From: Daniel Gajewski [email redacted]

Sent: Tuesday, May 05, 2015 12:01 PM

To: WorldClassPatentQuality

Cc: Tracy Durkin

Subject: Comments on Enhancing Patent Quality - Durkin / Gajewski

Attached are comments from Tracy Durkin and Daniel Gajewski in response to the USPTO's Request for Comments on Enhancing Patent Quality, Fed. Reg. Vol. 80, No. 24 (February 5, 2015).

Previous attempts to send these comments were rejected by the server as undeliverable because the attachment was too large. We believe the attached is sufficiently reduced that it should go through. Please replace any earlier versions that you may have received with this one.

Please acknowledge receipt. Thank you.

Daniel Gajewski

Daniel A. Gajewski | Associate | Sterne, Kessler, Goldstein & Fox | 1100 New York Avenue NW | Washington, DC 20005 | Email: [email redacted] | Direct: 202.772.8774 | Main: 202.371.2600 | Assistant – CJ Parnell: [email redacted] and 202.772.8616

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Sterne Kessler Goldstein Fox
ATTORNEYS AT LAW

May 5, 2015

Commissioner for Patents of the United States Patent and Trademark Office
Attn: Michael Cygan
Senior Legal Advisor, Office of Patent Legal Administration
Office of the Deputy Commissioner for Patent Examination Policy
P.O. Box 1450
Alexandria, VA 22313-1450
viaemail: [email redacted]

Re: Comments in response to USPTO's Request for Comments on Enhancing Patent Quality, Fed. Reg. Vol. 80, No. 24 (February 5, 2015)

Dear Commissioner:

We are attorneys with Sterne Kessler Goldstein & Fox, an intellectual property law firm with more than 170 IP professionals in Washington, DC. In 2014 alone, our firm filed over 1200 design applications worldwide, over 400 of which were filed at the USPTO. Together we have over 34 years' experience filing and prosecuting design patent applications before the USPTO on behalf of over 100 companies and individuals, including 2 companies that are regularly among the top 50 annual US design patent grantees.

As a firm and as individual practitioners we regularly contribute to efforts to shape and improve design prosecution practice. We work with the USPTO and foreign patent offices, and with nongovernmental intellectual property groups around the world.

We write today to present the Office with a straightforward, uncontroversial, and—we feel—*necessary* suggestion to improve the quality of design patents: print them clearly.

Enhancing print quality of design patents falls under the Office's Proposal 3: Clarity of Record, as it was raised during the Office's Patent Quality Summit of March 25–26.

Clarity in design patent drawings is essential.

The Office's rules require that a design patent's claim be in formal terms, covering the design for an article "as shown and described" in the required

drawings. 37 CFR §§ 1.152, 1.153. Since the drawings define the claimed subject matter, the Office recognizes the need for high-quality drawings in an *application*:

> The necessity for good drawings in a design patent application cannot be overemphasized. As the drawing constitutes the whole disclosure of the design, it is of utmost importance that it be so well executed both as to clarity of showing and completeness, that nothing regarding the design sought to be patented is left to conjecture.

MPEP § 1503.02. But the MPEP makes no such pronouncement about the quality of drawings in an issued patent.

We contend that high quality drawings are at least as important in an issued patent as in an application. The public deserves to know the extent of the property right protected by a patent, and the patentee deserves to have a clear representation of that right. We do not believe these to be controversial positions.

The print quality of the US Patent Office's design patents is uniformly low, often obfuscating the exclusive rights they represent.

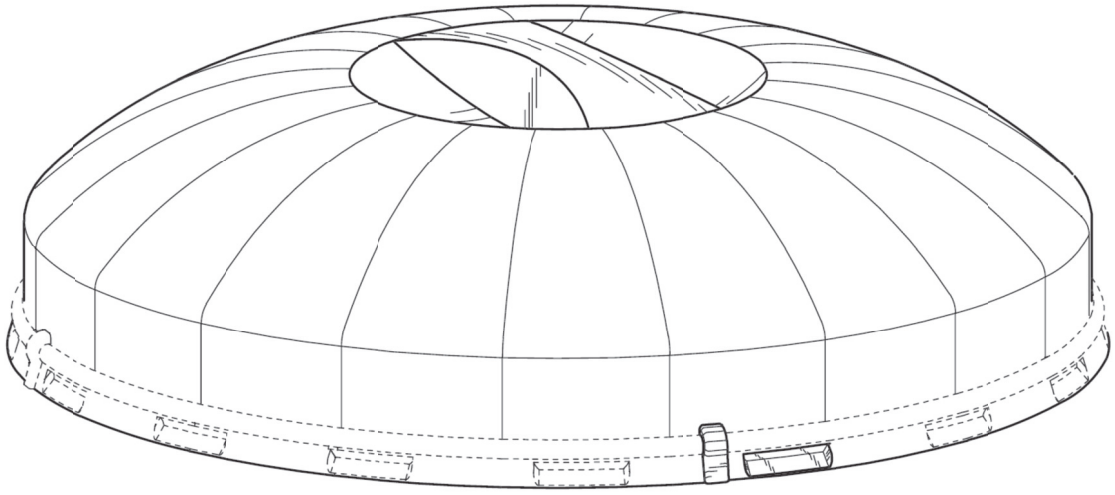
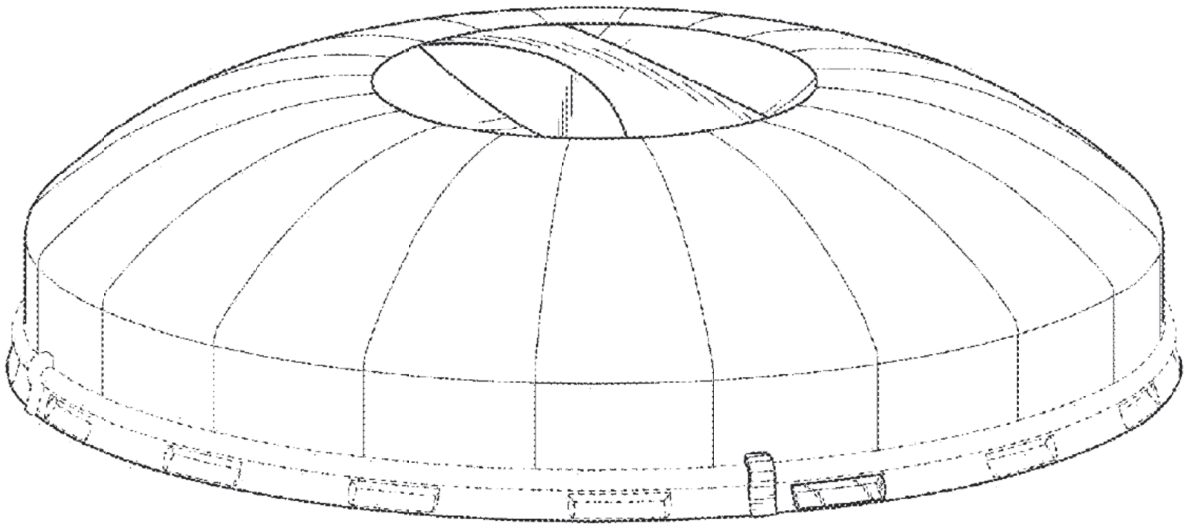
Design patent drawings often do more than simply depict a design. The types of lines used can be important indicators to represent portions of the design that are claimed, and portions that are not. For example, solid lines are often used to show claimed portions of a design, while broken lines are often used to show unclaimed portions or environment. Shade lines are often used to help show contour. A clear representation of these and other different line types helps the public to understand which portions of a depicted design it may be precluded from practicing.

Unfortunately, the Office's issued design patents not only consistently fail to represent patented designs with the same clarity with which they were presented in their applications, but—even worse—often are so poor that they are unintelligible or essentially depict a different design than that which was examined and allowed by the examiner.

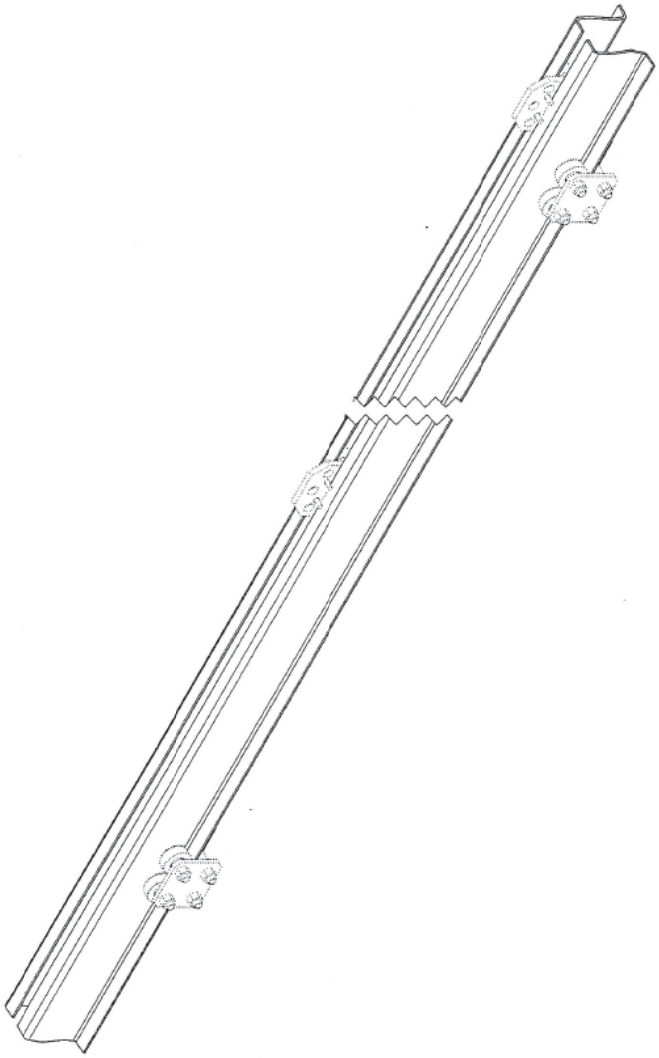
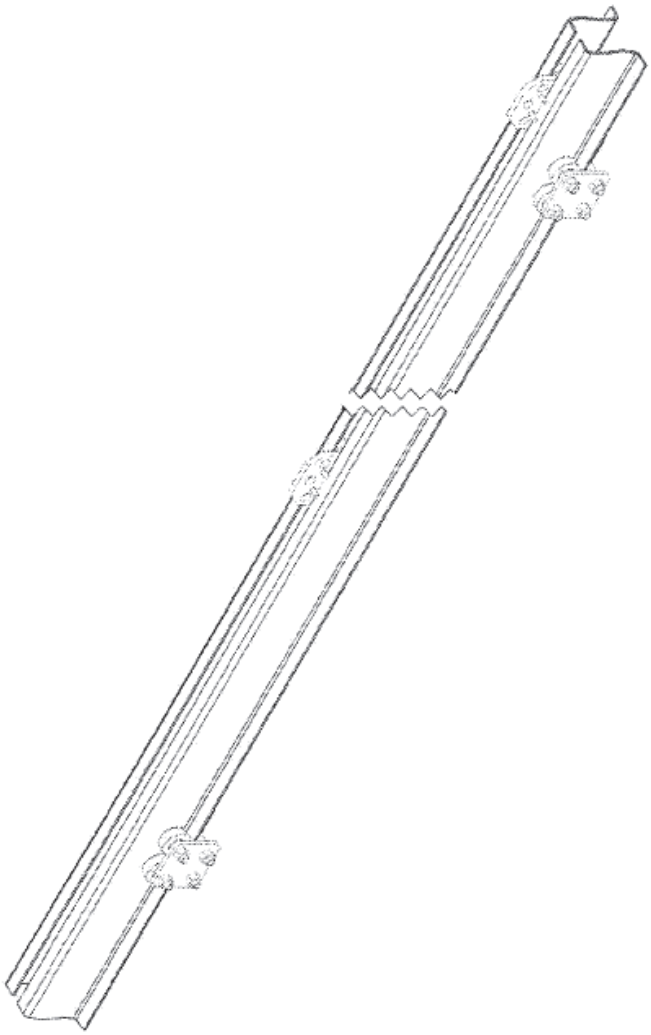
For example, the printing quality of the Office's design patents is often so poor that lines in the drawings of the issued patent are not represented as they were

