Intellectual Property Office

BL O/0957/25

14 October 2025

PATENTS ACT 1977

BETWEEN

Networld Sports Limited	Claimant
and	
Quick Play Sport Limited	Defendant

PROCEEDINGS

Revocation under section 72 in respect of EP2146786

HEARING OFFICER B Micklewright

For the Claimant: Dr Elliot Davies and Ms Sarah Phillips of Wynne-Jones IP Limited
For the Defendant: Mr Arnie Francis, Mr Christopher Mason and Ms Ashley Wragg of Appleyard Lees IP LLP

Hearing date: 01 March 2025

DECISION

Introduction

1 Patent number EP2146786 ("the Patent"), with a filing date of 15 May 2008, was granted to the defendant, Quick Play Sport Limited, on 9 January 2013. The Patent claims priority from patent application GB0709292.7 filed on 15 May 2007 ("the priority date") and relates to a portable sports goal apparatus.

2 The claimant, Networld Sports Limited, made an application for revocation of the patent under section 72(1) of the Patents Act 1977 ("the Act") on 2 July 2024. The claimant seeks revocation of the Patent on the grounds that the invention claimed is neither novel nor involves an inventive step over the prior art, as is required by section 1(1) of the Act.

3 The defendant contests both grounds for revocation and claims that the application for revocation should be dismissed. After evidence rounds, the matter came before me at a hearing on 1 March 2025 at which the claimant was represented by Dr Elliot Davies and Ms Sarah Phillips of Wynne-Jones IP Limited and the defendant by Mr Arnie Francis, Mr Christopher Mason, and Ms Ashley Wragg of Appleyard Lees IP LLP.

The Patent

4 The Patent relates to a portable goal for use in sports such as football (soccer) or hockey. It comprises a goal mouth 104 and net 103 which is supported by a frame 102. When the frame 102 and net 103 are connected as shown in figure 1, the frame 102 is in compression and supports the first, second and third goal mouth perimeter edges 105, 106, 107 in tension.

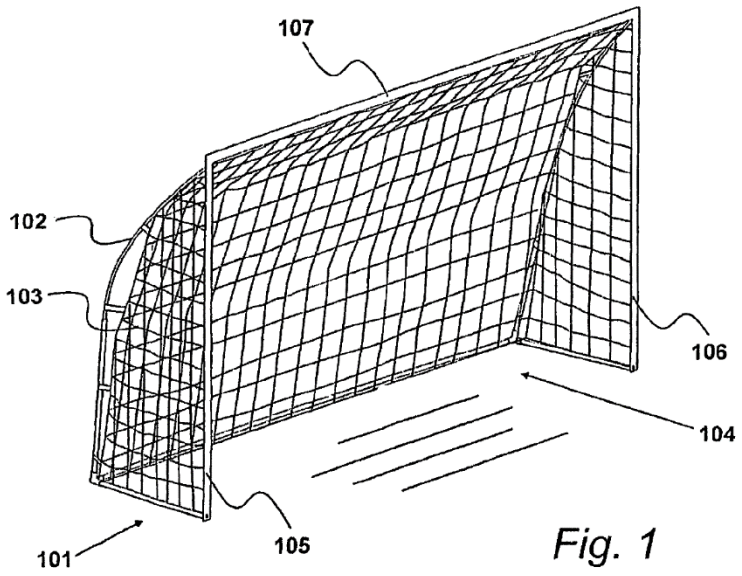

Fig. 1

5 The perimeter edges of the goal mouth comprise two pliable goal post members and a pliable crossbar member held in tension at each corner (407-410) by four corresponding connection points of the frame (201-204). An exploded view of this is shown in figure 5.

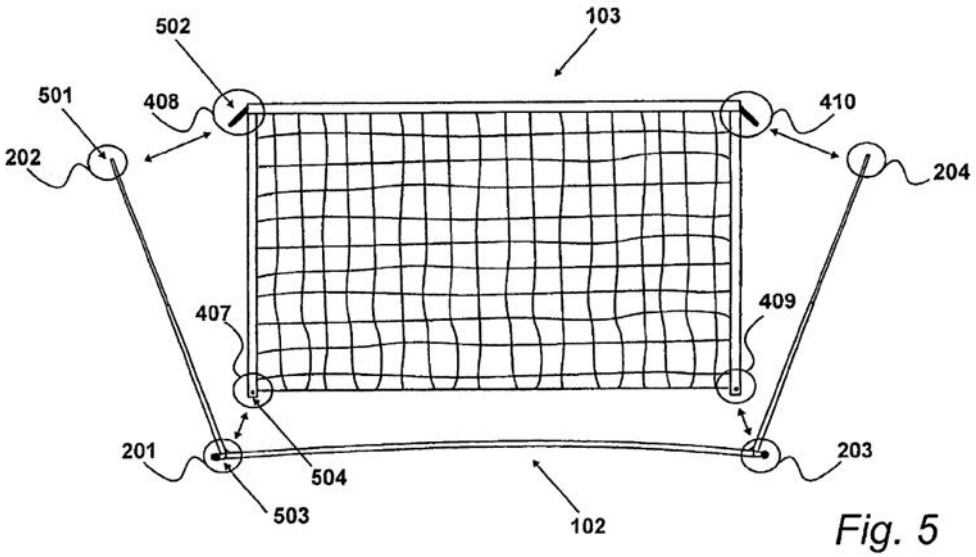

Fig. 5

6 The frame may be easily assembled from a set of poles to form a goal. The frame can then be disassembled into the set of separate poles which may comprise either telescopic poles, or poles which may be split into a set of relatively small poles. The frame may use a pair of rigid corner connectors 303, 304 that each provide three projections held at specific relative angles. Each projection receives an end of a frame member to form the frame shape. An example of the frame assembly is shown in Figure 3 below with a base member 205 that sits on the ground connected to two poles 206, 207 extending upwards. The base member preferably comprises a rear member 208 and two side members 301, 302.

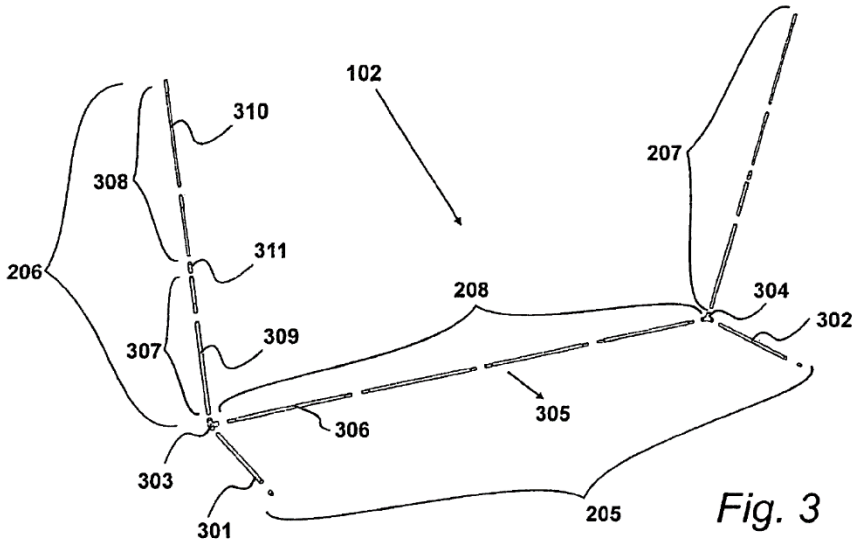

Fig. 3

7 The net forms an enclosure suitable for catching a ball. The net and the pliable members forming the goal mouth can both be easily collapsed down and stored along with the disassembled frame in a carry bag. To assemble the goal, first the frame is assembled and then the net and goal mouth members are attached to the frame, preferably by bending poles 1108, 1106 (shown as 206, 207 in Figure 3 above) inwards together such that the frame is in compression and thus applies a tension to the goal mouth. This method is shown in figures 11b and 12b.

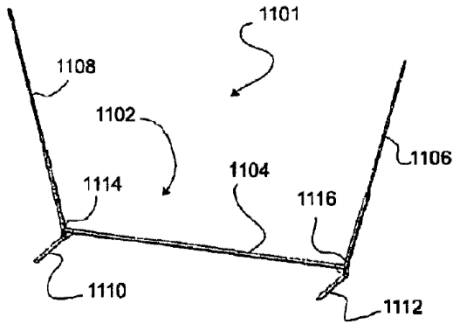

Figure 11b

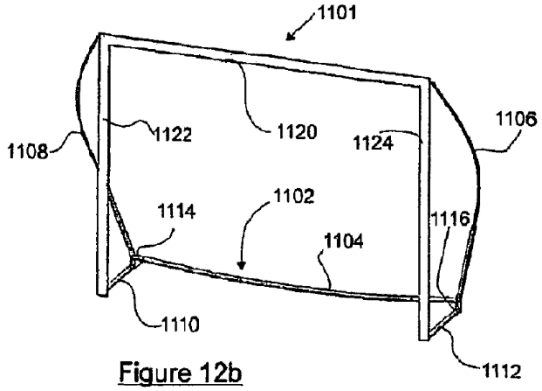

Figure 12b

8 The Patent was granted with 15 claims, four of which are independent: claim 1 to a goal apparatus, claim 10 to a frame, claim 11 to a net and claim 15 to a method of providing a goal. These claims are reproduced below.

