ORIGINAL

Joseph R. Re (SBN 134479)
joe.re@kmob.com
Joseph F. Jennings (SBN 145920)
joe.jennings@kmob.com
Curtis R. Huffmire (SBN 225069)
curtis.huffmire@kmob.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614
Telephone: (949) 760-0404
Facsimile: (949) 760-9502

Karen A. Gibbs (SBN 178690)
kgibbs@appliedmedical.com
Applied Medical Resources Corporation
22872 Avenida Empresa
Rancho Santa Margarita, CA 92688
Telephone: (949) 713-8000
Facsimile: (949) 713-8206

Attorneys for Plaintiff
APPLIED MEDICAL RESOURCES CORPORATION

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

APPLIED MEDICAL RESOURCES CORPORATION, Plaintiff, v. TYCO HEALTHCARE GROUP LP d/b/a COVIDIEN, Defendant.	Civil Action No.: SACV11-01406JVS (ANx) **AMENDED COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NO. 8,016,755** **DEMAND FOR JURY TRIAL**

Plaintiff Applied Medical Resources Corporation for its Amended Complaint states and alleges as follows:

PARTIES

1. Plaintiff Applied Medical Resources Corporation ("Applied") is a corporation incorporated under the laws of California and has its principal place of business at 22872 Avenida Empresa, Rancho Santa Margarita, California 92677, in Orange County, California.

2. Upon information and belief, Defendant Tyco Healthcare Group LP ("Defendant") is a Delaware limited partnership, doing business as Covidien, and having a principle place of business at 15 Hampshire Street, Mansfield, Massachusetts 02048.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States (Title 35 of the United States Code).

4. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue lies in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) in that Defendant has committed acts of infringement in this district. Venue is proper in the Southern Division of this district under the provisions of General Order 349-A (1)(A) in light of the facts that: 1) plaintiff Applied is resident in the Southern Division, 2) Defendant resides in a place outside the Central District of California, and 3) either the claim for patent infringement arose in the Southern Division where Applied has been injured by Defendant's infringement or the majority of claims for patent infringement arose outside the Central District of California where Defendant has committed the majority of its acts of infringement.

THE PATENT-IN-SUIT

6. Applied is the owner by assignment of U.S. Patent No. 8,016,755 entitled "SURGICAL ACCESS APPARATUS AND METHOD" ("the '755

patent") which issued September 13, 2011 and which names Richard C. Ewers, John R. Brustad, Edward D. Pingleton, Nabil Hilal, Gary R. Dulak, Payam Adlparvar, and Robert R. Bowes as the inventors. A true and correct copy of the '755 patent is attached hereto as Exhibit A. As the owner, Applied has the right to sue for infringement of the '755 patent.

DEFENDANT'S INFRINGEMENT OF U.S. PATENT NO. 8,016,755

7. Applied repeats and re-alleges the allegations of paragraphs 1-6 of this Complaint as if set forth fully herein.

8. Defendant infringes, both directly and indirectly, one or more claims of the '755 patent, in violation of 35 U.S.C. § 271, by making, using, offering for sale, selling, and/or importing products marketed by Defendant as a "SILS Port", and also by marketing and promoting the SILS Port and related products for use in what Defendant promotes as "SILS Procedures".

9. The SILS Port is a surgical access device suitable for, *inter alia*, performing laparoscopic surgical procedures with one or more instruments passing through the device and through a single incision in an abdominal wall of a patient with the abdominal cavity pressurized with an insufflation gas.

10. The SILS Port surgical access device is adapted to provide instrument access to the abdominal cavity for surgical procedures while generally maintaining insufflation pressure in the abdominal cavity of a patient.

11. The SILS Port surgical access device is formed of an elastomeric material.

12. On information and belief, the SILS Port surgical access device is formed of a material comprising a triblock copolymer.

13. On information and belief, the SILS Port surgical access device is formed of a material comprising an oil.

14. On information and belief, the SILS Port surgical access device is formed of a material comprising a foaming agent.

15. The SILS Port surgical access device has an external flange and an internal flange integrally formed with the device.

16. The SILS Port surgical access device with flanges is formed monolithically.

17. The external flange of the SILS Port surgical access device is adapted to be disposed external to the abdominal wall of a patient in an operative position and the internal flange of the device is adapted to be disposed internal to the abdominal wall in the operative position, wherein the device is configured to be maintained in the operative position and adapted to form a seal with the abdominal wall.

18. The SILS Port surgical access device has one or more openings between an external surface and an internal surface of the device, the openings when operatively disposed are in communication with an incision in a patient's abdominal wall and form a working channel between a location external to the abdominal wall and a location internal to the abdominal wall.

19. The SILS Port surgical access device is adapted to conform to a surface of an instrument inserted through the working channel, at least a portion of the device between the external flange and the internal flange and within an incision in a patient's abdominal wall between an external surface of the abdominal wall and an internal surface of the abdominal wall is adapted to form an instrument seal with the instrument.

