

**LOMBARDI GOLF BALL DESIGN, LP,**

*Plaintiff,*

v.

**FORTUNE BRANDS, INC. and ACUSHNET  
COMPANY,**

*Defendants.*

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**COMPLAINT AND  
DEMAND FOR JURY  
TRIAL**

Civil Action No.  
5:09-cv-610  
(DNH/GHL)

Plaintiff Lombardi Golf Ball Design, LP brings this action for patent infringement against Fortune Brands, Inc. and Acushnet Company (“Defendants”) as follows:

**The Parties**

1. Plaintiff Lombardi Golf Design, LP (“LGBD”) is a limited partnership having its principal address of One Park Place, 300 South State Street, Syracuse, New York 13202.
2. Upon information and belief, Defendant Fortune Brands, Inc. is, and at all relevant times mentioned herein was, a corporation organized under the laws of the State of Delaware, having its principal place of business at 520 Lake Cook Road, Deerfield, Illinois 60015
3. Fortune Brands, Inc. may be served by serving its registered agent, Prentice Hall Corp., 33 North LaSalle Street, Chicago, Illinois 60602-2607.
4. Upon information and belief, Defendant Acushnet Company is, and at all relevant times mentioned herein was, a corporation organized under the laws of the State of Delaware, having its principal place of business at 333 Bridge Street, Fairhaven, Massachusetts 02719.

5. Acushnet Company is authorized to do business in New York and may be served by serving its registered agent, Corporate Service Co., 80 State St., Albany, New York 12207-2543.

### **Jurisdiction and Venue**

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

7. The Court's jurisdiction is proper under the above statutes, including 35 U.S.C. § 271 *et. seq.*, and 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over each Defendant because: (a) each Defendant has conducted and does conduct business within the State of New York; (b) directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, and sells its products in the United States, the State of New York, and the Northern District of New York; and (c) has purposefully and voluntarily placed one or more of its infringing products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Northern District of New York.

9. The infringing products of each Defendant have been and continue to be purchased by consumers in the Northern District of New York.

10. Each Defendant has committed the tort of patent infringement within the State of New York and, more particularly, within the Northern District of New York.

11. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d), as well as 28 U.S.C. § 1400(b).

### **Patent in Suit**

12. On June 18, 2002, the United States Patent and Trademark Office (“USPTO”) issued U.S. Design Patent No. D458,978 S entitled “Golf Ball Demarcation” (hereinafter “the ’978 patent”). A true and correct copy of the ’978 patent is attached hereto as Exhibit A.

13. LBGD is the owner by assignment of all rights and interests in the ’978 patent.

### **Patent Infringement**

14. LGBD repeats and re-alleges the allegations contained in paragraphs 1 through 13 above as though more fully set forth herein.

15. The ’978 patent is valid and enforceable.

16. All requirements under 35 U.S.C. §287 have been satisfied with respect to the ’978 patent.

17. Defendants have been and are infringing the ’978 patent by making, using, selling, offering for sale, and/or importing in or into the United States, without authority, products that fall within the scope of the claims of the ’978 patent, including but not limited to products known as Titleist Pro V1, Titleist Pro V1x, Titleist NXT Tour, Titleist NXT Extreme, Titleist DT Carry, Titleist DT Roll, Pinnacle Platinum Feel, Pinnacle Platinum Distance, Pinnacle Gold FX Soft, and Pinnacle Gold FX Long.

18. Defendants have, at least as of the date of the filing of this lawsuit, and perhaps earlier, knowledge of the ’978 patent and its coverage of the Defendants’ infringing instrumentalities, but have nonetheless continued to engage in their infringing conduct. Defendants’ infringement of the ’978 patent is and continues to be willful.

19. Unless Defendants are enjoined by this Court from continuing their infringement of the '978 patent, LGBD will suffer additional irreparable harm and impairment of the value of its patent rights.

20. LGBD has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. §285, and LGBD is entitled to recover its reasonable and necessary attorneys' fees, costs, and expenses.