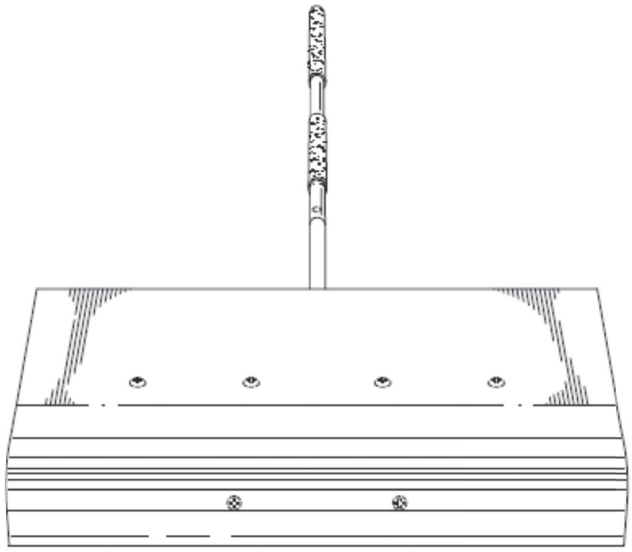
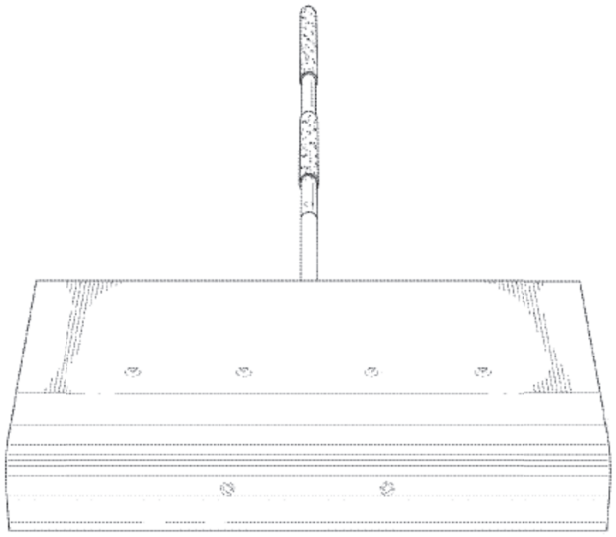
in the application. Examples include solid claimed lines appearing as broken unclaimed lines in the issued patent, or boundary and shade lines printing so blurry that they appear to run together, obscuring or misrepresenting portions of the design.

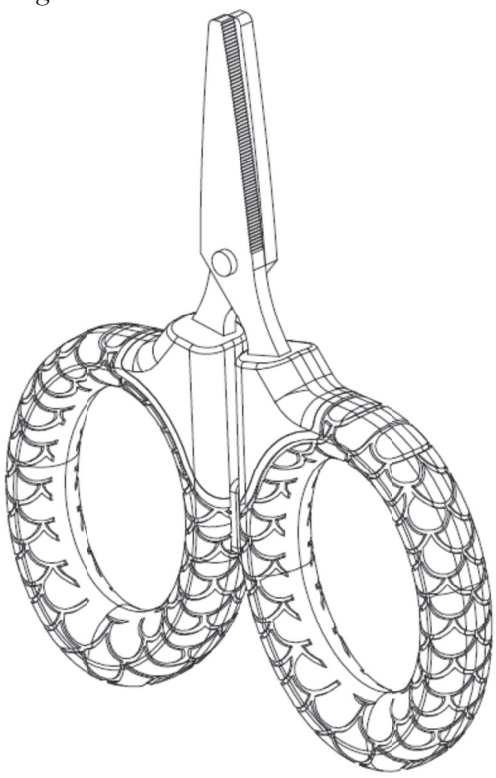
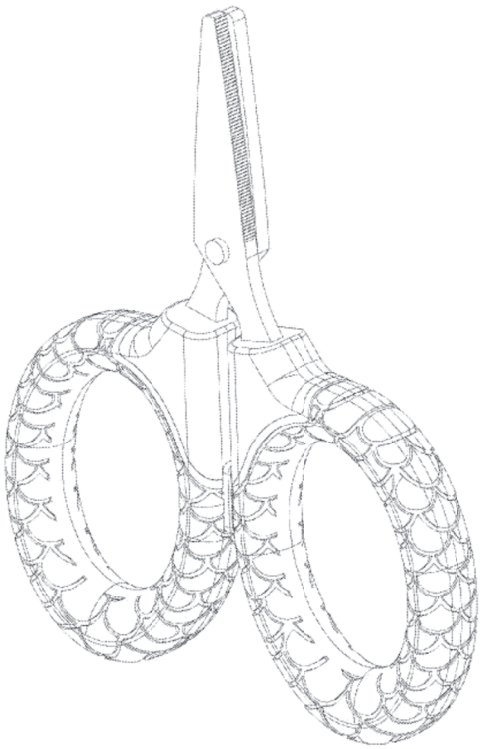
Some examples will help elucidate these points.[1]

US Patent No. D725,957 S, issued April 7, 2015: Popcorn Lid
Figure 1 as examined and allowed: 
Figure 1 as issued: 

[1] Examples in the body of this paper may be copied and scaled for comparison. All are reproduced in the Appendix at 100% scale, and their source files are publicly available through the USPTO's PAIR, SCORE, and Patent Full-Text and Image Database systems, and at http: // skgf. com/news/quaality-comments.

US Patent No. D726,072 S, issued April 7, 2015: Rail for a Suspended Rail System	
Figure 1 as examined and allowed:	Figure 1 as issued:
	

US Patent No. D724,909, issued March 24, 2015: Material Manipulation Tool	
Figure 1 as examined and allowed:	Figure 1 as issued:
	

US Patent No. D724,918, issued March 24, 2015: Micro Scissors	
Figure 1 as examined and allowed:	Figure 1 as issued:
	

US Patent No. D724,406 S, issued March 17, 2015:
Combination Socket-Wrench Handle and Hammer

Figure 1 as examined and allowed:

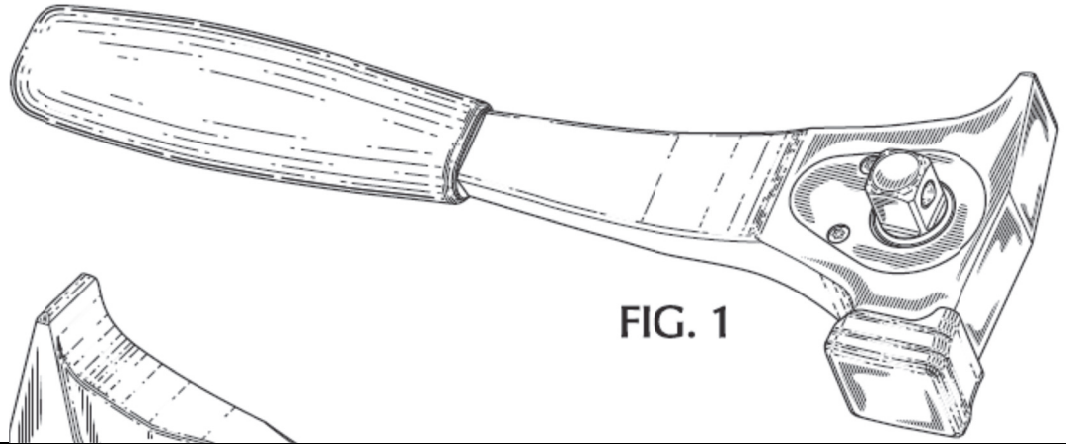
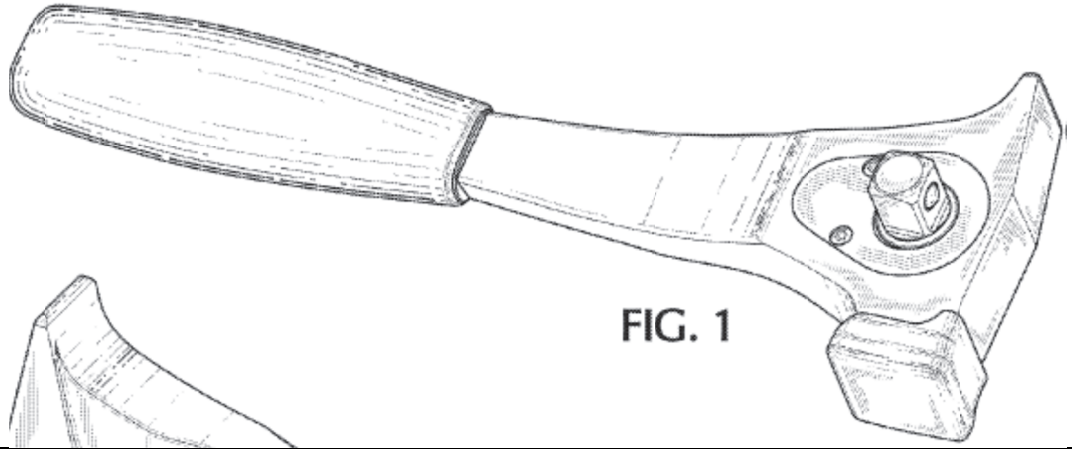
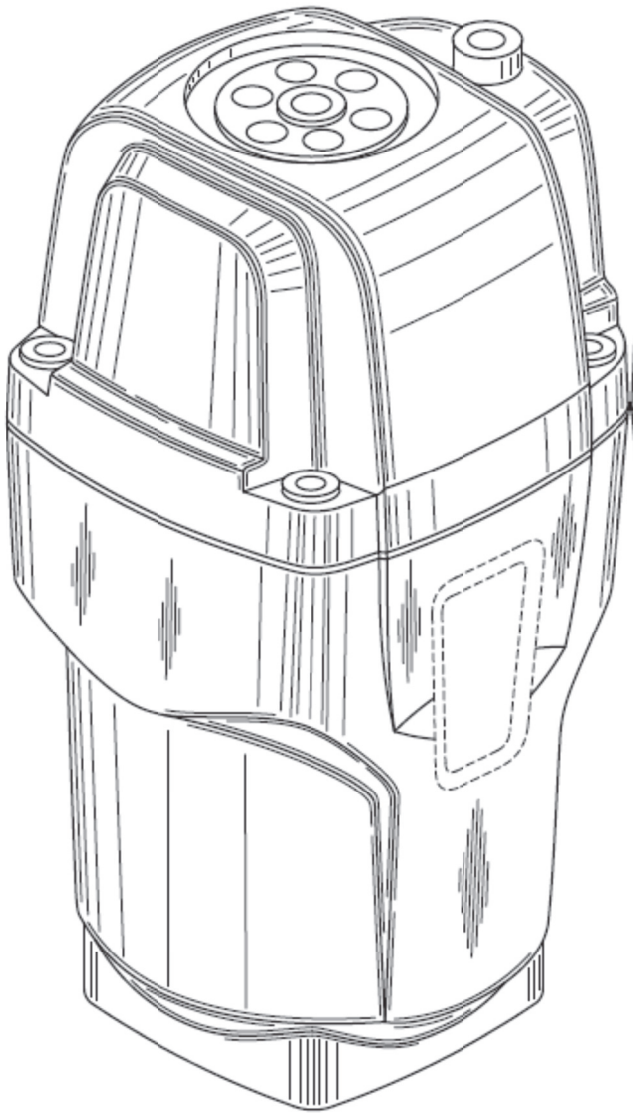
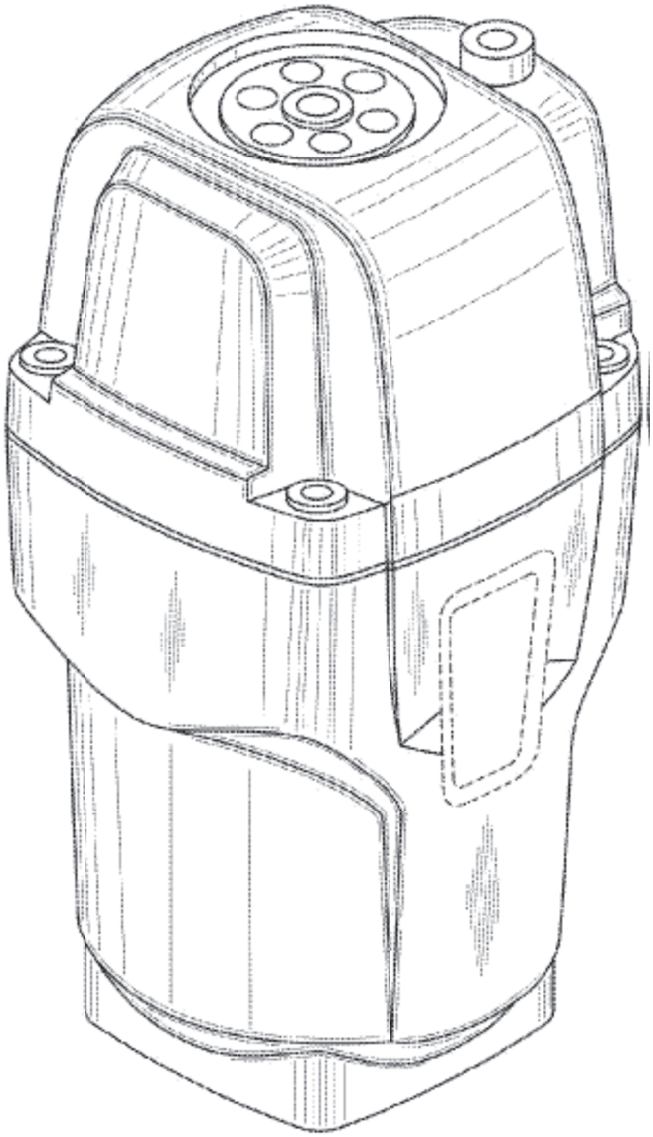


Figure 1 as issued:



US Patent No. D724,404, issued March 17, 2015: Nailer Housing Head	
Figure 1 as examined and allowed:	Figure 1 as issued:
	

The printing problems in these examples are self-evident. What do the designs really look like? Which parts are claimed, and which are not? How are the designs contoured? These kinds of questions should not be attributable to poor printing quality.

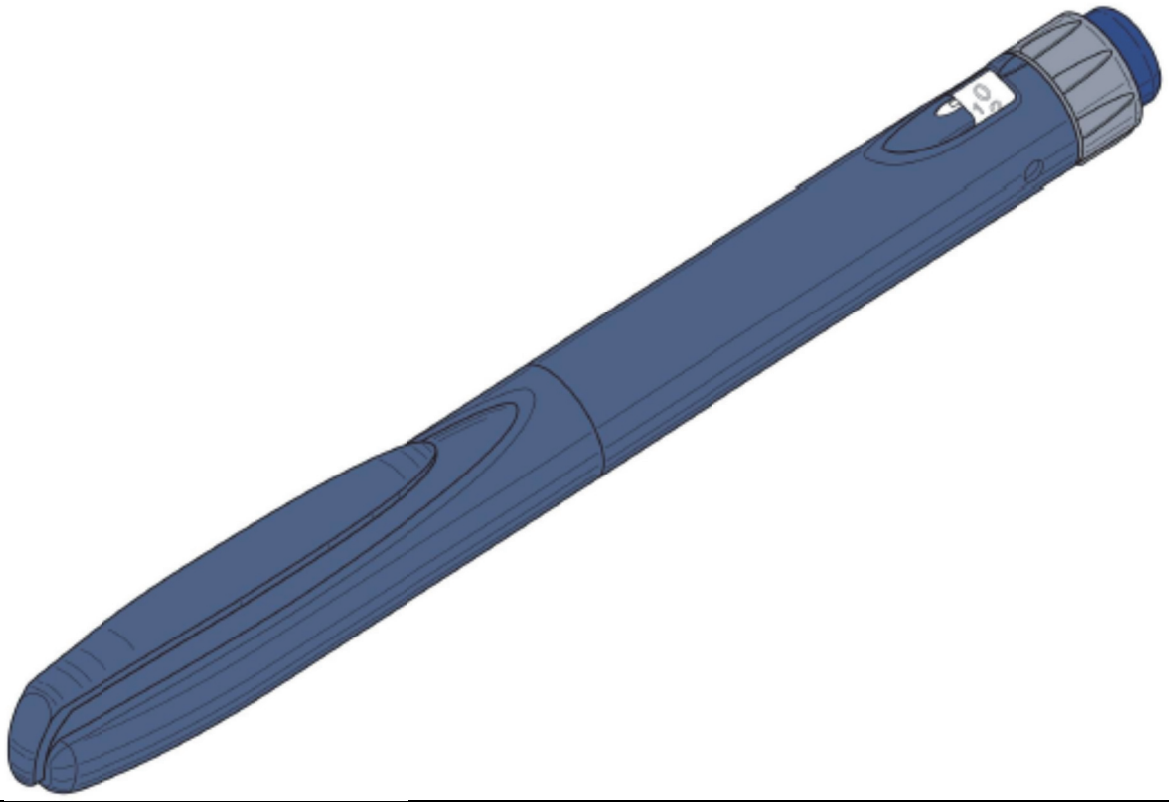
Not all design patents print this poorly. But so many do that that the problem merits a solution. Even those patents that print better, and more closely represent the designs that were examined and allowed, are often still of much lower quality than the drawings provided by the applicant. All would benefit from improved printing.

The Office is capable of issuing patents of such high quality as to rival those issued anywhere else in the world.

An anomaly in the Office's printing happens when an applicant files a design in color: the Office often prints the resulting patent flawlessly. So the Office already has a solution to the problem of poor-quality design patents, it has just not implemented it outside of color designs. The Office should consider printing all design patents through this system, or at least giving applicants the option to have their patents printed through it, even for a fee.

