



PATENTS ACT 1977

APPLICANT Christopher Nigel Ashton

ISSUE Whether patent application GB1803221.9 complies with sections 1(1)(b) and 1(2) of the Patents Act 1977

HEARING OFFICER Phil Thorpe

DECISION

Introduction

- 1 Patent Application No GB1803221.9 entitled “Ball launch accuracy game for marked outdoor field and golf courses” was filed on 28th February 2018. It was subsequently published as GB 2572134 A on 25th September 2019.
- 2 Throughout several rounds of correspondence between the examiner and the applicant’s attorney, the applicant has not advanced any substantive arguments against the examiner’s objections, instead choosing only to file amended claims. The applicant has been unable to satisfy the examiner that the application satisfies the requirement of the Patents Act 1977 (the Act). In particular, the examiner considers that the application is excluded from patentability under Section 1(2)(c) of the Act and lacks an inventive step under Section 1(1)(b) of the Act.
- 3 As such, the matter came before me to decide on whether the application complies with the requirements of the Act based on the papers on file.

The invention

- 4 The invention relates to a game played on a marked field area or golf course using a ball and ball launcher. Ball games that include a piece of equipment to shoot or launch the ball at ground-based targeted score areas are known in the art. Typically, these games use a grass course with permanent or temporary markings, such as ropes or ribbon lines that can be folded and packed away after use. The invention aims to provide such a permanent or temporary ground-marked game which can be played on field areas or golf courses, which may otherwise remain unused for periods of time (for example, due to weather and seasons).
- 5 Figures 1 to 4 below illustrate a plan view of the first to fourth stages of the game according to the invention. These four stages together form one playing area, which

is referred to in the application as a “spear”. There are a maximum of twenty spears that form a course and, throughout each spear, there are various zones, targets and traps situated where points may be gained or lost.

FIGURE 1

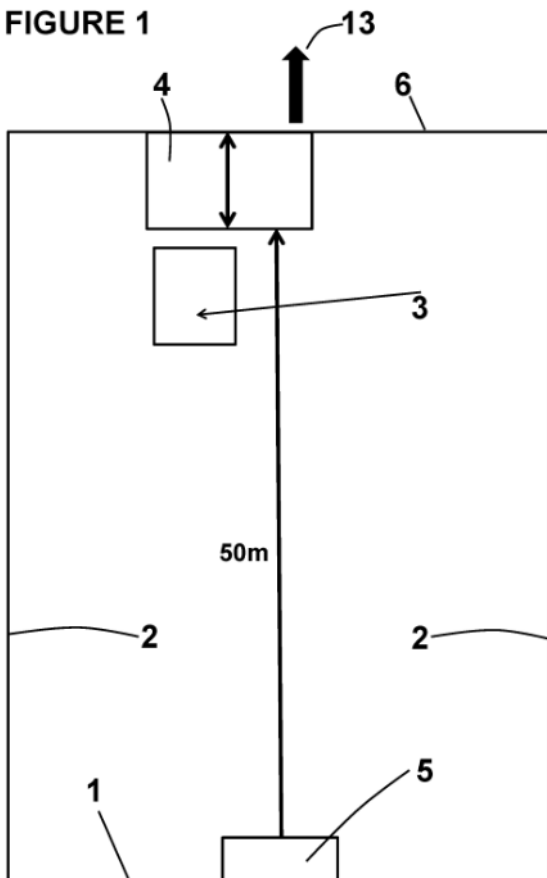
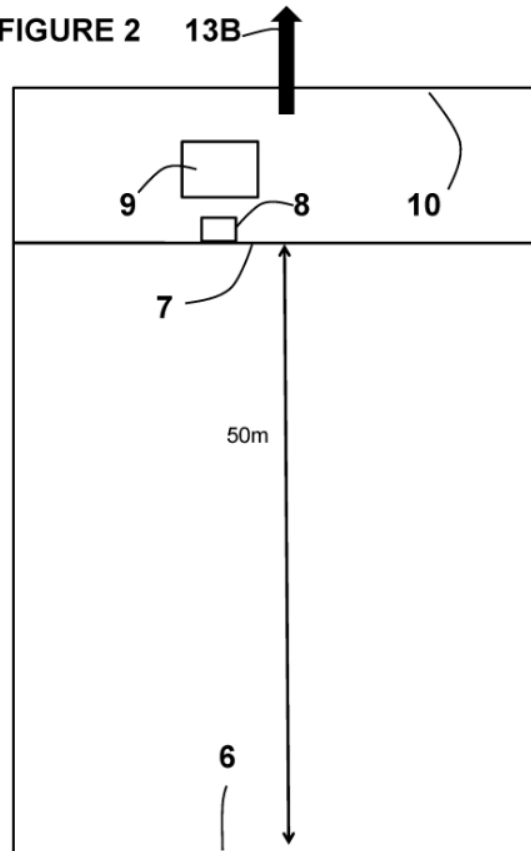