### **Prayer for Judgment and Relief**

**WHEREFORE**, Plaintiff Lombardi Golf Ball Design, LP prays for a Judgment against Defendant Fortune Brands, Inc. and Defendant Acushnet Company as follows:

- a. That U.S. Design Patent No. D458,978 S is valid and enforceable;
- b. That Defendant Fortune Brands, Inc. and Defendant Acushnet Company infringe U.S. Design Patent No. D458,978 S and that such infringement was and is willful;
- c. An award of damages to LGBD against Fortune Brands, Inc. and Defendant Acushnet Company for infringement of U.S. Design Patent No. D458,978 S under 35 U.S.C. § 284 or § 289;
- d. In the event LGBD elects to recover damages under 35 U.S.C. § 284, an increase of the sums awarded to LGBD to three times the actual damages pursuant to 35 U.S.C § 284;
- e. That Fortune Brands, Inc. and Defendant Acushnet Company, its officers, agents, servants, and employees be permanently enjoined from infringing U.S. Design Patent No. D458,978 S;

f. That this case be deemed exceptional under 35 U.S.C. § 285, and award to LGBD of attorneys' fees under 35 U.S.C § 285;

g. An award of prejudgment and post-judgment interest and costs of suit to LGBD;  
and

h. Such other and further relief as the Court deems proper and just.

### DEMAND FOR JURY TRIAL

Plaintiff Lombardi Golf Ball Design, LP, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demands a trial by jury on all issues triable by right.

**DATED:** May 26, 2009

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***ATTORNEYS FOR THE PLAINTIFF***

# **EXHIBIT**

**A**



US00D458978S

(12) **United States Design Patent** (10) **Patent No.:** **US D458,978 S**  
**Lombardi** (45) **Date of Patent:** **\*\* Jun. 18, 2002**

(54) **GOLF BALL DEMARCATION**

(76) Inventor: **John Lombardi**, 3917 Glen Oakes,  
Niagara Falls, Ontario (CA), L2H 2V9

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/140,859**

(22) Filed: **Apr. 27, 2001**

(51) **LOC (7) Cl.** ..... **21-02**

(52) **U.S. Cl.** ..... **D21/709**

(58) **Field of Search** ..... **D21/707, 708,**  
**D21/709; 473/351, 268, 378-383**

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

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D411,598 S	*	6/1999	Disco	.....	D21/708
D414,229 S	*	9/1999	Sohn	.....	D21/709

\* cited by examiner

*Primary Examiner*—Dominic Simone

(57) **CLAIM**

The ornamental design for a golf ball demarcation, as shown.

**DESCRIPTION**

FIG. 1 is a bottom plan view of a golf ball demarcation showing my new design;

FIG. 2 is a top plan view thereof;

FIG. 3 is a top perspective view thereof;

FIG. 4 is a bottom plan view of a second embodiment of FIG. 1;

FIG. 5 is a top plan view of FIG. 4;

FIG. 6 is a top perspective view of FIG. 4;

FIG. 7 is a bottom plan view of a third embodiment of FIG. 1;

FIG. 8 is a top plan view of FIG. 7;

FIG. 9 is a top perspective view of FIG. 7;

FIG. 10 is a bottom plan view of a fourth embodiment of FIG. 1;

FIG. 11 is a top plan view of FIG. 10;

FIG. 12 is a top perspective view of FIG. 10;

FIG. 13 is a bottom plan view of a fifth embodiment of FIG. 1;

FIG. 14 is a top plan view of FIG. 13;

FIG. 15 is a top perspective view of FIG. 13;

FIG. 16 is a bottom plan view of a sixth embodiment of FIG. 1;

FIG. 17 is a top plan view of FIG. 16; and,

FIG. 18 is a top perspective view of FIG. 16.