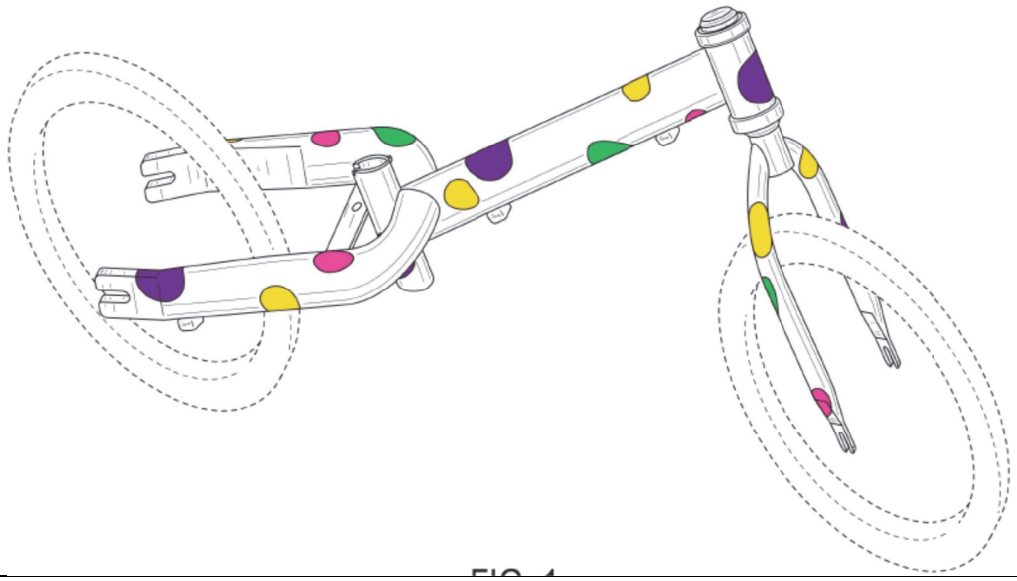
US Patent No. D725,771, issued March 31, 2015: Medical Injector

Figure 5 as issued:



US Patent No. D725,553 issued March 31, 2015: Bicycle Frame

Figure 1 as issued:



All benefit from improved quality.

The Office clearly wants to improve the quality of issued patents. Improving their print quality is an impactful way to take a big step toward that goal. It will require no additional examiner training or changes to the application process. And the clarity and improved certainty it will reduce uncertainty in claim scope and will accurately represent the exclusive right that the Office intended to award the patentee. This will benefit the public and patentees alike.

Respectfully submitted,

/Tracy Durkin/

Tracy-Gene G. Durkin, Reg. No. 32,831
Director, Mechanical and Design Practice Group Leader, Sterne Kessler

/Daniel A. Gajewski/

Daniel A. Gajewski, Reg. No. 64,515
Associate, Sterne Kessler

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The views expressed herein are our own and are not to be attributed to any other person or entity including Sterne, Kessler, Goldstein & Fox P.L.L.C., or any client of the firm.

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APPENDIX

to

Comments in response to USPTO's Request for Comments on Enhancing Patent Quality, Fed. Reg. Vol. 80, No. 24 (February 5, 2015)

submitted May 5, 2015, by

Tracy-Gene G. Durkin and Daniel A. Gajewski

of

Sterne Kessler Goldstein & Fox P.L.L.C

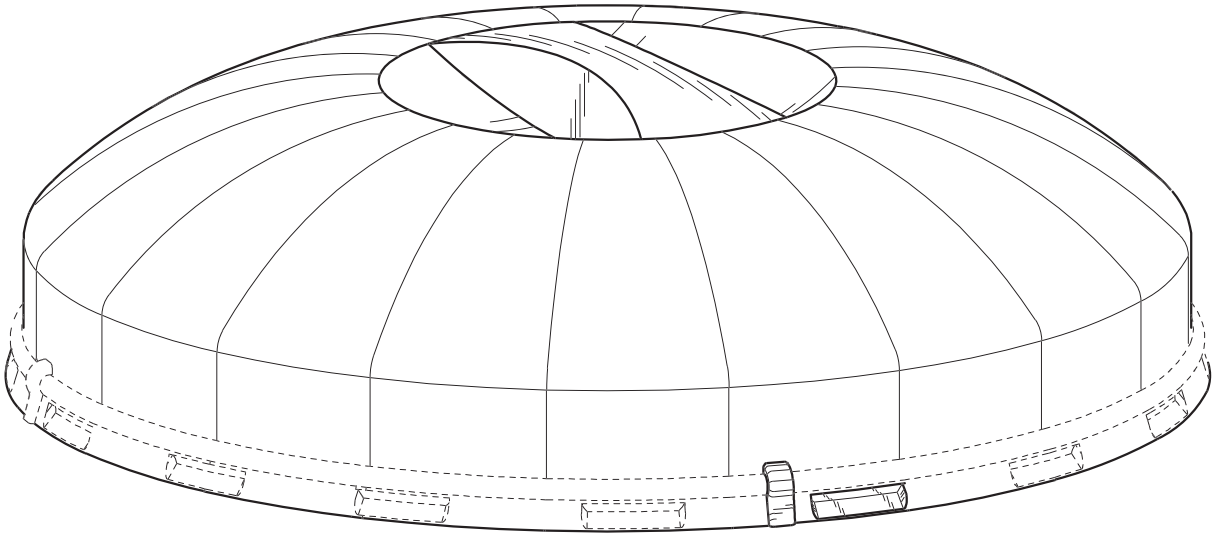


FIG. 1

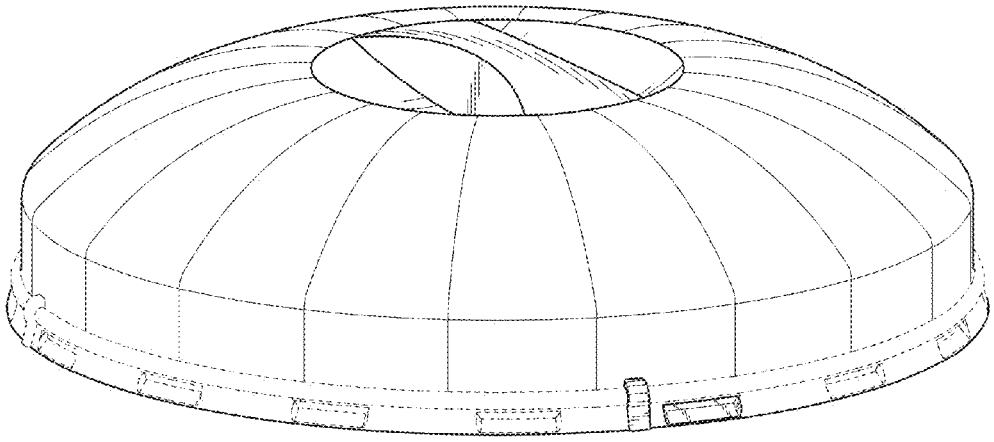


FIG. 1

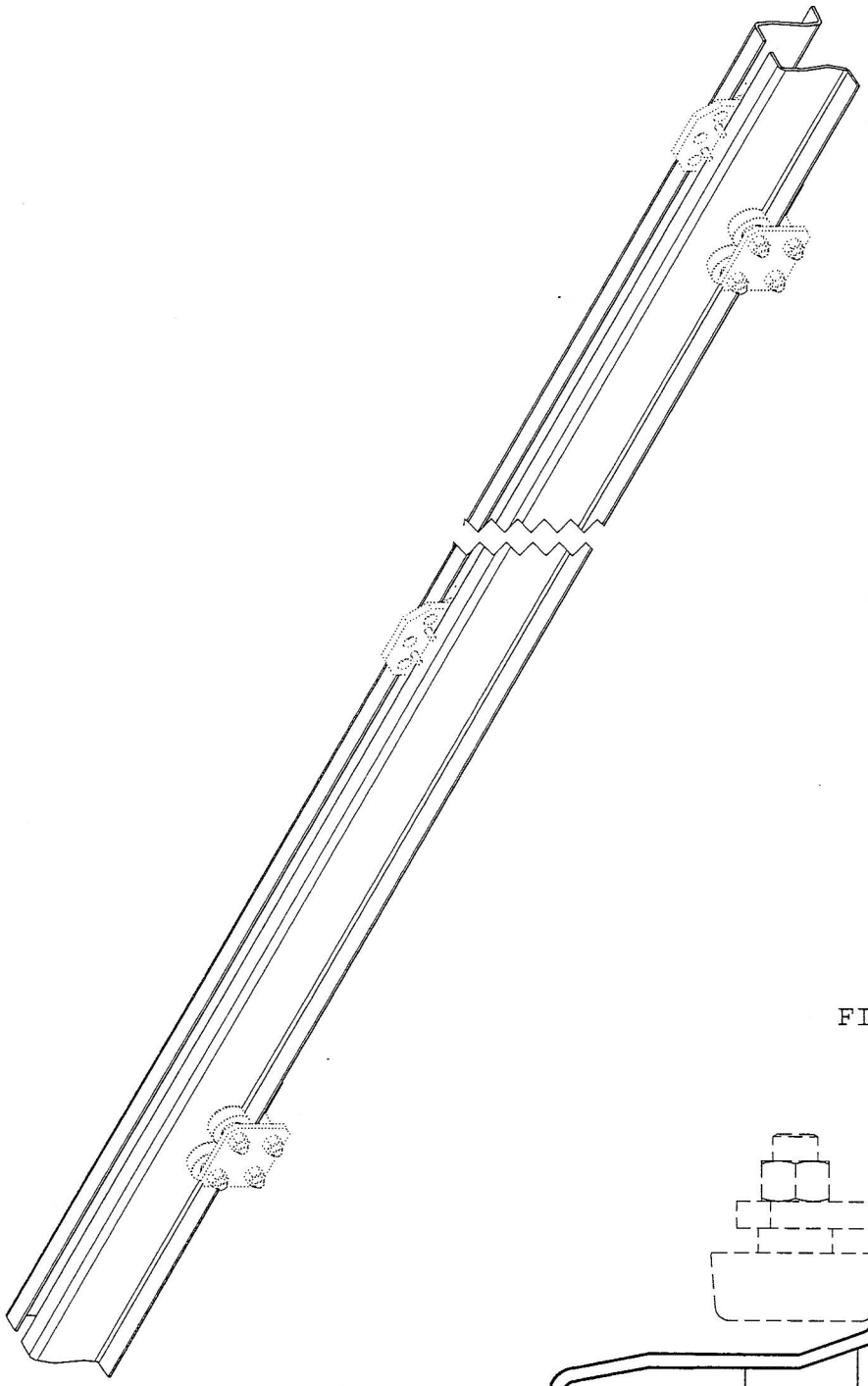
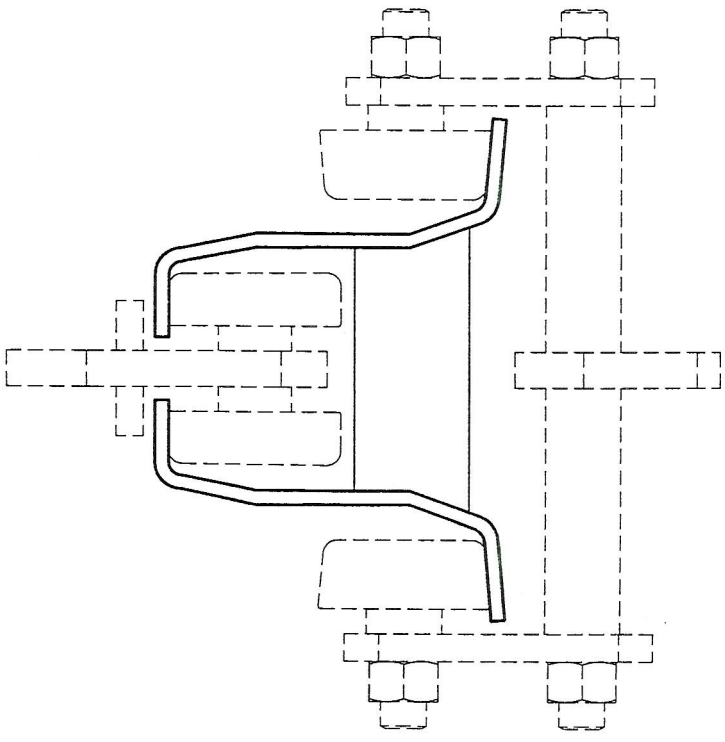