20. The SILS Port surgical access device is adapted to be located within an incision in a patient's abdominal wall and create a radially compressive force to provide an axial seal between the device and the abdominal wall.

21. Defendant's acts of infringement are undertaken without permission or license from Applied.

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22. Defendant has actual knowledge of the '755 patent because, among other things, Applied brought the patent to its attention on the day the patent issued, in connection with the filing and serving of the initial complaint in this action.

23. On information and belief, with actual knowledge of the patent, Defendant has willfully infringed, both directly and indirectly, one or more claims of the '755 patent by making, using, offering for sale, selling, and/or importing SILS Port products, and also by marketing and promoting the SILS Port and related products for use in SILS Procedures, and Defendant continues to engage in acts of willful infringement of the '755 patent, entitling Applied to enhanced damages under 35 U.S.C. § 284 and attorneys' fees and costs under 35 U.S.C. § 285.

24. On information and belief, Defendant has knowingly and actively induced infringement of the '755 patent by, *inter alia*, marketing and selling SILS Port and related products, knowing and intending that such products be used by Defendant's customers and users in a manner that infringes the '755 patent. Defendant's instruction and training includes, *inter alia*, what Defendant promotes as the "Covidien SILS Mobile Tour" which travels throughout the United States to provide training, including to Ohio, Kentucky and Indiana since the '755 patent issued. On the tour, Defendant provides hands-on experience and training in a replicated lab environment aboard a truck in which Defendant provides instructions and teachings to its customers and users that the SILS Port and related products be used in the manner claimed in the '755 patent. As a result, Defendant's products have been used by its customers and users in a manner that directly infringes the '755 patent. Defendant continues to engage in acts of induced infringement of the '755 patent.

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25. On information and belief, Defendant has contributed to infringement of the '755 patent by, *inter alia*, marketing and selling SILS Port products. Defendant has offered to sell and sold within the United States SILS Port products, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by Defendant to be especially made or especially adapted for use in an infringement of the '755 patent. As a result, Defendant's SILS Port products have been used by its customers and users in a manner that directly infringes the '755 patent. Defendant continues to engage in acts of contributory infringement of the '755 patent.

26. Applied is informed and believes, and thereon alleges, that Defendant has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount that is not presently known to Applied. By reason of the aforesaid infringing acts, Applied has been damaged and will continue to suffer harm and injury, including monetary damages.

27. On information and belief, unless enjoined, Defendant and others acting in concert with or on behalf of Defendant will continue their infringing acts, thereby causing additional irreparable injury to Applied for which there is no adequate remedy at law.

PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Applied requests the following relief:

(A) A judgment that Defendant has willfully infringed U.S. Patent No. 8,016,755 under 35 U.S.C. § 271.

(B) An injunction barring Defendant and its officers, agents, servants, employees, attorneys and all others in active concert or participation with them from any further infringement of Applied's '755 patent;

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(C) An award of damages adequate to compensate Applied for Defendant's infringement of Applied's '755 patent;

(D) An Order for a trebling of damages and/or exemplary damages because of Defendant's willful infringement pursuant to 35 U.S.C. § 284;

(E) An Order adjudging that this is an exceptional case;

(F) An award to Applied of the attorneys' fees and costs incurred by it in connection with this action pursuant to 35 U.S.C. § 285;

(G) An award of pre-judgment and post-judgment interest and the costs of this action; and

(H) Such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 4, 2011

By: _____

Joseph R. Re
Joseph F. Jennings
Curtis R. Huffmire
Attorneys for Plaintiff,
APPLIED MEDICAL RESOURCES CORPORATION

JURY DEMAND

Plaintiff Applied Medical Resources Corporation hereby demands trial by jury on all issues triable to a jury.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 4, 2011

By: _____

Joseph R. Re
Joseph F. Jennings
Curtis R. Huffmire
Attorneys for Plaintiff,
APPLIED MEDICAL RESOURCES CORPORATION

EXHIBIT A

US008016755B2

(12) **United States Patent**
Ewers et al.

(10) **Patent No.: US 8,016,755 B2**
(45) **Date of Patent: Sep. 13, 2011**

(54) **SURGICAL ACCESS APPARATUS AND METHOD**

(75) Inventors: **Richard C. Ewers**, Fullerton, CA (US); **John R. Brustad**, Dana Point, CA (US); **Edward D. Pingleton**, San Juan Capistrano, CA (US); **Nabil Hilal**, Laguna Niguel, CA (US); **Gary R. Dulak**, Valencia, CA (US); **Payam Adlparvar**, Lake Forest, CA (US); **Robert R. Bowes**, Laguna Hills, CA (US)

(73) Assignee: **Applied Medical Resources Corporation**, Rancho Santa Margarita, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **12/960,458**

(22) Filed: **Dec. 3, 2010**

(65) **Prior Publication Data**

US 2011/0071463 A1 Mar. 24, 2011

Related U.S. Application Data

(63) Continuation of application No. 12/360,710, filed on Jan. 27, 2009, which is a continuation of application No. 11/244,647, filed on Oct. 5, 2005, now Pat. No. 7,481,765, which is a continuation of application No. 10/381,220, filed as application No. PCT/US01/029682 on Sep. 21, 2001, now Pat. No. 7,473,221.

