

**OPINION UNDER SECTION 74A**

Patent	<b>GB 2334669</b>
Proprietor(s)	Mr Paul Fields
Exclusive Licensee	
Requester	Mr Paul Fields, on 22 May 2009
Observer(s)	
Date Opinion issued	7 October 2009

**The request**

1. The comptroller has been requested to issue an Opinion as to whether any of the claims of patent number GB 2334669 B are infringed by a product (the “marketed product”) an example of which was enclosed with the request. The requester Mr Paul Fields, represented by Baker & Mackenzie LLP, argues that the marketed product falls within the scope of the claims of the patent.
2. In support of the request the following evidence has been submitted:
  - D1 A written statement.
  - D2 Two photographs showing front and rear views of the marketed product.
  - D3 A sample of the marketed product.
3. The requester did not identify any interested parties on the Form 17 filed with the request in spite of the presence of the trademarks OGIO and SHLING which are clearly visible on the marketed product.
4. Under the provision of Rule 95(2) the comptroller may notify of the request any persons who appear to him to be likely to have an interest in the question upon which the opinion is sought. The trademarks were identified as belonging to Ogio International Inc, a manufacturer of golf

bags, etc. The Ogio website identifies a company Sky Golf Ltd as the sole UK importer/distributor for Ogio International. Sky Golf were duly informed of the request for an Opinion and were invited to file observations on the request. However, Sky Golf subsequently responded that they did not wish to file any observations.

### **The patent**

5. The patent was granted on 18<sup>th</sup> October 2000 and is still in force in the UK. The patent relates to a bag attachment apparatus to assist a user when carrying a bag, in particular a golf bag.
6. The apparatus comprises a substantially rigid member which is configured to fit onto a shoulder or across the shoulders of a person. The substantially rigid member may have outer padding to allow it to conform to the body shape of a user. Attachment points for the straps of a golf bag are provided at the ends of the rigid member. The rigid member comprises a number of bends which conform to the contours of the neck and shoulders of a person using the apparatus to carry a golf bag. The apparatus is designed for three modes of operation. In the first mode of operation the apparatus sits on the neck and shoulders and a golf bag is held behind the user – this is shown in figure 1(A) of the patent which is reproduced below:-

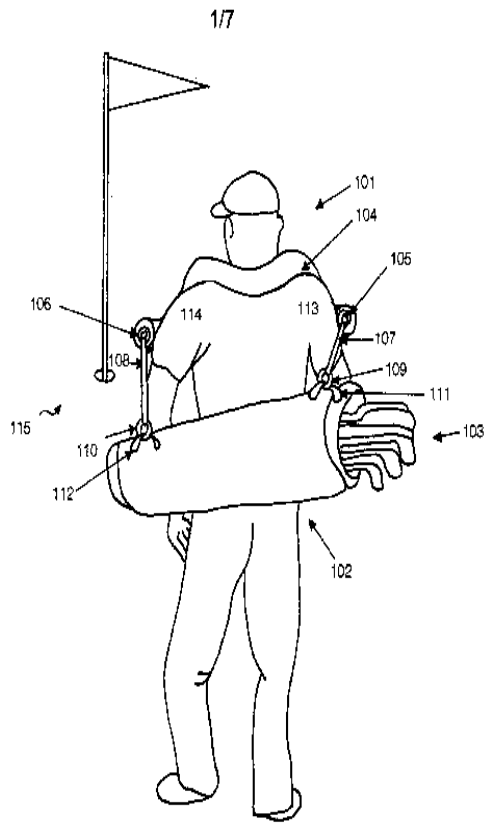


Fig. 1(A)

7. The apparatus is also configured to fit onto a single shoulder of a user so that the golf bag is carried along the side of a person using the attachment and the rigid member may be grasped by the hand. These other modes of operation are shown in figures 1(B) and 1(C) of the patent which are reproduced below.