FIG. 1

FIG. 2



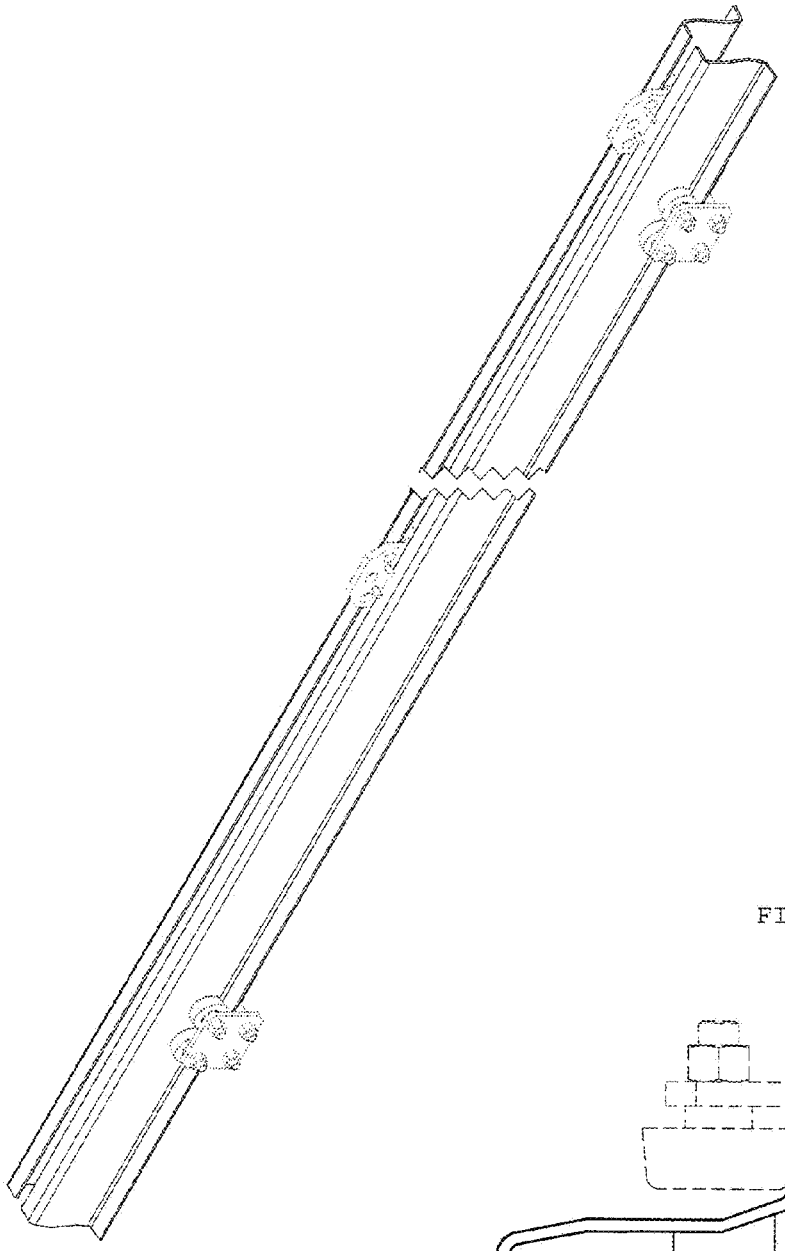
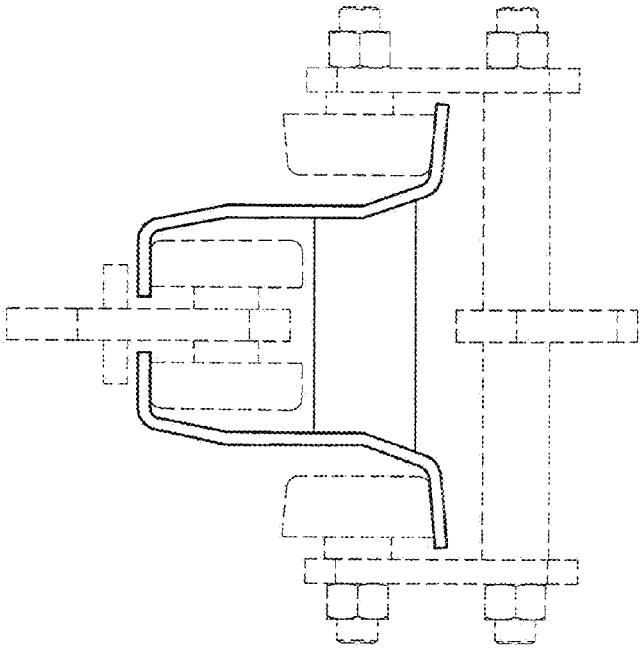