(60) Provisional application No. 60/241,958, filed on Oct. 19, 2000.

(51) **Int. Cl.**
A61B 1/32 (2006.01)

(52) **U.S. Cl.** **600/208**

(58) **Field of Classification Search** 606/108, 606/191, 213, 205–207; 604/164.01–164.11, 604/165, 166, 167, 246, 247, 250, 264; 600/206, 600/208; 524/267, 313, 490, 491
See application file for complete search history.

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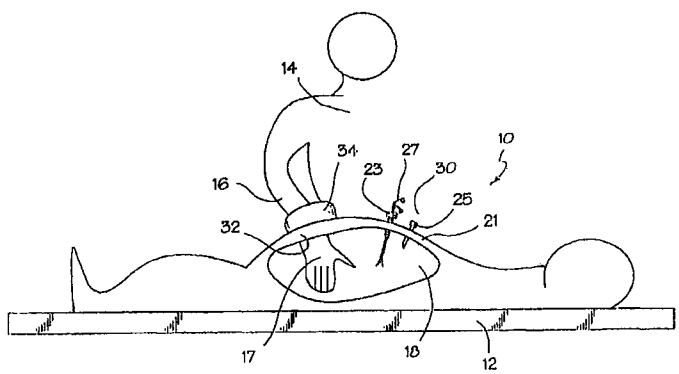
Primary Examiner — Tuan Nguyen
(74) *Attorney, Agent, or Firm* — Knobbe Martens Olson & Bear, LLP

(57) **ABSTRACT**

A surgical access device includes an access seal adapted to be disposed within an incision within an abdominal wall. The access seal has an external flange adapted to be disposed external to the abdominal wall and an internal flange adapted to be disposed internal to the abdominal wall. The access seal with flanges is formed monolithically. There are access channels through the access seal. The access channels span the thickness of the abdominal wall and form working channels between a location external to the abdominal wall and a location internal to the abdominal wall. The access seal is formed of an elastomeric material adapted to conform to a surface of an instrument inserted through the working channel to form an instrument seal along a length spanning the thickness of the abdominal wall. The elastomeric material is adapted to form an abdominal seal within the abdominal wall.