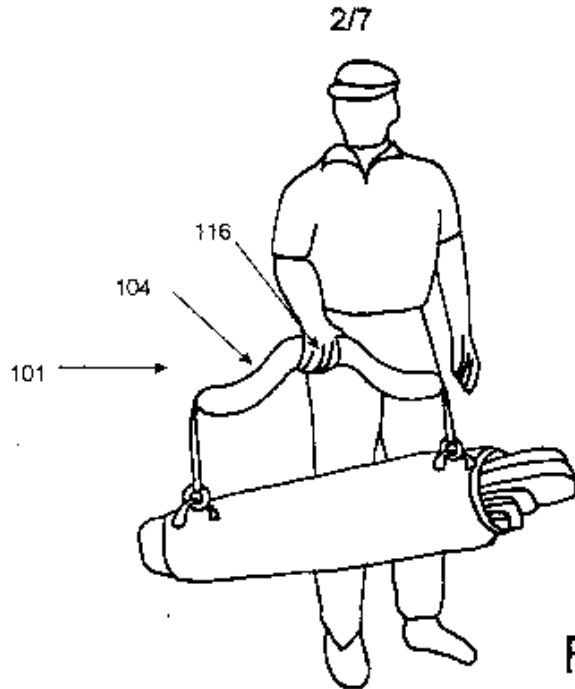


Fig. 1(c)

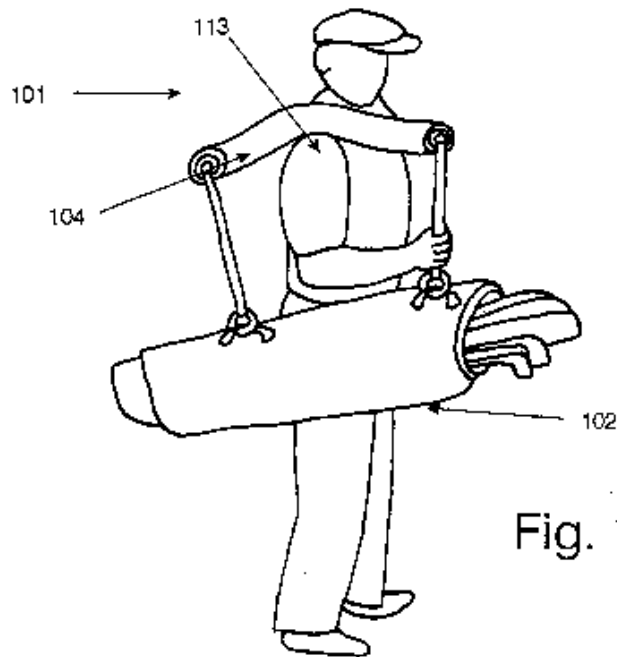


Fig. 1(B)

8. The rigid member comprises at least five bends which conform to the shape of a person using the apparatus. The rigid member is shown in figure 2 of the patent which is reproduced below and comprises first and

second curved end portions 212 and 211 which extend across the shoulders, a central third curved portion which extends around the neck, and fourth and fifth curved portions 214 and 213.

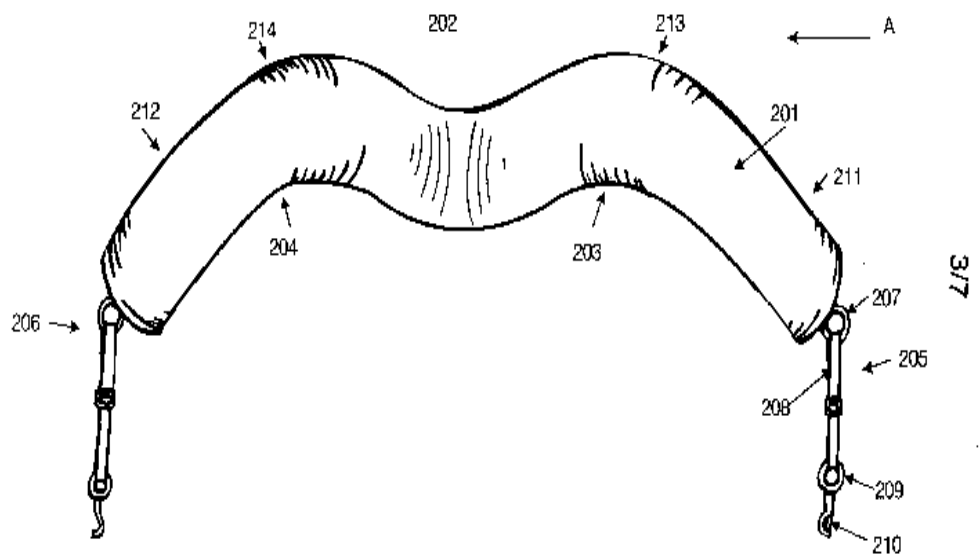


Fig. 2

9. The three main independent claims of the patent are given below:-

Claim 1:

*Apparatus usable by a person to carry a bag, the apparatus comprising;*

*(a) a substantially rigid member and*

*(b) means for attaching said member to said bag,*

- (c) wherein said member comprises not less than five bends and is
- (d) configured to fit on a shoulder of said person.

