

Quickly Evaluating Claims

Shortcuts to Spotting Good and Bad Patent Claims

How to Quickly Judge a Claim

- Look for Unnecessary Function in Structure Claims (May Mean More Structure is Needed) and Vice Versa for Method Claims
- Look for Overuse of the Workpiece
- Look for Multiple Features Buried in a Single Limitation (May Mean More Structure or Method is Needed - Usually Makes the Claim Confusing and Vague)
- Look for Overuse of “Wherein”; “Such That”; “Whereby”; etc.
- Look for Obtuse Claims
- Look for Claims Without Defined Terms (Even if Those Terms Would be Known By One Skilled in That Art Field)
- Look for Unnecessary Claim Elements

Unnecessary Function in Structure Claims

- MPEP 2173.05(g) discusses functional limitations.
- A claim term is functional when it recites a feature “by what it does rather than by what it is” (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In *reSwinehart*, 439 F.2d 210, 212, 169 USPQ 226, 229 (CCPA 1971). In fact, 35 U.S.C. 112, sixth paragraph, expressly authorizes a form of functional claiming (means-plus-function claim limitations discussed in MPEP § 2181).
- A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.
- Notwithstanding the permissible instances, the use of functional language in a claim may fail “to provide a clear-cut indication of the scope of the subject matter embraced by the claim” and thus be indefinite. In *re Swinehart*, 439 F.2d 210, 213 (CCPA 1971).

Unnecessary Function in Structure Claims

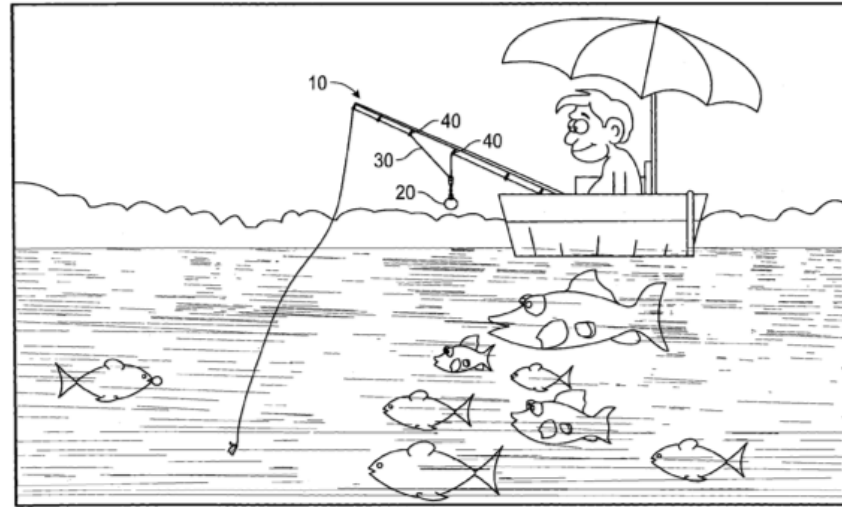


FIG. 1

- A fish-on line indicator comprising:
- a counterweight sufficiently heavy to hold a fishing line taut and sufficiently visible to alert the angler that the fishing has moved;
- a swivel to slip over the fishing line to position the counterweight for view of the action;
- a connector for connecting the counterweight to the swivel, the connector comprising a sufficiently heavy and water resistant material.

Unnecessary Function in Structure Claims

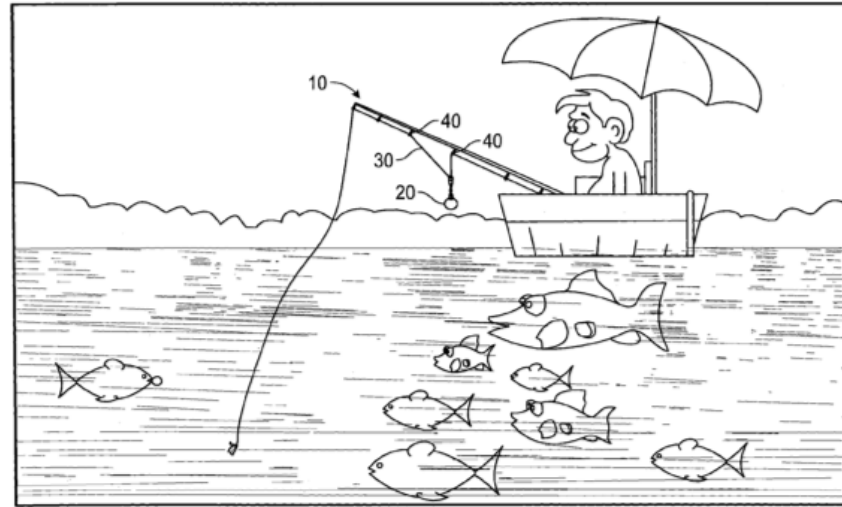


FIG. 1

- A fish-on line indicator comprising:
- a counterweight sufficiently heavy to hold a fishing line taut, and sufficiently visible to alert the angler that the fishing has moved;
- a swivel to slip over the fishing line to position the counterweight for view of the action;
- a connector for connecting the counterweight to the swivel, the connector comprising a sufficiently heavy and water resistant material.

Unnecessary Function in Structure Claims

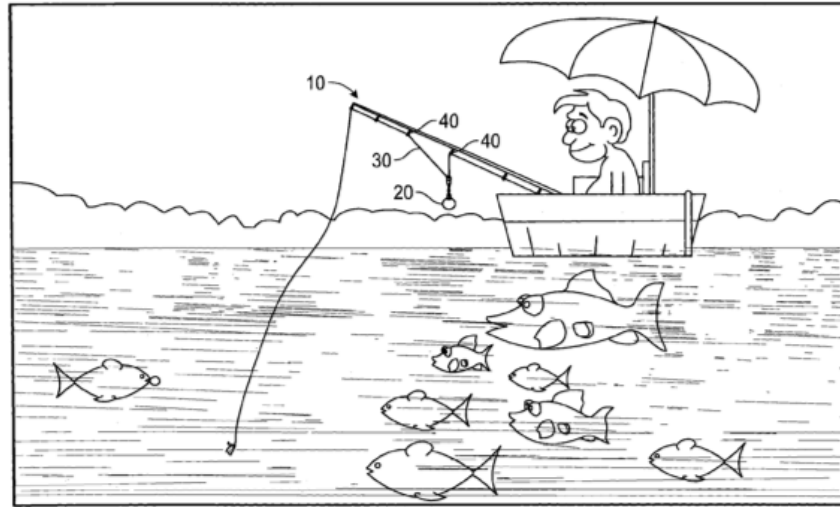
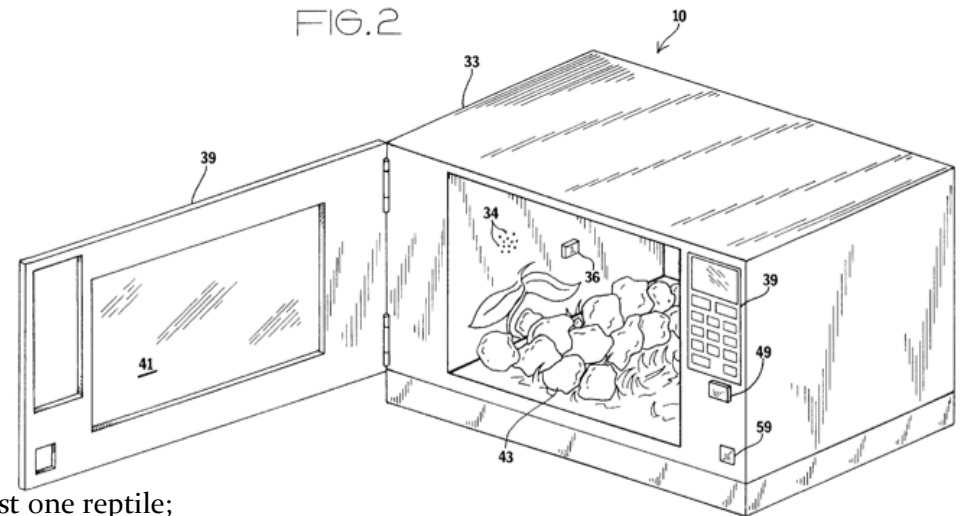


FIG. 1

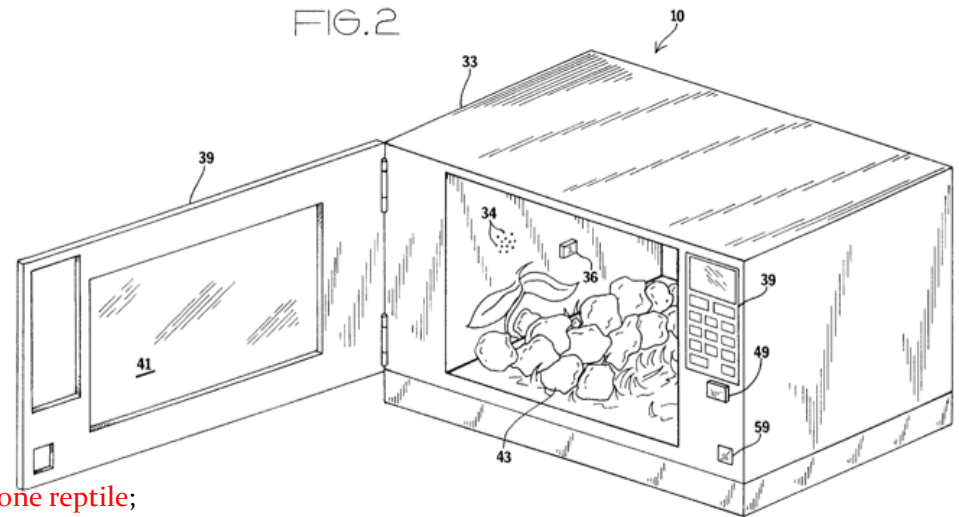
- A fish-on line indicator comprising:
- a counterweight connected to a fishing line, said counterweight being sufficiently heavy to hold a said fishing line taut, and said counterweight having physical characteristics to be sufficiently visible to alert the angler holding a fishing pole containing said fishing line that the fishing line has moved;
- a swivel connected to said counterweight, said swivel being slipped to slip over the fishing line to position the counterweight in a position to allow said angler to for view of the counterweight action;
- a connector for connecting the counterweight to the swivel, the connector comprising a sufficiently heavy and water resistant material and being sufficiently heavy to cause said counterweight to be sufficiently visible to alert said angler holding said fishing pole that said fishing line has moved.