Claim 1

1. Goal apparatus (101), comprising:

A frame (102), a net (103), and

A first pliable goalpost member (105), a second pliable goalpost member (106) and a pliable crossbar member (107);

Said frame (102) presents a first lower net connection point (201) and a first upper net connection point (202), and a second lower net connection point (203) and a second upper net connection point (204);

characterised in that said frame (102) is configured to:

Support said first pliable goalpost member (105) in tension between said first lower net connection point (201) and said first upper net connection point (202),

Support said second pliable goalpost (106) member in tension between said second lower net connection point (203) and said second upper net connection point (204), and

Support said pliable crossbar member (107) in tension between said first upper net connection point (202) and said second upper net connection point (204); such that said first and second pliable goalpost members (105, 106) extend substantially parallel to each other and said pliable crossbar member (107) extends substantially perpendicularly to said first and second pliable goalpost members (105, 106); wherein the first and second upper net connection points (202, 204) of the frame (102) are biased apart laterally from a position relative to each other and wherein the net (103) presents an enclosure when assembled.

Claim 10

10. A frame (102) for use in the goal apparatus (101) of claim 1, comprising:

A base member (205) for resting on a support surface; and

First and second post members (206, 207): wherein

Said base member (205) presents first and second lower net connection points (201, 203) said first and second post members (206, 207) present first and second upper net connection points (202, 204) respectively, characterised in that

Said first and second upper net connection points (202, 204) are normally biased apart from a position at which the frame (102) is placed in compression.

Claim 11

11. A net (103) for use in the goal apparatus (101) of claim 1, comprising a first edge (401), a second edge (402) and a third edge (403) connected between the said first and second edges (401, 402),

A first pliable goalpost element (404) extending along said first edge (401), a second pliable goalpost element (405) extending along said second edge (402) and a pliable crossbar element (406) extending along said third edge (403), characterised in that

Said first pliable goalpost element (404), said second pliable goalpost element (405) and said third crossbar element (406) collectively present a first lower frame connection element (407), a first upper frame connection element (408), a second lower frame connection element (409) and second upper frame connection element (410).

Claim 15

15. A method of providing a goal, comprising the steps of:

Providing a frame (102) having a first lower net connection element and a first upper net connection element, and a second lower net connection element and a second upper net connection element.

Providing a first pliable goalpost member (404), a second pliable goalpost member (405) and a third pliable crossbar member (406), characterised in that the method comprises:

Connecting said first pliable goalpost member (404) between said first lower net connection point and said first upper net connection point,

Connecting said second pliable goalpost member (405) between said second lower net connection point and said second upper net connection point, and

Connecting said pliable crossbar member (406) on between the first upper net connection point and said second upper net connection point.

The Law

9 The comptroller's powers to revoke a patent on the application of another person are set out in section 72(1) of the Act, the relevant part of which read as follows:

72.-(1) Subject to the following provisions of the Act, the court or the comptroller may by order revoke a patent for an invention on the application of any person … on (but only on) any of the following grounds, that is to say –

(a) the invention is not a patentable invention;
…

10 An invention is patentable if it meets the requirements set out in section 1(1) that the invention is new, involves an inventive step, is capable of industrial application and is not excluded. Sections 2 and 3 define what is meant by "new" and "inventive step" respectively and the relevant parts read:

2.(1) An invention shall be taken to be new if it does not form part of the state of the art.

(2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the

public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.

(3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say –

(a) that matter was contained in the application for that other patent both as filed and as published; and
(b) the priority date of that matter is earlier than that of the invention.

3. An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

11 Neither party made significant submissions in relation to the law, except in relation to the question as to when a combination of documents can form a basis for demonstrating a lack of an inventive step, which I will address in my analysis below. The parties did however, in their submissions on inventive step, use the four-step approach developed by the Court of Appeal in *Windsurfing*[1] and reformulated by Jacob LJ in *Pozzoli*[2]. This reformulated approach, as set out in *Pozzoli*, is:

(1)(a) Identify the notional "person skilled in the art"

(1)(b) Identify the relevant common general knowledge of that person;

(2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;

(3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed;

(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

12 As I will discuss further below, the defendant has requested an opportunity to file amendments should I find that the patent in its current form is invalid. Basis for this request is found in sections 72(4), (4A) and 75(1) which state:

72(4) An order under this section may be an order for the unconditional revocation of the patent or, where the court or the comptroller determines that one of the grounds mentioned in subsection (1) above has been established, but only so as to invalidate the patent to a limited extent, an order that the patent should be revoked unless within a specified time the specification is amended to the satisfaction of the court or the comptroller, as the case may be.

72(4A) The reference in subsection (4) above to the specification being amended is to its being amended under section 75 below and also, in the case of a European Patent (UK), to its being amended under any provision of the European Patent

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[1] *Windsurfing International Inc. v Tabur Marine (Great Britain) Ltd*, [1985] RPC 59
[2] *Pozzoli SPA v BDMO SA* [2007] EWCA Civ 588

Convention under which the claims of the patent may be limited by amendment at the request of the proprietor.

75(1) In any proceedings before the court or the comptroller in which the validity of a patent may be put in issue the court or, as the case may be, the comptroller may, subject to section 76 below, allow the proprietor of the patent to amend the specification of the patent in such manner, and subject to such terms as to advertising the proposed amendment and as to costs, expenses or otherwise, as the court or comptroller thinks fit.

13 Further provisions relate to the ability to oppose such amendments (section 75(2)), and to specifying that such amendments must not add subject matter or extend the scope of protection (section 76(3)). I will consider these provisions to the extent necessary in my analysis.

Pleadings

14 The claimant contends that all the granted claims lack novelty and/or inventive step and request that the patent be revoked in its entirety. Their submissions are based on the following two patent documents:

D1: US 5690339 A *published 25/11/1997*

D2: US 2002193186 A1 *published 19/06/2001*

15 The defendant, on the other hand, asserts that the patent is novel and inventive over the documents relied on by the claimant, and argues that the application for revocation should therefore be rejected.

Evidence

16 The evidence rounds elicited further arguments from both parties in relation to the patentability of the claims. No further evidence was filed, such as, for example, any expert evidence. I will consider these arguments where necessary, but the substance of my decision is based on the parties' cases set out in their skeleton arguments and presented at the hearing.

Request to amend the claims

17 In their evidence filed on 6 January 2025 the defendant requested that, should I consider the patent to be invalid, they be given an opportunity to amend the patent, and listed six auxiliary requests specifying possible amendments.

18 The claimant did not make any objection to consideration of the auxiliary requests at the hearing, and I therefore agreed to hear submissions in relation to the auxiliary requests. The claimant's arguments focussed on the substantive questions of novelty and inventive step, but they also argued that some of the auxiliary requests, specifically those relating to an amendment to claim 1, added subject matter not present in the application as filed and were therefore contrary to section 76(3).

19 I will consider the defendant's request to be given an opportunity to amend the claims to the extent necessary following my findings on validity.

Assessment

20 The claimant's primary case is that the patent should be revoked because the independent claims lack novelty over each of D1 and D2. However, they also made submissions that the invention defined in the independent claims at least is obvious in the light of the teachings of the combination of D1 and D2. The defendant's primary case is that the patent is novel and inventive over both D1 and D2 but has asked for consideration of their auxiliary requests should I find for the claimant in relation to the unamended patent. I will consider submissions made by the parties in relation to each of D1 and D2 in turn, and then consider submissions made in relation to obviousness over a combination of both D1 and D2. Finally, I will consider to the extent necessary the submissions in relation to the auxiliary requests.

21 There were few submissions by either party as to the nature of the person skilled on the art and their common general knowledge at the hearing or in the pleadings or evidence rounds. At the hearing Dr Davies gave the following definition of the person skilled in the art in the context of his submissions in relation to inventive step:

> *"the person skilled in the art is considered to be a manufacturer of goal posts, goal frames, goal apparatus and they would be well familiar with the typical shapes of goals, that goals provide or require a frame and a net and they would be aware of the documents D1 and D2."*

22 Mr Francis did not disagree with this characterisation of the person skilled in the art except in relation to their awareness of D2. In relation to this point, Mr Francis submitted that there is no evidence to suggest that the skilled person would be aware of D2, as there is no evidence that it is common general knowledge. I will consider this point further in my analysis of inventive step, but the remainder of Dr Davies' characterisation of the person skilled in the art seems reasonable to me. Given this, and Mr Francis' overall lack of disagreement, I am therefore content to accept it.