**1 Claim, 6 Drawing Sheets**

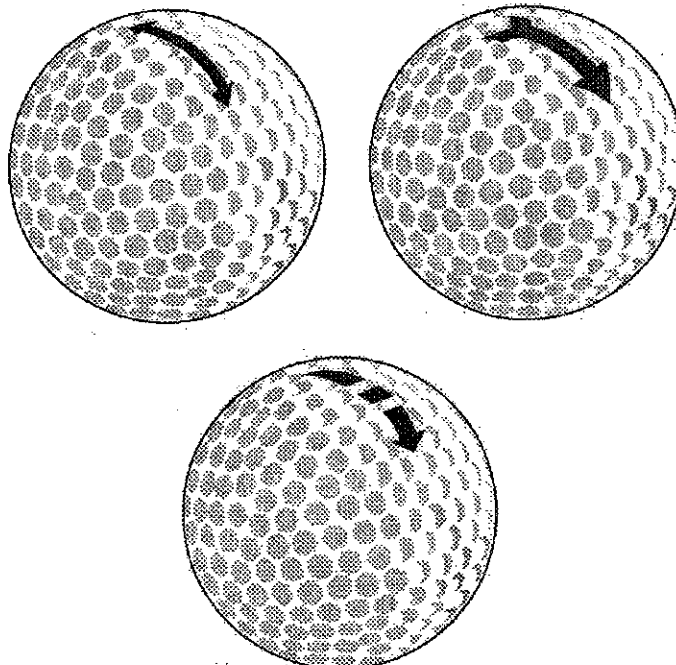




FIG. 1

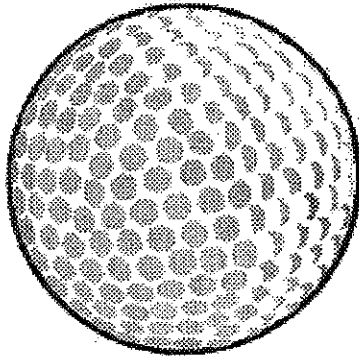


FIG. 2

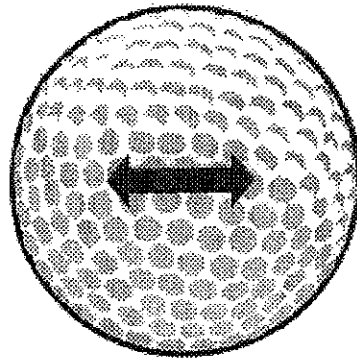


FIG. 3