18 Claims, 18 Drawing Sheets



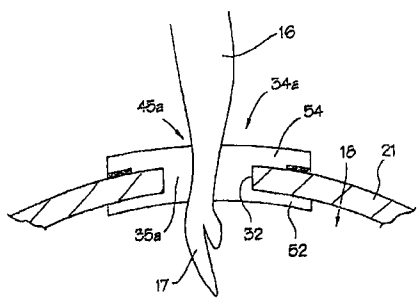


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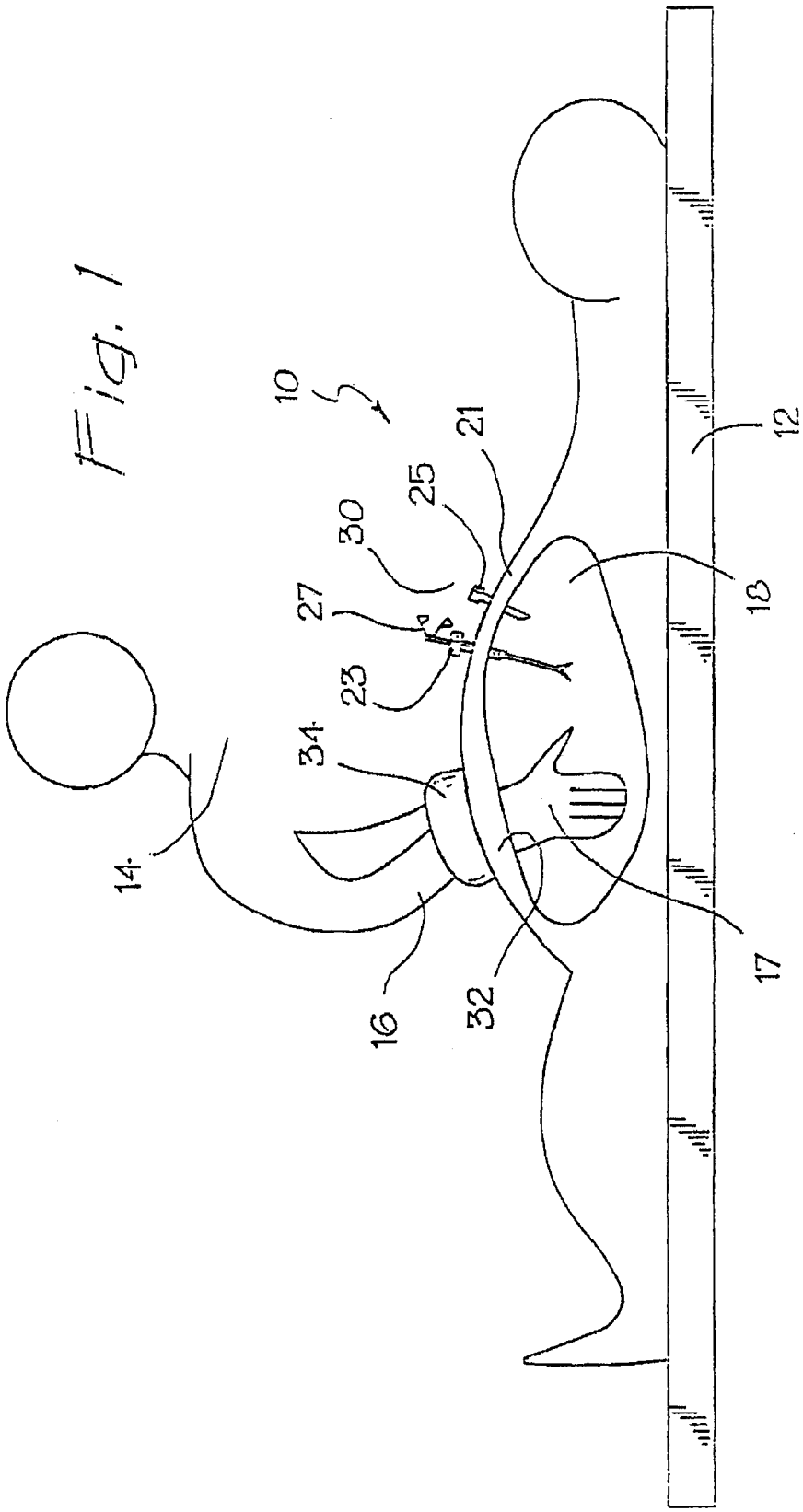
Fig. 1