FIGURE 2



- 6 As illustrated in figure 1, a player starts the game in the launch area 5. A desired landing area for the launched ball is target area 4 that is situated just beyond a trap 3. Totem line 6 is adjoined to the far end of the target area 4. Play continues from the totem line 6 into the next stage of the spear towards the rebound line 7, as illustrated in figure 2. A totem pole 8 is located on the rebound line and, in the arrangement of figure 2, a trap is located between the rebound line 7 and a bonus line 10.
- 7 Moving forward from the bonus line 10 into the next stage of the game, as illustrated in figure 3 below, play continues towards a swamp line 14 denoting the start of the swamp. Bonus box 12 is located near the swamp line 14 and, in the illustrated arrangement, another trap 11 is situated near the bonus box. The final stage of the spear is illustrated in figure 4 below. The swamp incorporates areas 15, 16, 17 and 18. A bonus zone 21 is located within the green area 19 with a hole or target circle 22 located centrally to the bonus zone 21. A bunker or water hazard 20 is located near the green 19.
- 8 The spears may be long, medium, short or mini with the shorter spears containing only some of the features illustrated in figures 1 to 4 (for example, the mini spear is the shortest spear that only contains the green and the bonus zone).

FIGURE 3

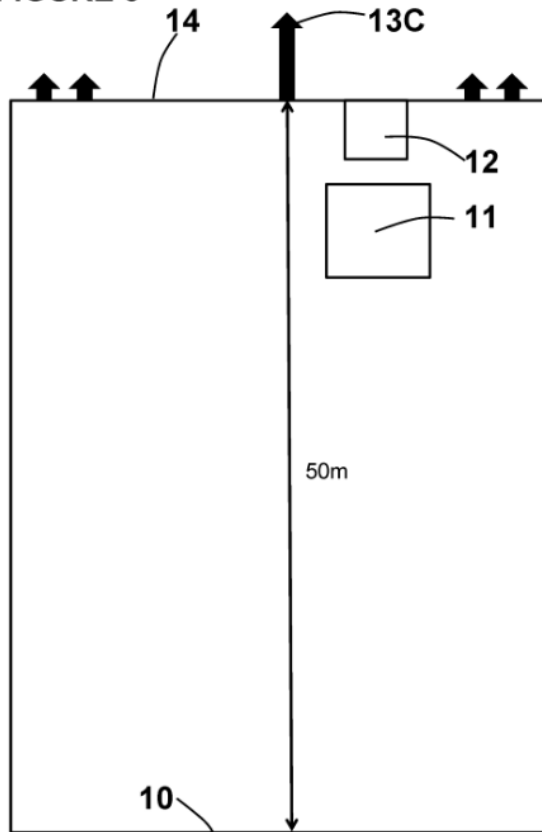
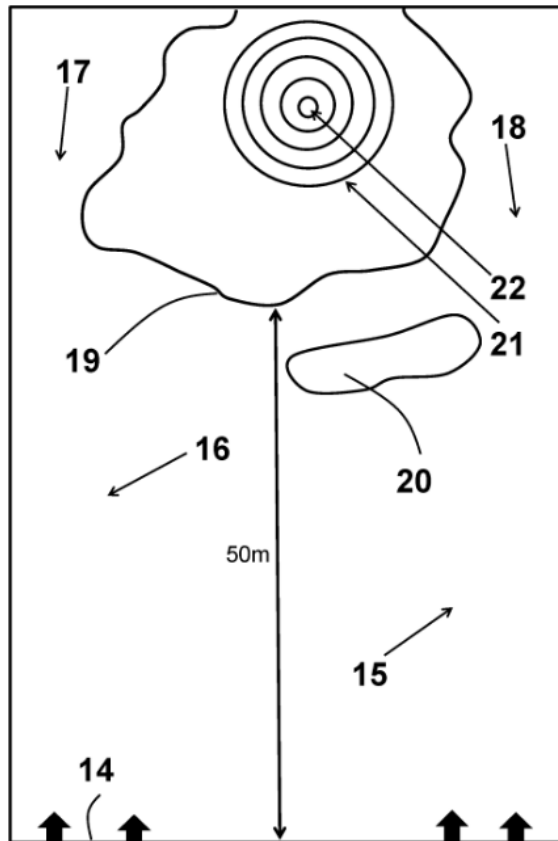


