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PATENTS ACT 1977

IN THE MATTER OF Patent Application

No 9015964.1 in the name of

David Mario Willis

DECISION

Application 9015964.1 was filed by the inventor, David Mario Willis, on 20 July 1990 and published as GB2246301 on 29 January 1992. The examiner warned Mr Willis in the preliminary examination report dated 25 July 1991 that, in the light of the documents listed in the search report, "your application is not concerned with anything which is patentable". The first report under section 18(3) dated 3 September 1993 raised objection under section 1(1)(a) and (b) that the claims were not new and/or did not involve an inventive step and also that the application did not disclose anything which could be considered patentable having regard to the citations in the search report. This objection has been maintained during the subsequent reports and telephone conversations between the examiner and Mr Willis. A hearing was appointed on 30 March 1994 to decide the matter. Mr Willis did not attend and the matter has been decided on the papers on file including a letter dated 26 March 1994 containing observations by Mr Willis.

The invention relates to a bat having a hole and a net attached around the hole so as to form a pocket in which a ball can be caught.

The claims have been amended a number of times. The most recent amendment filed on 24th February 1994 has as claim 1:

A ball and racquet device for hitting and netting a ball, consists of a handle and a periphery with an aperture therein.

There are three additional dependent claims:

2. a ball and racquet device for hitting and netting a ball to claim 1 as said it is a reticle on the underside of the aperture.

3. a ball and racquet device for hitting and netting a ball, to claim 1 as said it as a aperture disposed at one side of said periphery.

4. a ball and racquet device for hitting and netting a ball, to claim 2 and 3 as said this means the periphery end to the said reticle you can hit a ball on both sides and catch on both sides with the reticle.

It is not clear whether or not the claims are to a racquet in combination with a ball nor whether the racquet of claim 1 includes the net or merely has an aperture which can be used with a net. The latter seems the correct interpretation as it is claim 2 which specifically introduces the racquet in combination with a net ("reticle" was not used in the application as filed but can mean a little net - see the Shorter Oxford English Dictionary). Also the term racquet (which conventionally refers to a strung bat) does not seem to be appropriate as the application as originally filed refers to a bat and the drawings show an unstrung bat. However, having referred to the description and drawings, I have interpreted claim 1 as being directed to an unstrung bat per se having an aperture therein which can be used with a net to catch a ball and claim 2 as the bat of claim 1 having a net mounted around the aperture to form in effect a pocket which can catch a ball.

I have inspected the cited documents and am satisfied that each of GB297,530(Hutchings) and GB891,047(Jansen) discloses a bat having all the features of the bat claimed in claims 1 and 2. Mr Willis is mistaken where he says in his letter of 26 March 1994 that Hutchings "has not got a fixed net" as Hutchings describes just such a net in page 2, lines 101 - 105. A similar net is described in page 1, lines 43 - 50 of Jansen. Both disclose the use of a ball and so also anticipate the claims if they are regarded as being directed to a bat in combination with a ball.

It is difficult to interpret claim 3, but I note that, in the drawings, the aperture is located near to one edge of the striking face of the bat and this appears to be what is meant by "at one

side of said periphery". The Hutchings citation shows in figure 1 a bat with the aperture adjacent the lower edge of the striking face and so anticipates claim 3.

Mr Willis in his letter dated 26 March 1994 contrasts his invention with Hutchings and states that "my invention is not shaped like a Shamrock leaf, ace of clubs , or as three holes so the ball can go through and bounce on the ground". Although Hutchings does not have to include a net, so allowing balls to pass through the aperture and bounce on the ground, it can do so as I have indicated above. It also clearly discloses in figure 1 a bat with just one hole as in the present invention rather than the three holes of figure 3. Hutchings is limited to a bat shaped as a shamrock or ace of clubs, but I do not consider the round or square bat disclosed in this application provides a patentable distinction over the bat in Hutchings.

I therefore find that claims 1, 2 and 3 lack novelty contrary to the requirements of section 1(1)(a).

Claim 4 appears to be concerned with allowing either face of the bat to be used to strike or catch a ball by allowing the net to move through the aperture to form a pocket on either side of the bat as Mr Willis describes in his letter dated 26 March 1994. Such an arrangement is expressly described in page 1, lines 77 - 82 of GB422,495(Tillotson), which differs from the device of claim 4 only in that it discloses a racquet (ie a strung bat). But it would be obvious to the skilled person that such a pocket could be used with the bats in the Hutchings and Jansen patents and I find that claim 4 lacks an inventive step contrary to the requirements of section 1(1)(b).

I have considered the application to see whether any amendment could be made to meet these defects. The application is very short and discloses little else other than the bat can be round or square and the hole is 3" in diameter. I do not consider that these features could provide a patentable distinction over the cited prior art. I therefore refuse the application under section 18(3).

This being a substantive matter, any appeal should be lodged within 6 weeks of the date of the decision.

Dated this 11 day of April 1994



T SAUL

Principal Examiner, acting for the Comptroller

