, Witzel, and Bulley. Ans. 15.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Petterson, Witzel, and Cropper. Ans. 18.

## OPINION

### *Obviousness*

All of the Examiner’s rejections rely on the combination of Petterson and Witzel, either alone or in combination with other references. According to the Examiner, Petterson teaches all of the elements of claim 1 except for “wherein the bottom end includes a reduced elastic strength region around the bottom opening, the reduced elastic strength region having a lower elastic strength than the central portion.” Ans. 3. The Examiner then relies on Witzel for teaching this feature. Ans. 4.

Appellant argues, *inter alia*, that Petterson teaches a lower cuff 18 that expands to pass over the horse’s hoof, but then contracts again to tightly fit pastern 42 so as to prevent main body 16 from slipping over walls 38, toe 36, and heel 40. Reply Br. 7 (citing Petterson ¶¶ 10 and 25–27). Appellant further argues that the Examiner’s combination would “have an impact on the ability of the central portion of Petterson to bunch together since the lower cuff 18, by being less elastic than the loosely fit central portion 16, would no longer be able to hold the sock 10 in place or prevent the bunched together main body 16 portion from slipping downward.” *Id.* We agree with Appellant that the Examiner’s modification would, thus, render Petterson’s horse sock inoperative for its intended purpose. Petterson’s central portion already has little to zero compression as it is meant to bunch loosely around the leg, and a less elastic lower cuff (as recited) would result in a sock that drapes down over the entire leg and hoof such that it would no longer sit properly on the horse’s leg. Because all of the rejections rely on

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this improper combination, we do not sustain any of the Examiner’s obviousness rejections.

We further note that the Examiner’s handling of the Leibold Declaration is in error. The Examiner merely makes a conclusory statement that the Declaration fails to provide evidence that the combination is not reasonable without providing any analysis of the contents thereof. Ans. 24. The Declaration itself is the evidence and we agree with Appellant that “[t]he Examiner has not explained why this evidence is insufficient.” Reply Br. 8.

### CONCLUSION

The Examiner’s rejections are REVERSED.

More specifically,

### DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 9, 12, 14, 15, 19, 24–26	103	Petterson, Witzel		1, 2, 9, 12, 14, 15, 19, 24–26
3, 4, 10, 20	103	Petterson, Witzel, Schlomski		3, 4, 10, 20
16–18	103	Petterson, Witzel, Bulley		16–18
27	103	Petterson, Witzel, Cropper		27
<b>Overall Outcome</b>				1–4, 9, 10, 12, 14–20, 24–27

REVERSED