Unnecessary Function in Structure Claims



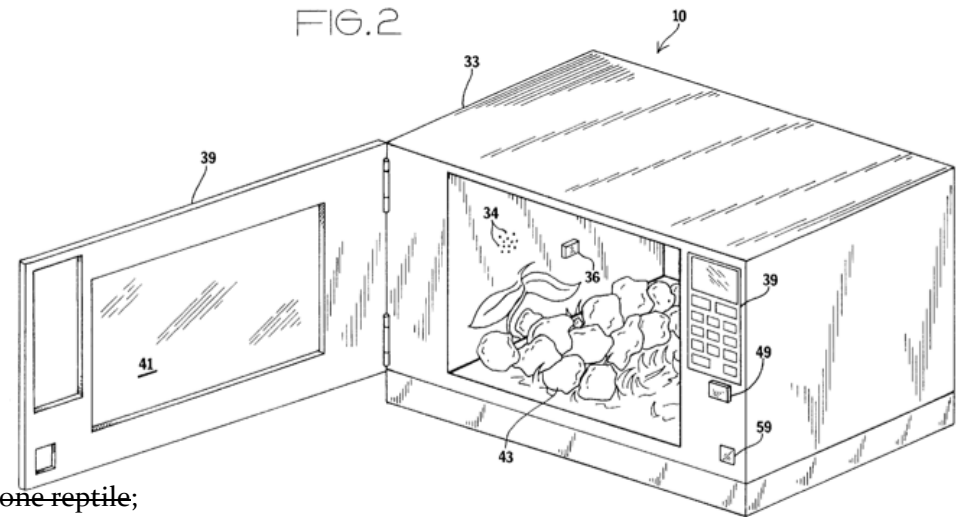
- A hibernation enclosure for reptiles, comprising:
 - a) a cabinet having an interior for housing at least one reptile;
 - b) a door swingably mounted to the cabinet and a one-way viewing window mounted to said door for enabling a user to determine the status of the reptile without the necessity of opening said door;
 - c) cooling means to effect selective cooling of the interior of said cabinet;
 - d) ventilation holes and an air filter fitted over the ventilation holes to circulate a controlled amount of fresh air into the cabinet;
 - e) a motion sensor for detecting movements by the reptile, and an alarm electrically connected to said motion sensor such that the alarm is activated in response to the detection of movements indicative of the reptile withdrawing from hibernation;
 - f) a humidifier to maintain an optimal humidity level for the reptile;
 - g) a control unit operatively connected to said cooling means having a thermostat for selectively switching said cooling means on and off according to preselected temperature values and the current temperature within said cabinet; and
 - h) wherein said preselected temperature values are selected to gradually change the temperature within the cabinet from a normal temperature to a lowest preselected temperature value to encourage said reptile to enter into hibernation, to maintain said lowest preselected temperature during a substantial part of the hibernation period, and to gradually raise the temperature within the container to the normal temperature, as the end of the hibernation period approaches.

Unnecessary Function in Structure Claims



- A hibernation enclosure for reptiles, comprising:
 - a) a cabinet having an interior for housing at least one reptile;
 - b) a door swingably mounted to the cabinet and a one-way viewing window mounted to said door for enabling a user to determine the status of the reptile without the necessity of opening said door;
 - c) cooling means to effect selective cooling of the interior of said cabinet;
 - d) ventilation holes and an air filter fitted over the ventilation holes to circulate a controlled amount of fresh air into the cabinet;
 - e) a motion sensor for detecting movements by the reptile, and an alarm electrically connected to said motion sensor such that the alarm is activated in response to the detection of movements indicative of the reptile withdrawing from hibernation;
 - f) a humidifier to maintain an optimal humidity level for the reptile;
 - g) a control unit operatively connected to said cooling means having a thermostat for selectively switching said cooling means on and off according to preselected temperature values and the current temperature within said cabinet; and
 - h) wherein said preselected temperature values are selected to gradually change the temperature within the cabinet from a normal temperature to a lowest preselected temperature value to encourage said reptile to enter into hibernation, to maintain said lowest preselected temperature during a substantial part of the hibernation period, and to gradually raise the temperature within the container to the normal temperature, as the end of the hibernation period approaches.
- (This claim needs much more positional identifiers and needs to remove the implied step of selecting the temperatures)

Unnecessary Function in Structure Claims



- A hibernation enclosure for reptiles, comprising:
 - a) a cabinet having an interior for housing at least one reptile;
 - b) a door swingably mounted to the cabinet and a one-way viewing window mounted to said door for enabling a user to determine the status of the reptile without the necessity of opening said door;
 - c) a cooling device connected to means to effect selective cooling of the interior of said cabinet;
 - d) ventilation holes in said cabinet extending from said interior of said cabinet to an exterior of said cabinet, and an air filter fitted over the ventilation holes to circulate a controlled amount of fresh air into the cabinet;
 - e) a motion sensor in said cabinet for detecting movements by the reptile, and an alarm electrically connected to said motion sensor such that the alarm is activated in response to the detection of movements indicative of the reptile withdrawing from hibernation in said cabinet;
 - f) a humidifier connected to said interior of said cabinet to maintain an optimal humidity level for the reptile;
 - g) a control unit operatively connected to said cooling device means having a thermostat for selectively switching said cooling device means on and off according to preselected temperature values and the current temperature within said cabinet; and
 - h) ~~wherein said preselected temperature values are selected to~~ said controller gradually ~~change~~ changing the temperature within the cabinet from a normal temperature to a lowest preselected temperature value to encourage said a reptile to enter into hibernation, to maintain said lowest preselected temperature during a substantial part of the hibernation period, and to gradually raise the temperature within the container to the normal temperature, as the end of the hibernation period approaches.

Unnecessary Function in Structure Claims

- A personal roll bar device for protecting a user's head, neck and back and transferring impact forces substantially to the waist of the user in the event the user experiences a head-first fall, the device comprising:
- an impact member positioned adjacent the user's back and spaced apart from the user's head, neck and shoulders, the impact member removably engaged with the user's waist and extending upwardly therefrom above a top of the user's head; and
- a stabilizing means slidably coupled with the impact member and configured for maintaining the impact member adjacent the user's back during use;
- whereby, in the event the user experiences a head-first fall while using the device, an upper end of the impact member substantially protects the user's head and neck from initial impact, with the resulting impact forces being distributed through the impact member and substantially absorbed by the user's waist, thereby reducing the risk of burst and compression fractures in the user's neck and back.

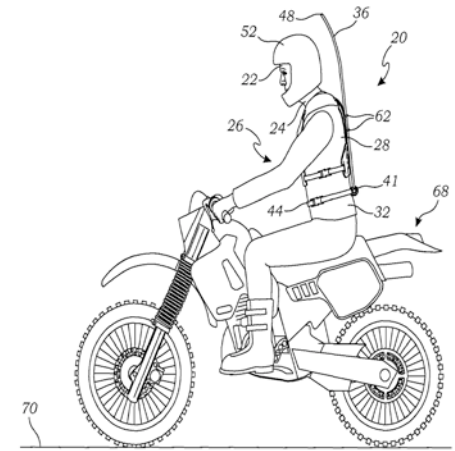


Fig. 5

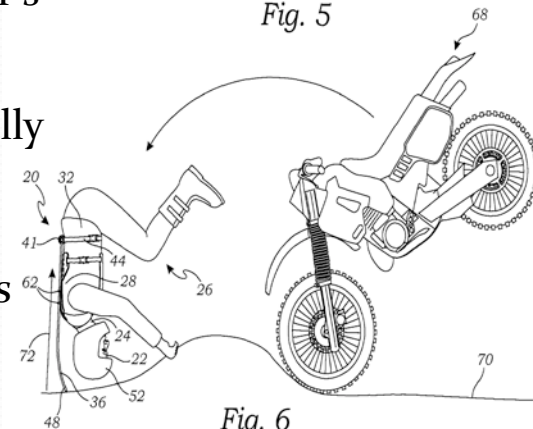


Fig. 6

Unnecessary Function in Structure Claims

- A personal roll bar device for protecting a user's head, neck and back and transferring impact forces substantially to the waist of the user in the event the user experiences a head-first fall, the device comprising:
- an impact member positioned adjacent the user's back and spaced apart from the user's head, neck and shoulders, the impact member removably engaged with the user's waist and extending upwardly therefrom above a top of the user's head; and
- a stabilizing means slidably coupled with the impact member and configured for maintaining the impact member adjacent the user's back during use;
- whereby, in the event the user experiences a head-first fall while using the device, an upper end of the impact member substantially protects the user's head and neck from initial impact, with the resulting impact forces being distributed through the impact member and substantially absorbed by the user's waist, thereby reducing the risk of burst and compression fractures in the user's neck and back.

