What Does it Mean to “Rotate, Translate, and Reciprocate”? Smith & Nephew owned a patent for a surgical instrument for cutting semi-rigid tissue. The cutting member, according to the patent claims, “simultaneously rotate, translate, and reciprocate.”

The Federal Circuit pointed out that the patent described “deceleration phases of the cutting member.” According to Smith & Nephew, reciprocation means “to move forward and backward alternately.” Reciprocate, according to the Board, means “movement from one place (e.g., point A) to another (e.g., point B).” Translation, according to Smith & Nephew, “restricts the reciprocal motion to the linear phase.” Reciprocation, according to the Board, means “to move forward and backward alternately.”

The patent appeal Board concluded that the reciprocal motion occurred between one place and another “moving from one point to another along the longitudinal axis.” The Federal Circuit pointed out that the patent does “not mention the deceleration or acceleration phases of the cutting member.” However, the patent did describe “simultaneously rotating and translating the inner member.”

The Federal Circuit sided with the Board’s construction.

COMMENTS:
Though the coefficient relationship may have been newly discovered, it was not recited in the broadest patent claims. If not recited, then it seems that the Federal Circuit was improperly relying on features of the invention beyond the claims of the patent.

"Injection Molded" Knee Brace Can Be Patentable Nordit filed a patent application for a knee brace that had a hinge mechanism comprising an injection molded strut component and an injection molded first and second arm components. The patent application explained the benefits of injection molding.

Nordit did not dispute that the prior art showed a knee brace with a strut and arms. However, Nordit argued that the prior art did not show those components as injection molded.

Neither the patent examiner nor the patent appeals Board disputed that “there are clear structural differences” between a knee brace made with fabric components and a knee brace made with injection-molded components.

The Federal Circuit concluded that “injection molded” can describe a structural feature different from the prior art. And, therefore, the feature of “injection molded” can be patentable.

COMMENTS:
The Federal Circuit reached its decision, notwithstanding its acknowledged payment decisions that said “process limitations” should be ignored when deciding patentability.

Janssen Is Stopped From “Double Patenting” Its Remicade Drug The patent laws “prevent the extension of the term of a patent to prohibit the issuance of the claim of a second patent that are not patentably distinct from the claims of the first patent.” This is obviousness-type double patenting.

However, there is a safe harbor exception. If you file a patent application with more than one invention, and then separate the inventions by filing a divisional application, neither patent can be used as prior art against the other — i.e., obviousness-type double patenting.

After a series of patent filings that were related to one another, and where one of its patents became the subject of reexamination, Janssen tried to amend one of its patent applications to make it a divisional application.

The Federal Circuit noted that Janssen had acquired more than thirty related patents, and that the patent application Janssen sought to designate a divisional application was related to the thirty patents.

Because Janssen was not entitled to the safe harbor, its patent was invalid for double patenting.

COMMENTS:
It seems that Janssen simply walked too long to designate the application as a divisional. It should have asked before its patent became the subject of reexamination.