D1: US 5690339 A

23 D1 describes a collapsable sports goal for placement on the ground with a frame and a net. Dr Davies focused specifically on the embodiment of Figure 6, shown below, which shows an assembled goal.

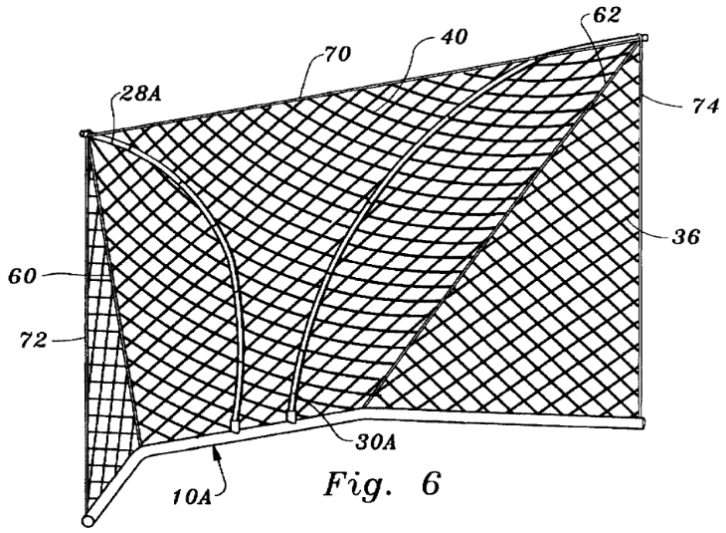


Fig. 6

24 According to D1, the frame comprises a substantially rigid base portion 10A that sits on the ground connected to two flexible resilient poles 28A,30A extending upwards. The bottom of the net is affixed to the frame base and at the top of the net a cord-like reinforcement member 70 extends along the top of the goal mouth. This is the key difference between this embodiment and the alternative embodiment described in D1, the alternative embodiment having a rigid crossbar rather than the cord-like arrangement of the embodiment of Figure 6. The net comprises two side panels and a central panel with flexible reinforcement cords 60,62 at the internal joins between these panels. The ends of the poles 28A,30A are fixed to the ends of both the reinforcement member 70 and cords 60,62.

25 To better understand the construction, it is helpful to consider Figure 2 which, although relating to the alternative embodiment, shows the key features of the goal in a part-disassembled state with the net lying on the ground. This figure shows the ends of poles 28,30 disconnected from the corners of the net and substantially straight. To assemble the goal, the poles are necessarily bent from their position shown in Figure 2 such that they are forced towards the top corners of the net. The net construction retains the poles in their bent shape as they exert an upwards force on the net to pull the top of the net upwards from the base portion. According to the description, the edges of the net forming the goal mouth, labelled as 72,74 in Figure 6, are said to be ropes or cords.

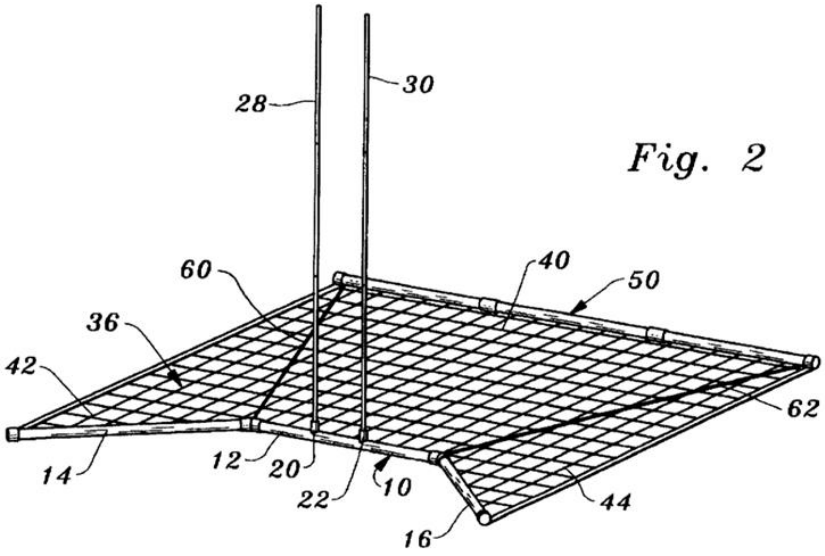


Fig. 2

26 At the hearing, Dr Davies stated:

> *"In Figure 6 poles 28A and 30A are biased such they push the goal posts upwardly and therefore support the goal posts in tension. … if the net was not connected to the support frame then the poles 28A and 30A would extend upwardly in a linear fashion."*

27 I agree that, when attached, each of the bent poles will effectively pull substantially upwards at the top corner of the net putting both edge cords into tension. These edge cords form the goal posts of the goal mouth. The shape of the net behind the goal mouth is partly provided by the rear reinforcement cords which appear to help resist sagging of the net. The shape of the net is also provided by the top reinforcing cord that forms the crossbar for the goal mouth.

Novelty of claim 1 over D1

28 The parties did not dispute that D1 discloses a goal apparatus comprising a frame and a net, nor that it discloses first and second pliable goalpost members. Dr Davies identified these as items 72 and 74 of Figure 6, which are described as ropes or cords in D1.

29 The defendant did however argue in their counterstatement that it is not clear that D1 discloses a pliable crossbar member, as is required by claim 1, the cord-like reinforcement member 70 of D1 being non-rigid but not necessarily pliable. They did not however pursue this argument at the hearing. Dr Davies referred to the Patent itself for a definition of the term "pliable", where paragraph 33 states:

> *"Herein the term 'pliable' is used to express the flexible, supple collapsible nature of the members."*

30 Dr Davies submitted that a rope or cord is flexible, supple and collapsable, in accordance with the definition of "pliable" in the Patent. In my view the term "pliable" normally means something that is easily folded, bent or shaped in a flexible or supple manner. In the context of the Patent, it seems to me that the skilled person

would understand the term to mean that the goalpost and crossbar members are flexible and supple such that they hold their shape under tension but can be folded so as to be portable and packable into a relatively small bag. Figure 8 of the Patent shows such a bag. The Patent's definition of "pliable" is consistent with the skilled person's understanding, and the defendant has not proposed a different definition. I therefore will construe the term "pliable" to be as defined in paragraph 33 of the Patent. Given the breadth of this definition, and that the defendant made no submissions on this at the hearing and only a brief argument in their counter-statement, it seems to me that, in the sense defined in the Patent, the cord-like reinforcement member 70 in D1 is pliable in that it holds its shape under tension but is flexible, supple and collapsible.

31 The parties did not dispute that the frame of D1 provides two upper net connection points. Dr Davies identified the intersection of upper ends of poles 28A and 30A with the flexible reinforcement members to provide two upper connection points of the frame, and I agree that these are points at which the net must be connected. Nor was it disputed that D1 also provides two lower net connection points. Dr Davies referred to column 2 of D1 which states: *"Affixed to goal base member 10 in any suitable fashion such as mechanical fasteners or adhesive is a goal net 36. The goal net 36 is attached to the goal base member at the goal net bottom.*" He argued that this clearly shows both a first lower net connection point and a second lower net connection point. This was not disputed by Mr Francis, and I agree that D1 discloses a frame with first and second lower net connection points.

32 Claim 1 of the Patent requires that the frame is configured to support each of the goalpost members in tension between respective pairs of upper and lower connection points of the frame. There is no dispute that the net of D1 is tensioned such that the vertical edges of the net 46 and 48, forming the goalposts, are pulled by the biasing force of the frame's upper connection points away from the frame's lower connection points so that they are in tension between the upper and lower connection points of the frame.

33 There is also agreement that the members 72 and 74 are substantially parallel to each other, and member 70 extends substantially perpendicularly between members 72 and 74, forming an enclosure when assembled, as is required by clam 1.

34 The parties do not however agree that D1 discloses a frame that is configured to "*support said pliable crossbar member in tension between said first upper net connection point and said second upper net connection point … wherein the first and second upper net connection points of the frame are biased apart laterally from a position relative to each other*", as is required by claim 1 of the Patent.

35 There was some disagreement as to whether and how the frame of D1 is configured to support the crossbar member in tension between the first and second upper net connection points. Mr Francis asserted in relation to claim 1 of the Patent that, when read as a whole, "*the skilled person would understand … that laterally biasing apart is providing the tension for supporting that crossbar in tension"*. Dr Davies argued that the biasing of poles 28A and 30A push the goalposts of D1 upwardly and therefore support the goalposts in tension, and also that the frame holds the crossbar in tension. Mr Francis submitted that, when read as a whole, the skilled person would understand the claim of the Patent to require that it is the laterally

biasing apart of the upper net connection points that provides the tension for supporting the crossbar in tension.