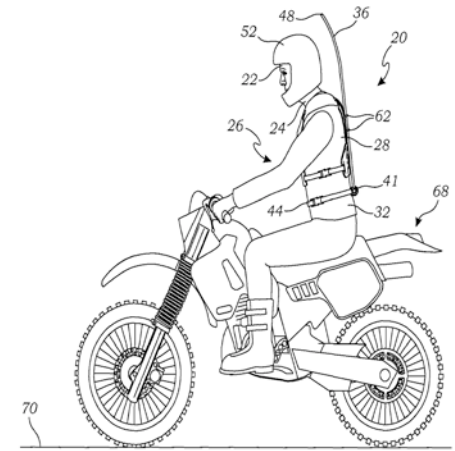


Fig. 5

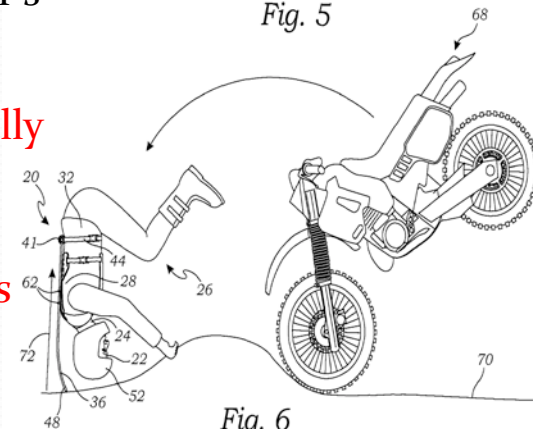


Fig. 6

Unnecessary Function in Structure Claims

- A personal roll bar device for protecting a user's head, neck and back and transferring impact forces substantially to the waist of the user in the event the user experiences a head-first fall, the device comprising:
- an impact member positioned adjacent the user's back and spaced apart from the user's head, neck and shoulders, the impact member removably engaged with the comprising a belt, said belt being sized to fit a user's waist and said impact member having a size to extending upwardly therefrom from said belt to above a top of the user's head; and
- a stabilizing member means slidably coupled with the impact member and configured for maintaining the impact member adjacent being sized to fit the user's back during use;
- whereby, in the event the user experiences a head-first fall while using the device, an upper end of the impact member substantially protects the user's head and neck from initial impact, with the resulting impact forces applied to said impact member being distributed through the impact member and to said belt and said stabilizing member substantially absorbed by the user's waist, thereby reducing the risk of burst and compression fractures in the user's neck and back.

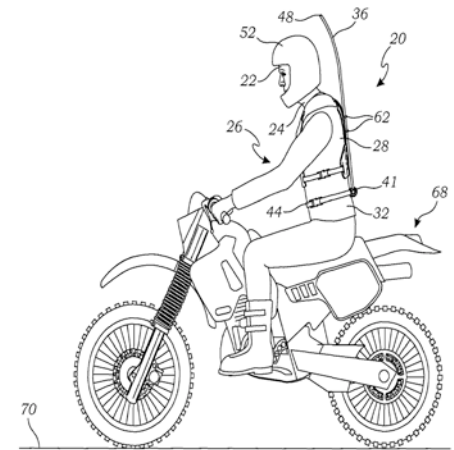


Fig. 5

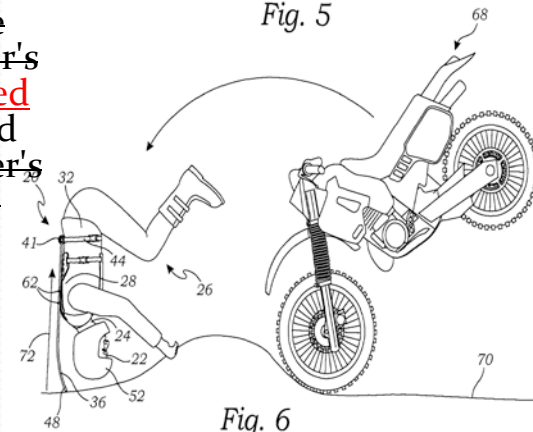


Fig. 6

Unnecessary Structure in Method Claims

- MPEP 2173.05(p) provides that a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. See *In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303 (Fed. Cir. 2011).
- A claim can be indefinite if it is unclear “whether infringement ... occurs when one creates a system that allows the user [to use the input means], or whether infringement occurs when the user actually uses the input means (*In re Katz*, 639 F.3d at 1318 (citing *IPXL Holdings v. Amazon.com, Inc.*, 430 F.2d 1377, 1384, 77 USPQ2d 1140, 1145 (Fed. Cir. 2005))).

Unnecessary Structure in Method Claims

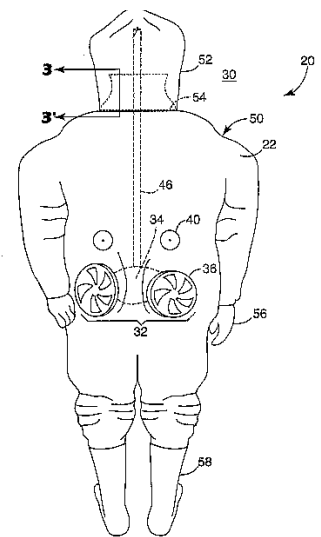
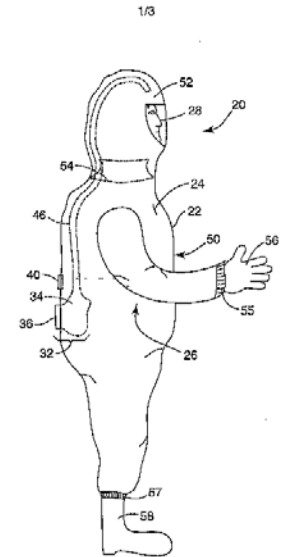
- A method for protecting a patient from falling by remotely alerting a caregiver of patient motion within a care facility, the method comprising:
 - placing a motion sensor and a wireless transmitter in a patient's room;
 - giving a wireless receiver to a caregiver, the wireless receiver having a reset button and a cancel call button;
 - integrating an operating module together with the wireless transmitter into the motion sensor;
 - broadcasting an alert signal when the motion sensor is activated to the wireless receiver to alert the caregiver of patient's unsafe motion; and
 - sending a reset or a cancel call signal from the wireless receiver to the operating module using the reset or the cancel call button on the wireless receiver.

Unnecessary Structure in Method Claims

- A method for protecting a patient (Unnecessary, use a first person) from falling by remotely alerting a caregiver (Unnecessary, use a second person) of **patient** motion **within a care facility**, the method comprising:
 - placing a motion sensor and a wireless transmitter in a **patient's** room;
 - giving a wireless receiver to a caregiver, the wireless receiver having a reset button and a cancel call button;
 - integrating an operating module together with the wireless transmitter into the motion sensor (Unnecessary, use this as a description clause of the motion sensor, or this should make you think about whether the manufacture of the device or the consumer's use of the device should be claimed);
 - broadcasting an alert signal when the motion sensor is activated to the wireless receiver **to alert the caregiver of patient's unsafe motion**; and
 - sending a reset or a cancel call signal from the wireless receiver to the operating module using the reset or the cancel call button on the wireless receiver.

Overuse of the Workpiece

- A personal protective suit for a wearer, comprising:
- a generally fluid-tight barrier comprising a hood portion located generally above the wearer's neck and at least partially enveloping the wearer's nose and mouth, and a body portion located generally below the wearer's neck and at least partially enveloping the wearer's torso;
- an air delivery system that can deliver air to the hood portion;
- a vent that can permit gasses to escape from the body portion;
- a partial flow restriction between the hood portion and body portion that can permit gasses to pass from the hood portion to the body portion while reducing carbon dioxide levels measured in front of the wearer's mouth.



Overuse of the Workpiece

- A personal protective suit **for a wearer**, comprising:
- a generally fluid-tight barrier comprising a hood portion located **generally above the wearer's neck** and at least partially enveloping the **wearer's nose and mouth**, and a body portion **located generally below wearer's neck and** at least partially enveloping **the wearer's torso**;
- an air delivery system **that can deliver** air to the hood portion;
- a vent **that can permit** gasses to escape from the body portion;
- a partial flow restriction between the hood portion and body portion **that can permit** gasses to pass from the hood portion to the body portion **while** reducing carbon dioxide levels measured in **front of the wearer's mouth**.

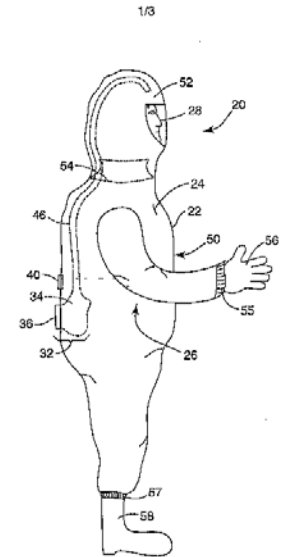


FIG. 1

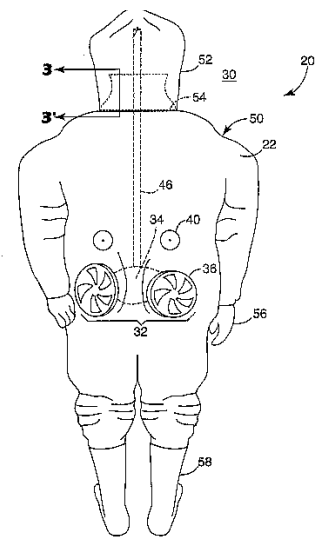


FIG. 2

Overuse of the Workpiece

- A personal protective suit for a wearer, comprising:
- a generally fluid-tight barrier comprising a hood portion located at a first location relative to a reference plane generally above the wearer's neck and at least partially enveloping the first location wearer's nose and mouth, and a body portion located generally below wearer's neck and at least partially enveloping a second location between said first location and said reference plane the wearer's torso;
- an air delivery system that can deliver delivering air to the hood portion;
- a vent that can permit permitting gasses to escape from the body portion;
- a partial flow restriction between the hood portion and body portion that can permit permitting gasses to pass from the hood portion to the body portion while and reducing carbon dioxide levels measured in said hood portion front of the wearer's mouth.

