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3:05-CV-01488 DIVIX GOLF INC V. MOHR

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CMP.

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05 JUL 26 PM 2:56

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

7
8 **UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

9 DIVIX GOLF, INC.

10 Plaintiff,

11 v.

12 JEFFREY P. MOHR; REMEDY GOLF,
13 INC., a California corporation;
14 BANDWAGON, INC., a Massachusetts
15 corporation; DIANA SARCOZ; and FELIX
16 HOANG,

17 Defendants.

Civil No. 05 CV 1488

JAH (POR)

18 **COMPLAINT FOR PATENT
19 INFRINGEMENT; CONVERSION AND
20 CONSPIRACY TO COMMIT
21 CONVERSION; TRADEMARK AND
22 TRADE DRESS INFRINGEMENT;
23 BREACH OF FIDUCIARY DUTY;
24 MISAPPROPRIATION OF TRADE
25 SECRETS; STATE AND COMMON LAW
26 UNFAIR COMPETITION; and
27 JURY DEMAND**

18 Plaintiff, DIVIX GOLF, INC., complains as follows:

19 1. This Court has original jurisdiction over the issues raised in this Complaint under Title
20 28 United States Code, § 1331 (federal question), § 1338(a) (actions relating to patents), and under
21 Title 15 United States Code, § 1121 (actions arising under the Lanham Act). This Court has
22 jurisdiction over the subject matter of the state claims in this action pursuant to the Court's
23 supplemental jurisdiction under 28 United States Code, § 1367.

24 2. Venue is proper in this District pursuant to 28 United States Code, § 1391(b) and (c),
25 and 28 United States Code, § 1400(b).

26 3. Plaintiff DIVIX GOLF, INC. is a California corporation whose principal office is
27 located in San Diego, California.

28 //

[Handwritten signature]

1 4. Defendant JEFFREY P. MOHR (“MOHR”) is an individual residing in San Diego,
2 California. Defendant REMEDY GOLF, INC. (“REMEDY”) is a California corporation with its
3 principal place of business in San Diego, California . MOHR is the president, a director and a
4 principal shareholder of REMEDY

5 5. Defendants DIANA SARCOZ (“SARCOZ”) and FELIX HOANG (“HOANG”) are
6 both individuals residing in San Diego, California.

7 6. Defendant BANDWAGON, INC. (“BANDWAGON”) is a Massachusetts
8 corporation, and as alleged herein is a co-conspirator of MOHR to unlawfully harm Plaintiff.

9 **FIRST COUNT - PATENT INFRINGEMENT**

10 7. On December 19, 2000 United States Letters Patent No. 6,162,137 were duly and
11 legally issued to TODD JONES and GREG BARK for a multiple-use hand tool for golfers,
12 commonly known as a “Divix.” Subsequently ownership of the Letters Patent was assigned to
13 Plaintiff DIVIX GOLF, INC., and since then Plaintiff has been and still is the sole owner of those
14 Letters Patent, a copy of which is attached hereto as Exhibit 1.

15 8. Within the six years last past Defendants MOHR, REMEDY and BANDWAGON, and
16 each of them have infringed and continue to infringe the subject Letters Patent by making, having
17 made, selling, using within this District and elsewhere within the U.S., and inducing others to make,
18 sell, or use within this District and elsewhere within the U.S., a multiple-use, divot repair hand tool
19 (“Remedy Tool”) for golfers embodying inventions claimed in the Letters Patent, and will continue
20 to do so unless enjoined by this Court.

21 9. Plaintiff has placed the required statutory notice on all its products manufactured and
22 sold by it under the Letters Patent, and Plaintiff is informed and believes that all the Defendants
23 named in this count, and all their agents and representatives as listed below, are aware of the
24 subject Letters Patent, and further that MOHR has personally read the Letters Patent and as a past
25 president of Plaintiff had authorized cease and desist letters to infringers of the Letters Patent.

26 10. Certain individuals have been and are continuing to sell and market the Remedy
27 Tools as agents and representatives of Defendants MOHR and REMEDY. These individuals are all
28 aware of the Letters Patent (Exh. 1) but have nevertheless continued to sell and market the Remedy

1 Tools. These individuals are as follows: STEVE BAKER of Pinehurst, North Caroline; TOM
2 CONWAY of Elkhart, Indiana; PAULA KANOFSKY of Marlboro, New Jersey; PETER
3 GAUTHIER of Kernersville, North Caroline; CHIP HOLCOMB of Ft. Walton, Florida; and
4 STEVE JOHNSON of Sugarland, Texas.