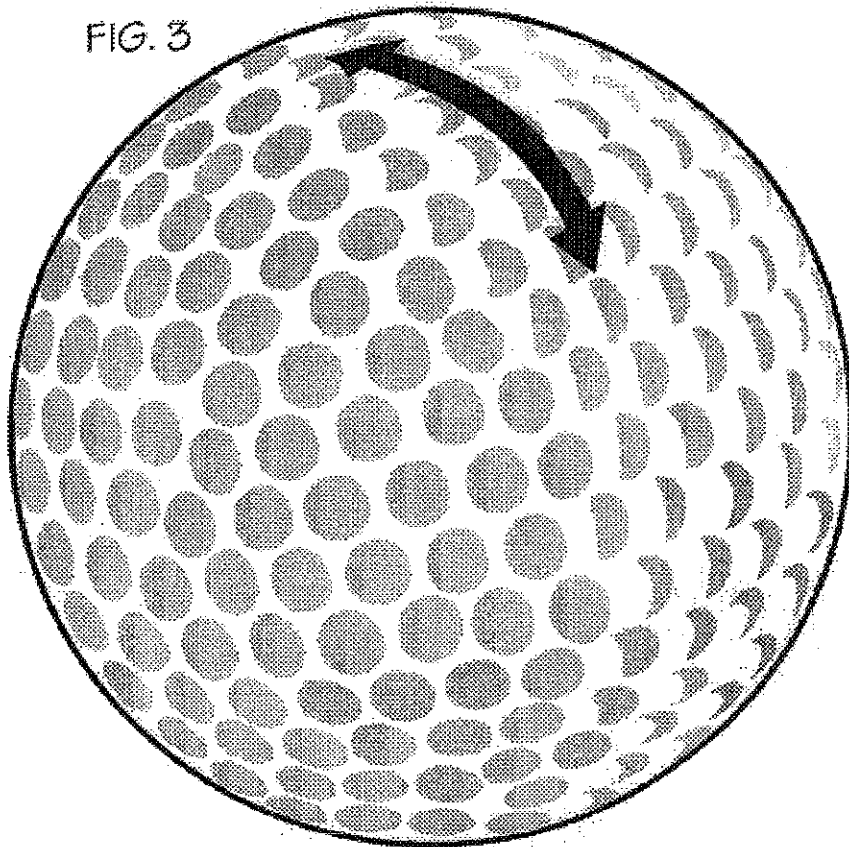


FIG. 4

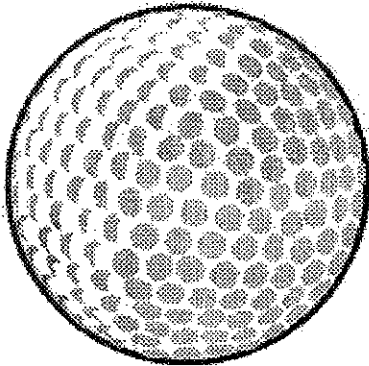


FIG. 5

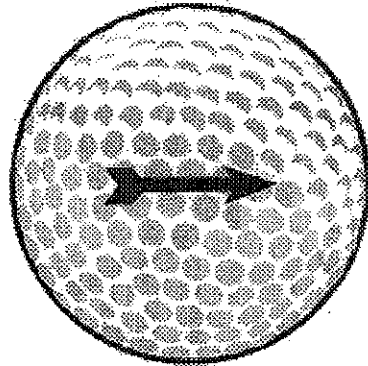


FIG. 6

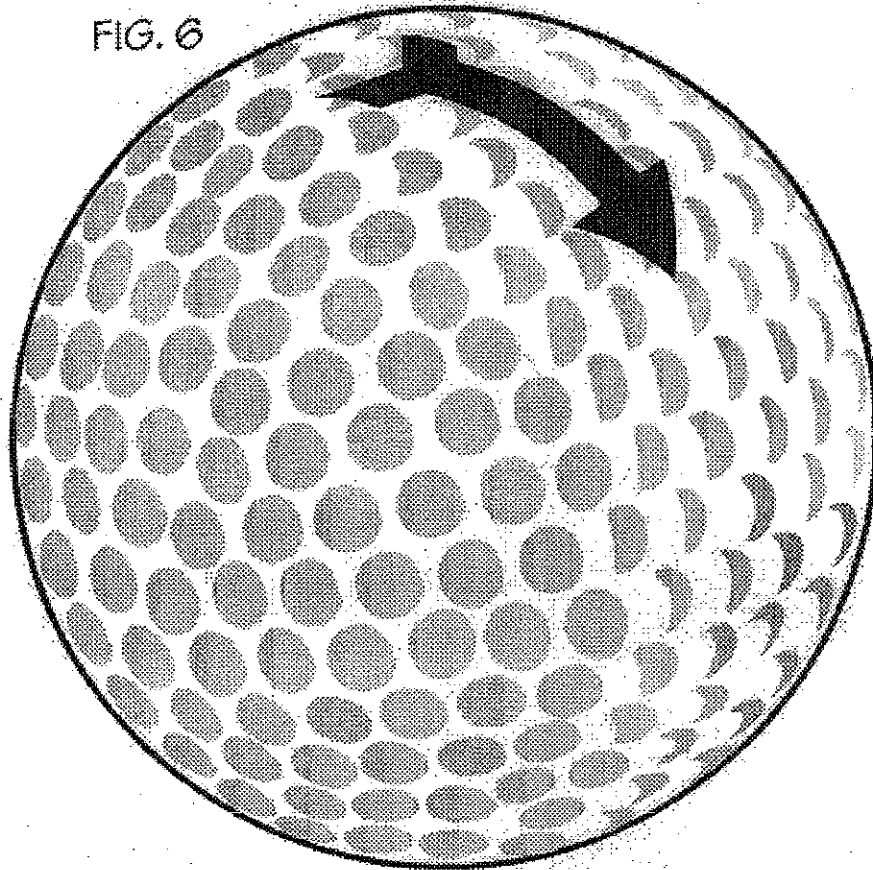