FIG. 1

FIG. 2



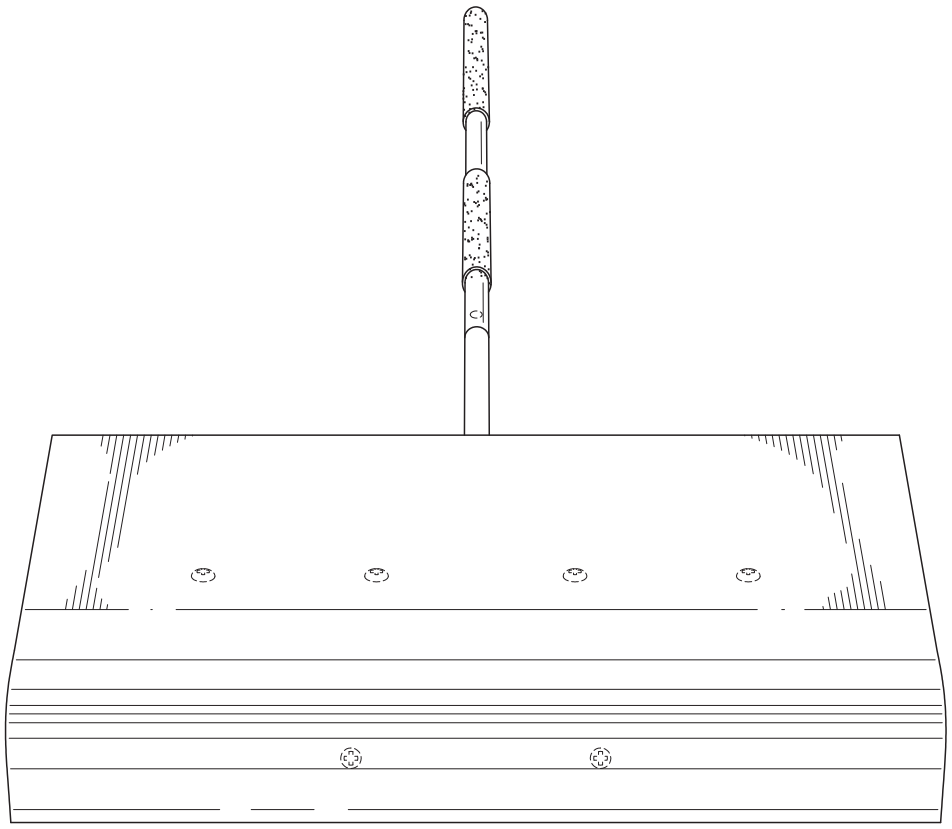


FIG. 1

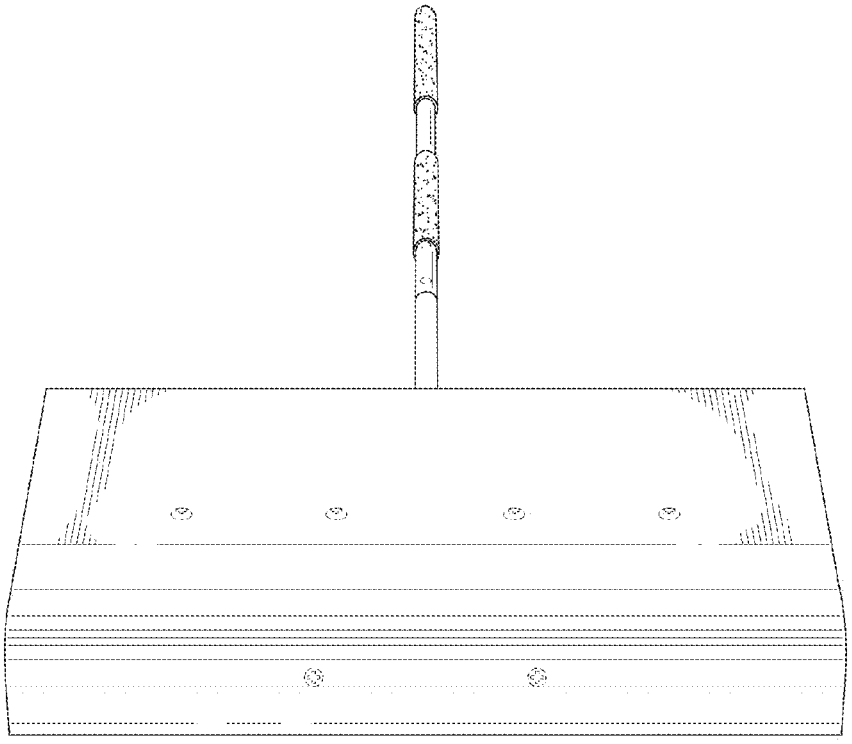


FIG. 1

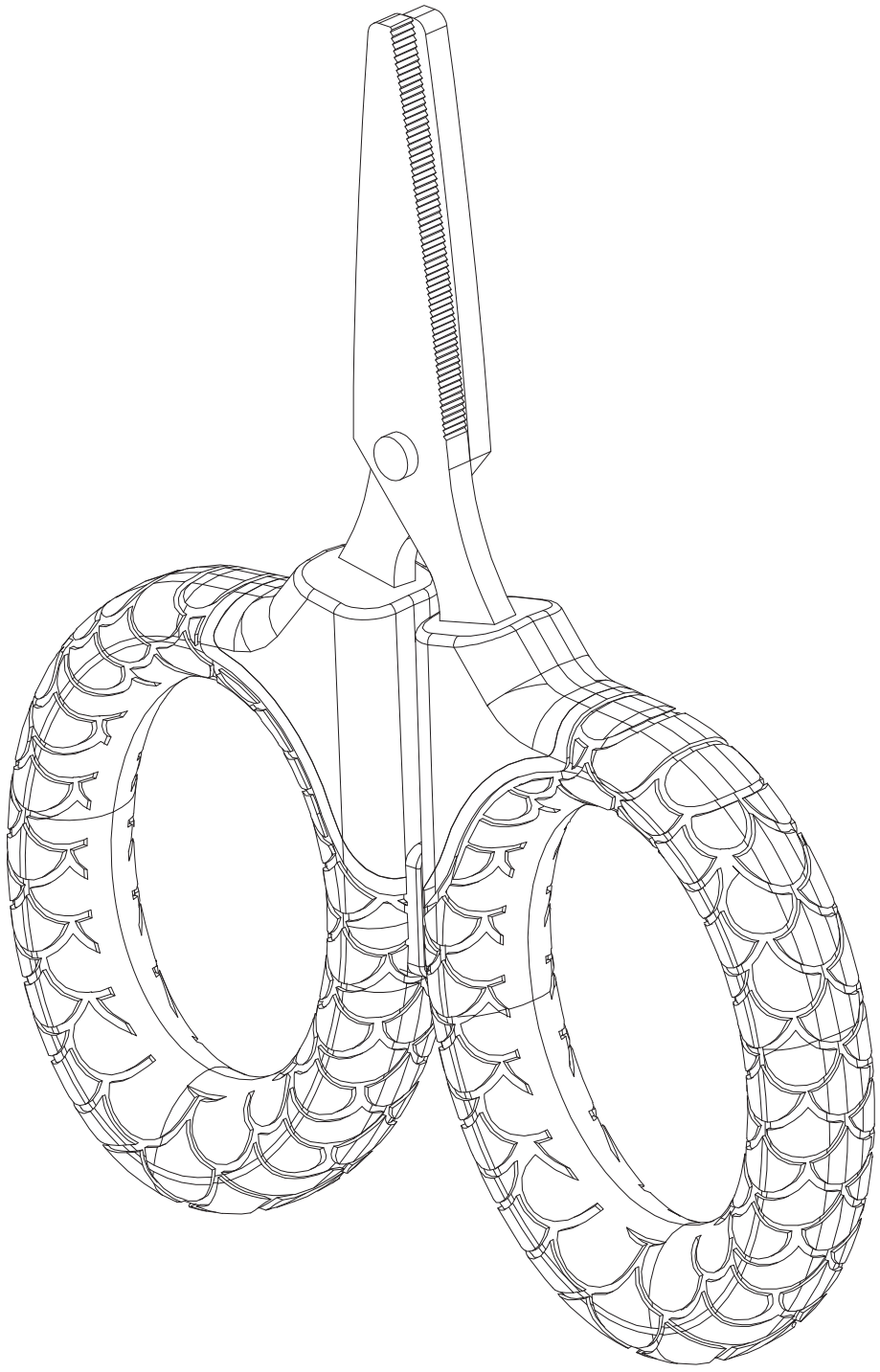


FIG. 1

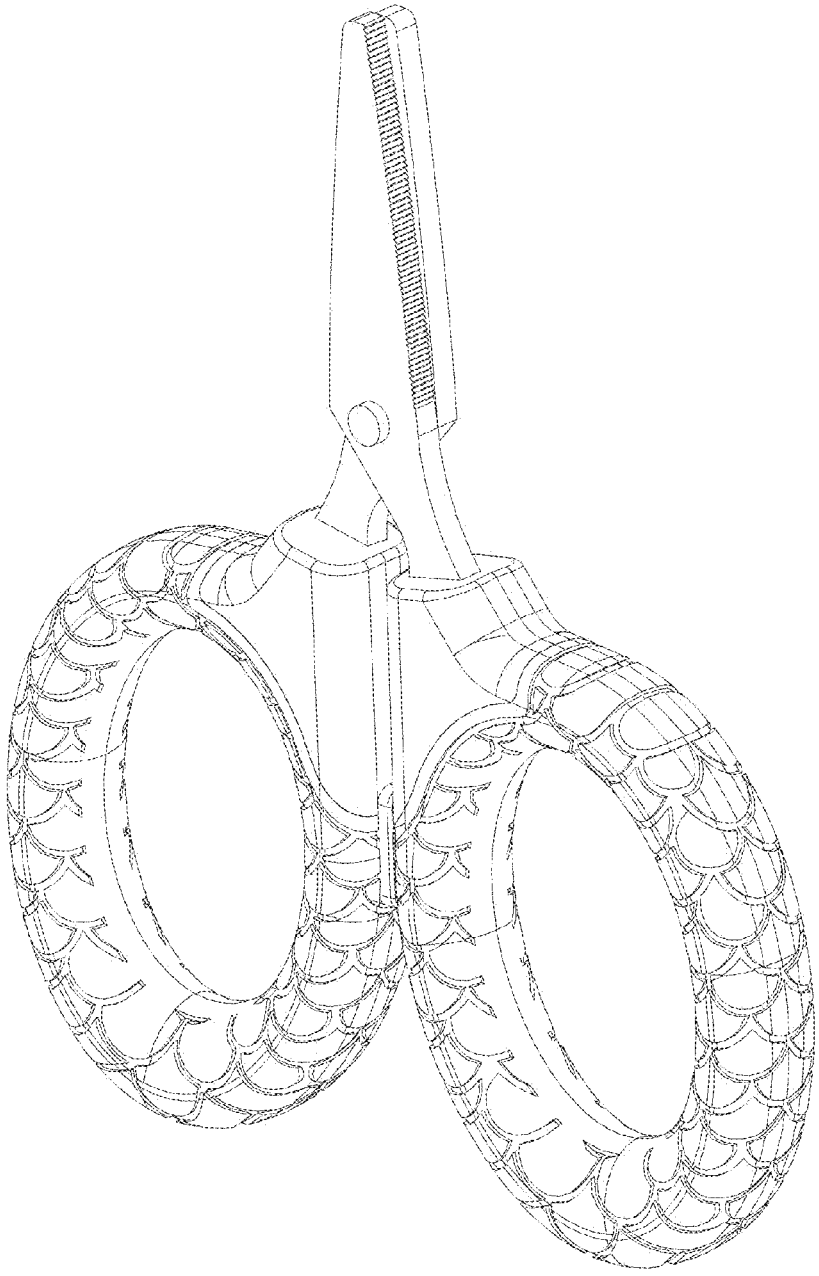