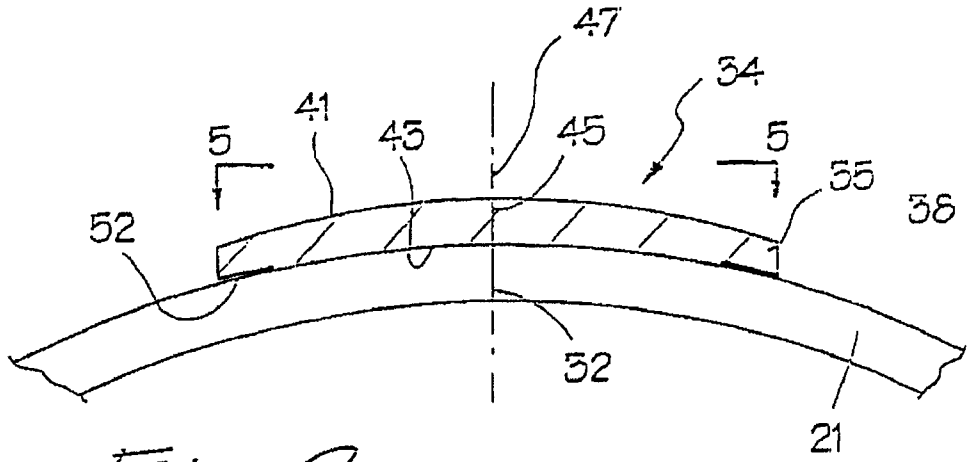


Fig. 2

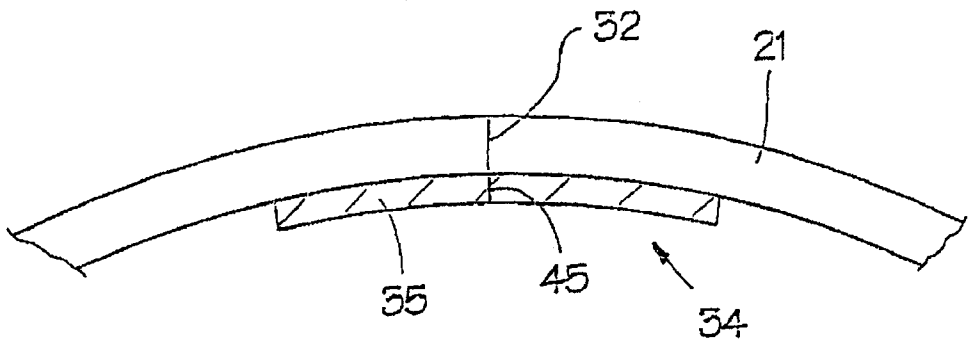


Fig. 3

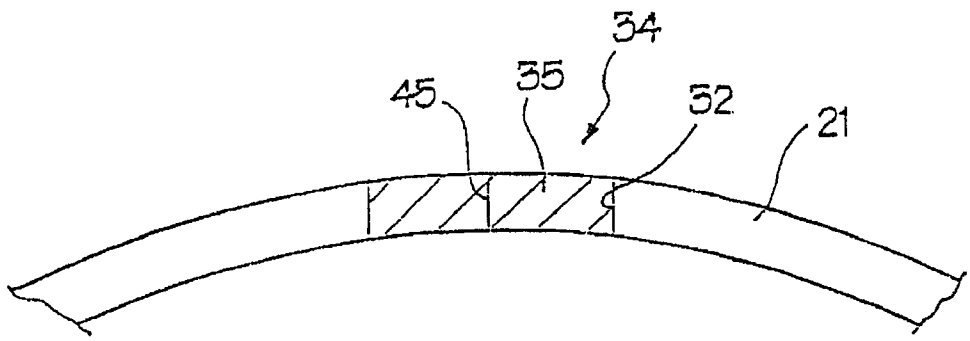


Fig. 4

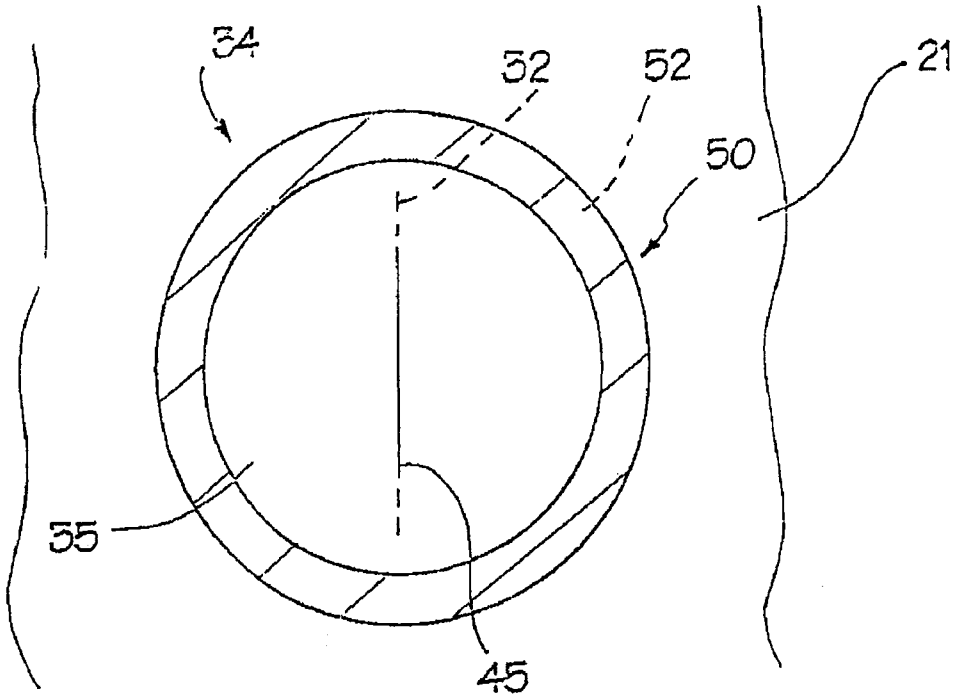


Fig. 5

