



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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/362,747	06/04/2014	Christian Stockinger	27492US01	3913

23446 7590 01/31/2019
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER

SKUBINNA, CHRISTINE J

ART UNIT	PAPER NUMBER
----------	--------------

3754

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

01/31/2019

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):

mhmpto@mcandrews-ip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTIAN STOCKINGER and ERIC SOLANYK

Appeal 2018-004533
Application 14/362,747
Technology Center 3700

Before BIBHU R. MOHANTY, CYNTHIA L. MURPHY, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants¹ appeal under 35 U.S.C. § 134 from the Examiner's final rejections of claims 1–7, 20, and 21. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ The Appellants identify the real party in interest as “Everlast Climbing Industries, Inc. DBA Colorado Time System.” (Appeal Br. 2.)

STATEMENT OF THE CASE

The Appellants' invention "is in the field of starting assist devices for swimmers in competitive swimming and training." (Spec. 1, ll. 8–9.)

Illustrative Claim

1. A starting assist apparatus for assisting backstroke swimmers during a start process, the apparatus comprising:
 - a footrest operable for positioning in a pool during the start process and automatic removal from the pool after the start process, wherein the positioning in the pool corresponds with an extended position of the footrest and the automatic removal from the pool corresponds with a retracted position of the footrest;
 - a rotatable winding tube comprising a torsion spring configured to provide a bias force to the rotatable winding tube in a first direction corresponding with the retracted position of the footrest;
 - a plurality of straps coupling the footrest to the rotatable winding tube, the plurality of straps configured to simultaneously wind around the rotatable winding tube if the rotatable winding tube is rotated in the first direction, the plurality of straps configured to simultaneously unwind from the rotatable winding tube if the rotatable winding tube is rotated in the second direction, wherein:
 - a force applied to the rotatable winding tube in a second direction that exceeds the bias force provided by the torsion spring in the first direction rotates the rotatable winding tube in the second direction to simultaneously unwind the plurality of straps to move the footrest to the extended position, and
 - the bias force provided by the torsion spring in the first direction automatically and simultaneously winds the plurality of straps on the rotatable winding tube to move the footrest to the retracted position in an absence of the force applied to the rotatable winding tube in the second direction that exceeds the bias force provided by the torsion spring in the first direction; and

a lock configured to allow rotation of the winding tube in the first direction to wind the plurality of straps and prevent rotation of the winding tube in the second direction to unwind the plurality of straps if the lock is in a closed position.

References

Carlson	US 1,542,435	June 16, 1925
Nichols	US 3,248,069	Apr. 26, 1966
Rouhana	US 6,773,075 B2	Aug. 10, 2004
Colletto	EP 2 740 518 A2	June 11, 2014

Rejections

- I. The Examiner rejects claims 1–5, 7, 20, and 21 under 35 U.S.C. § 103 as unpatentable over Colletto, Nichols, and Rouhana. (Final Action 3.)
- II. The Examiner rejects claim 6 under 35 U.S.C. § 103 as unpatentable over Colletto, Nichols, Rouhana, and Carlson. (Final Action 6.)
- III. The Examiner rejects claim 21 under 35 U.S.C. § 112 as indefinite. (Final Action 2.)

ANALYSIS

Independent claim 1 recites a “starting assist apparatus for assisting backstroke swimmers during a start process.” (Appeal Br., Claims App.) The rest of the claims on appeal (i.e., claims 2–7, 20, and 21) depend from, or otherwise incorporate the limitations of, independent claim 1. (*See id.*)

Rejections I and II

Independent claim 1 requires the backstroke-start apparatus to comprise a “footrest,” a “tube,” and “straps” that couple the footrest to the tube. (Appeal Br., Claims App.) The footrest is “operable” for “removal from the pool after the start process,” and this “removal from the pool corresponds with a retracted position of the footrest.” (*Id.*) Independent

claim 1 further recites a “bias force” that “automatically and simultaneously winds” the straps on the tube to move the footrest “to the retracted position.” (*Id.*) In other words, the straps are wound around the tube to remove the footrest from the pool after the start process.

The Examiner finds that Colletto discloses a backstroke-start apparatus having a footrest 20, a tube 26, and straps 24 coupling the footrest 20 to the tube 26. (*See* Final Action 3.) And, the Examiner finds that Colletto’s footrest 20 is shown in the “retracted position” in Figure 6, reproduced below. (*Id.*)