FIG. 1

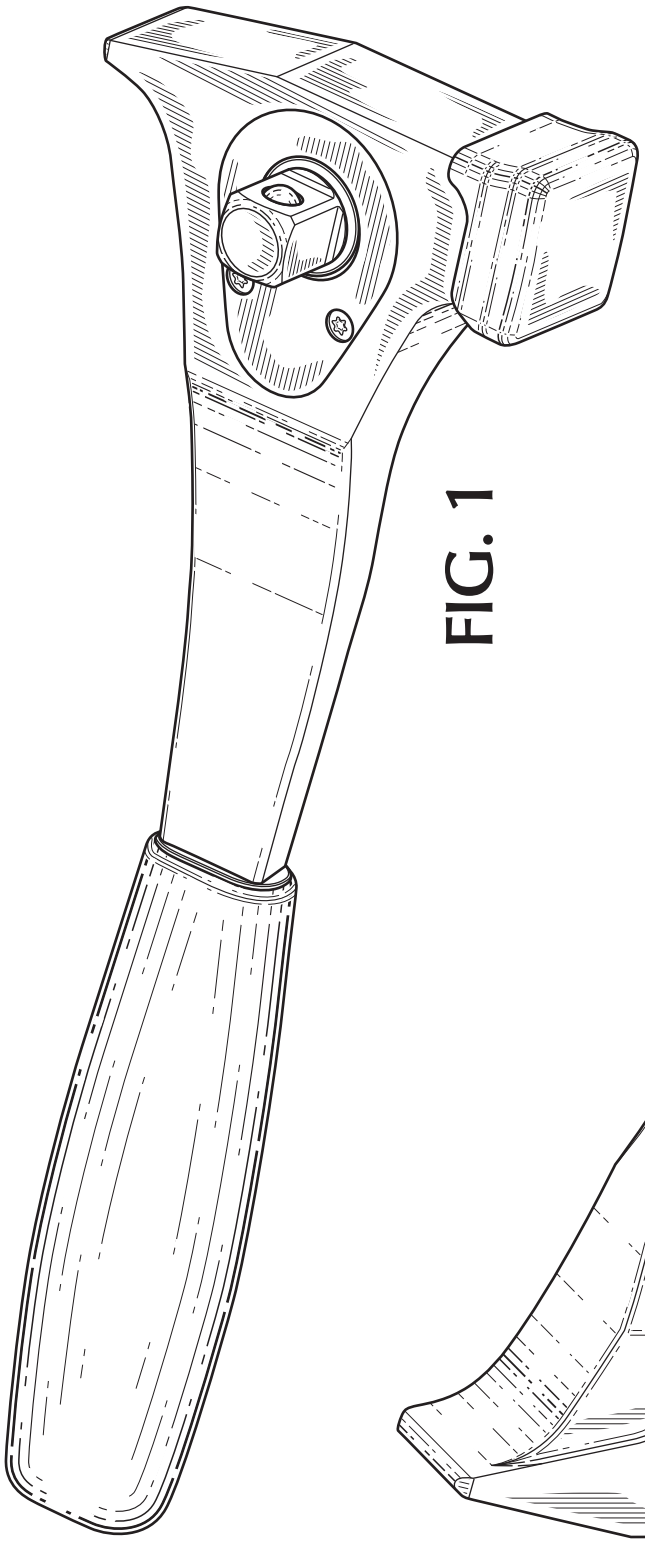


FIG. 1

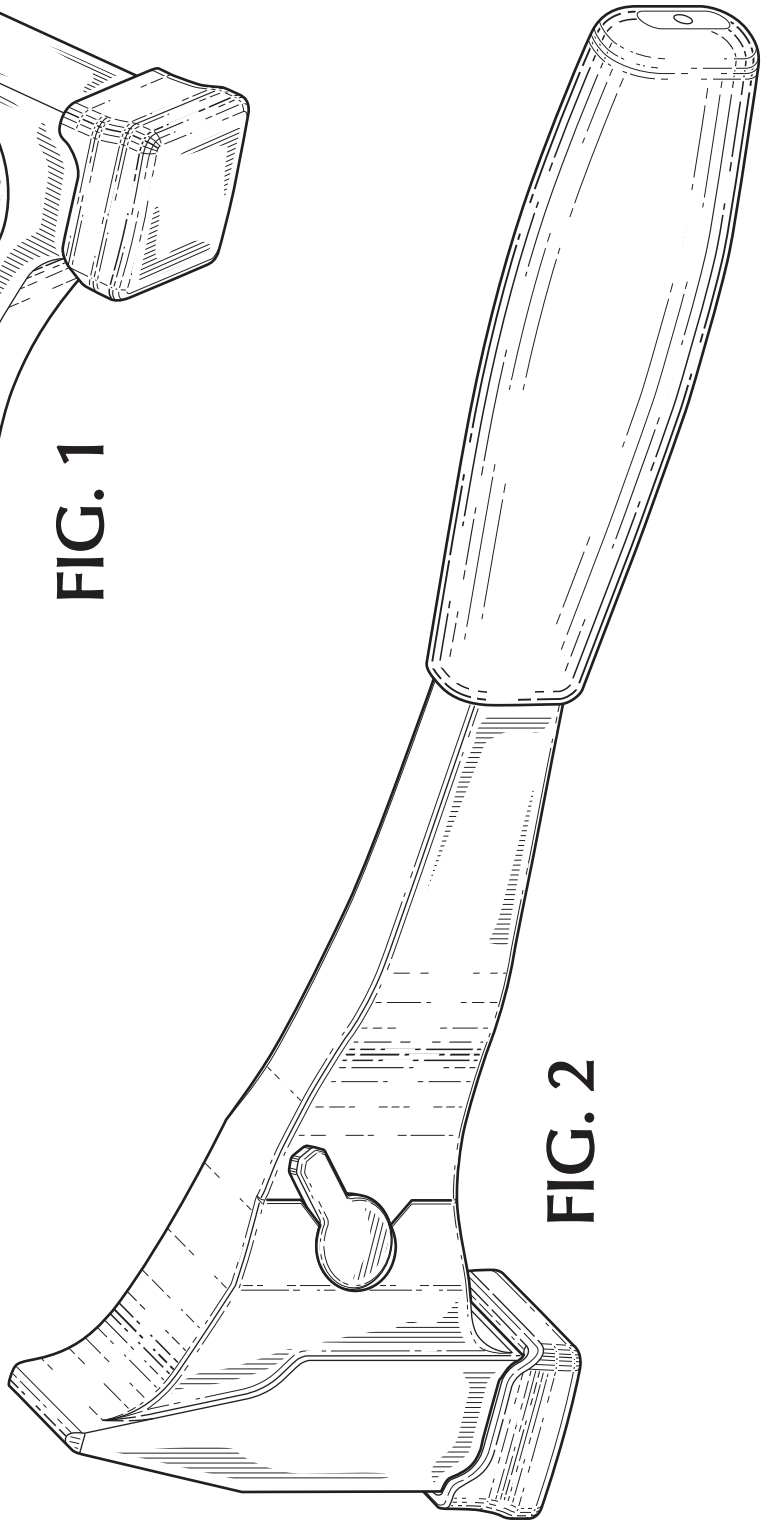


FIG. 2

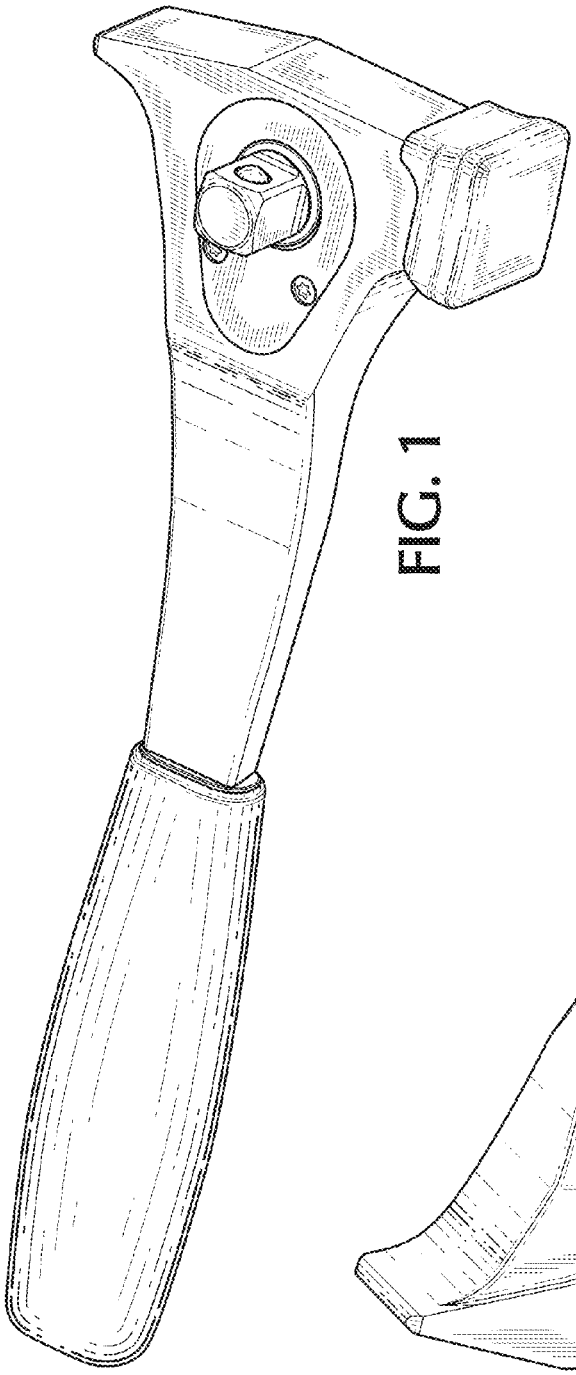


FIG. 1

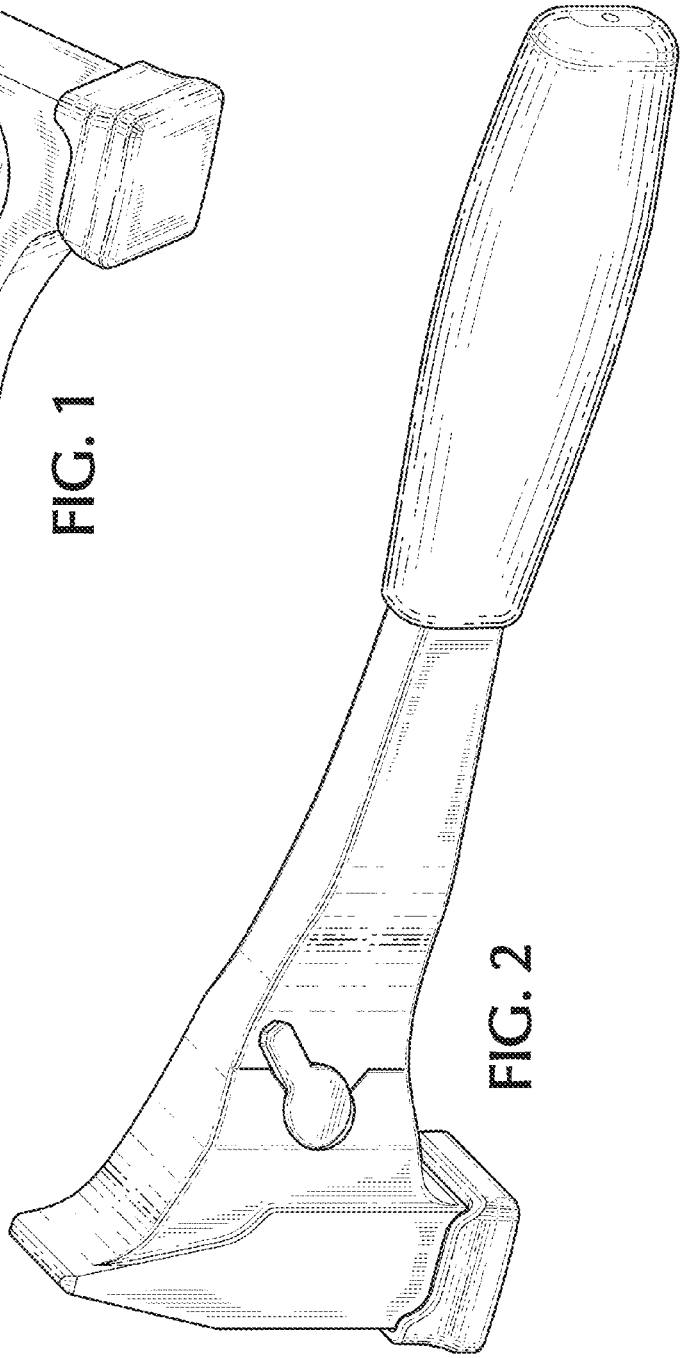


FIG. 2