36 I note that a pliable cord fixed between two spaced apart endpoints will hang between these points, the weight of the cord causing a tension in the cord as the support points pull on the cord in reaction to keeping it in place against gravity. Thus, I believe the frame of D1 does support both the two goalposts and the crossbar in tension, as Dr Davies asserted. Whilst, in the embodiments of the Patent, the biasing apart of the upper net connection points laterally from a position relative to each other will impart tension to the crossbar member, claim 1 is not limited to the tension being applied to the crossbar member by the biasing arrangement. Thus, D1's arrangement for supporting the crossbar in tension falls within the scope of claim 1. The key question is therefore whether D1 discloses the biasing apart of the first and second upper net connection points laterally from a position relative to each other.

37 Dr Davies submitted that the poles 28A and 30A, if not connected to the net, would extend upwardly in a linear fashion, and are then bent forwardly and outwardly in order to couple with the frame. He agreed with the defendant that, in order to couple with the frame, they are biased inwardly. But he argued that, in order to provide the goal-like structure when the poles 28A and 30A are coupled to the top of the goal posts, they are biased apart laterally by the goal posts, the frame supporting the crossbar in tension. Dr Davies said that, although there is an inward bias created by the poles, there is a net outward bias to hold the poles apart in that, if the net was not coupled to the poles, they would adopt a parallel orientation, but under the bias of the goal posts they are biased apart laterally. Dr Davies also submitted that claim 1 does not require the frame to provide a tension in the net, merely that the goalpost members and crossbar members are supported in tension by the frame.

38 Mr Francis, on the other hand, submitted that, due to the curvature of the poles 28A and 30A of D1, they are biased together rather than apart, referring to Figure 2 which he said showed that when the net is partially disassembled the two poles 28 and 30 have moved back towards each other in a parallel configuration. He argued that, in claim 1 of the Patent, the laterally biasing apart provides the tension for supporting the crossbar in tension, and this feature is not in D1.

39 Considering the embodiment of the Patent as is illustrated in the figures, it is evident that the flexible pole ends 202, 204 are initially outside the footprint of the frame base and are thus pulled downwards and inwards to the corners, whereas, in contrast in D1, the flexible pole ends are initially inside the footprint of the base and are pulled downwards and outwards to the corners. In both situations, the net construction holds the poles in the bent position. In the embodiment of the Patent the pole ends are held closer to each other when attached to the net than they are when detached from the net, whilst in D1, when the ends are attached, they are held farther apart than when the poles are not attached to the net and not bent.

40 I note that, whilst the net provides a force applied to the poles to bend them, the poles consequently provide the opposite reaction force onto the net. The word 'bias' seems to have been used by the parties to refer to each of these forces. The expression *"biased apart laterally from a position relative to each other"* in claim 1 is potentially ambiguous as to whether the expression refers to the frame when disconnected or connected to the net. I however consider that the skilled reader,

when reading claim 1 as a whole and in the light of the description and figures, would construe this expression to mean that a restoring bias of the upper frame connection points, i.e. the reaction forces of the frame against the connected net, is one that would try to move the upper connection points apart. Adopting this construction, the poles of D1 are not biased apart laterally from a position relative to each other but rather the bias is to move the upper net connection points towards each other, in contrast to the arrangement in claim 1.

41 I therefore find that D1 does not disclose upper net connection points of the frame which are biased apart laterally from a position relative to each other, as is required by claim 1 of the Patent. Claim 1 is therefore novel over the disclosure of D1.

Novelty of claim 10 over D1

42 Claim 10 relates to a frame for use in the goal apparatus of claim 1 and includes a base member and two post members. Whilst claim 10 also refers to the bias of the first and second upper net connection points, it uses different language, stating that the upper connection points (of the post members) *"are normally biased apart from a position at which the frame (102) is placed in compression*."

43 There is no dispute that D1 provides a frame base and two post members that provide a pair of lower and a pair of upper net connection points. As in claim 1, the key point is the construction of the bias feature.

44 Dr Davies submitted that, when in use, the frame is placed in compression and *"the poles have to be biased apart and they are biased apart by the goal mouth"*. Mr Francis, on the other hand, submitted that "*the ends … are not normally biased apart from a position at which the frame is placed in compression. They are biased together."*

45 In my view this feature of claim 10 should be construed in a manner consistent with the bias feature of claim 1. The skilled reader would understand "placed in compression" to relate to the state of the frame when attached to a net. In the embodiments this compression is substantially caused by the elastic bending of the posts. In D1, the frame posts are also elastically bent, and the frame can be considered as "in compression" when attached to the net. It seems to me that the state of being normally biased apart *from* a position at which the frame is placed in compression suggests that they are normally biased apart when the frame is not under compression. This is illustrated in the described embodiments of the invention, such as that of Figure 2 of the Patent. In D1 the upper connection points are normally biased together when the frame is not placed in compression rather than apart, as is illustrated in Figure 2 of D1. I do not therefore consider D1 to disclose upper net connection points that are normally biased apart from a position at which the frame is placed in compression, as is required by claim 10. Claim 10 is thus novel over D1.

Novelty of claim 11 over D1

46 Claim 11 relates to a net for use in the goal apparatus of claim 1, the net comprising first, second and third edges, first and second pliable goalpost elements, and a pliable crossbar element. I note that claim 11 defines pliable goalpost and crossbar

elements, whereas claim 1 defines pliable goalpost and crossbar *members*. It is not immediately evident as to whether these are intended to refer to the same features. The embodiment described in Figure 4 of the Patent assists in construing these features. It describes a net with the first, second and third edges 401, 402 and 403 respectively, and then first and second goalpost elements 404 and 405, and crossbar element 406. The embodiments do not define any additional goalpost or crossbar members. I therefore construe the goalpost and crossbar elements of claim 11 to relate to the same elements as the goalpost and crossbar members of claim 1.

47 Dr Davies submitted that the net of Figure 6 of D1 has three edges forming two pliable goalposts 72,74 (Figure 6) and a pliable crossbar 70 and, because the net is coupled to the frame in D1, the net must present both lower frame connection elements and upper frame connection elements. He therefore submitted that all the elements of claim 11 are present in D1.

48 Mr Francis submitted that, because the net must be suitable for use in the goal apparatus of claim 1, the net connection elements need to be positioned so that the appropriate tensioning is provided when attached to a frame. At the hearing Mr Francis stated:

> "*In D1, because the frame itself is not providing the tension that the frame of claim 1 provides, there is no disclosure that … the portions of the net in D1 that attach to the frame … would satisfy the requirements of the connection elements of Claim 11."*

49 In his skeleton Mr Francis also submitted that there is no explicit disclosure of any specific net connection elements. He submitted that, while the claimant argues that the net is connected 'all along the goal base', this is not an explicit disclosure of the required connection points.

50 In D1, the net edges are formed of ropes or cords 70,72,74 which correspond to the pliable crossbar element and first and second pliable goalpost elements respectively. D1 clearly discloses a net forming a rectangular goalmouth and the top corners of the goalmouth are shown as attachable to and detachable from the ends of the bent frame poles. D1 states, in lines 58 to 61 of column 2:

> *"Affixed to goal base member 10 in any suitable fashion such as mechanical fasteners or adhesive is a goal net 36. The goal net 36 is attached to the goal base member at the goal net bottom."*

51 Thus, the net of D1 is connected to the base of the frame so that both the edges and panel reinforcements can be pulled in tension. Whilst it is not explicitly stated where at the goal net bottom it is attached to the goal base member, it seems to me that it would need to be attached substantially at each end of the base member so that the arrangement functions as a goal with cords 70,72 maintained under tension, as is required by D1 (see column 3 lines 29-34 in relation to ropes 46,48, which are the corresponding elements to cords 70,72 in the first embodiment). Moreover, the figures of D1 seem to suggest such an arrangement. D1 therefore requires connection elements to be present at each lower corner of the net, at the point where it connects to respective ends of the goal base member. The term "lower connection element" is very broad and merely, in my view, suggests some means by which the goalpost and crossbar elements are attachable to the frame. I therefore conclude

that D1 discloses a net with upper and lower connection elements which, when attached to the frame, create the required tension in the goalpost and crossbar members. Such a net is therefore suitable for use in the goal apparatus of claim 1, despite the different biasing arrangement of the frame of D1. Claim 11 therefore lacks novelty over D1.

Novelty of claim 15 over D1

52 Claim 15 does not reference any previous claims. It also does not explicitly refer to a net, rather it defines four net connection elements on a frame and three pliable members that are each connected to a pair of "*said … net connection points*". It is not clear in the claim whether the "*net connection points*" are intended to be the same as the "*net connection elements*", but the wording of the claim, with its reference to "*said*" connection points, suggests that they are intended to refer to the same feature.

53 Dr Davies referred to the features of the first embodiment in D1, illustrated in Figures 1 to 5, in his submissions, submitting that they show assembly and disassembly of the goal of the first embodiment, and argued that a similar process of assembly and disassembly would apply to the second embodiment of Figure 6. In particular, he referred to Figure 3 of D1, which shows the frame dissembled, and submitted that, in this figure, the goal posts are already connected to the base member, and when the poles are connected, the goalposts will be connected to lower and upper connection points and the crossbar to the upper connection points. He submitted that D1 shows "*all the apparatus you need to enable the method"*. In their statement of case, the claimant also stated that "*it is implicit that prior to use the frame is attached to the net including along the base member as shown in Fig. 6"*.