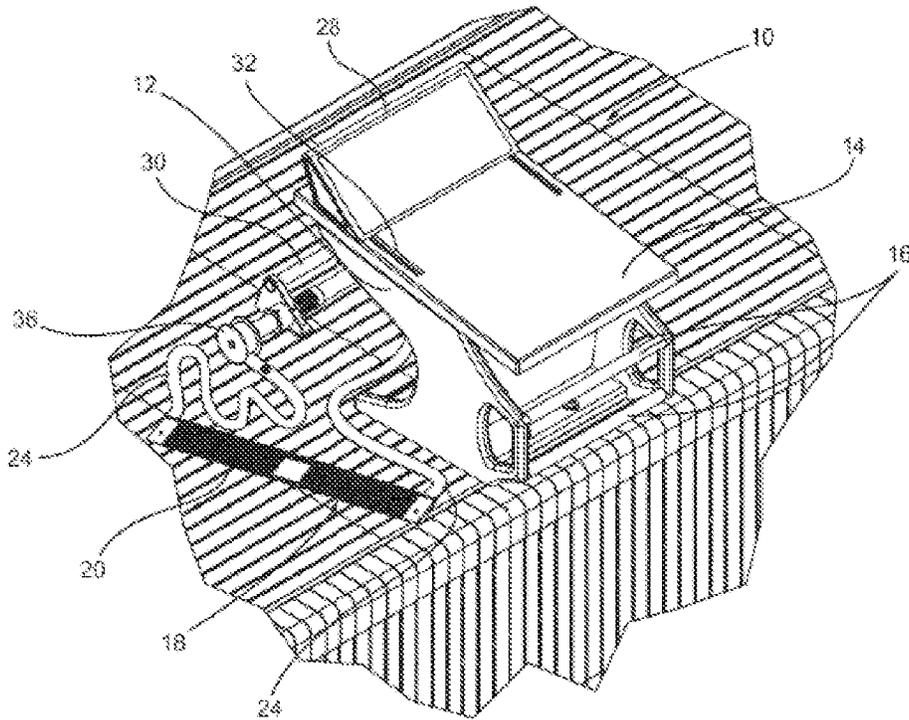


Fig. 6

Figure 6 shows the Colletto’s backstroke-start apparatus in an “operating configuration.” (Colletto ¶ 15.) In the illustrated operating configuration (i.e., what the Examiner considers the “retracted position”), the footrest 20 and the tube 26 are positioned on the floor of the pool deck adjacent the starting block 10, and the straps 24 extend with slack therebetween.

The Examiner's rejection relies upon Colletto to teach "winding" the straps 24 onto the tube 26 "for the removal of the starting footrest from the pool water" (Answer 3), and, "removal from the pool corresponds with [the] retracted position of the footrest" (Appeal Br., Claims App.).

The problem with the Examiner's position is that, as shown in Figure 6 reproduced above, Colletto does not teach winding its straps 24 around the tube 26 to move the footrest 20 to the retracted position.² Put another way, Colletto "does **not** teach using a winding and unwinding reel device as a solution to the problem of removing the starting assist device." (Reply Br. 11.) And, as pointed out by the Appellants, the secondary references do not cure this shortcoming, as the straps disclosed therein are "**not** used to pull a footrest (or anything else for that matter) out of a pool." (Appeal Br. 13; *see also id.* at 14, 18.)

The Examiner does indicate that it would have been obvious "to modify Colletto to include an automatic winding and unwinding device for the purpose of storing the belts when not in use." (Final Action 4.) But we agree with the Appellants that "storing belts when not in use is different than automatically removing a footrest from a pool after a start process as claimed." (Appeal Br. 19.)

Thus, we do not sustain the Examiner's rejection of independent claim 1 as unpatentable over Colletto, Nichols, and Rouhana.

² Although Colletto discloses that the tube 26 that is somewhat rotatable relative to the straps 24, this limited rotation is done to provide "length-wise adjustments" of the belts 24 relative to the "vertical wall of the swimming pool" when the footrest 20 is positioned in the water. (Colletto ¶ 26; *see also id.* ¶ 28, Figs. 7, 8.) This rotation is not done to remove the footrest 20 from the water, as implied by the Examiner. (*See* Final Action 3.)

The Examiner's further findings and determinations with respect to the rest of the claims on appeal do not remedy the above-discussed deficiency in the rejection of independent claim 1. (*See* Final Action 5–6.)

Thus, we do not sustain the Examiner's rejection of claims 2–5, 7, 20, and 21 under 35 U.S.C. § 103 as unpatentable over Colletto, Nichols, and Rouhana; and we do not sustain the Examiner's rejection of claim 6 under 35 U.S.C. § 103 as unpatentable over Colletto, Nichols, Rouhana, and Carlson.

Rejection III

Claim 21 recites “[a] plurality of the apparatus” (Appeal Br., Claims App.); and the Examiner determines that “[c]laim 21 is indefinite as it is unclear what ‘the plurality of apparatuses’ is referring to.” (Final Action 2.) However, we agree with the Appellants' position that one of ordinary skill in the art would, upon reading the Specification (*see e.g.* Spec. 13, ll. 6–13, Fig. 11), understand that claim 21 is claiming “two or more (*i.e.*, a plurality) of the apparatus of claim 1.” (Reply Br. 6.)

Thus, we do not sustain the Examiner's rejection of claim 21 under 35 U.S.C. § 112 as indefinite.

DECISION

We REVERSE the Examiner's rejections of claims 1–7, 20, and 21.

REVERSED