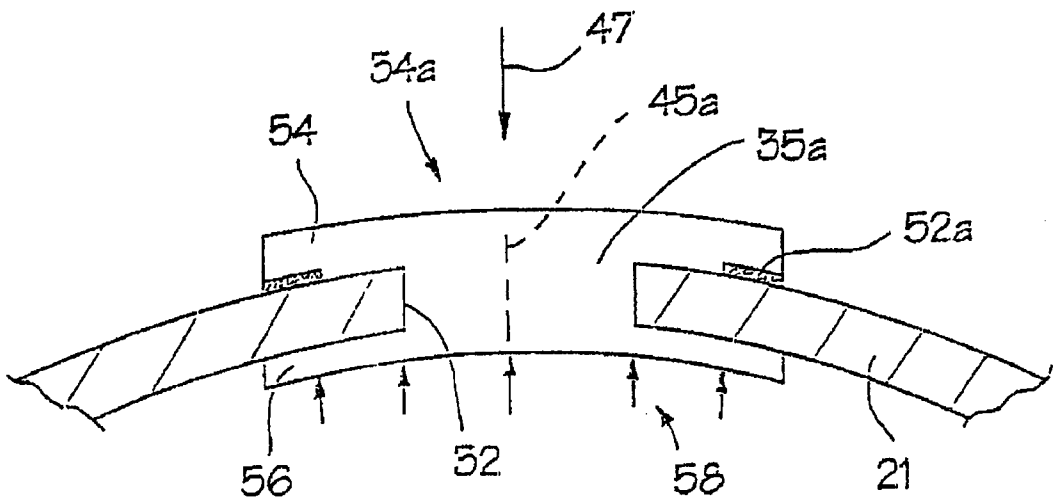


Fig. 6

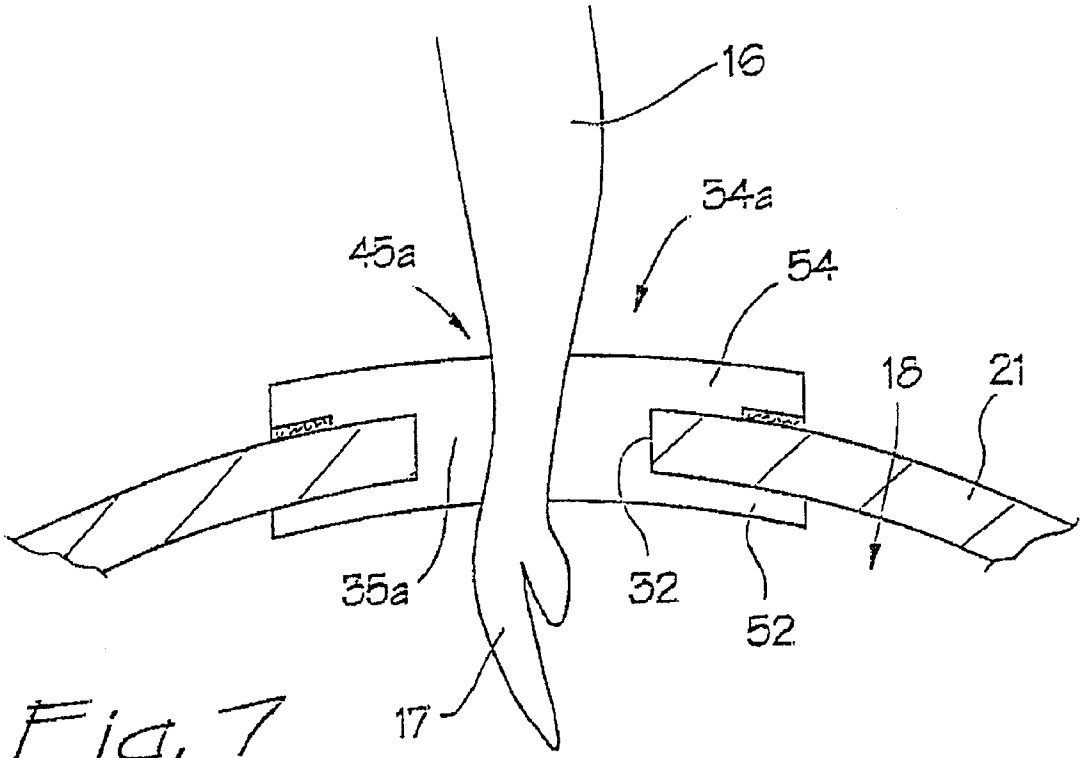


Fig. 7

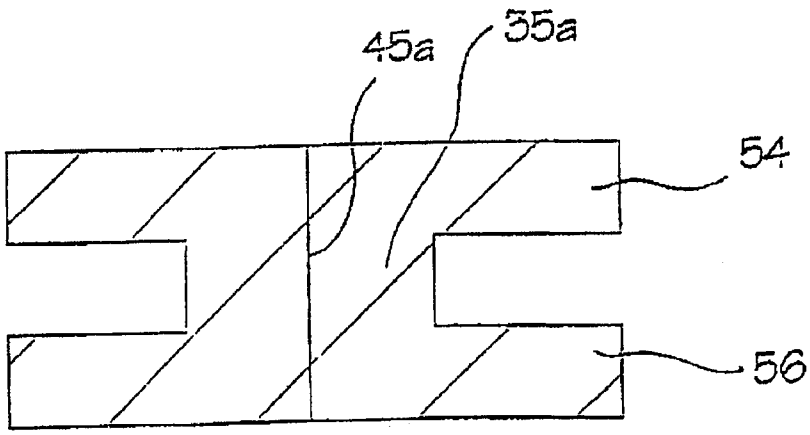


Fig. 8

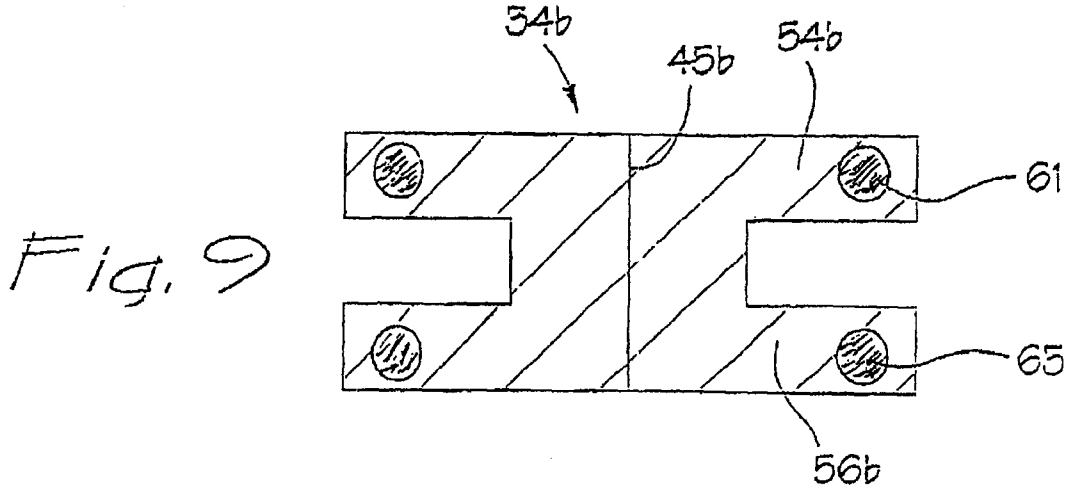


Fig. 9