WO 03/08654

FIG. 1/US 2004/008322

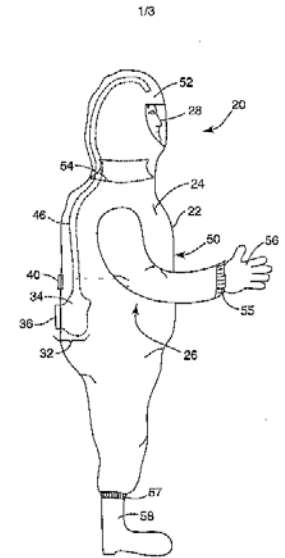


FIG. 1

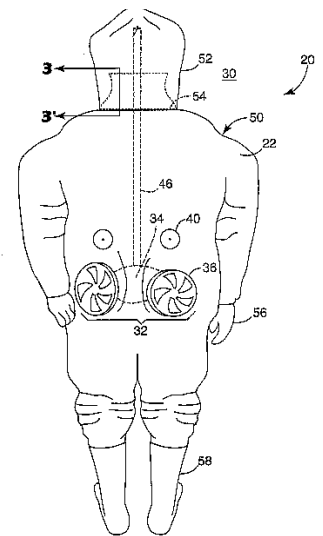
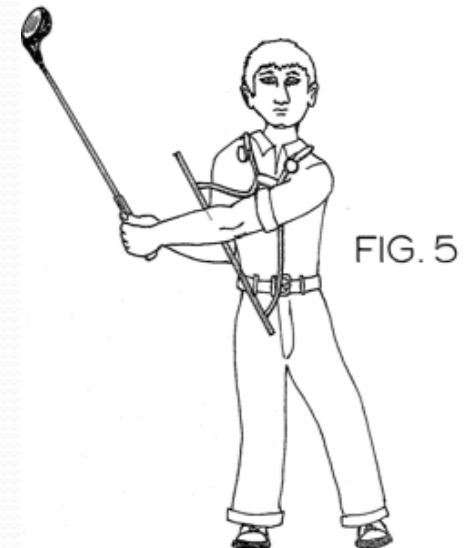


FIG. 2

Overuse of the Workpiece

- A golf swing training device comprising:
- (a) a first section made of rigid material arched over the user's shoulder on each side of the neck and extending to rest against the user's back in substantially stable fashion below the shoulder level;
- (b) another section of rigid material continuing from the first section downward from the shoulder along the front of the user resting in substantially stable fashion at about the user's breastbone; and
- (c) a straight rigid elongated member attached to and spaced forward from said another section angled in an upward direction, in a forward direction and in a side direction.



Overuse of the Workpiece

- A golf swing training device comprising:
- (a) a first section made of rigid material arched over **the user's shoulder on each side of the neck** and extending to **rest against the user's back in substantially stable fashion below the shoulder level**;
- (b) another section of rigid material continuing from the first section downward from the **shoulder along the front of the user** resting in substantially stable fashion at about **the user's breastbone**; and
- (c) a straight rigid elongated member attached to and spaced **forward** from said another section angled in **an upward** direction, in a **forward** direction and in a **side** direction.



FIG. 4

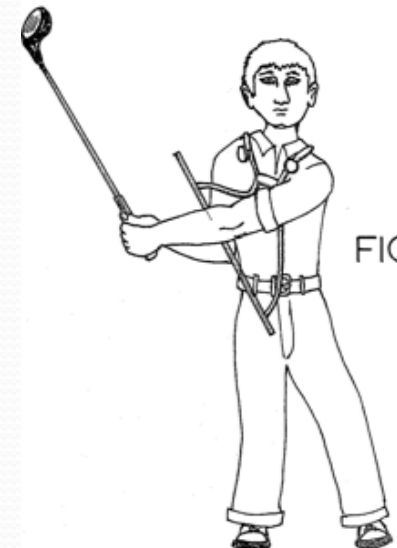


FIG. 5

Overuse of the Workpiece

- A golf swing training device comprising:
- (a) a first section made of rigid material arched over two sides of a first location at a first height from a reference plane ~~the user's shoulder on each side of the neck and extending to rest against the user's back in substantially stable fashion below the shoulder level~~ a second location positioned a second height from said reference plane, said second height being closer to said reference plane relative to said first height;
- (b) another section of rigid material continuing from the first section ~~downward~~ toward said reference plane from the second location ~~shoulder along the front of the user resting in substantially stable fashion at about~~ a third location positioned at said second height from said reference plane spaced from said second location in a first direction ~~the user's breastbone; and~~
- (c) a straight rigid elongated member attached to and spaced forward in said first direction from said another section angled in a an upward direction away from said reference plane, in a forward said first direction and in a side second direction.
- said first direction being parallel to said reference plane, and
- said second direction being at an angle other than parallel to said reference plane.



FIG. 4

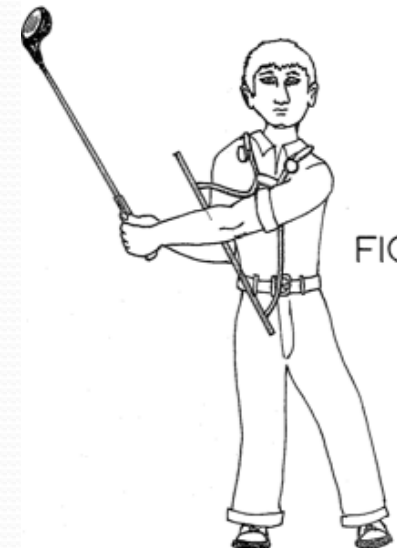


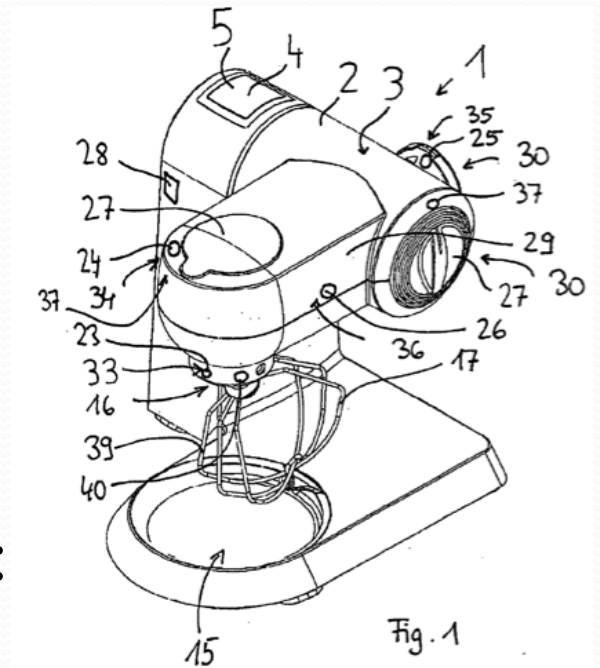
FIG. 5

Multiple Separate Features Buried In A Single Limitation

- MPEP 2173.02 states that the applicant has an opportunity and a duty to amend ambiguous claims to clearly and precisely define the metes and bounds of the claimed invention. The claim places the public on notice of the scope of the patentee's right to exclude. See, e.g., *Johnson & Johnston Assoc. Inc. v. R.E. Serv. Co.*, 285 F.3d 1046, 1052 (Fed. Cir. 2002)(en banc).

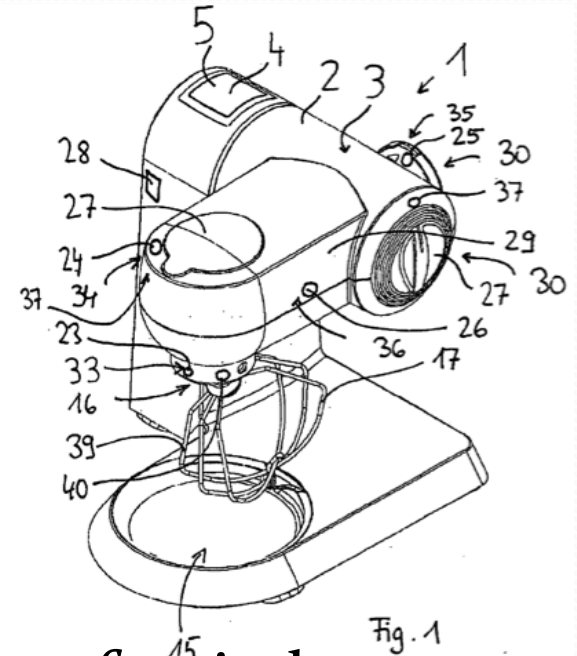
Multiple Separate Features Buried In A Single Limitation

- A kitchen appliance comprising:
 - a circuit closer; and
 - a safety lock system with a plurality of switches each with a corresponding sensor that unlock the circuit closer and permit operation of the kitchen appliance only if the kitchen appliance is properly assembled.