54 Mr Francis submitted that figures 2 and 3 refer to disassembly and not to assembly as claim 15 requires and thus these figures *"cannot display the features of claim 15"*. He also argued that when assembling the goal of D1 there is no reason why it would be done in any particular order, and that there is no disclosure of connecting the second goalpost to the second net connection points, or the crossbar between upper net connection points. In their counter-statement the defendant stated that, while Figures 1 to 5 show disassembly of the frame of the goal, the goalpost members are never disconnected from the net connection points (of the frame) and thus there is no implicit or explicit disclosure of connecting the goalposts to the connection points.

55 D1 relates to a collapsible goal and, whilst the embodiment of Figure 3 focusses on disassembly, it is evident to me that a reverse process would be used for assembly, whereby the poles are attached to the top corners of the net. Moreover, the description of D1 explicitly refers to assembly and disassembly. Furthermore, whereas there may be no reason why the assembly of the goal of D1 would be done in any particular order, the same can be said for the method of claim 15 of the patent.

56 D1 clearly discloses connection of pliable goalpost members 72,74 to upper connection points on a frame, specifically to poles 28A and 30A respectively, and connection of pliable crossbar member 70 to the same upper connection points. It is however less clear whether D1 discloses lower net connection elements which are connected to the pliable goalpost members.

57 I have construed the terms "*connection element*" and "*connection point*" in claim 15 to relate to the same feature. Dr Davies suggested that these terms merely relate to a location where the pliable goalpost and crossbar members, which form part of the net, are connected to the frame. Mr Francis' submissions seem to imply some specific feature which enables connection and, by implication, disconnection. The characterising portion of the claim uses the term "connection point" and each pliable goalpost or crossbar member is said to be connected *between* two connection points. This suggests to me that the connection points are merely locations. I therefore will adopt this construction of the claim.

58 D1 discloses that the net can be affixed to the goal base member "*in any suitable fashion such as mechanical fasteners or adhesive*" (column 2 lines 58-59). It is apparent that cords 72 and 74 would need to be affixed to the base member in such fashion in order to provide a goal mouth. I can find nothing in D1 to suggest that the net needs to be able to be disconnected and reconnected to the frame. In fact, Figures 3-5 seem to suggest that the goal apparatus can be disassembled without needing to disconnect the net from the base member, although D1 does not preclude such disconnection. Claim 15 of the Patent however relates to "a method of providing a goal" and relates only to connecting elements of the goal, with no specific reference to disassembly. D1 explicitly refers to affixing the net to the goal base member, as I have referred to above. I therefore find that D1 requires that, at least initially, the net would need to be attached to the goal base member, whether this attachment is carried out by the manufacturer or the user, in order to provide a goal. I have found in my consideration of claim 11 above that, in order to provide a goal, D1 requires such attachment to be at least at the respective ends of the base member. It therefore seems to me that D1 must disclose lower connection points where the pliable goalpost members (cords 72,74) are connected between upper connection points (the tops of poles 28A,30A) and lower connection points at the ends of base member 10A.

59 Claim 15 therefore lacks novelty over D1.

D2: US 2002193186 A1

60 D2 relates to a sports ball net assembly. Paragraph [0002] of D2 states:

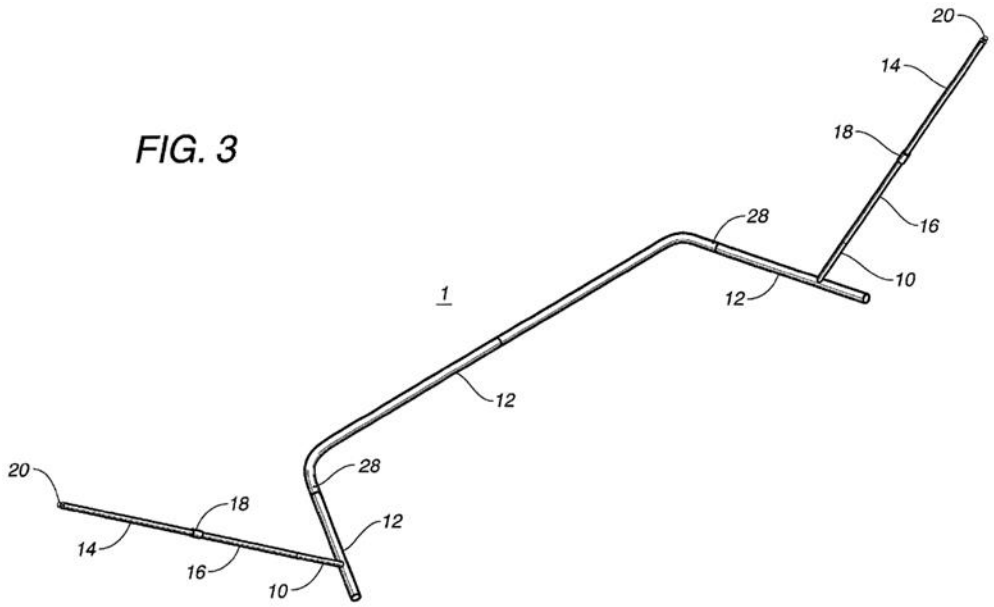
> *"The present invention relates, in general, to a golf practice net assembly and, more particularly, to a net assembly capable of allowing a user to easily and conveniently practice the launching retrieval of various sports balls in a limited area with a net of the assembly being appropriately tensioned so as to effectively stop and retain the launched sports balls."*

In addition to golf, D2 notes that the balls may include "*baseballs, soccer balls and footballs"* that may be thrown or kicked. I note that D2 specifically states that the net allows a user to *"practice the throwing, launching or kicking of sports balls in a limited area"*. While D2 does not describe the net assembly as a 'goal', it is apparent that the user is expected to target the net with the ball.

61 The net assembly of D2 comprises a support frame connected to a net. The net may be disconnected from the frame, and the frame disassembled to allow easy carrying. Figure 3 of D2 illustrates the assembled frame without the net attached. The frame

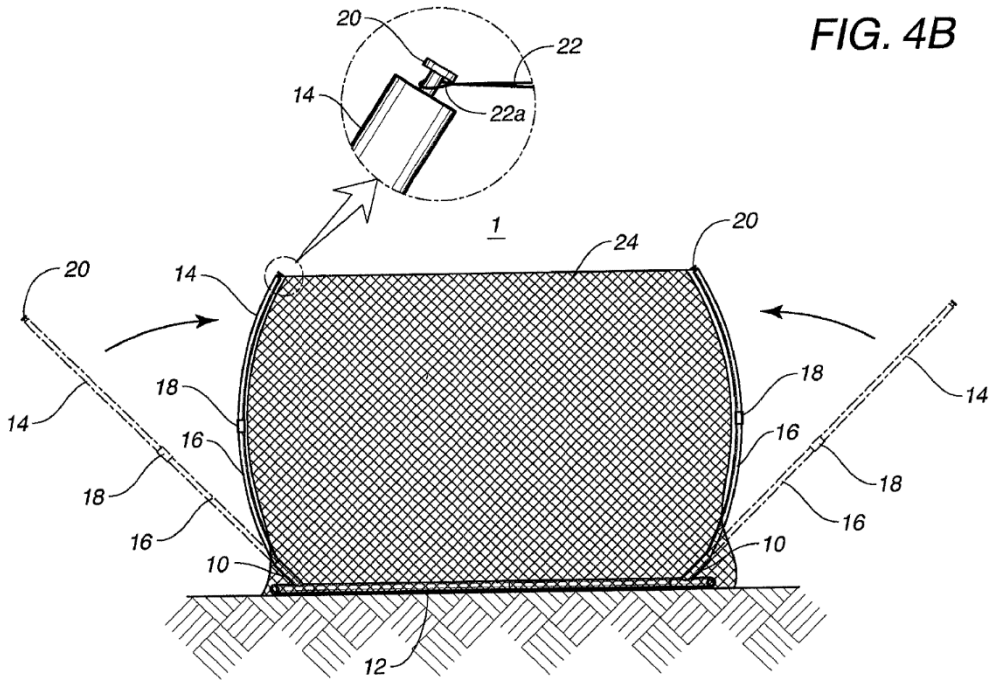
comprises a base pipe unit 12 that sits on the ground in use, and a pair of tension pipe units extending up from each side of the base unit. Each tension pipe comprises pipe pieces 14,16 fixed end to end by a central joint 18. The lower piece 16 connects to a support pipe 10 fixed at an inclined angle to a side arm of the base unit. D2 states that the pipe pieces 14 and 16 can be bent.

