



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 14/159,524, 01/21/2014, Roger Delano May II, DCP-May-1601, 5289
Row 2: 36787, 7590, 01/17/2019, [EXAMINER GRAHAM, MARK S]
Row 3: [ART UNIT 3711] [PAPER NUMBER]
Row 4: [NOTIFICATION DATE 01/17/2019] [DELIVERY MODE ELECTRONIC]

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

- patents@BLKLawGroup.com
cbelleci@BLKLawGroup.com
blynn@BLKLawGroup.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT DELANO MAY II and BOBBY JOHN LAMM

Appeal 2018-000749
Application 14/159,524¹
Technology Center 3700

Before STEFAN STAICOVICI, LEE L. STEPINA, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Roger Delano May II and Bobby John Lamm (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s decision in the Final Office Action (dated Oct. 11, 2016, hereinafter “Final Act.”) rejecting claims 11–30.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

¹ Roger Delano May II and Bobby John Lamm are identified as the real parties in interest in Appellants’ Appeal Brief (filed May 12, 2017, hereinafter “Appeal Br.”). Appeal Br. 2.

² Claim 1–10 are cancelled. *See* Appellants’ Amendment, filed Aug. 16, 2016, at page 2.

SUMMARY OF DECISION

We REVERSE.

INVENTION

Appellants' invention is related "to a sports training device that focuses on proper balance and hip rotation." Spec. 1, ll. 6–7.

Claims 11 and 24 are independent. Claim 11 is illustrative of the claimed invention and reads as follows:

11. A sports training device comprising:
a base configured to rest on a surface, the base including a base first side extending in a first direction from a centerline of the sports training device with a first base extension extending laterally from a distal end of the base first side, a base second side extending in a second direction from the centerline of the sports training device with a second base extension extending laterally from a distal end of the base second side, wherein the first base extension and the second base extension are coupled together only at one end via the base first side and the base second side, wherein a feet boundary is formed in between the first base extension and the second base extension whereby a user practicing with the sports training device may place their feet within the feet boundary during practice and wherein the base first side and the base second side are configured to be behind the user in use;

a support structure extending from the base from the centerline of the sports training device and extending in a substantially vertical position relative to the surface in which the base is configured to rest on; and

a top portion attached to the support structure, wherein the top portion comprises a top first side extending in the first direction from the centerline of the sports training device and a top second side extending in the second direction from the centerline of the sports training device, wherein the top first side and the top second side are substantially parallel with the surface, wherein the top first side comprises a first top extension extending laterally and cantilevered

from the top first side and is substantially perpendicular relative to the top first side, and the top second side comprises a top second extension extending laterally and cantilevered from the top second side in substantially the same direction as the first top extension, wherein a waist boundary is formed in between the first top extension and the second extension, whereby a user practicing with the sports training device may place their waist within the waist boundary between extending portions of the cantilevered first top extension and the cantilevered second top extension during practice whereby a vertical plane extending through the user's waist during at least part of practice will extend simultaneously through both the cantilevered first top extension and the cantilevered second top extension.

REJECTIONS

- I. The Examiner rejects claims 11 and 12 under 35 U.S.C. § 103 as being unpatentable over Groves (US 8,088,020 B2, iss. Jan. 3, 2012) and Sheldon et al. (US 3,215,438, iss. Nov. 2, 1965, hereinafter "Sheldon").
- II. The Examiner rejects claims 13–17 and 21–25 under 35 U.S.C. § 103 as being unpatentable over Groves, Sheldon, and Collins (US 6,497,627 B2, iss. Dec. 24, 2002).
- III. The Examiner rejects claims 18–20 and 26–30 under 35 U.S.C. § 103 as being unpatentable over Groves, Sheldon, Collins, and Rose et al. (US 7,204,766 B1, iss. Apr. 17, 2007, hereinafter "Rose").