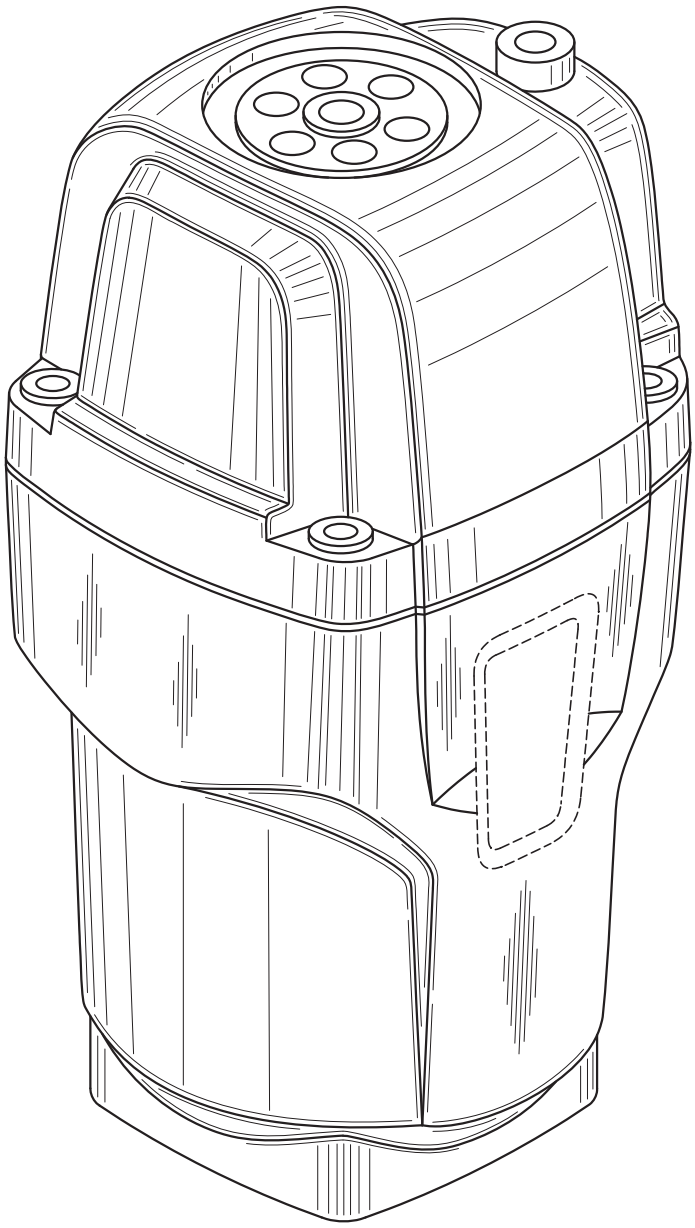


FIG. 1

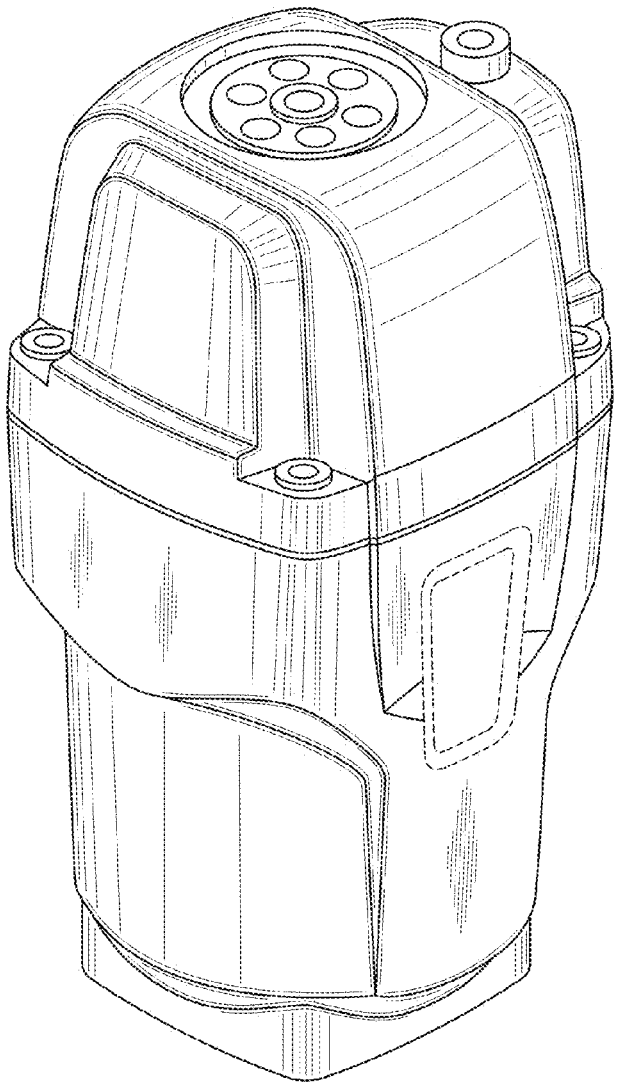


FIG. 1

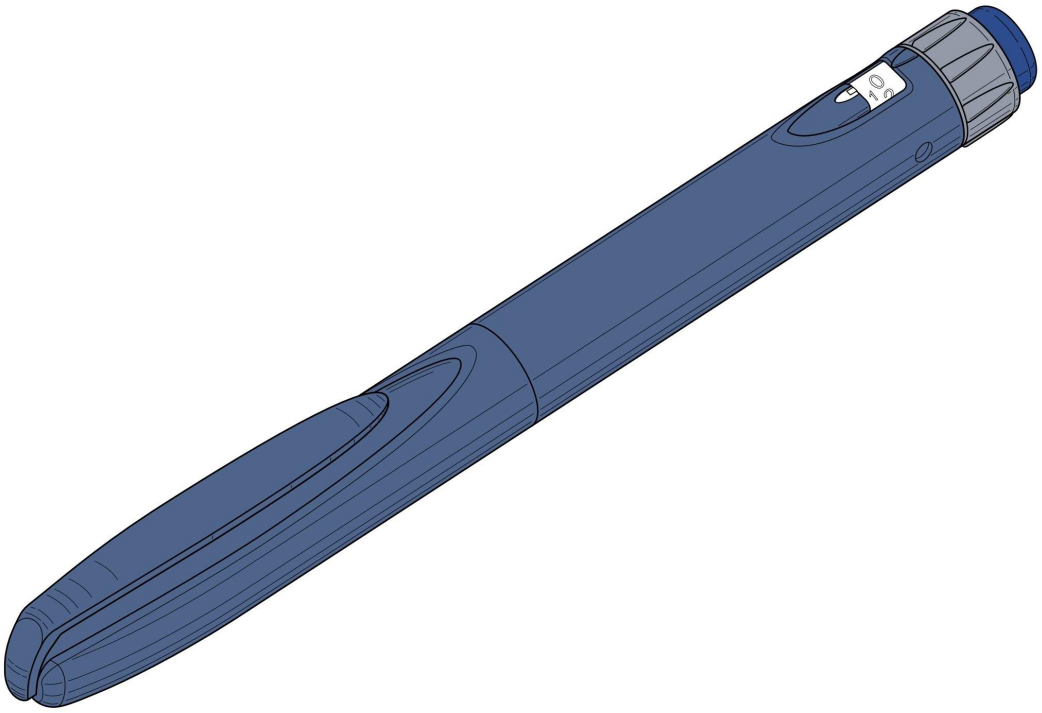


FIG. 5

FIG. 6

FIG. 7

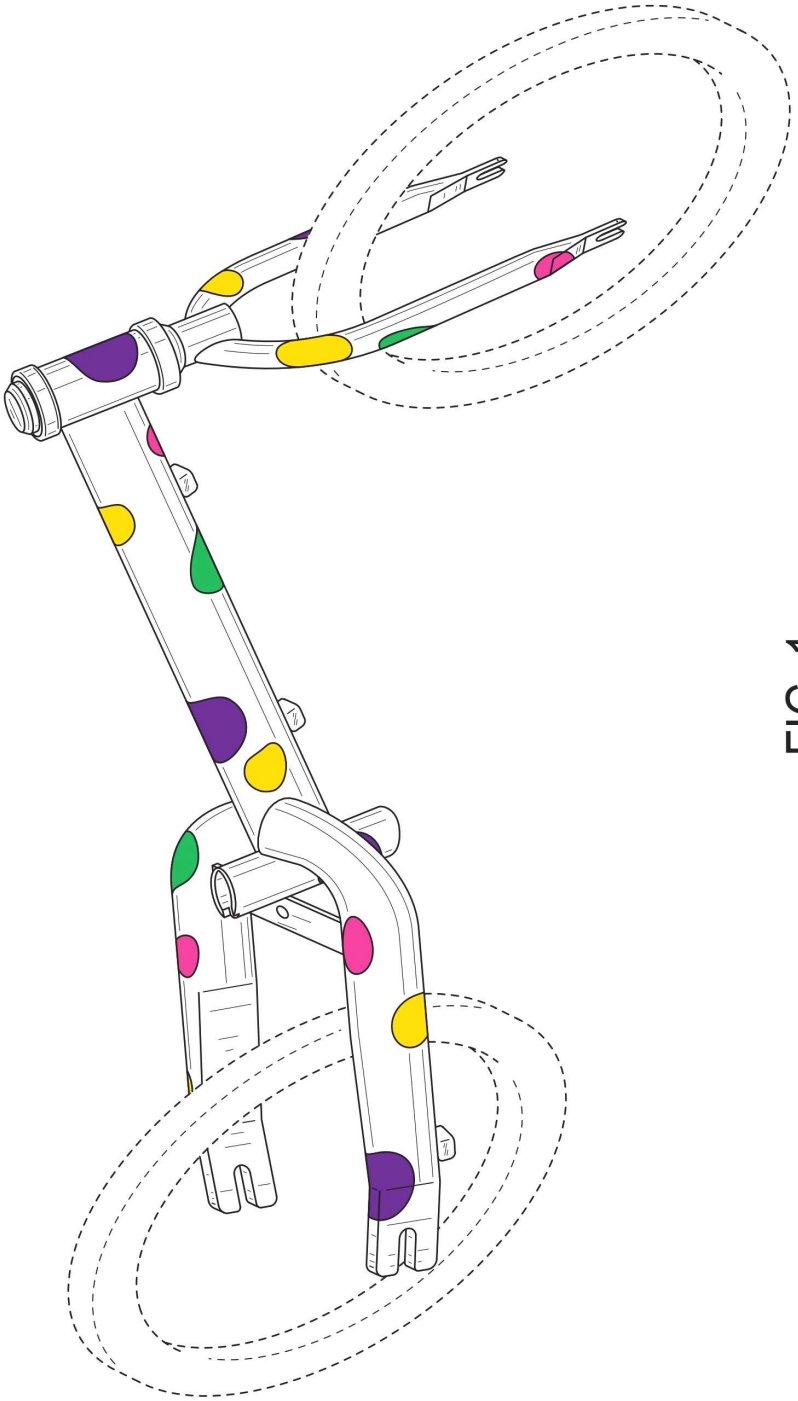


FIG. 1