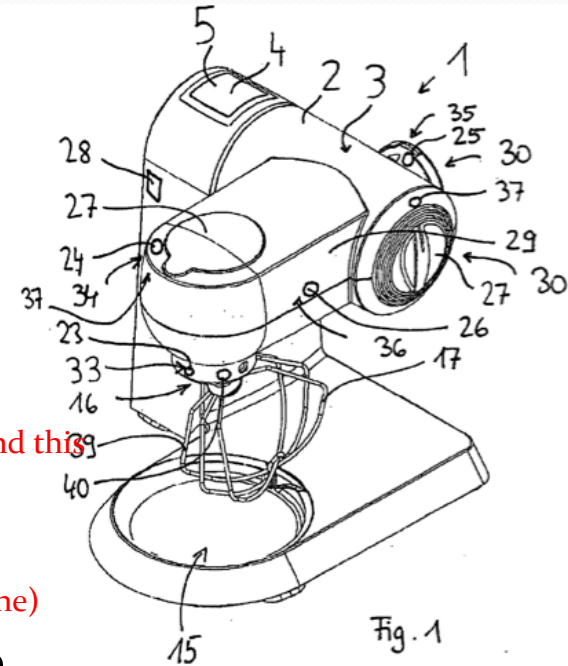
Multiple Separate Features Buried In A Single Limitation

- A kitchen appliance comprising:
 - a circuit closer; and
 - a safety lock system with a plurality of switches (buried element) each with a corresponding sensor (buried element) that unlock the circuit closer and permit operation of the kitchen appliance only if the kitchen appliance is properly assembled (buried element).
- (These buried elements should be individually structurally defined features, doing so will make you define the elements more precisely).



Multiple Separate Features Buried In A Single Limitation

- An kitchen-appliance safety lock system comprising:
 - a circuit closer; and
 - a safety lock system with a plurality of switches connected to said circuit closer, (end this thought and begin a new one)
 - each of said switches comprising with a corresponding sensor, (end this thought and begin a new one)
 - each said sensor unlocking that unlock the circuit closer if a corresponding element of said appliance is improperly assembled, (end this thought and begin a new one) and
 - said circuit closer permitting operation of the kitchen-appliance only if each said sensor of said switches indicate the kitchen-appliance is properly assembled.



Multiple Separate Features Buried In A Single Limitation

- An automatic shoe cover dispenser, comprising:
 - a shoe cover feeding arrangement holding a plurality of shoe covers each having a shoe opening;
 - a pulling mechanism which is capable of pulling one of said shoe covers from said shoe cover feeding arrangement as a standby shoe cover for being ready for wearing on a shoe of a user; and
 - a driving mechanism, comprising
 - a pedal arranged in up and down movable manner for said shoe of said user to step thereon and
 - means for driving said pulling mechanism to deliver said standby shoe cover to said pedal and enlarging said shoe opening of said standby shoe cover to be large enough for said shoe of said user to place inside said standby shoe cover by means of up and down movements of the pedal,
 - wherein said shoe opening of each of said shoe cover has an elastic peripheral edge provided therearound,
 - wherein said driving mechanism is constructed in a manner that when a downward force is applied to said pedal to press said pedal downward, said pulling mechanism is actuated to deliver said standby shoe cover above said pedal and said shoe opening is enlarged by applying a separating force to move said elastic peripheral edge apart by said driving mechanism, afterward said pedal being driven upwards again by said driving mechanism,
 - wherein when said pedal is pressed downward again, said standby shoe cover is detached from said shoe cover feeding arrangement and said separating force applied to said elastic peripheral edge is released by means of said driving mechanism for wearing said standby shoe cover on said shoe of said user that steps on said pedal to press said pedal to move up and down.

Multiple Separate Features Buried In A Single Limitation

- ~~wherein said driving mechanism is constructed in a manner that when a downward force is applied to said pedal to press said pedal downward,~~ actuating said pulling mechanism ~~is actuated to deliver said standby shoe cover above said pedal~~ (end this thought and begin a new one)
- ~~and said shoe opening~~ being ~~is enlarged by~~ said downward force being applied to said pedal; (end this thought and begin a new one)
- said downward force applied to said pedal applying a separating force to move said elastic peripheral edge apart by said driving mechanism, (end this thought and begin a new one)
- ~~afterward~~ upon release of said downward force said pedal being driven upwards again by said driving mechanism,
- ~~wherein when said pedal is pressed downward again,~~ a second application of said downward force applied to said pedal causing said standby shoe cover ~~is to~~ detached from said shoe cover feeding arrangement pedal (end this thought and begin a new one) and
- said separating force applied to said elastic peripheral edge ~~is~~ being released by ~~means of said driving mechanism for wearing~~ to leave said standby shoe cover on said shoe of said user ~~that steps on said pedal to press said pedal to move up and down.~~

Multiple Separate Features Buried In A Single Limitation

- An automatic shoe cover dispenser

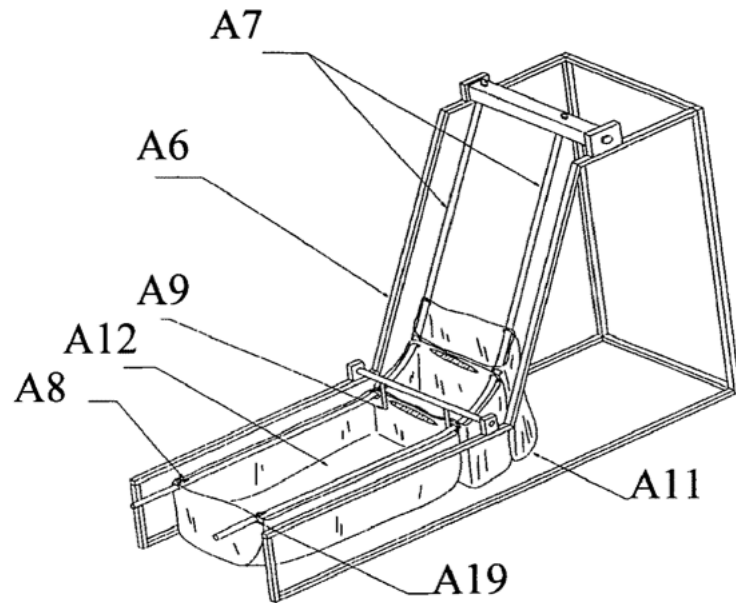


FIG. 28

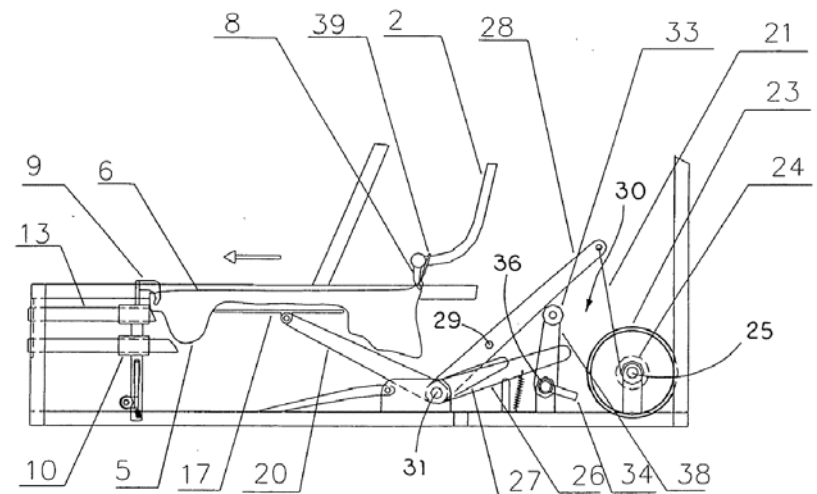


FIG. 8

Multiple Separate Features Buried In A Single Limitation

- “Unobtrusive Personal Air Filtration Device”:
- A portable personal air filtration device that doesn't use a face mask or face shield and is worn on the user's person wherein the air inhaled by the user is diluted with 20% or more by volume of air that has not passed through the filter of said device.

Figure 3

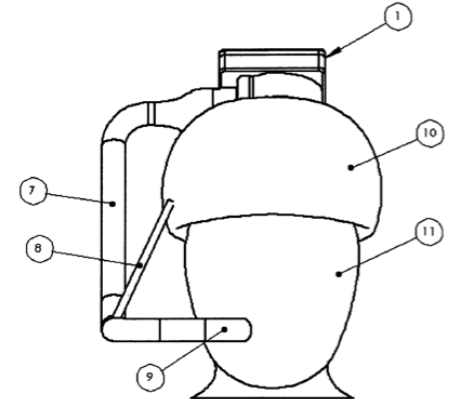
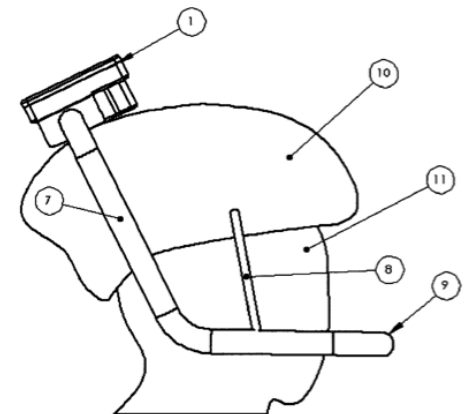


Figure 4



Multiple Separate Features Buried In A Single Limitation

- “Unobtrusive Personal Air Filtration Device”:
- A portable personal air filtration device that doesn't use a face mask or face shield and is worn on the user's person wherein the air inhaled by the user (buried element) is diluted (buried element) with 20% or more by volume of air that has not passed through the filter (buried element) of said device.

