

# TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W  
A LIMITED LIABILITY PARTNERSHIP

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May 29, 2008

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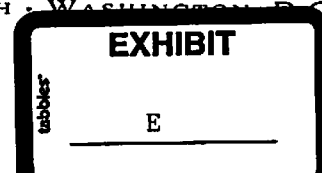
Re: Claimed Infringement of US Patent No. 7,131,534  
Your Reference: 60514.4006.00

Dear Michael:

We are in receipt of your letters to David Boardman, CEO of Bag Boy Company, L.L.C. ("Bag Boy"), concerning United States Patent No. 7,131,534 (the "'534 patent). This firm represents Bag Boy, and I ask that you send any further correspondence directly to me.

Bag Boy respects the intellectual property rights of other companies and as such takes purposeful steps to avoid infringing the valid claims of enforceable patents owned by others. In your letter of March 12, 2008, you informed Bag Boy that your client, Sun Mountain Sports, Inc., demands that Bag Boy cease and desist from all manufacture, use, or sale of golf bag systems infringing the claims of the '534 patent. However, based upon our analysis of the claims, specification, and file history of the '534 patent, as well as a comparison of the patent claims (reasonably construed) to the strap systems incorporated in the Bag Boy golf bags, we do not believe that Bag Boy manufactures, uses, or sells any golf bag systems infringing the claims of the '534 patent. Further, we believe that some or all of the claims of the '534 patent may be invalid.

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For example, claim 1 of the '534 patent requires "a symmetrical central portion having four arms" and "a D-ring situated at the end of each arm." No Bag Boy golf bag strap system contains or comprises a D-ring situated at the end of each arm of a central portion as claimed in the patent. Further, since the D-ring was added during prosecution as a narrowing amendment for reasons of patentability, the Doctrine of Equivalents may not be used to include other types of connectors within the scope of the claimed invention.

Further, claim 1 may be found to be indefinite under 35 U.S.C. § 112, second paragraph, for at least two reasons. First, the Court of Appeals for the Federal Circuit and the Board of Appeals and Interferences have made it clear that a single claim reciting both an apparatus and a method of use for that apparatus renders a claim indefinite. The claims of the '534 patent claim contain such claims as they apply to an apparatus and use of the apparatus, such as for "providing continually adjusting balance during use," for example.

In addition, claim 1 may be indefinite under 35 U.S.C. § 112, second paragraph, because the claim does not reasonably apprise one skilled in the art of its scope. For example, it is unclear in the specification and file history how one skilled in the art would determine whether "said golf bag straps permits rotation of the hub on the back of a golfer when carrying the golf bag, providing continually adjusting balance optimization during use" or whether the "said hub pivots during use to provide optimum balance in response to forces applied to said straps." The specification provides no guidance on the meaning or scope of these elements. Because a D-ring is the only contemplated shape of the invention and its presence is considered essential in the file history, a person of ordinary skill in the art would not view the applicant to have been in possession of the generic subject matter claimed on the single species disclosed in the specification.

For the claims that do not explicitly recite the D-rings but use a generic term such as "pivotally connected," a proper claim construction would require that all such claims to implicitly include D-rings to pivotally connect the straps to the arms. Again, the specification does not use nor define the term "pivotally." A standard dictionary definition would not apply to this claim construction since the straps and arms do not include a pivot point, therefore the file history must be used to define the terms, or all the claims fail and are considered invalid under 35 U.S.C. § 112.

Additionally and no less importantly, since the specification does not include the broad generic term "pivotally," or even "pivot," all claims of the '534 patent fail the written description standard of 35 U.S.C. § 112, first paragraph. The disclosure of the specification must convey to one of ordinary skill in the art that the inventor had possession of the amended claim subject matter at the time of filing. In this specification, there is nothing to suggest that a pivotal connection was any part of the invention. The specification does indicate that it is the independently adjustable straps that provide balance and not the rotation of the hub as amended into the claims. The importance of the pivotal attachment to providing "optimum balance" is only provided in the file history after filing. A person of ordinary skill in the art would view the

inventor to have been in possession of only the narrow subject matter based on the disclosure of a D-ring used to attach the straps to the arms of the central hub. There was no reduction to practice or disclosure of pivotal connections.