5 11. Neither the Defendants nor their agents and representatives listed above are, or ever
6 have been, licensed or authorized by Plaintiff to make, sell or use the Remedy Tools.

7 12. As a direct and proximate result of the infringing Defendants' conduct as alleged
8 herein, Plaintiff has been deprived of sales of its Divix products and in other respects has been
9 damaged in an amount at least equal to REMEDY'S profits from the sales of the Remedy Tools ,
10 and any other infringing articles sold by Defendants, plus Plaintiff's lost profits due to lost sales in
11 an amount according to proof. Said infringement will cause Plaintiff added injury and loss of
12 profits unless enjoined by this Court.

13 13. Defendants' infringement of the subject Letters Patent has been and still is willful,
14 deliberate and with full knowledge of the Letters Patent. For this reason, and other reasons as the
15 evidence will show, this matter is an exceptional case under Title 35 United States Code, §§ 284
16 and 285, and so Plaintiff is entitled to an award of attorneys' fees and treble damages against all
17 infringing Defendants.

18 14. As a direct result of Defendants' past and continuing infringement as alleged herein,
19 Plaintiff has suffered and is continuing to suffer irreparable harm, harm for which damages at law
20 are inadequate. Plaintiff will continue to suffer further irreparable harm unless and until Defendants
21 are temporarily, preliminarily and permanently enjoined from doing so under Title 35 United States
22 Code, § 283.

23 **SECOND COUNT -**
24 **CONVERSION AND CONSPIRACY TO COMMIT CONVERSION**

25 15. Plaintiff incorporates, as if fully set forth herein, all the allegations contained in
26 preceding paragraphs 1-12.

27 16. Defendant MOHR was president of Plaintiff from April of 2002 to May of 2004, and
28 as such owed Plaintiff a fiduciary duty not to act against the interests of Plaintiff. On or about

1 March 3, 2004, while he was still Plaintiff's president, MOHR placed an order with
2 BANDWAGON on behalf of Plaintiff for certain molds and tooling for use in the manufacture of
3 Plaintiff's Divix products. Subsequent to his termination from Plaintiff's employ, MOHR and
4 BANDWAGON conspired to convert the subject molds and tooling to their own use and deprive
5 Plaintiff of its rightful use and enjoyment of same. REMEDY joined the conspiracy when it was
6 formed.

7 17. Under California's Code of Civil Procedure, § 1140(b) and other relevant law, the
8 rightful owner of the molds and tooling is Plaintiff, and BANDWAGON was notified of this fact,
9 nevertheless BANDWAGON, in furtherance of the conspiracy, illegally transferred control and/or
10 possession of the subject molds and tooling to MOHR and REMEDY, in blatant and willful
11 violation of applicable law and Plaintiff's ownership rights.

12 18. When Plaintiff learned that the molds and tooling were being illegally misdirected to
13 the control of Defendant MOHR and REMEDY, Plaintiff demanded that MOHR transfer them to
14 Plaintiff, the rightful owner, but both MOHR and REMEDY willfully and maliciously refused to do
15 so.

16 19. Defendants MOHR, REMEDY and BANDWAGON by their conduct alleged herein,
17 and in furtherance of the conspiracy, misappropriated and converted to their own use the valuable
18 molds and tooling belonging to Plaintiff.

19 20. Plaintiff is informed and believes that in furtherance of the conspiracy Defendants
20 MOHR, REMEDY and/or BANDWAGON are, and have been since the conversion, using the
21 molds and tooling to make or have made the Remedy Tools which are then shipped to MOHR in
22 this District for sale throughout the U.S. in direct competition with Plaintiff's Divix products.
23 Plaintiff is further informed and believes that in furtherance of the conspiracy said Defendants sent,
24 or had sent, the molds and tooling to a manufacturer in China, and that since then said China
25 manufacturer has been using the molds and tooling to make the Remedy Tools which are then
26 imported into the U.S. and shipped to MOHR in this District for sale in this District and throughout
27 the U.S.

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1 21. As a direct and proximate result of MOHR's, REMEDY's and BANDWAGON's
2 conduct as alleged herein, Plaintiff has been damaged on account of being deprived of the use of
3 said molds and tooling; Plaintiff suffered delays while replacement molds and tooling were made,
4 suffered the cost of the replacement molds and tooling, suffered lost sales due to delays in
5 manufacturing its Divix products. Plaintiff has been further damaged on account of lost sales, lost
6 business opportunities and loss of goodwill because said molds and tooling were, and are still being
7 used, to make infringing products that are sold and used in the U.S. in direct competition with
8 Plaintiff's Divix products. The total amount of damage is unknown at this time but will be certain
9 according to proof at the time of trial.