FIGURE 4



9 The latest claims were filed on 5 September 2022. Claim 1 is the only independent claim, which reads:

- 1) *An apparatus for a game comprising in combination; a ball, a launching means for the ball, a markings on the ground with dispersed apparatus including; a launch area, up to twenty individual spears, a target and zone, a trap, an out of bounds area, a swamp, a bunker area, a water hazard, a bonus box, a bonus zone with a green area, a vertical totem pole and a bonus box.*

10 In each of the Examination Reports issued to date, the examiner has indicated that full examination of the application has been deferred with focus on the main issues of patentability and inventive step, as discussed below. However, I think it is worth noting that there are some issues with claim 1 that render it unclear. For example, according to the described invention, the “*up to twenty individual spears*” actually include the other areas defined in the claim, i.e. the “*launch area*”, the “*target*”, the “*trap*”, etc. and so the claim is unclear in defining the “*up to twenty individual spears*” as a separate feature to the other areas and zones. There are also two references to “*a bonus box*”, which appears to be an error. However, I will endeavour to interpret the claim in light of the description and drawings as required under Section 125(1) of the Act.

The Law

11 Sections 1(1)(b) and 1(1)(d) of the Act read:

A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say -

...

(b) it involves an inventive step;

...

(d) the grant of a patent for it is not excluded by subsections (2) and (3) or section 4A below;

12 Regarding matter excluded from patentability, section 1(2)(c) of the Act adds:

It is hereby declared that the following (among other things) are not inventions for the purposes of this Act, that is to say, anything which consists of -

...

(c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;

13 And, in relation to inventive step, section 3 of the Act states:

An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

14 Finally, section 2(2) of the Act states:

The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

Inventive step

15 The courts have formulated a four-step approach to assessing obviousness in *Windsurfing*¹ and *Pozzoli*². These steps are:

(1)(a) Identify the notional “person skilled in the art”

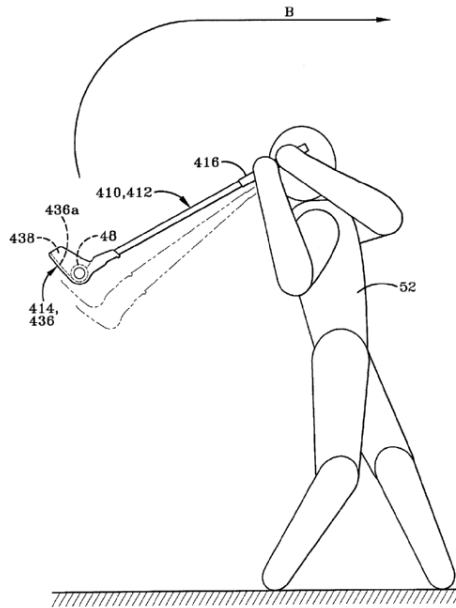
(1)(b) Identify the relevant common general knowledge of that person;

(2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;

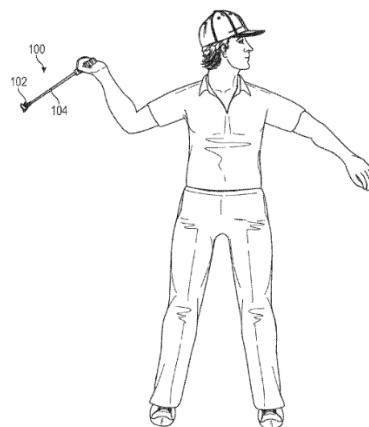
(3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;