To obtain the patent, and in order to clarify what was believed to be misconceptions of the Examiner, the Applicant states in the file history that the "pivotal attachment which is enabled by the D-rings allows for alignment of the central hub according to the tension on the straps." Thus, the file history defines the pivotally connected element as a D-ring that allows rotation of the central hub in response to tightening of these straps. The buckles of the Bag Boy products, on the other hand, do not allow for alignment of the central hub according to the tension of the straps as required by the file history and thus the claims. In that context, the straps of the Bag Boy products are fixedly attached. The importance of the requirement that all straps be pivotally attached to the central hub and that the pivotal attachment be enabled by the D-rings is further emphasized in the Response to Notice of Non-Compliant Amendment filed on March 21, 2005. Trying to recapture this disclaimed subject matter after allowance of the patent is not allowed by US patent law.

The file history not only defines what "pivotally connected" means, it also teaches what "pivotally connected" is not. The Applicant in the file history states that "it is apparent that connector strap 30 [of Han] is not pivotally attached." As can be seen in the Figures of Han, the connector strap 30 of Han is a strap through a slot. That is the connector type that the Bag Boy uses, a strap through a slot. Though not identical to Han, any connection comprising a strap through a slot has been defined as not being pivotally attached by the Applicant. Thus, lack of infringement is clear.

The Applicant further emphasizes that a strap in a slot is not a "pivotal attachment" and does not allow pivoting during use in the arguments overcoming the rejection based upon US Patent No. 5,558,259 issued to Izzo. Clearly, the straps of Izzo are attached by a strap through a slot. The Applicant emphasizes that this is not a pivotal attachment point and does not allow pivoting during use for balance. These statements must be taken into account in the claim construction of the '534 patent. Similarly, the arguments the Applicant made to overcome the rejection based upon United States Patent Application Publication No. 2002/0088836 further distinguish the claimed invention from the straps and buckles used in Bag Boy golf bags. As is known in the art, and confirmed by the specification, a buckle or slide connector, as used in the Bag Boy products, is different than and not equivalent to a D-ring.

Finally, the Bag Boy golf bag strap system contains no central hub including a padded portion which includes a raised portion as required by claims 3-7 and 9-12 of the patent.

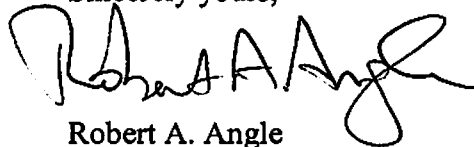
There are additional arguments for invalidity based novelty and obviousness and against infringement, but we do not believe that any further argument needs to be presented at this time. We hope that, after your further review of the Bag Boy products and the claims of the '534 patent, you will agree with our analysis.

Given our analysis, we cannot agree to Sun Mountain's demands that Bag Boy destroy any of the products accused of infringing the '534 patent. Likewise, Bag Boy cannot agree to provide Sun Mountain with an accounting and reparations for past sales of the products accused of infringing the '534 patent. While we believe that these demands are unfounded, we also believe that the disagreement between the parties with respect to the '534 does not warrant the expenditure of more time and resources by either party. The COSMIC™ product accused of infringement is a minor product that has not accounted for significant revenues for Bag Boy. Moreover, separately and without regard to Sun Mountain's infringement allegations, Bag Boy has been in the process of redesigning its golf bag straps to incorporate certain advances and improvements. The redesigned strap systems, which are expected to be introduced on the COSMIC™ bag and other bags in the coming months, will be significantly different from those of Sun Mountain. Moreover, now that you have brought the '534 patent to our attention, Bag Boy will ensure that the newly designed straps clearly avoid infringement of all claims of the '534 patent.

Once Bag Boy introduces its new golf bag strap system, it intends to retire the strap system that is the subject of your letter. Bag Boy anticipates that the new golf bag strap system will completely replace the prior strap system on the COSMIC™ bag before the end of the year. Hence, even if Sun Mountain had a valid infringement claim (which we do not believe it does), the subject of Sun Mountain's allegations is or soon will be moot.

Thank you for your reconsideration of this important matter. We hope that we can resolve any further issues quickly and informally. However, given the threatening nature of your prior correspondence, Bag Boy has a reasonable apprehension that Sun Mountain intends to file litigation against Bag Boy with respect to the '534 patent. To protect its rights and avoid the uncertainty of having Sun Mountain's threat hanging over it, Bag Boy has filed a declaratory judgment action against Sun Mountain in the United States District Court for the Eastern District of Virginia. A courtesy copy of that Complaint is attached. For now, Bag Boy has held off serving the Complaint upon Sun Mountain in the hope that the parties can resolve this matter without requiring the involvement of the court. If Sun Mountain is willing to engage in such settlement discussions, please contact me to discuss this matter further. If I have not heard from you within fifteen days of the date of this letter, I will assume that Sun Mountain does not wish to resolve this informally and will move forward with serving the Complaint.

Sincerely yours,



Robert A. Angle

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cc: Mr. David Boardman