FIG. 7

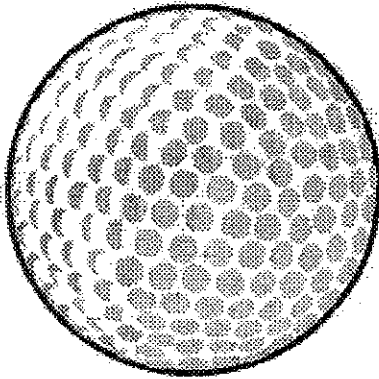


FIG. 8

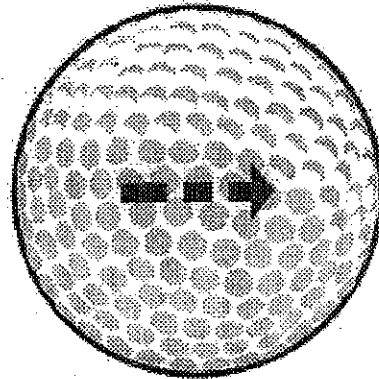


FIG. 9

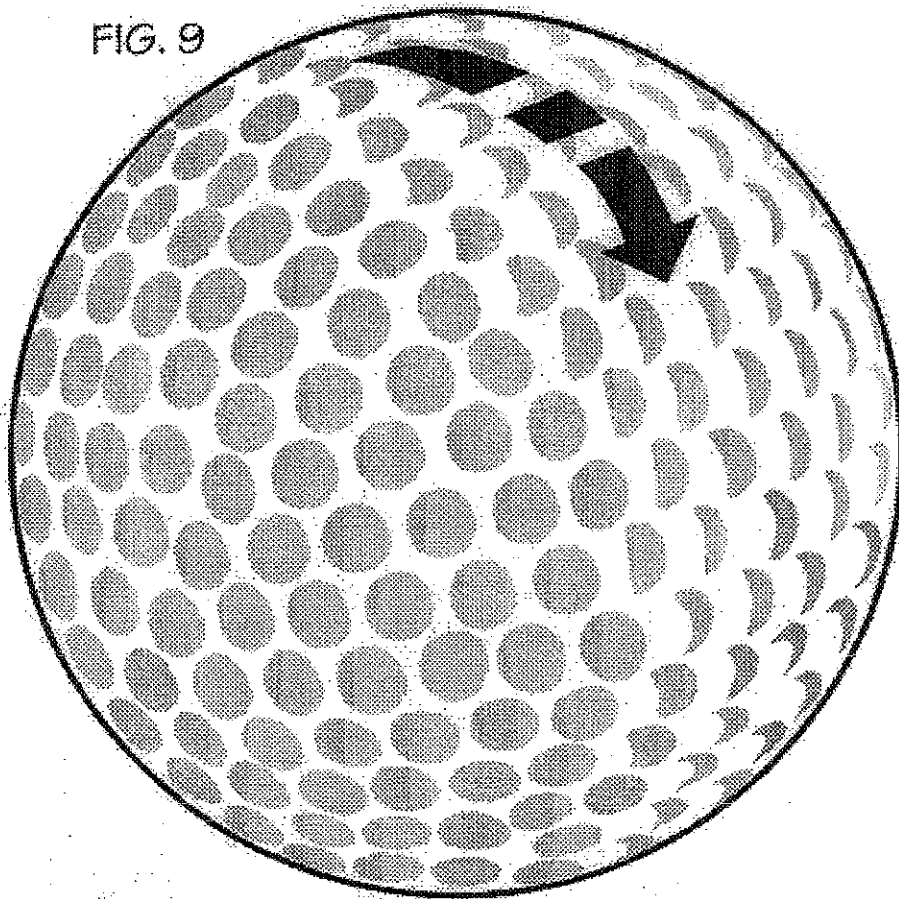


FIG. 10

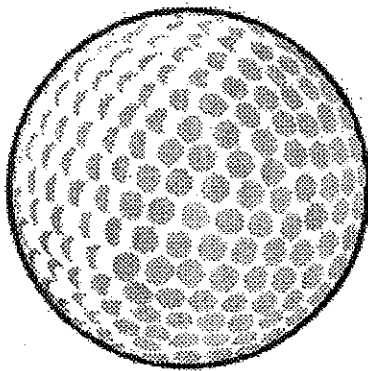