10 22. The conduct of the co-conspirators as alleged herein denying Plaintiff the use of
11 molds and tooling rightfully belonging to Plaintiff, and using same to make and sell an infringing
12 product in the U.S. is, and was, willful and malicious, and Plaintiff is entitled to punitive and
13 exemplary damages.

14 **THIRD COUNT - TRADEMARK AND TRADE DRESS INFRINGEMENT**

15 23. Plaintiff incorporates, as if fully set forth herein, all the allegations contained in
16 preceding paragraphs 1- 22.

17 24. Since August of 1999 Plaintiff has continuously used the mark "DIVIX" in
18 interstate commerce in the U.S. in connection with its divot repair hand tools as described above,
19 the divot repair hand tools Plaintiff labels "Divix." During that time, Plaintiff's customers have
20 come to recognize, accept and uniquely associate Plaintiff's mark with Plaintiff's high quality Divix
21 products. Since August of 1999 Plaintiff has worked hard and expended great sums of money and
22 resources to make high quality Divix products, and to widely promote them throughout the United
23 States, and as a result Plaintiff has built-up an enormous amount of goodwill in the relevant market.

24 25. On March 20, 2001 Plaintiff was granted a U.S. registration of its "DIVIX" mark by
25 the United States Patent and Trademark Office, Registration no. 2,437,273. A true and correct
26 copy of the registration is attached hereto as Exhibit 2.

27 26. Defendant MOHR and REMEDY, and their agents and representatives, have been,
28 and are continuing to, infringement Plaintiff's registered mark by mislabeling as "Divix" various

1 stands and displays from which their Remedy Tools are displayed and sold to customers. In
2 addition, they have deliberately used "Divix" imprinted ball markers to mislabel their Remedy
3 Tools. Said Defendants have also been, and are continuing to, infringement said registered mark by
4 labeling their divot repair hand tools with a stylized word mark that is confusingly similar to the
5 stylization of Plaintiff's registered mark. In addition, said Defendants have exactly copied the trade
6 dress of Plaintiff's Divix products, trade dress that has acquired distinctiveness and secondary
7 meaning in the relevant market through years of continued use since August of 1999.

8 27. Said Defendants, by their conduct as alleged herein have caused confusion and mistake
9 on the part of Plaintiff's customers and in the relevant market. Moreover their conduct has and
10 does constitute false designations of origin and false representations that Defendants' goods
11 originate from, or are connected with Plaintiff.

12 28. The general public is also being injured. The Remedy Tools are poorly constructed
13 using inferior materials, and they frequently fail to operate; they have very short useful lives, if at
14 all, but they are made to look exactly like Plaintiff's Divix products. By selling such an unreliable
15 and inferior product under false and confusing labeling and trade dress said Defendants are causing
16 injury to the general public.

17 29. Said Defendants' conduct as alleged herein was and is in violation of Title 15 United
18 States Code, § 1125(a).

19 30. Said Defendants' conduct as alleged herein, the greatly inferior products they are
20 passing off as Divix products, and the likely increase in instances of confusion suffered by Plaintiff
21 is causing Plaintiff irreparable harm and will, unless restrained, further impair, if not destroy, the
22 value of plaintiff's products, hard work, reputation and goodwill leaving Plaintiff with no adequate
23 remedy at law. Moreover, said Defendants' conduct as alleged herein will continue to cause injury
24 to the general public unless restrained.

25 31. As a direct and proximate result of said Defendant's conduct as alleged herein, Plaintiff
26 has lost sales, has lost customers, goodwill, and has been damaged to an extent unknown at this
27 time. Plaintiff is at least entitled to all Defendants' gains and profits from the sales of the Remedy
28 Tools, and to other damages according to proof.

1 32. Defendants conduct as alleged herein was willful and malicious to injure Plaintiff's
2 business and to mislead the relevant market to purchase Remedy Tools rather than Plaintiff's
3 products, and therefore Plaintiff is entitled to treble damages and attorneys' fees.

4 **FOURTH COUNT - BREACH OF FIDUCIARY DUTY**

5 33. Plaintiff incorporates, as if fully set forth herein, all the allegations contained in
6 preceding paragraphs 1- 22.

7 34. When Defendant MOHR was president of Plaintiff he owed Plaintiff a fiduciary duty
8 under California law. His conduct as alleged above in the Second Count was a serious breach of
9 his fiduciary duty to Plaintiff.