Figure 3

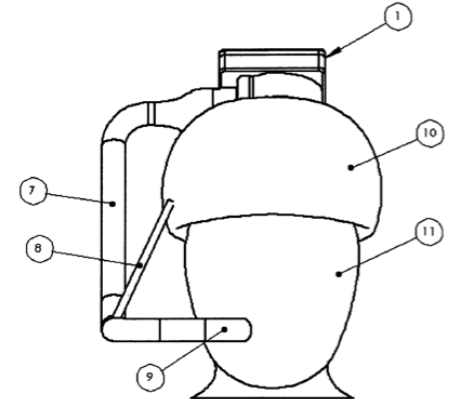
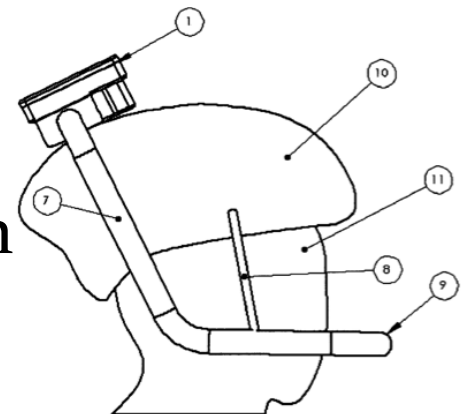


Figure 4



Multiple Separate Features Buried In A Single Limitation

- “Unobtrusive Personal Air Filtration Device”:
- A portable personal air filtration device that **doesn't** (do not use contractions, do not use negative limitations when they can be stated positively) use a face mask or face shield and is worn on the **user's** (do not use possessive forms) person (try to state structure, not function) wherein the air inhaled by the user (buried element) is diluted (buried element) with 20% or more by volume of air that has not passed through the filter (buried element) of said device.
- Note that in this claims 100% (20% or more of the air) can bypass the only claimed structure (the filter) essentially rendering it unnecessary.

Figure 3

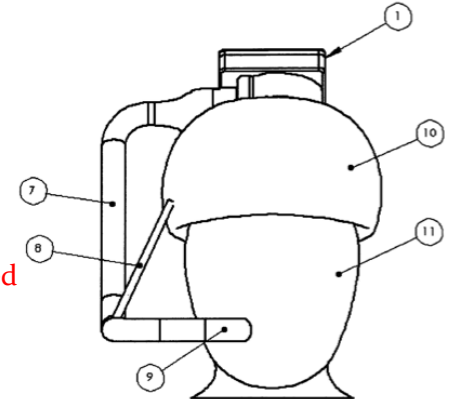
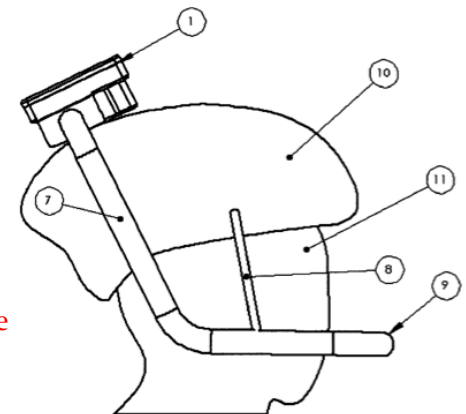


Figure 4

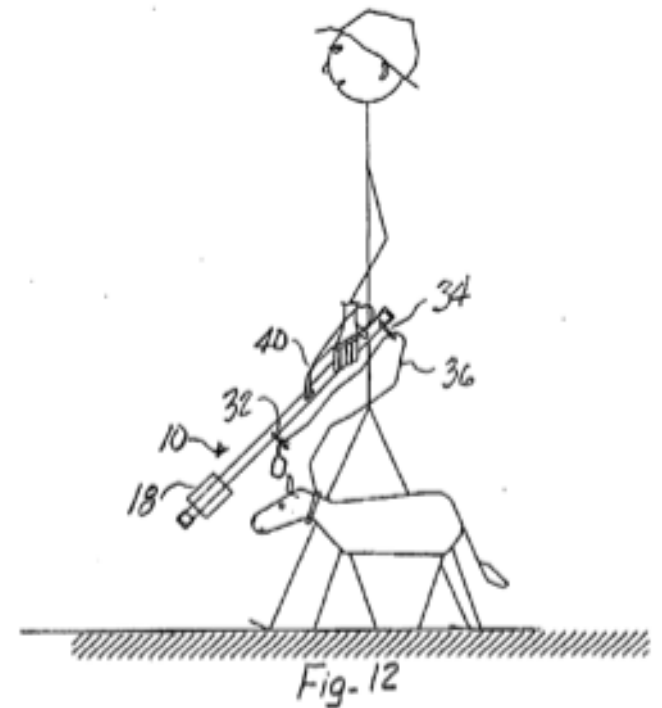


Overusing “Wherein”; “Such That”; “Whereby”; etc.

- MPEP 2111.04 discusses “adapted to,” “adapted for,” “wherein,” and “whereby” clauses [R-9]
- Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are: (A) “adapted to” or “adapted for” clauses; (B) “wherein” clauses; and (C) “whereby” clauses.
- The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case.
- *Griffin v. Bertina*, 283 F.3d 1029, 1034, 62 USPQ2d 1431 (Fed. Cir. 2002) found that a “wherein” clause limited a process claim where the clause gave “meaning and purpose to the manipulative steps”.
- In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a “whereby” clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention.” *Id.*
- However, the court noted (quoting *Minton v. Nat’l Ass’n of Securities Dealers, Inc.*, 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a “whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited.” *Id.*

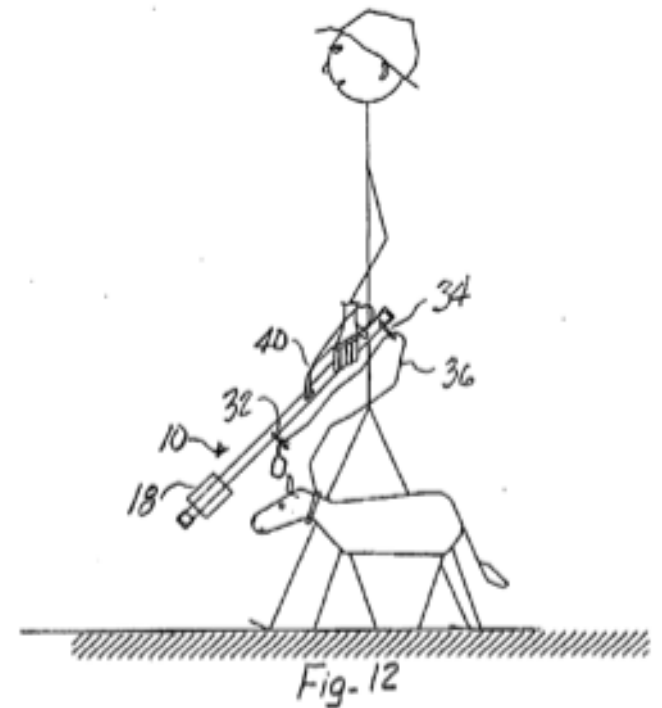
Overusing “Wherein”; “Such That”; “Whereby”; etc.

- A dog training and control apparatus, comprising:
 - an elongated walking wand having a distraction end and a handle end; and
 - guide means for receiving and holding a leash in place along at least a substantial part of the length of said wand;
 - whereby a leash can be strung through said guide means, one end of the leash can be secured to said wand proximate said distraction end, and the distal end of the leash can be routed past said handle end attached to the collar of a dog to be trained, such that a handler gripping said wand at said handle end can use the leash to restrain the dog in a heeling position, and can use the distraction end to distract the dog should it attempt to move forward of the heeling position or have its attention diverted.



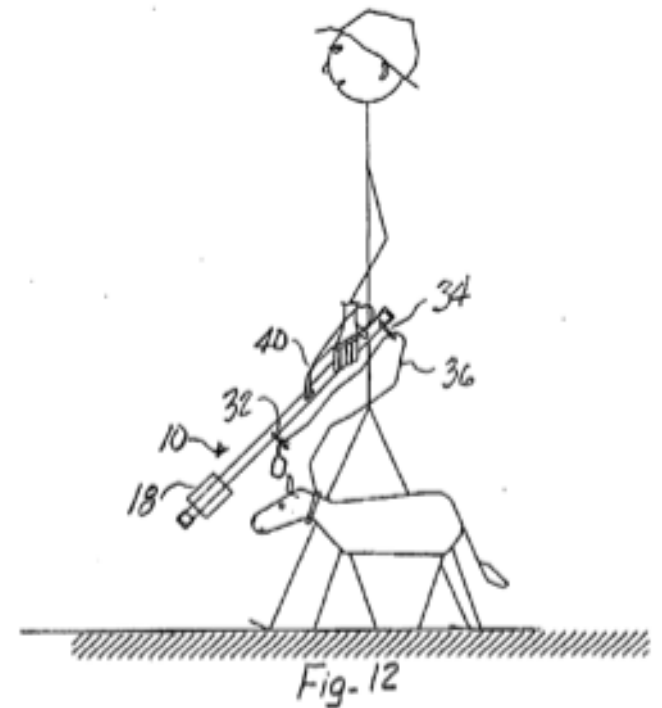
Overusing “Wherein”; “Such That”; “Whereby”; etc.