FIG. 11

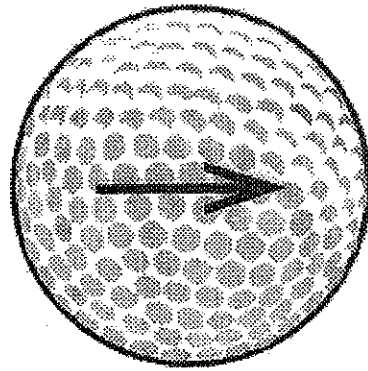


FIG. 12

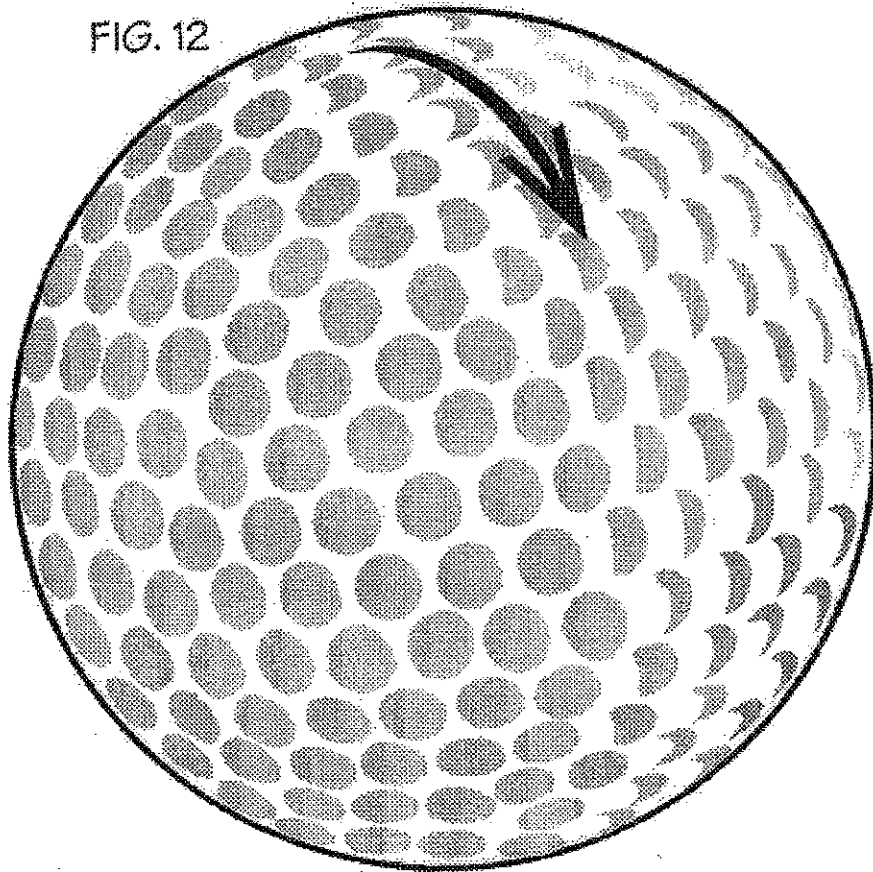


FIG. 13

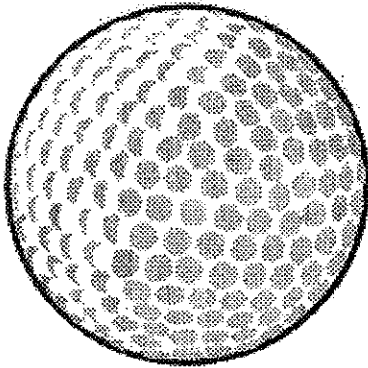


FIG. 14