Claim 19:

*An elongate member for carrying a golf bag across a persons shoulder, said member having: first and second ends; first, second and third curves configured to rest upon a persons shoulders, said first, second and third curves being positioned between said first and second ends; said third curve being positioned between said first and second curves and said third curve configured to extend around the persons neck; and fourth and fifth curves positioned between said first and third curve and said second and third curve respectively; and first and second attachment means positioned respectively at said first and second ends, said first and second attachment means configured for attachment of said golf bag.*

Claim 20:

*A yoke usable by a person to carry a bag, the yoke comprising a substantially rigid member and means for attaching said member to said bag wherein said member comprises not less than five bends and is configured to nestle to the shoulders and upper part of the back of said person.*

**The marketed product**

10. The images below provided by the requester show front and reverse photographic views of the marketed product respectively.

ANNEX 2 - Annotated images of the Marketed Product  
Image #1 - Front View



Image #2 - Reverse View



The marketed product has a shape which apparently allows it to be placed around the neck and shoulders of a wearer. The straps B and C have clips which could be used for attaching a golf bag.

## Infringement

11. In order to decide whether the marketed product falls within the scope of any of the claims of the patent I must first construe the claims of the patent. To do this I must follow the latest authority on claim construction given in *Kirin-Amgen Inc v Hoescht Marion Roussel Limited* [2005] RPC 9. Following that authority I must put a purposive construction on the claims, interpret the claims in the light of the description and drawings as required by section 125(1) of the Act and take into account the protocol to Article 69 of the EPC. To put it simply, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claim to mean. I consider that for present purposes that the person skilled in the art is someone with a good knowledge of the design and manufacture of baggage and baggage accessories.
12. The request only included specific argument with regard to claim 1 but also queried whether any of the claims of the patent were infringed. The requester in his submission maintained that the apparatus defined by claim 1 is relatively straightforward and self-evident. The requester provided the following table correlating the essential features of the invention defined by claim 1 with the labeled features in the photographic views of the marketed product:

Element	Location on the marketed product
Substantially rigid member	A
Means for attaching the member to a bag	B, C
Bends in the rigid member	D, E, F, G, H
Means configured to fit the member onto a user's shoulder	I, J

13. I will consider each of the main claims in turn.
14. Claim 1 is directed to an apparatus usable by a person to carry a bag. The requester has asserted in his submission that the marketed product is clearly designed for carrying a bag. From inspecting the marketed product, when it is worn on the shoulders of a person, the position of the straps and clips are in a suitable position to attach to the straps of a golf bag. So it is clear to me that the person skilled in the art would realize that the function of the marketed product is to assist a user in carrying a

golf bag.

15. The first feature (a) specified by claim 1 is “a substantially rigid member”. In the embodiment this is indicated as 201 in figure 2. The description of the invention specifies that the substantially rigid member may comprise hardened aluminium although other materials such as plastic may also be used. In the context of the patent it is considered that the skilled person would understand that “substantially rigid” would require that the member would at most only slightly bend during normal use. The description also discusses problems with known carrying methods referring specifically to the uneven distribution of weight provided by flexible shoulder straps and also that straps dig into a person’s shoulder. Therefore, I believe that the skilled person would understand that in referring to “substantially rigid”, the patentee was intending to mean something that would at most only slightly bend during use.
16. The corresponding feature of the marketed product is the member which extends generally from A to D in the front view image shown above. From inspection, this does seem to be substantially rigid notwithstanding that it has some degree of flexibility which allow the curved portions E-D and H-A to bend slightly when a load is applied to the straps. Consequently, I am satisfied that the marketed product comprises a substantially rigid member as required by the claim 1 of the patent
17. The claim 1 feature (b) specifies a means for attaching the member to a bag and is straightforward to understand from a reading of the description of the invention. From inspection of the marketed product it clearly comprises attached straps and clips which would be used for attaching a golf bag. Therefore, it is clear that the element (b) of claim 1 is present in the marketed product.
18. I now need to decide how many bends are provided in the marketed product. The requestor has argued that that the word bend should be interpreted with its usual dictionary meaning i.e. “a curved or angled part”. There is no uncertainty in this matter as the description of the invention includes an explicit instruction that the term “bend” should be construed as equivalent and interchangeable with the word “curve”. The patented product has a first curve at the centre of the substantially rigid member for accommodating a user’s neck. Curves are also provided at the ends of the substantially rigid member (see portions 212 & 211 in figure 2) such that they extend around a user’s shoulders. Intermediate curved portions (213 & 214) are provided between central neck curve and the outer shoulder curves. The curves may be in more than one dimension, so the substantially rigid member of the patent has at least five curved portions.