FIG. 3



62 Figure 4B of D2 below shows a front view of the assembly. The dashed lines indicate the support pipe frame position prior to being connected to the net. The arrows show how side tension arms 14,16 are bent from this initial dashed position inwards to allow the top connection pins 20 to attach to the loops 22a at top corners of the net 22. In the assembled arrangement, the net is put into tension as it restrains the arms from moving relatively outwards and apart. The top edge of the net is tensioned by the poles and provides a locating force for the respective ends of the poles.

FIG. 4B



63 Whilst not shown in the figure, paragraph 28 states:

"The net 22 is also tied to the first and second tension pipes 14 and 16 using the tieing bands 30 at the middle portions of both sides thereof. The net 22 is thus firmly held on the support pipe frame while being appropriately tensioned and pitched by elasticity of the tension pipes 14 and 16."

64 D2 does not explicitly describe what happens to the bottom of the net at ground level.

Novelty of claim 1 over D2

65 Dr Davies asserted that, despite D2 not using the term 'goal', the net assembly can clearly function as a goal as it provides a closure surrounded by a net and is a goal in everything but name. He referred to Figure 5 of D2 in support of his argument as a representation of a goal frame. He noted that D2 states the net can be used with various sports balls including kicking footballs. Mr Francis submitted that D2 is not a goal because the term 'goal' is not used in D2 and the net assembly is not for a particular sport, rather it is a capturing net *"to enable the participant to practice the particular sports motion"*. He noted that a number of different sports are referred to including golf, and submitted that the net of D2 is to enable practice in a limited or indoor area, stating *"you are not replicating the sport in action"*. Mr Francis also submitted that D2 does not show the alleged goalposts being parallel, which points away from the net of D2 being a goal.

66 Claim 1 of the Patent relates to a "Goal apparatus". The description, in paragraphs 1 and 2, states that the invention relates to a portable goal apparatus and refers to the benefits that the location of the goal need not be permanently devoted to use as a sports field, and that portable goals are particularly useful in training scenarios where it may be beneficial to have a large number of goals to train with. The illustrated embodiment relates to configuration as a football goal. I do not understand the term "Goal apparatus" in claim 1 to be restricted to a particular type of use, for example for scoring goals in a match, but could be used for any number of training activities.

67 Whilst the sports ball net assembly of D2 is not explicitly described as a goal, and some of the sports listed in which it may be used do not involve goals, it nevertheless explicitly discloses a use with "*soccer balls and footballs*". The description in paragraph [0004] refers to problems with retrieving the soccer ball when kicked a long distance and to problems with directing the ball at a target. It seems to me that, for its application to soccer, D2 envisages the assembly acting as a goal in the sense that it provides a target and captures the ball to prevent it travelling a long distance when kicked into the assembly. Moreover, the dimensions of the assembly in D2 as shown in the figures (albeit schematically), with its longer width in relation to its height, approximate the shape of a goal used in sports such as soccer. It therefore seems to me that D2 envisages the assembly acting as a "goal apparatus" in the sense that it defines a target area for sports balls and has a net to catch them, and the assembly, in use, can function as a goal. I therefore conclude that the person skilled in the art would understand the assembly of D2 to be usable, at least informally, as a goal apparatus in sports such as football (soccer).

68 It is not disputed that D1 discloses a frame for supporting an attached net.

69 The claimant initially argued in their written submissions that each set of bent tension pipes 14,16 comprised the pliable goalpost members of claim 1 of the Patent, but later shifted to an alternative interpretation that the edges of the net formed these goalposts. At the hearing, Dr Davies favoured the latter interpretation, and also argued that the top edge of the net comprises a pliable crossbar. The defendant has had ample opportunity to make submissions in response to this alternative interpretation, and has done so, and I will therefore use it as the basis for my analysis.

70 It is not disputed that the frame has two upper net connection points in its top corners, and that the net has specific portions to releasably connect to these points. Nor is it disputed that the top of the net is held in tension between the top ends of the tension pipes 14,16 and that the top of the net can be considered a pliable crossbar member. Furthermore, it is not disputed that the frame's upper connection points are biased apart as claim 1 requires.

71 The key disagreements between the parties in relation to claim 1 are whether the frame has lower net connection points of the configuration required by claim 1, and whether the pliable goalpost members can be said to extend substantially parallel to each other.

72 Dr Davies submitted that, as the net of D2 is said in paragraph 32 to be *"appropriately tensioned so as to effectively stop flying balls"*, it is implied that the net is connected to the frame around the periphery in order to stop the balls "without failure", otherwise a ball could pass beyond the net. He also argued that paragraphs 24 and 28 describe the net as *"tied to the … tension pipes … using tieing bands"*, and that these bands are located at the middle portions of the tension pipes, which is a lower position relative to the upper net connection points. Dr Davies further submitted that the tieing bands must tension the net and thus they act as lower connection points that support the net in tension between upper and lower net connection points, referring to D1 for support that such attachment members would provide some tension.

73 Mr Francis, on the other hand, submitted that there is no disclosure in D2 of these tieing bands specifically attaching to the edge of the net, nor is there disclosure that they tension the pliable goalpost members between the upper and alleged lower connection points. He argued that *"using tieing bands in D2 is not sufficient to impart any tension".*

74 I note that paragraph 28 of D2 states:

> *"The net 22 is also tied to the first and second tension pipes 14 and 16 using the tieing bands 30 at the middle portions of both sides thereof. The net 22 is thus firmly held on the support pipe frame while being appropriately tensioned and pitched by elasticity of the tension pipes 14 and 16."*

75 Thus the net is "firmly held" on the support pipe frame by the tieing bands and appropriately tensioned and pitched by the elasticity of the tension pipes, at least if they are tied sufficiently tightly to provide such tension (I note that loosely tying the tieing bands may not impart any tension, but D2 clearly implies that that the tieing bands are tied at least tightly enough to provide the appropriate tension). In my view

the skilled person would understand that the tieing bands must therefore be attached to the edge of the net in some way. The net must thereby be tensioned by the tieing bands when they are appropriately tied, at least to an extent. I agree with Dr Davies' interpretation that the edges of the net form pliable goalpost members, which I consider to be reasonable in that they are pliable and define the edge of the net and therefore the sides of the goal mouth. Therefore, the pliable goalpost members are, at least to an extent, each held in tension between each upper net connection point and each respective tieing band when the tieing bands are appropriately tied.

76 The configuration of the assembly at its base is not clear in D2, with the illustration of the net in Figure 4b not assisting matters. Both Dr Davies and Mr Francis made submissions as to what may be going on there, but I did not find either submission conclusive. I do not consider D2 to provide enough detail to determine whether or not the sides of the net, which constitute pliable goalpost members, are held in tension between the upper net connection points and any lower net connection point at the base. I have however found that the pliable goalpost members are held in tension between the upper net connection points and the tieing bands when the tieing bands are appropriately tied. The tieing bands are located, according to the description, at the middle portions of the net. I note that claim 1 of the Patent does not require the second net connection point to be at the base. I therefore conclude that the tieing bands do act as lower net connection points as defined in claim 1 of the Patent.

77 Claim 1 of the Patent requires that the first and second pliable goalpost members extend substantially parallel to each other and perpendicular to the crossbar member. Dr Davies submitted that, while the side edges of the net in figure 4b of D2 are "*somewhat curved'* they are *substantially vertical for the purposes of providing a goal"*. He argued that, if the tension pipes were extended, the edges would become even more substantially vertical. Mr Francis however submitted that the goal post members in D2 are not substantially parallel to each other, noting in particular that each pipe assembly 14,16 is fixed to the bottom frame via fixed support pipe 10 which is said in paragraphs 18 and 19 to be outwardly inclined at 45º +/- 10º.

78 It seems to me that the functioning of the assembly of D1 requires at least some curvature of pipes 14 and 16 in order to provide the required tension, with the tieing band located in the middle of this curve. Moreover, I agree with Mr Francis that the angles of fixed support pipe 10 would not result in an arrangement in which the pipes 14,16 could be said to be substantially parallel.

79 The pipes curve in opposite directions, and in my view cannot be considered to be substantially parallel. The net is shown in Figure 4b as broadly following the curves of the pipes at either side, and the tieing bands would connect the net to the pipe at the middle of the curve. It is less clear what shape the net edges might take between the top connection point and middle point of the pipes where the tieing bands are located, or between the tieing bands and the bottom of the net. I note however that, if the net did not follow the curves of the pipes, a hole would be left which may render the net ineffective in capturing balls. In any case, the tieing bands are not located in the same vertical plane as the upper connection points at the tops of the pipes but are located further outwards relative to the upper connection points. Thus, even if the edge of the net formed a straight line between the upper connection points and respective tieing bands, these edges would not be parallel to each other, nor

perpendicular to the crossbar member, but would be angled outwards. I therefore conclude that the skilled reader would understand the D2 disclosure as having net edges with some sort of curve or outwardly angled line between the respective upper net connection points and the tieing bands and would not consider the net edges to be substantially parallel to each other, nor, for that matter, substantially perpendicular to the pliable crossbar member. Claim 1 is therefore novel over D2.