10 35. As a direct and proximate result of MOHR's conduct as alleged herein, Plaintiff has
11 been damaged on account of being deprived of the use of said molds and tooling; Plaintiff suffered
12 delays while replacement molds and tooling were made, suffered the cost of the replacement molds
13 and tooling, suffered lost sales due to delays in manufacturing its Divix products. Plaintiff has been
14 further damaged on account of lost sales, lost business opportunities and loss of goodwill because
15 said molds and tooling were, and are still being used, to make infringing products that are sold and
16 used in the U.S. in direct competition with Plaintiff's Divix products. The total amount of damage
17 is unknown at this time but will be certain according to proof at the time of trial.

18 36. Defendant MOHR's conduct as alleged herein was at all times willful and malicious,
19 and thus Plaintiff is entitled to punitive and exemplary damages.

20 **FIFTH COUNT - MISAPPROPRIATION OF TRADE SECRETS**

21 37. Plaintiff incorporates, as if fully set forth herein, all the allegations contained in
22 preceding paragraphs 1- 36.

23 38. Defendants DIANA SARCOZ and FELIX HOANG were trusted employees of
24 Plaintiff and were entrusted with confidential information proprietary to Plaintiff. Prior to
25 entrusting them with such sensitive information, they both agreed to be trustworthy and keep secret
26 confidential information proprietary to Plaintiff. Said defendants subsequently left the employ of
27 Plaintiff and are now employed by Defendant REMEDY. Plaintiff is informed and believes that
28 said defendants have communicated to, or using on behalf of REMEDY said confidential

1 information proprietary to Plaintiff, including proprietary customer lists, contact information, and
2 proprietary artwork, all developed by Plaintiff through great expenditures of time and money, and
3 all of which are of great value to Plaintiff.

4 39. Plaintiff is informed and believes that Defendants MOHR and REMEDY conspired
5 with and encouraged Defendants SARCOZ and HOANG to misappropriate and divulge said
6 confidential information proprietary to Plaintiff.

7 40. As a direct and proximate result of said Defendants' conduct as alleged herein, Plaintiff
8 has lost sales, has lost customers, has lost the marketing advantage that unique and proprietary
9 artwork can engender, and has been further damaged, all according to proof.

10 41. Said Defendants' conduct as alleged herein was willful and malicious with the intent to
11 unfairly steal sales, customers and marketing advantage from Plaintiff, and so Plaintiff is entitled to
12 exemplary and punitive damages.

13 **SIXTH COUNT - COMMON LAW AND STATE UNFAIR COMPETITION**

14 42. Plaintiff incorporates, as if fully set forth herein, all the allegations contained in
15 preceding paragraphs 1- 41.

16 43. Defendants' conduct as alleged above was done to unfairly compete with Plaintiff by
17 infringing Plaintiff's Letters Patent, by conspiring and converting Plaintiff's molds and tooling, and
18 then using same to make the directly competitive, infringing Remedy Tools that exhibit the identical
19 or confusingly similar trade dress of Plaintiff's Divix products in order to unfairly piggy-back on
20 Plaintiff's longstanding goodwill, by mis-labeling and otherwise misleading golfers as to the origin
21 of their inferior products - to pass-off their defective and poorly made products as superior quality
22 Divix products, and by conspiring and persuading prior trusted employees of Plaintiff to divulge
23 valuable trade secrets proprietary to Plaintiff and using same to compete against plaintiff.

24 44. Defendants' conduct as alleged herein and in the previously stated counts is in
25 violation of common law and California statutes, namely California Business and Professions Code
26 § 14330, § 17200 *et seq.* and § 17500 *et seq.*, *inter alia*.

27 45. As a direct and proximate cause of Defendants' conduct as alleged herein, Plaintiff has
28 suffered all the harm and injury as set forth in the preceding paragraphs 12, 14, 21, 31, 35, and 40,

1 and has sustained corresponding damages according to proof.

2 46. Said Defendants' conduct as alleged herein was willful and malicious with the intent to
3 unfairly steal sales, customers and marketing advantage from Plaintiff, and so Plaintiff is entitled to
4 exemplary and punitive damages.

5
6 **PRAYER**

7 WHEREFORE, Plaintiff prays as follows:

8 1. That Defendants, their agents, servants, employees, representatives, assignees and
9 successors be enjoined temporarily, preliminarily and permanently from making, selling, using, and
10 inducing others to make, sell, or use their Remedy Tools and any other products that infringe
11 Plaintiff's Letters Patent;

12 2. That the Court issue an immediate or preliminary order for seizure and impounding of
13 all Defendants' Remedy Tools wherever situated for immediate destruction;

14 3. That the Court issue an immediate or preliminary order for seizure and impounding of
15 all Defendants' Remedy Tools being imported into the U.S. wherever situated for immediate
16 destruction;

17 4. That Defendants, their agents, servants, employees, and representatives be enjoined
18 temporarily, preliminarily and permanently from mis-marking, mis-labeling and otherwise engaging
19 in any conduct that may in any way confuse golfers as to the origin of Defendants' products versus
20 Plaintiff's products.