- A dog training and control apparatus, comprising:
 - an elongated walking wand having a distraction end and a handle end; and
 - guide means for receiving and holding a leash in place along at least a substantial part of the length of said wand;
 - **whereby** a leash **can be** strung through said guide means, one end of the leash **can be** secured to said wand proximate said distraction end, and the distal end of the leash **can be** routed past said handle end attached to the collar of a dog to be trained, such that a handler gripping said wand at said handle end **can use** the leash to restrain the dog **in a heeling position**, and **can use** the distraction end to distract the dog **should it attempt to move forward of the heeling position or have its attention diverted**.



Overusing “Wherein”; “Such That”; “Whereby”; etc.

- A dog ~~dog~~ animal training and control apparatus, comprising:
 - an elongated walking wand having a distraction end and a handle end; and
 - guide means for receiving and holding a leash in place along at least a substantial part of the length of said wand;
 - ~~whereby a leash can be strung through said guide means, one~~ a first end of the leash in said guide means being ~~can be secured to said wand proximate said distraction end, and~~
 - ~~the distal~~ a second end of the leash being ~~can be~~ routed past said handle end attached to an animal ~~the collar of a dog to be trained, such that a handler gripping said wand at said handle end can use the leash to restrain the dog in a heeling position, and can use~~
 - the distraction end having physical characteristics to distract an animal ~~to distract the dog should it attempt to move forward of the heeling position or have its attention diverted.~~

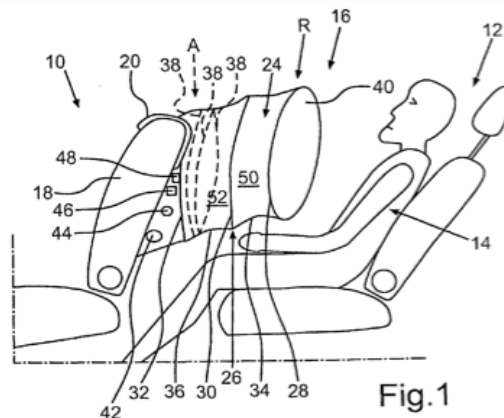


Obtuse Claims

- A restraining system having
 - a restraining volume delimited by a cladding,
 - which restraining volume is enlargeable from a storage position to a restraining position,
 - in which the restraining volume serves at least indirectly to restrain a person or an object,
 - wherein: a mechanical enlarging unit is provided, by which the restraining volume can be adjusted into the restraining position.

Obtuse Claims

- A restraining system having
 - a restraining volume delimited by a cladding,
 - which restraining volume is enlargeable from a storage position to a restraining position,
 - in which the restraining volume serves at least indirectly to restrain a person or an object,
 - wherein: a mechanical enlarging unit is provided, by which the restraining volume can be adjusted into the restraining position.



Claims Without Defined Terms

- An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” and, if done, must “set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)).
- Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999).

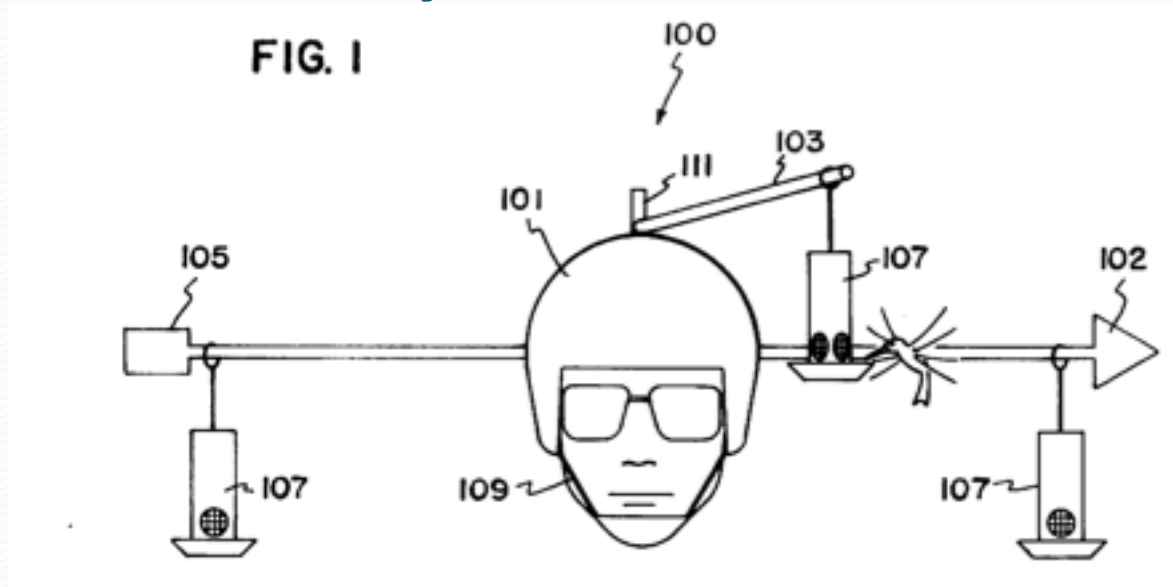
Claims Without Defined Terms

- A method for improving stacking schema for multiclass classification tasks by combining based classifiers in three stages:
 - a) combining all base classifiers using the one-against-one specialist classifiers and providing a specialist classifiers prediction;
 - b) learning the prediction characteristics of said specialist classifiers using meta-classifiers wherein said meta-classifiers are trained using one-against-all class binarization and regression learners for each class model; and providing a meta-classifiers prediction; and
 - c) producing a final prediction;
- wherein said method comprising:
 - building predictive models based on stacked-generalization meta-classifiers;
 - combining classifications to build a new scheme from at least two layers;
 - converting multiclass classification problems into binary classification problems;
 - improving ensemble classifiers using stacking;
 - improving accuracy differences, accuracy ratio, and runtime classification in multiclass datasets; and
 - predicting the class of a value.

Claims Without Defined Terms

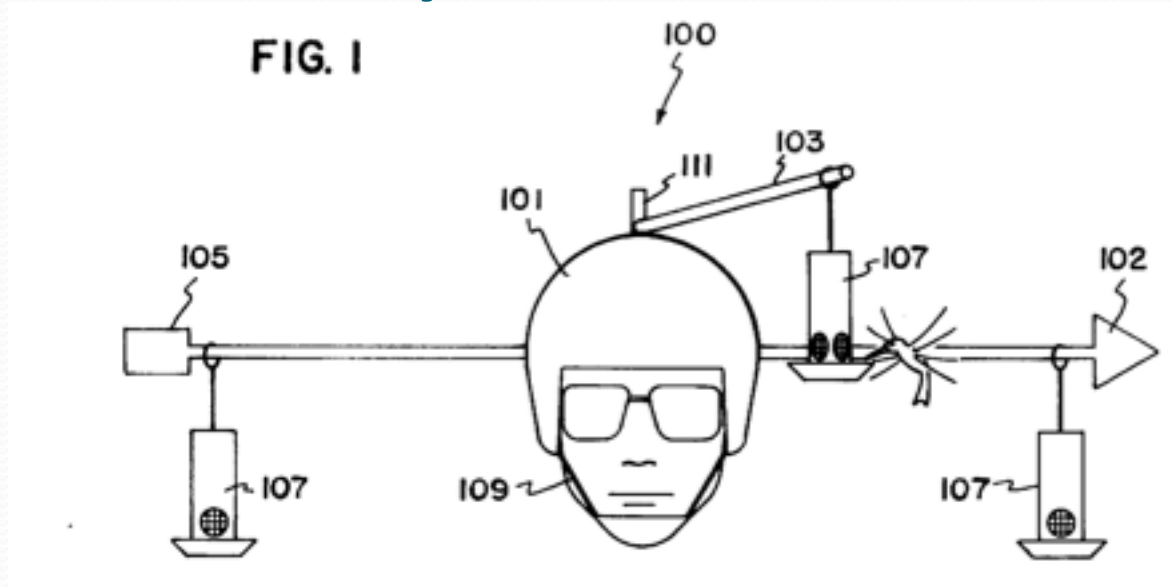
- A method for improving stacking schema for multiclass classification tasks by combining based classifiers in three stages:
 - a) combining all base classifiers (not defined) using the one-against-one specialist classifiers (not defined) and providing a specialist classifiers prediction (not defined);
 - b) learning the prediction characteristics (not defined) of said specialist classifiers using meta-classifiers (not defined) wherein said meta-classifiers are trained using one-against-all class binarization and regression learners (not defined) for each class model (not defined); and providing a meta-classifiers prediction (not defined); and
 - c) producing a final prediction (not defined);
 - wherein said method comprising:
 - building predictive models (not defined) based on stacked-generalization meta-classifiers (not defined);
 - combining classifications (not defined) to build a new scheme from at least two layers (not defined);
 - converting multiclass classification problems (not defined) into binary classification problems (not defined);
 - improving ensemble classifiers (not defined) using stacking (not defined);
 - improving accuracy differences (not defined), accuracy ratio (not defined), and runtime classification (not defined) in multiclass datasets (not defined); and
 - predicting the class (not defined) of a value (not defined).

Unnecessary Claim Elements



- A device for feeding and observing flying animals comprising:
 - a hat, the hat including a front portion and a rear portion;
 - a first support mounted on the hat and extending forward of the front portion of the hat; and
 - a feeder configured to contain food for flying animals mounted on the first support, wherein the flying animals can be observed while they feed.