Novelty of claim 10 over D2

80 The key issue between the parties in relation to the novelty of claim 10 over D2 is whether D2 discloses a base member which presents first and second lower net connection points. Dr Davies submitted that the tension pipes in D2 present lower connection points at the locations where tieing bands hold the net to the frame. He also alternately argued that in D2 there is implicit coupling of the net along the base of the frame:

> *"otherwise balls that would strike the net at the lower base member would pass beyond the net, and this document clearly says that this net stops balls without failure"*

and thus there are lower connection points on the frame.

81 Mr Francis submitted that, for similar reasons as argued regarding claim 1, there is no disclosure in D2 of lower connection points.

82 Claim 10 requires that the lower net connection points be presented on the base member. The tieing bands of D2 are not presented on the base member and cannot therefore be considered as the lower net connection points defined in claim 10. As I said in relation to claim 1, D2 is unclear as to how the assembly is configured at its base and does not explicitly disclose that the net is connected to the base member. Whilst I understand Dr Davies' argument that the net must be connected to the base member in order to stop balls without failure, it seems to me that the skilled person would not consider this the only possible solution. For example, an unconnected net, if sufficiently arranged, could potentially stop balls in this manner, or the net could be affixed to the ground rather than to the frame. I therefore conclude that D2 does not disclose, either explicitly or implicitly, a base member which presents first and second lower net connection points in the manner required by claim 10. Claim 10 is therefore novel over D2.

Novelty of claim 11 over D2

83 Claim 11 is directed to a net suitable for use in the goal apparatus of claim 1. Dr Davies submitted that the net in D2 has clear upper frame connection elements in a pair of holding loops. He said that there are clearly three edges to the net: two sides that form the pliable goalposts and a top edge with the loops that form the pliable crossbar. He argued that the edges of the net provide lower frame connection elements, noting that D2 shows connection of the net to the tieing bands and that the net must also be connected at the bottom to the base member. He submitted that the term "connection element" is undefined and is a generic and broad term, and the lower edge of the net in D2 can therefore be construed as a connection element.

84 Mr Francis submitted that there is no disclosure in D2 of a net with a lower frame connection element. Emphasising the requirement in claim 11 that the net be suitable for use with the apparatus of claim 1, he considered that the frame connection elements must withstand the tension that the goalposts and crossbar would be placed under when used in a goal apparatus according to claim 1, and there is no disclosure in D2 of any lower connection elements able to withstand such tension.

85 I agree with Dr Davies that the net has loops at each top corner which function as upper frame connection elements. It is less clear whether D2 discloses a net with lower frame connection elements. I have found that D2 does not explicitly disclose that the net is connected to the base member, but, as Mr Davies implied, the tieing bands could also be considered lower frame connection elements in the context of claim 11 which, unlike claim 10, does not require them to be located on the base member. Whilst their means of attachment to the net is not clear, it is nevertheless the case that the tieing bands must be attached to the net in some sense and can be considered as lower frame connection elements of the net of D2.

86 The net must however be suitable for use in the goal apparatus of claim 1, as Mr Francis pointed out. I however disagree with Mr Francis that the tieing bands would not be able to withstand the tension that the goalposts and crossbar would be placed under when used as a goal apparatus according to claim 1. It seems to me that the tieing bands of D2 would be able to withstand sufficient tension when connected to the frame of claim 1 in order for the apparatus to function as a goal.

87 I note that claim 1 also requires that the frame support the pliable crossbar member in tension such that first and second pliable goalpost members extend substantially parallel to each other and substantially perpendicular to the pliable crossbar member. No specific submissions were made by either party in relation to whether the net of D2 would be suitable for such a purpose. Mr Francis' arguments in relation to the net being suitable for use in the goal apparatus of claim 1 related to the question of whether the tieing bands would be able to withstand the tension placed on the net by the frame of D2.

88 I note however that the connection points on the frame of claim 11 are arranged so as to ensure that, when a suitable net is attached, first and second pliable goalpost members would extend parallel to each other and perpendicular to the crossbar member, and this is the basis by which the net must be suitably tensioned. It could be assumed that Mr Francis was not relying on this feature of claim 1 to argue that the net of claim 11 would not be suitable for use in the goal apparatus of claim 1. In any event, it seems to me that it is the location of the net connection points on the frame that are important in ensuring that the pliable goalpost members are substantially parallel to each other, rather than any specific features of the net itself. Specifically, the upper net connection points need to be in the same vertical plane as their respective lower net connection points.

89 In my view, if the net of D2, was to be attached to such a frame by connecting its upper frame connection elements to the frame's upper net connection points and the tieing bands to the lower net connection points, a tension would be imparted in the net between these upper and lower connections which would result in substantially parallel vertical tensioned edges in the net, forming substantially parallel pliable

goalpost members, albeit that there may be additional net located at the foot of the goal (that portion of the net that extends below the tieing bands), and potentially beyond the tensioned edges if the net is not substantially rectangular. Moreover, these edges would also be substantially perpendicular to the crossbar member and would function as a goal apparatus, even if the net of D2 is not the optimal shape for attaching to the frame of claim 1. I therefore find that the net of D2 is suitable for use in the goal apparatus of claim 1 and discloses all the features of claim 11. Claim 11 therefore lacks novelty over D2.

Novelty of claim 15 over D2

90 Claim 15 relates to a method of providing a goal and is not limited to being suitable for the goal apparatus of claim 1. I have already found that the apparatus of D2 can be considered as a goal.

91 Dr Davies submitted that D2 shows a frame with a lower net connection element, stating:

> *"That lower net connection element could indeed be in this case the base member itself. For example, the base member could be arranged to pass through the lower part of the net."*

92 Dr Davies submitted that the net in D2 could be connected to the lower connection points and then to the upper connection points of the pipes 14 using the net loops. His submission was:

> *"Then the method of connecting the first pliable goal post between the first lower net connection point and the first upper net connection point. The tension pipes 14 and 16 are positioned in support pipes 10 and they are bent inwardly and arranged to couple with the looped part of the net at the top. So by coupling the net at the top of the tension pipes 14, they then become coupled between the upper end of the poles and the base 12."*

93 Mr Francis submitted that D2 does not disclose any lower net connection points and therefore the step of connecting the pliable goalpost members between the respective upper net connection points and lower net connection points is not disclosed in D2. Mr Francis also submitted that there is no disclosure in D2 of how the practice net assembly may be assembled or disassembled. In reply, Dr Davies argued that D2 does show how it is assembled.

94 On Mr Francis' latter point, I note that claim 15 does not relate to assembling or disassembling a goal but to a method of providing a goal, albeit that it does include steps of connecting various members in various configurations. In any event, some degree of assembly is disclosed in D2, for example stating in paragraph [0018] in relation to Figures 2 and 3 (emphasis mine):

> *"Fig. 2 is an exploded perspective view of a support pipe frame of a sports ball net assembly … Fig. 3 is a perspective view of the support pipe frame of Fig. 2 with the pipes of the frame being assembled into a single body."*

95 Moreover, it is apparent in D2 that the tension pipes 14,16 are bent inwards and connected to the net, which is another assembly step. For example, paragraph [0020] states:

> *"The tension pipe unit is mounted to each support pipe 10 at the lower end of the second tension pipe 16 prior to being elastically bent inwardly. Thereafter, the net 22 is held by the support frame with both top corners of the net 22 being caught by the holding pins."*

96 Whilst I have found that the term "net connection element" should be construed broadly in my analysis in relation to D1, I have however found that there is no explicit or implicit disclosure that the net is connected to the base member in D2 or, for that matter to pipes 14,16 at any points other than at their top ends and at the midpoint via the tieing bands.

97 At the hearing Dr Davies stated that the tieing bands could also be considered as lower net connection points. I note that claim 15 does not specify that the lower net connection elements/points be located on the base member. The tieing bands can therefore be considered as lower net connection points. Moreover, in assembly, the edges of the net of D2, which form the pliable goalpost members, are connected between the top end of the pipes via the loop and the tieing bands, thereby providing a goal. I therefore conclude that D2 discloses a method of providing a goal in accordance with claim 15 of the Patent. Claim 15 therefore lacks novelty over D2.

Inventive step over D1 and D2

98 Dr Davies did not at any point submit that any of the independent claims of the Patent were obvious over either D1 or D2 alone, although the statement of grounds does rely on obviousness over D1 alone and D2 alone in relation to some of the dependent claims I will not therefore consider obviousness of the independent claims over D1 or D2 alone. Mr Francis did make submissions on inventive step in relation to both D1 alone and D2 alone, but since the claimant did not plead or make any arguments in relation to these points, I need not consider his arguments any further in relation to determining obviousness of the independent claims.

99 Dr Davies did however submit that the independent claims were obvious over a combination of D1 and D2. He argued that, as the person skilled in the art would be well familiar with typical shapes of goals and understand that goals provide or require a frame and a net, they would be aware of the documents D1 and D2. He considered the field of stopping balls of D2 to be related to the field of goals of D1, and therefore submitted there is a clear incentive to combine D1 and D2.