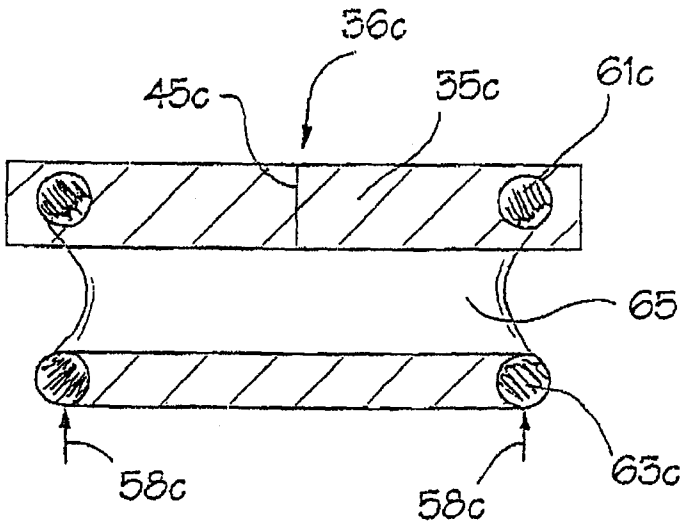


Fig. 10

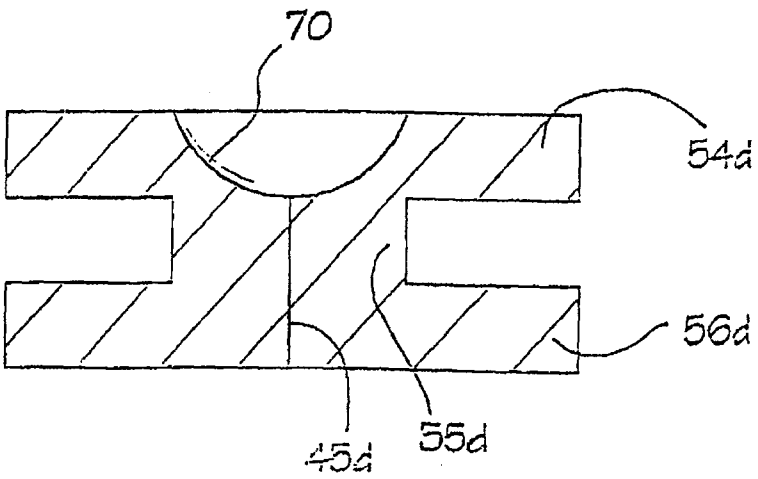


Fig. 11

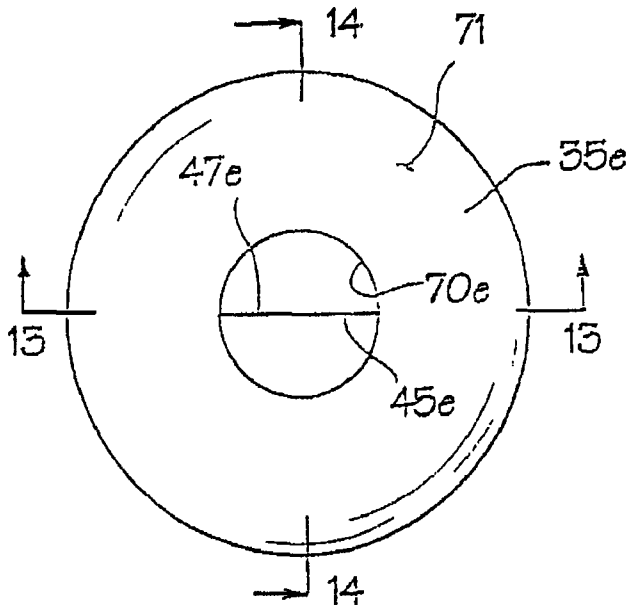


Fig. 12

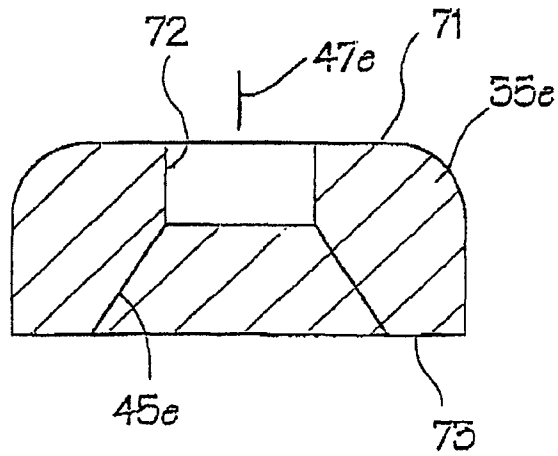


Fig. 13