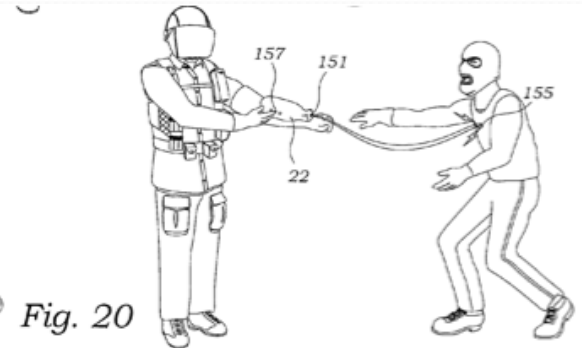
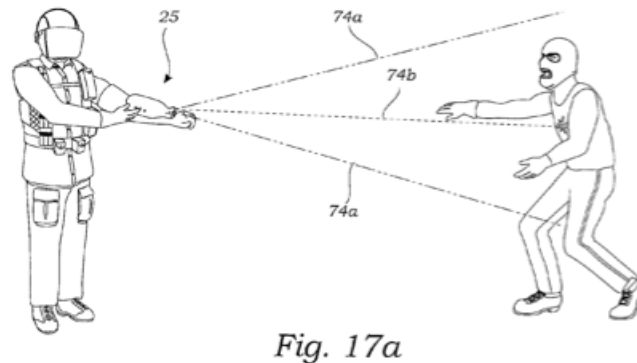
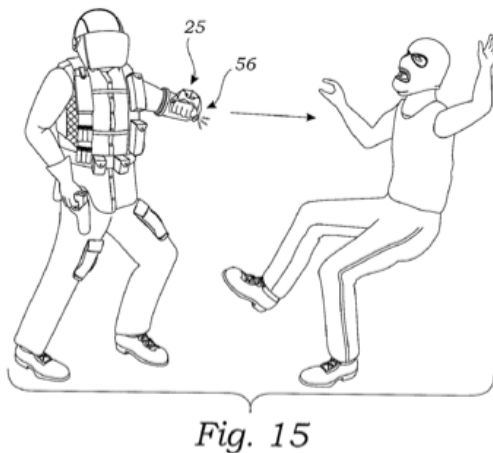
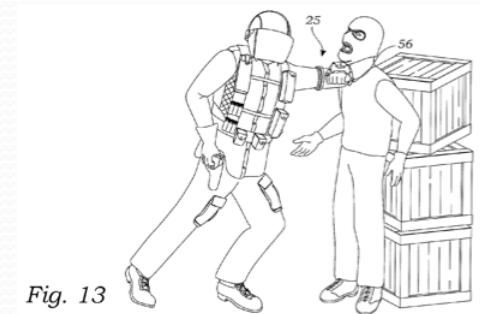
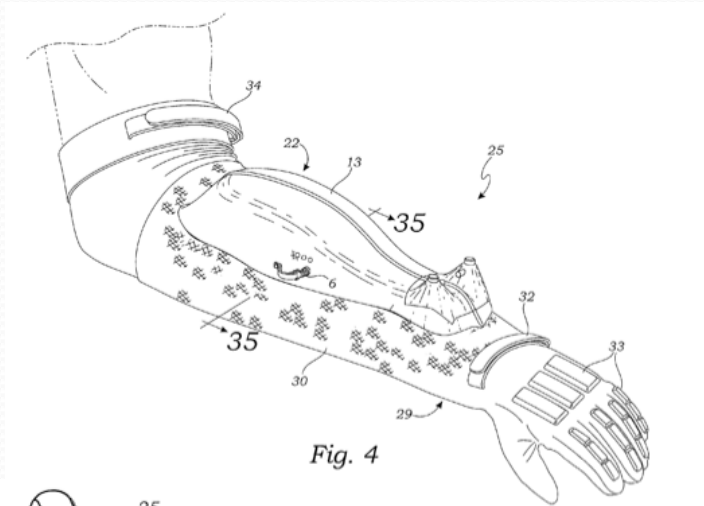
Unnecessary Claim Elements



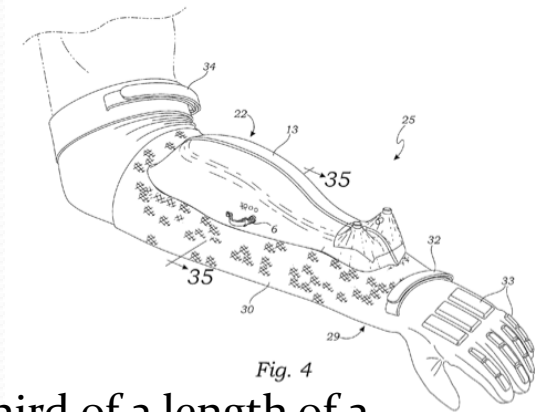
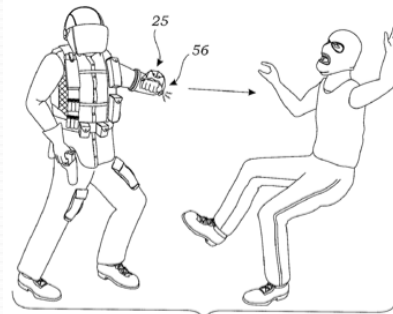
- A device **for feeding and observing flying animals** comprising:
 - a hat, the hat including a front portion and a rear portion;
 - a first support mounted on the hat and extending forward of the front portion of the hat; and
 - a feeder configured to contain food **for flying animals** mounted on the first support, **wherein the flying animals can be observed while they feed.**

Unnecessary Claim Elements

- Example: “Personal Defense Device”

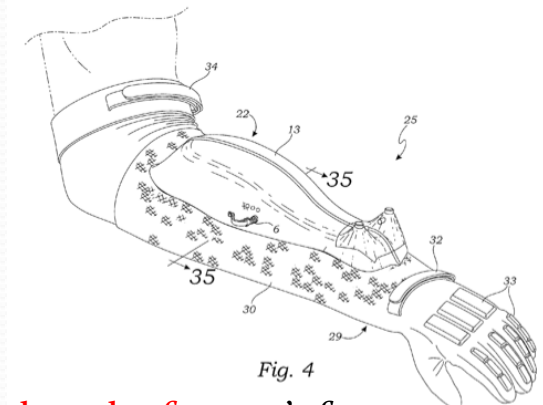
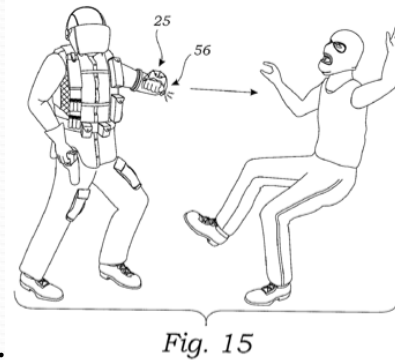
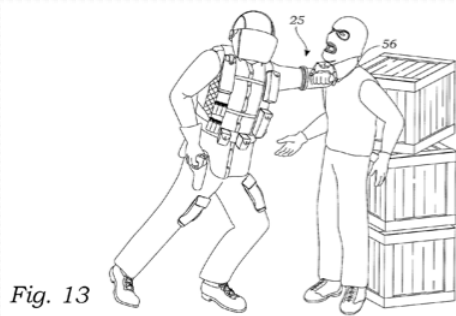


Unnecessary Claim Elements



- A personal defense device comprising:
 - a shield member configured to be worn over at least a third of a length of a user's forearm, the forearm being bounded by the user's ipsilateral wrist and ipsilateral elbow, the length being measured from the wrist to the elbow, the shield member conforming closely to the outer surface contours of a forearm, and
 - a portable source of electricity,
 - wherein the shield member includes an electrical shock bar configured to receive an electrical current from the electrical source and to deliver an electrical shock to a human or other animal,
 - wherein the electrical shock bar includes a pair of substantially parallel shock bar members, and
 - wherein the electrical shock bar is configured to deliver an electrical shock when the electrical shock bar receives an electrical current from the electrical source and both of the shock bar members are contacted simultaneously.

Unnecessary Claim Elements



- A personal defense device comprising:
 - a shield member configured to be worn over **at least a third of a length of a user's forearm, the forearm being bounded by the user's ipsilateral wrist and ipsilateral elbow, the length being measured from the wrist to the elbow, the shield member conforming closely to the outer surface contours of a forearm, and**
 - a portable source of electricity,
 - wherein the shield member includes an electrical shock bar configured to receive an electrical current from the electrical source and to deliver an electrical shock **to a human or other animal,**
 - wherein the electrical shock bar includes a pair of substantially parallel shock bar members, and
 - wherein the electrical shock bar is configured to deliver an electrical shock when the electrical shock bar receives an electrical current from the electrical source and both of the shock bar members are contacted simultaneously.



- Thank You

How to Quickly Judge a Claim

- Look for Unnecessary Function in Structure Claims (May Mean More Structure is Needed) and Vice Versa for Method Claims
- Look for Overuse of the Workpiece
- Look for Multiple Features Buried in a Single Limitation (May Mean More Structure or Method is Needed - Usually Makes the Claim Confusing and Vague)
- Look for Overuse of “Wherein”; “Such That”; “Whereby”; etc.
- Look for Obtuse Claims
- Look for Claims Without Defined Terms (Even if Those Terms Would be Known By One Skilled in That Art Field)
- Look for Unnecessary Claim Elements

For softcopy e-mail: Fred Gibb (gibb@gibbiplaw.com)