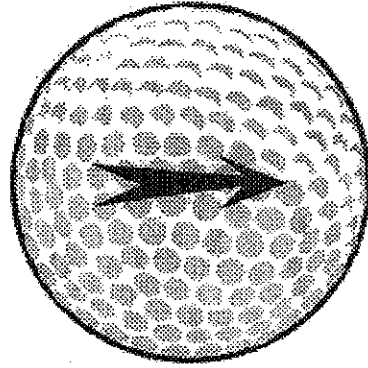


FIG. 15

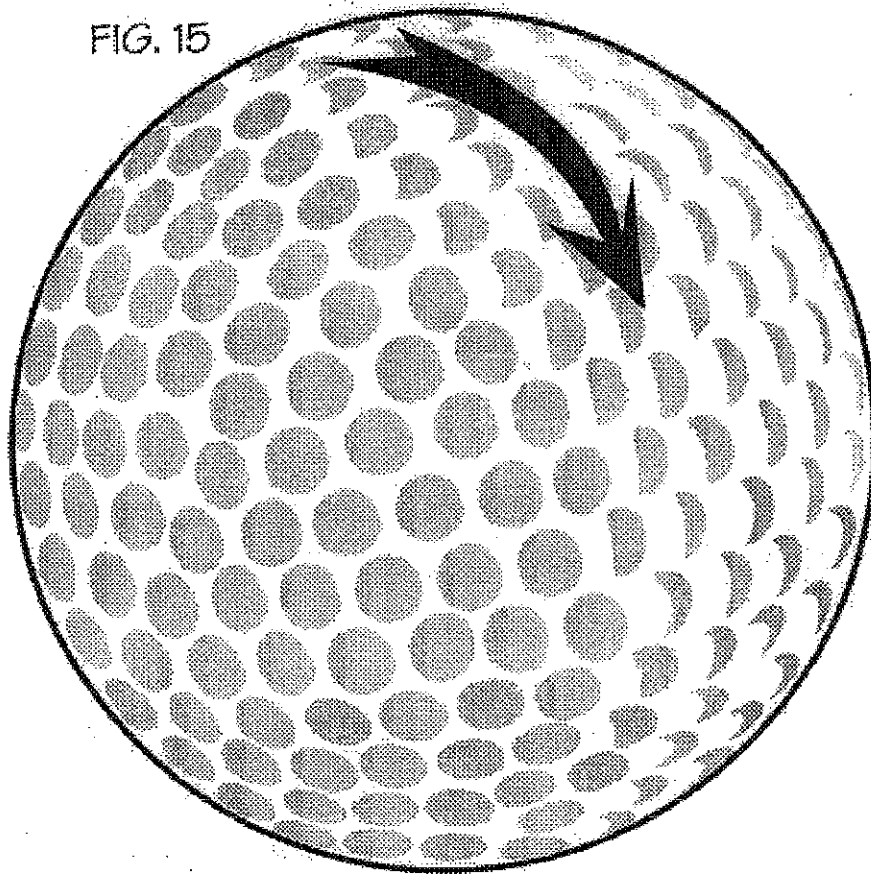


FIG. 16

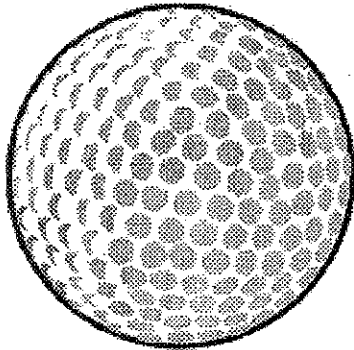


FIG. 17

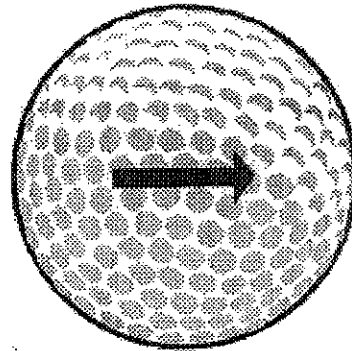


FIG. 18

