

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

**EXHIBIT 2**

**JOINT STATEMENT OF ISSUES OF FACT  
THAT REMAIN TO BE LITIGATED**

The following factual issues remain to be litigated at trial. To the extent that any issues of law set forth in Exhibits 3 or 4 of the Joint Pre-Trial Order may be considered or include issues of fact, the parties incorporate those portions of Exhibits 3 and 4 herein by reference. The parties incorporate Exhibits 11 and 12 (Brief Statement of Intended Proofs) herein.

**I. INVALIDITY**

**A. Obviousness**

While obviousness is a legal issue, Acushnet intends to offer evidence on at least the following underlying issues of fact:

1. The scope and content of the prior art.
2. The level of ordinary skill in the art of the patents-in-suit in 1995.
3. The differences, if any, between the claimed inventions of the patents-in-suit and the prior art.
4. If Callaway Golf offers evidence of alleged secondary considerations of non-obviousness, Acushnet will offer evidence to rebut such secondary consideration evidence and to demonstrate that there is no nexus between any such alleged secondary considerations and the claimed inventions of the patents-in-suit.

**B. Anticipation**

1. Whether the asserted claims of the '293 patent are anticipated under 35 U.S.C. § 102.
2. Whether the asserted claims of the '156 patent are anticipated under 35 U.S.C. § 102.
3. Whether the asserted claims of the '130 patent are anticipated under 35 U.S.C. § 102.
4. Whether the asserted claims of the '873 patent are anticipated under 35 U.S.C. § 102.

**C. Other**

1. Callaway Golf reserves the right to address in rebuttal all issues relating to the validity of the patents-in-suit, including:
  - (a) That none of the asserted claims of the patents-in-suit are invalid as anticipated or obvious;
  - (b) whether any suggestion or motivation existed to combine and/or alter prior art to arrive at the inventions set forth in the asserted claims; and
  - (c) the extent of objective indicia of nonobviousness of the inventions set forth in the asserted claims, including:
    - (i) commercial success of products covered by any of the asserted patent claims; (ii) a long felt, unmet need in the art that was satisfied by the invention; (iii) the failure by others to make the invention; (iv) copying of the invention by others; (v) initial skepticism of the invention by others; (vi) praise of the invention by others. Callaway Golf will also show that there is a nexus between the secondary considerations and the claimed inventions of the patents-in-suit.

**II. DAMAGES**

1. The amount of damages, if any, in the form of lost profits due to Callaway Golf as a result of Acushnet Company's infringement.
2. The amount of damages, if any, in the form of a royalty due to Callaway Golf as a result of Acushnet Company's infringement.