(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

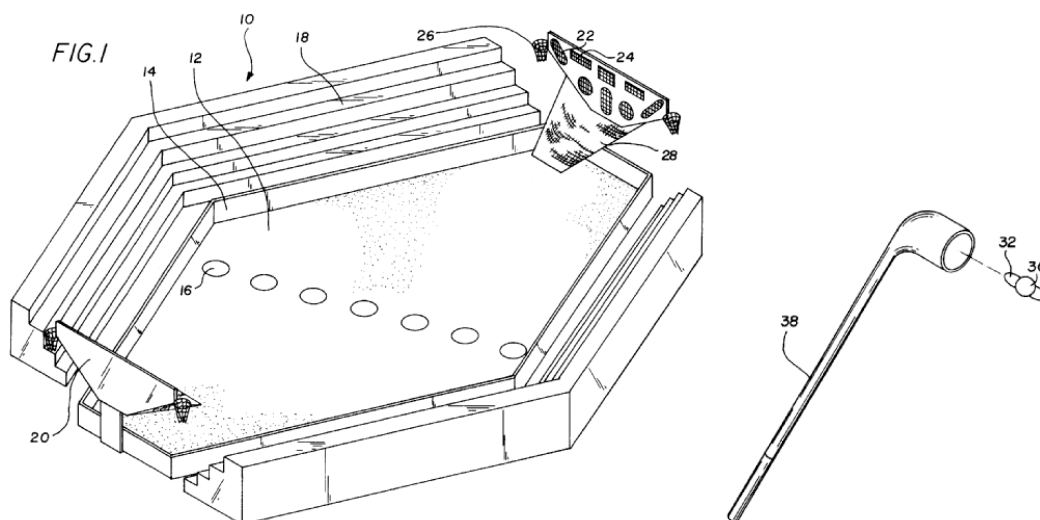
- 16 Taking steps (1)(a) and (1)(b) together; the applicant has not submitted an identity for the notional “person skilled in the art”. In the examination report dated 15th July 2022, the examiner suggested that the “person skilled in the art” is a designer of playing areas for games or sports involving a ball and ball launcher. Further, the examiner proposed that *the relevant common general knowledge of that person* would include knowledge of playing areas including fields, golf courses and pitches, and the means for marking, separating or designating different areas within the playing field. Additionally, *the relevant common general knowledge* would include knowledge of various hazards involving water, sand, gravel or other hindering materials as well as the depths or heights of such hazards or impeding features. I am content to accept this together with the added knowledge of the common form of markers and other course furniture typically present on a golf course.
- 17 Step (2) requires identifying or construing *the inventive concept of the claim in question*. Again, the applicant has not submitted a view regarding the inventive concept of claim 1. I have construed the claim as ground markings and apparatus outlining a course of up to twenty playing areas (“spears”) in combination with a ball and ball launcher. The ground markings and apparatus designate various areas, zones and a “totem pole” to either be targeted or avoided in accordance with the rules of the game (N.B. although the various areas and zones defined in claim 1 have specific names, e.g. “trap”, “swamp”, “bonus box”, these areas and zones are merely marked areas that a player would avoid or target – the names are only significant in the context of the rules and scoring system of the game).
- 18 Step (3) requires identifying the *differences between the matter cited as forming part of the “state of the art” and the inventive concept of the claim*. The examiner has cited the following prior art:
- D1 – US 2015/007803 A1 (VAN ALLEN)
- D2 – US 2016/375333 A1 (FRYER)
- D3 – US 5908360 A (GUILLONT)
- 19 D1 discloses a ball throwing game played on a course in which a “game ball 48” is launched using a “game stick 410” (see figure below).



- 20 The course comprises one or more 'holes', each including a starting location, which may be marked in a suitable fashion (see paragraph 0012), a remote target location and a fairway therebetween. A golf course may act as a suitable course, with the target location being the green surrounding a flag and cup (see paragraphs 0013 and 0092), or a "pick-up" version of the game may be set up at any desired location. Other types of target locations may be incorporated into the game (see paragraph 0103). As on a golf course, there are sand traps and water hazards to avoid, and an out-of-bounds area (see paragraph 0099 to 0101). There will be a set number of holes on the course – such as eighteen holes – although any other desired number of holes may be played (see paragraph 0090).
- 21 I consider that a skilled person would understand the areas of the course outlined in D1, i.e. fairway, green, sand traps, water hazards, designate various areas and zones to either be targeted or avoided in the same manner as the areas and zones defined in claim 1. Therefore, I consider that the only difference between D1 and the inventive concept of claim 1 is the inclusion of a "totem pole" in the claim.
- 22 D2 discloses a "device 100" for launching a golf ball across a range, such as a golf course (see figure below).



- 23 As discussed in paragraph 0005 of D2, a golf course typically “consists of a series of holes, each with a teeing ground that is set off by two markers showing the bounds of the legal tee area, fairway, rough and other hazards, and the putting green surrounded by the fringe with the flag stick and cup.” The disclosed “device 100” is therefore configured to launch a ball from a tee box, across the fairway and to the green (see paragraph 0086).
- 24 Again, I consider that a skilled person would understand that the areas of a golf course outlined in D2 designate various areas and zones to either be targeted or avoided as defined in claim 1. Therefore, I also consider the only difference between D2 and the inventive concept of claim 1 is the inclusion of a “totem pole” in the claim.
- 25 D3 discloses apparatus for playing a game on a delineated “playing field 12” including a “ball 30” and a “thrower 38” (see figure below). The playing field is surrounded by a “peripheral vertical wall 14” and “circles 16” are distributed around the playing field in any desired configuration, each with unique indicia (see column 3 lines 35 to 43). Vertical “backboards 20” are situated at opposite ends of the playing field, each having a plurality of netted “apertures 22”, a pair of “baskets 26” mounted on opposite sides of the backboards and a “front net 28” (see column 3 lines 47 to 59).