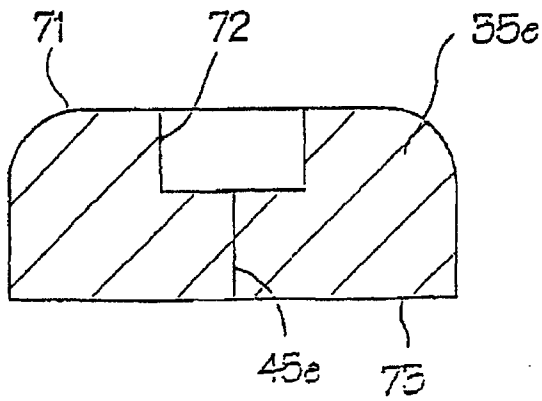


Fig. 14

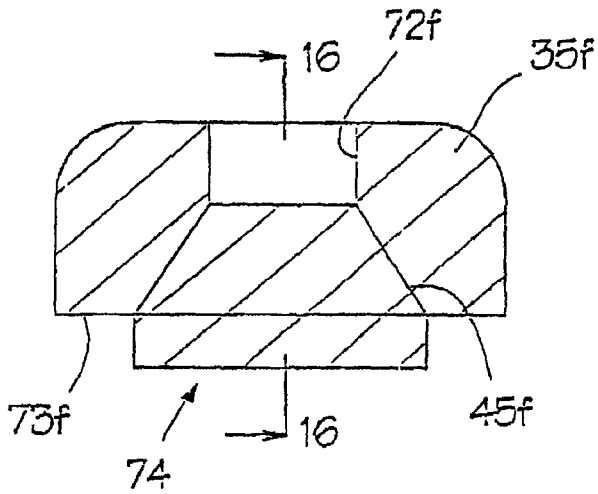


Fig. 15

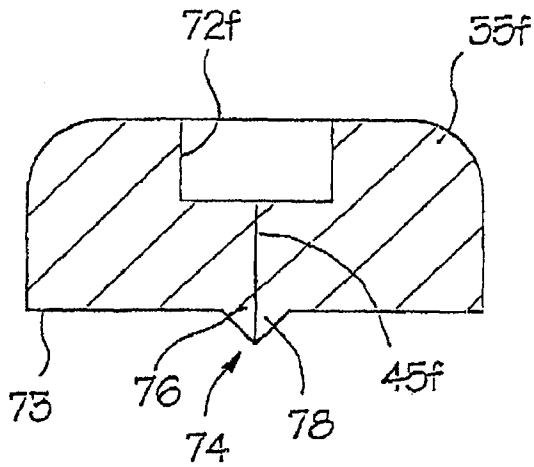


Fig. 16

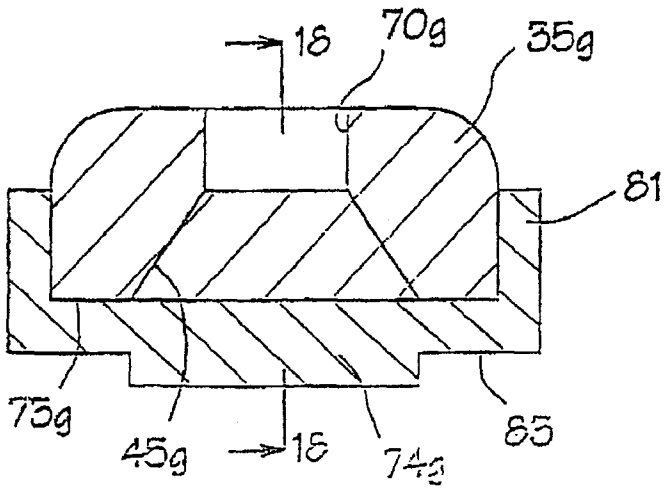


Fig. 17