19. I will now follow the same approach used for identifying the curves present in the patented product for the marketed product. The marketed product also has a central portion for accommodating a user's neck which defines a first curve. It can be seen from the front view that the curve portion for the neck is raised slightly with respect to the rest of the marketed product and has clear boundaries with the remaining portions of the marketed product. On the left hand side of the front view figure the portion of the marketed product extending from the neck portion has a pronounced "S" shape (labeled E, D in the front view) which has a strap and a snap connector at the end. The "S" shaped portion also curves away from the body in the upper portion and towards the body in the lower portion. The left hand side therefore must comprise at least two curves corresponding to the upper and lower parts of an "S". The right hand side of the front view figure shows the portion of the marketed product extending from the neck portion having a reverse "S" shape (labeled H, A in the front view) with a more pronounced curve to the upper part of a reverse "S" shape than the lower half. The right hand sided reverse "S" shaped extension also curves away from the wearer's body in the upper half of the portion and towards the wearer's body in the lower half of the extension. I therefore consider that the right hand side of the marketed product as shown in the front view therefore comprises at least two curves corresponding to the upper and lower portions of the reverse "S" shape. So, the marketed product comprises one central curve, at least two curves on the left hand side and at least two curves on the right hand side. Consequently, I consider that the marketed product has at least five curves or bends.
20. The final requirement specified by claim 1 is that the substantially rigid member is configured to fit on a shoulder of a person using the apparatus. The description of the invention only describes the second mode of operation shown in figure 1(B) as an example of a substantially rigid member configured to fit on "a shoulder" of a person. Consequently, I consider that the person skilled in the art would understand that this limitation of claim 1 requires that the apparatus must be usable in this fashion. Although the described embodiment of the invention may be also be used in other ways - across both shoulders or holding by hand - it is an essential requirement of claim 1 that the apparatus is usable using only one shoulder.
21. The marketed product has the central curve which seems designed to extend around the neck of a person and to rest on both of the shoulders of that person. Two soft pads are provided presumably to cushion the member onto the shoulders. However, unlike the shape of the patented invention, the shape of the marketed product does not in any way seem configured to enable it to fit on just one shoulder as required by claim 1. Consequently, I consider that the marketed product lies outside the

scope of claim 1 of the patent.

22. I shall now consider claim 19 which is directed to an elongate member for carrying a golf bag across a persons shoulder and defines the member with reference to use across both shoulders. Claim 19 requires that the attachment means are located at the ends of the elongate member whereas the corresponding features of the marketed product are situated at one end of the left hand extension (generally indicated by item D in the front view) and at the back of the neck portion (feature C in the reverse view). Consequently, I consider that the marketed product is not within the scope of claim 19.
23. Claim 20 defines a yoke usable by a person to carry a bag. Claim 20 specifies that the yoke comprises a substantially rigid member and that the substantially rigid member comprises at least five bends. As already discussed above, I have found that the marketed product does comprise a substantially rigid member and the substantially rigid member has at least five bends or curves. Claim 20 further specifies that the substantially rigid member is configured to nestle to the shoulders and the upper part of the back of the person using the yoke. From inspection, when the substantially rigid member of the marketed product is in use the portions I,J indicated in the photograph views rest on the shoulders of the wearer. Also, the portion of the substantially rigid member that curves behind the neck of the wearer rests on the upper part of the wearer's back. Consequently, the marketed product includes all of the features specified by claim 20.
24. Claim 21, which is the only claim appended to claim 20, requires that the substantially rigid member comprises connecting portions having 45° bends and end portions extending from the connecting portions having 90° bends. However, I cannot see any corresponding portions of the marketed product having bends with such angles. Consequently, I consider that the marketed product lies outside the scope of claim 21.

## **Opinion**

25. I conclude that, from the evidence in front of me that the marketed product lies outside the scope of claims 1-19 & 21-22 of the patent. I also conclude that claim 20 of the patent GB2334669 B would be infringed if the marketed product was manufactured, disposed of, offered for sale, used, imported, or kept for disposal or otherwise in the United Kingdom.

## **Application for review**

26. Under section 74B and rule 98, the proprietor may, within three months of the date of issue of this opinion, apply to the comptroller for a review of the opinion.
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### **NOTE**

*This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.*

Steven Morgan  
Examiner