- 26 Two teams of players take turns using the thrower to propel the ball into one of the apertures or baskets of the backboard to score points. If a ball lands in a circle within which foul indicia is indicated, play switches to the other team (see column 4 lines 14 to 26).
- 27 There appear to be significant differences between D3 and the inventive concept of claim 1. Firstly, the game disclosed in D3 is played on a largely enclosed playing field surrounded by a “pair of bleachers 18”. This is more akin to a stadium sport with a single playing field whereas claim 1 defines “up to twenty individual spears”. Secondly, whilst the examiner has equated the “backboards 20” with the “totem pole” of claim 1, I do not believe that a skilled person would consider them to be equivalent. The patent application describes the “totem pole” as a fixture “for both the permanent and removable game versions” (see page 3) and so this would suggest a more straightforward structure than the “backboards” of D3.

- 28 Finally, step (4) requires determining whether the identified *differences constitute steps which would have been obvious to the person skilled in the art*. The patent application does not give much further information about the nature of the “*totem pole*” except that it “*shall be wooden in nature and shall stand vertically from the ground*” (see page 4) and that it can be removable.
- 29 A skilled person would be well-aware that such a simple pole is a common feature on a playing course, such as the pole holding a flag on the green of a golf course or even a pole marking a boundary between fairway and rough or out-of-bounds along the edge of a course. It is also common for holes on a golf course to include a sighting pole in the middle of the fairway to assist golfers to target their shots where the flag is not visible. Therefore, if not already part of a playing course, to include a fixture that matches the interpretation of a “*totem pole*” would be an obvious step to the person skilled in the art. So, I consider that claim 1 lacks an inventive step over both document D1 and document D2.
- 30 Considering document D3, I do not believe that the person skilled in the art would consider it obvious to adapt the single, stadium-like playing field of D3 to the individual playing areas defined as the “*spears*” of claim 1. Furthermore, I do not believe that the person skilled in the art would consider it obvious to modify the “*backboards*” of D3 to be something matching the interpretation of a “*totem pole*”. Hence, I believe that claim 1 does include an inventive step over D3.

Dependant claims

- 31 Claim 2 relates to the provision of a plurality of ball launching means and balls which can be stored on a person’s body worn holders. D1 in particular refers to the throwing stick being adjustable [0123] and also interchangeable heads or shafts for the stick which can be changed during the course of the game [0139]. Whilst there is no explicit reference to how for example these interchangeable heads or shafts are carried, it would be obvious to a person skilled in the art that they could be carried in a holder worn or carried by the player. Hence claim 2 is obvious in light of D1.
- 32 Claim 3 includes that the ball launching means is a “*cup or holding attachment for holding of balls located to the end of a long curved handle*”. Both D1 and D2 disclose holding devices for the ball and whilst both handles or shafts are depicted in the particular embodiments as straight it would be obvious to provide a curved handle. D1 in particular notes that the shaft 412 rather than being straight can include one or more bends [0064]. Hence claim 3 is obvious in light of at least D1.
- 33 Claims 4-7 relate to the general design and content of the “*spears*” and would be obvious to the person skilled in the art based on their common general knowledge and the disclosures in either D1 or D2. Hence these claims are also lacking in any inventive step.

Excluded matter

- 34 Since I have found all the claims to be lacking in the necessary inventive step, it is not necessary to go on and consider the question of whether the claims relate to excluded matter in particular whether they relate to a scheme, rule or method for playing a game. I would however note that the current claims are directed essentially

to the apparatus for playing the game and therefore are generally outside of the matter excluded from patent protection. Much of the disclosure in the application relates however to how the game is played including how it is scored and these aspects if included in the claimed invention would in the absence of any clear technical contribution from the apparatus, likely render the claims unpatentable.

Conclusion and findings

- 35 I have concluded that the invention as claimed in any of claims 1-7 lacks an inventive step as it would be obvious to a person skilled in the art considering the disclosures in US 2015/007803 A1 and US 2016/375333 A1. Having considered the application as a whole, I cannot see any feature that would overcome this objection whilst also being unobjectionable as excluded matter. I therefore refuse the application.

Appeal

- 36 Any appeal must be lodged within 28 days after the date of this decision.

Phil Thorpe

Deputy Director, acting for the Comptroller