ANALYSIS

Rejection I

The Examiner finds that Groves discloses most of the limitations of independent claim 11, but "does not disclose a top portion as claimed but it is known in the art as disclosed by Sheldon to provide a top portion 32 parallel with

the surface” including, *inter alia*, “an adjustable length first top side 33 and second top side 34 . . . first and second lateral cantilevered extensions 43, 44 perpendicular to the top portion forming a waist boundary wherein a vertical plane will pass through the user’s waist.” Final Act. 2 (citing Sheldon, Figs. 2, 13). The Examiner then concludes that “[i]t would have been obvious to one of ordinary skill in the art to have provided Groves’ device with such a feature as well to obtain the advantages sought by Sheldon in practicing a golf swing.” *Id.*

Appellants argue that a skilled artisan would not provide Sheldon’s hip engaging elements to Groves’ device “because such would destroy the intended operation of the Groves[’ device] . . . in which the user places his hips in a variety of locations relative to the apparatus depending upon the particular swing being practiced.” Appeal Br. 17.

The Examiner responds that because “[b]oth Groves and Sheldon disclose a golf training device designed to aid the user in practicing a proper stance” and “[b]oth use a swivel mechanism to allow the upper portion of the device to be adjusted to the user,” a skilled artisan “seeking to provide [the] Groves training device with a hip movement aid would have obviously have seen fit to have used a hip movement aid as disclosed in Sheldon’s training aid to accomplish this purpose.” Examiner Answer 6 (dated Aug. 30, 2017, hereinafter “Ans.”). According to the Examiner, “[t]he use of such a hip movement aid does not ‘destroy’ the intended operation of Grove’s device” because “it would have been an obvious step to one of ordinary skill in the art to have employed Sheldon’s hip movement aid to help teach proper hip movement in addition to the posture training.” *Id.*

Groves disclose a “golf swing training apparatus” that “is easily adaptable to different configurations” “to properly position a golfer’s head, torso, arms, or virtually any other body part that needs corrective manipulation during a golf stance or swing.” Groves, col. 1, ll. 15–16, col. 4, ll. 61–64. For example, as correctly noted by Appellants, Groves illustrates in Figures 6–8 that its device is being used to position a golfer’s back, hip, and knees, respectively. *See* Reply Brief 4–6 (filed Oct. 30, 2017, hereinafter “Reply Br.”); *see also* Groves, col. 4, ll. 37–53. In contrast, Sheldon’s training device is used to position and, thus, train only a golfer’s hips for “acquiring correct pivoting form.” *See* Sheldon, col. 1, l. 11, Fig. 2.

As such, in light of Groves’ object and purpose—to position correctly *various* body parts of a golfer that require correction during a golf swing or stance—it would not have been obvious to a person of ordinary skill in the art to modify the device of Groves to include the hip aid device of Sheldon because such a modification would not maintain the purpose of Groves’ device to train different body parts, but merely limit its use to a single body part, namely, a golfer’s hips. *See DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1326 (Fed. Cir. 2009) (noting that the “predictable result” discussed in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), also means “that the combination would have worked for its intended purpose”); *see also In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). Accordingly, we agree with Appellants that “[i]ncluding the waist engaging element [of Sheldon to the device of Groves] would not allow the alternative configurations [of Groves] to be used.” Reply Br. 9.

Hence, for the foregoing reasons, we do not sustain the rejection under 35 U.S.C. § 103 of claims 11 and 12 as unpatentable over the combined teachings of Groves and Sheldon.

Rejections II and III

The Examiner's use of the Collins and Rose disclosures does not remedy the deficiency of the Examiner's Groves and Sheldon combination discussed *supra*. See Final Act. 3–5. Therefore, for the reasons discussed above, we also do not sustain the rejections under 35 U.S.C. § 103 of claims 13–17 and 21–25 as unpatentable over Groves, Sheldon, and Collins and of claims 18–20 and 26–30 as unpatentable over Groves, Sheldon, Collins, and Rose.

SUMMARY

The Examiner's decision to reject claims 11–30 under 35 U.S.C. § 103 is reversed.

REVERSED