100 Dr Davies took as his starting point for his inventive step analysis the teachings of D1 and his submissions were made on the basis that the difference between the inventive concept of the patent and D1 relates to how the upper connection points of the frame are biased, assuming that their submissions in relation to this feature had not been accepted for the purposes of novelty. While Dr Davies referred to claims 1, 10, 11 and 15, it seems the difference highlighted is only relevant to claims 1 and 10 as these are the only claims to explicitly refer to biasing.

101 Dr Davies submitted that D2 clearly shows the biasing feature of claim 1 and also teaches that it is important to have a suitably tensioned net. He argued that D1 identified a need to keep the crossbar in tension to prevent it from sagging. Dr Davies therefore submitted:

> *"So the skilled person would clearly know that from D2, if they wanted to provide additional tensioning to the crossbar of the goal apparatus in D1, they would need to have additional poles, potentially. The poles shown in D2 should be combining the frame in D1 and that would provide additional tensioning to the crossbar. That would be an obvious modification because it would simply involve repositioning the poles or applying poles in the (unclear) shown in D2."*

102 Dr Davies therefore submitted that there was a lack of an inventive step over a combination of the teachings of D1 and D2 on this basis.

103 Mr Francis submitted that the Patent was inventive over a combination of D1 and D2. He argued that there is nothing in D1 to suggest to the skilled person that the cord-like cross bar arrangement is under insufficient tension and, even if there was, D1 proposes its own solution of a rigid crossbar. He also argued that there is no evidence to suggest that the skilled person would be aware of D2, as there is no evidence that it is common general knowledge. In response to this point, Dr Davies pointed out that D2 referred to the benefit of an exceptionally light goal, and this would provide the skilled person with incentive to look for other solutions for preventing sagging of the crossbar.

104 Mr Francis made reference to paragraph 3.43 of the Manual of Patent Practice which sets out considerations in relation to combining documents and states:

> *"In deciding whether or not it is obvious to combine the disclosure in two or more documents, the following considerations are likely to be relevant:-*
>
> *(a) How the nature and the contents of the documents influence whether the person skilled in the art would combine them. For example where the disclosed features seem at first sight to have an inherent incompatibility or where one document has a tendency to lead from the mosaic, this would be a pointer towards the combinations being inventive see 3.91*
>
> *(b) Whether the documents came from the same technical field or from neighbouring or remote technical fields see 3.26-3.28.2 and see 3.44*
>
> *(c) The presence of references in one document to another*
>
> *(d) The amount of selection required to isolate the separate disclosures from the surrounding documentary material*
>
> *(e) Whether the contents of one document are so well known that the skilled person would always have them in mind in reading other documents see 3.45*
>
> *(f) The age of the documents see 3.37.2-3.39.1"*

105 Mr Francis made submissions in relation to each factor in turn. Mr Davies did not organise his arguments in this manner, but his submissions I have summarised above touch on at least some of these factors. In relation to factor (a), Mr Francis

submitted that one could not arrive at claim 1 from the mere combination of D1 and D2 as they are teaching opposite things with respect to the biasing apart of the upper net connection points and the resultant tension on the crossbar, with there being no biasing apart in D1, and the poles in opposite curvature to those of D2. Mr Francis considered this an inherent incompatibility at least with respect to that feature.

106 In relation to factor (b), Mr Francis submitted that D2 does not relate to a goal apparatus but to a practice net assembly. He argued that these were related but not identical technical fields, particularly when the skilled person is considering the relevant teachings of D1, which is limited to a goal apparatus, unlike D2.

107 Mr Francis pointed out that there are no references in D1 to D2 or vice versa, and therefore submitted that factor (c) does not point to the skilled person combining the disclosure of the documents.

108 Mr Francis submitted that factor (d) feeds into the consideration as to what the skilled person would actually do even if they tried to combine these documents, arguing that what was being suggested was extracting the feature of the curvature of the poles 14,16 and their biasing apart and tensioning of the top of the net in isolation from D2 and inserting it into D1 without further consideration as to what that would mean for D1. He submitted that the skilled person would run into all sorts of difficulties, and it would not be clear how to do this without substantially modifying the arrangements of D1 and would negate the teaching and functions of the poles 28 and 30 in D1 to push the net outwards. Mr Francis asserted it is not therefore clear how one could combine D1 and D2 even if they were minded to.

109 Mr Francis submitted that, in relation to factor (e), there is no evidence that D2 is so well known to the skilled person that they would have it in mind when reading D1.

110 Factor (f) relates to the age of the documents, and Mr Francis, rightly in my view, did not consider this a relevant consideration in the present proceedings.

111 In my analysis, I agree with Mr Francis that there is little to suggest to the person skilled in the art that there is insufficient tension in the crossbar of D1 in the embodiment involving the cord-like crossbar member and, even if there was, D1 does itself propose another solution, namely a rigid bar. Moreover, I also agree that D1 and D2 function in very different ways, with the poles of D1 tensioning the net, including its crossbar element, in a very different manner to that of D2.

112 I consider D1 and D2 to be in sufficiently related fields so as to be available for consideration by the skilled person in that they both relate to goals in the sense that they present a frame and net for capturing balls, including footballs, although I would not go so far as to say that D2 is sufficiently well known to the skilled person that they would have it mind when reading D1, or that it would be part of their common general knowledge.

113 Overall, due to their very different functionality I am not persuaded that the skilled reader of D1 would be motivated to consider making changes the frame such that the poles are repositioned in the manner of D2, nor motivated to add additional poles equivalent to those in D2, as Dr Davies suggests. In my view significant changes would need to be made to the goal of D1 in order to insert the biased poles of D2

into the goal of D1, and I do not consider the skilled person would be motivated to make such changes, or even give D2 any consideration, given the lack of a perceived problem of insufficient crossbar tension in D1.

114 Consequently, I am not persuaded by the claimant's argument that claim 1 and claim 10 are obvious in the light of a combination of the teachings of D1 and D2.

Dependent claims

115 I have found claims 11 and 15 to be invalid. Claims 12-14 are dependent on claim 11 and claim 15 has no dependent claims. Whilst the claimant did, in their statement of grounds, make submissions that the dependent claims either lacked novelty or were obvious over D1 and/or D2 and asked me at the hearing to consider these submissions, I note that these submissions were never pursued in detail after the initial pleadings. The defendant, in their counter-statement, submitted that the dependent claims are novel because the independent claims upon which they are dependent are novel, but did not at any point make any further submissions in relation to the dependent claims. Moreover, I note that the defendants Auxiliary Request 2 states:

> *"Under the condition the Comptroller considers the Patent to be invalid with respect to independent claim 11("A net …"), the Proprietor provides Auxiliary Request 2 in which claims 11-14 are deleted."*

116 Given that no substantive arguments have been made in relation to the dependent claims since the initial pleadings, specifically in the skeletons or during the hearing, and given the defendant's request that claims 11-14 be deleted in the event that I consider claim 11 to be invalid, I need not consider the dependent claims further in this decision.

Conclusion, auxiliary requests and order

117 I have found that claims 1 and 10 of the patent are novel over both D1 alone and D2 alone and are inventive over D1 and D2 when considered in combination. I have found that claims 11 and 15 lack novelty over both D1 alone and D2 alone.

118 The defendant has sought an opportunity to amend the claims in line with one or more of six auxiliary requests, should I find any of the claims invalid. I note that auxiliary request 2 relates to the deletion of claims 11-14 in the event that I find claim 11 to be invalid, and auxiliary request 3 to the deletion of claim 15 in the event that I find claim 15 invalid. Auxiliary request 1 relates to a finding that claim 10 is invalid, and auxiliary requests 4-6 to a finding that claim 1 is invalid.

119 Whilst the defendant did make submissions that some of the auxiliary requests should not be allowed, either because they would result in claims that lacked novelty and/or an inventive step, or they added subject matter not present in the application as originally filed, they did not make any objections to auxiliary requests two and three, which relate only to deletion of claims. I will therefore allow an opportunity for the defendant to request an amendment under section 75 in accordance with their auxiliary requests 2 and 3 to delete claims 11-15. Such an amendment should be advertised in the usual way.

120 In view of my finding of a lack of novelty of claims 11 and 15, I therefore order the following:

(1) A request to amend patent number EP2146786 in accordance with auxiliary requests 2 and 3 to delete claims 11-15 should be made by the defendant within eight weeks of the date of this decision.

(2) If such an amendment is made within this period to the satisfaction of the comptroller, then the patent EP2146786 is not revoked.

(3) If no such request for an amendment is made within this period, the patent EP2146786 is revoked.

121 I invite the parties' submissions on the matter of costs.

Appeal

122 Any appeal must be lodged within 28 days after the date of this decision.

Dr B MICKLEWRIGHT
Deputy Director, acting for the Comptroller