

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte H. JAY SPIEGEL

Appeal 2006-2155
Application 10/747,179
Technology Center 3700

Decided: May 29, 2007

Before TERRY J. OWENS, STUART S. LEVY, and ANTON W. FETTING, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

The Appellant requests reconsideration of the affirmance of the rejection of claims 1-3, 8, 10, 11 and 14-20 under 35 U.S.C. § 102(b) over US 5,613,678 to McKee et al. in our March 26, 2007 decision (Request 1).

The Appellant argues that McKee's disclosure that the tee functions as a conventional football tee (col. 11, ll. 5-6) indicates that there is no

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structure associated with the tee that would deflect the football (Request 6). The Appellant argues that the Board's statement that "[a]s shown in figure 13C, when a football placed in the indentation [230] is kicked, at least the lower tip of the football necessarily will strike the first surface [226]" (Decision 4) "is speculative at best and surely does not occur" (Request 6).

The depth of the indentation (230) in McKee's figure 13C, which appears to be comparable to those in the Appellant's figures 6-8, indicates that surface 226 necessarily is capable of being struck by a football kicked from the tee, especially if the football is kicked straight ahead or downward. The Appellant's claims are not limited to the football being kicked straight up such that it somehow would not hit surface 226. The Appellant argues that US 5,501,454 to Frantz discloses a tee that surrounds the tip of a football without impeding a clean kick therefrom (Request 6-7). The entire sentence in the portion of Frantz (Frantz, col. 6, ll. 39-41) relied upon by the Appellant states that "[t]he construction and configuration of kicking tee **20** is especially suited to provide the most accurate kick with the longest trajectory simulating game conditions by virtue of the fact that the kicker's instep or toe contacts only the underside wall of the football and does not engage any portion of kicking tee **20**, be aligned so that the kicker can point tee **20** to the intended direction thus maximizing accuracy of the kicks" (Frantz, col. 6, ll. 39-46). That portion of Frantz discloses that the kicker's foot does not hit the tee, but is silent as to whether the football, after being kicked, strikes any portion of the tee.

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The Appellant argues that McKee does not indicate that the football is deflected into a substantially predictable trajectory (Request 5-6). The Appellant's Specification does not indicate how predictable a "substantially predicable trajectory" must be. Certainly, if a football is kicked forward from McKee's tee, the ball predictably will go in a generally forward trajectory rather than backward.

For the above reasons we are not convinced of error in our decision. Accordingly, the request for rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(2006).

DENIED

hh

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