21 5. That the Court order a full and open accounting of MOHR's and REMEDY's books for
22 ascertaining the full extent of their real profits attributable to the sales of infringing products such
23 as the Remedy Tools, for the period beginning when the Letters Patent issued until the present;

24 6. That Plaintiff be awarded general and consequential damages including without
25 limitation: (1) all the real profits from Defendants' making, selling and using infringing products;
26 (2) plus plaintiff's lost profits; (3) plus the monetary equivalent of the full extent of Plaintiff's lose
27 of intangible property, such as goodwill, due to Defendants' unlawful and unfair conduct as alleged
28 herein; (4) plus all direct and proximate damages sustained by Plaintiff on account of the conversion

1 of Plaintiff's molds and tooling to Defendants' use; (5) plus all damages sustained by Plaintiff due
2 to injuries attributable to the unlawful or unfair conduct of one or more of the Defendants of which
3 Plaintiff is currently unaware.

4 7. That the Court declare this case to be exceptional and that Plaintiff be awarded treble
5 damages and its attorneys' fees along with costs;

6 8. For general damages according to proof;

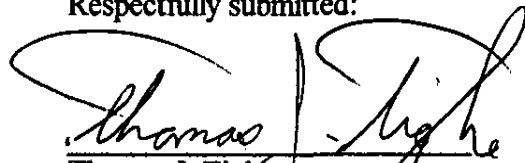
7 9. For punitive damages; and

8 10. For such further and additional relief as deemed proper by the Court.

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Dated: 7-26-05

Respectfully submitted:



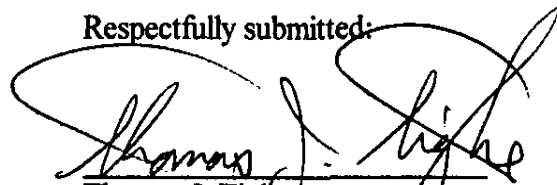
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JURY DEMAND

Plaintiff demands a jury trial as to all triable issues in this case.

Dated: 7-26-05

Respectfully submitted:



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US006162137A

United States Patent [19]
Jones et al.

[11] **Patent Number:** 6,162,137
[45] **Date of Patent:** Dec. 19, 2000

[54] **MULTIPLE-USE HAND TOOL FOR GOLFERS**

[76] **Inventors:** Todd Jones, 805 Leland Pl., El Cajon, Calif. 92020; Greg Bark, 11215 Forest View La., San Diego, Calif. 92131

[21] **Appl. No.:** 09/317,299

[22] **Filed:** May 24, 1999

[51] **Int. Cl.⁷** A63B 57/00; B26B 11/00

[52] **U.S. Cl.** 473/408; 7/158; 30/109

[58] **Field of Search** 7/158; 30/109, 30/112, 151, 153, 155, 159, 160, 161; D21/793; 473/278, 408

[56] **References Cited**

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Primary Examiner—Eileen P. Morgan
Assistant Examiner—Joni B. Danganan
Attorney, Agent, or Firm—Thomas J. Tighe

[57] **ABSTRACT**

A combination ball mark repair tool, golf club support and cigar cutter. The invention includes a prier for prying up ball marks which are depressions made particularly in golf greens by impacting golf balls. The prier includes a shank ending, in a pair of tines which are used to penetrate turf and pry up depressions in the turf. The prier is pivotally connected to an end of a handle for leverage, the handle defining a slot for retracting the prier. A push pin controls a detent which locks the shank in either a fully opened position or a fully retracted position. Depressing the push pin unlocks the shank. When the shank is unlocked, a torque spring urges the shank to pivot from its handle slot to its open position. The prier preferably has two tines to avoid damage to the turf. Inserting the tines into the turf at the edge of a ball mark and then pivoting the handle toward the surface causes the tines to raise the depressed turf, thereby repairing the ball mark. Opening the prier also provides access to a cigar cutter in a hole in a side of the handle. An annular recess surrounding the cutter allows the tip of a cigar to be pressed onto the cutter and twisted. By twisting the cigar, a shallow plug from the cigar's end is cut, allowing for easier drawing of smoke through the cigar. The end of the handle opposite the open prier defines a concave recess. With the tines of the prier stuck in turf so that the handle is generally vertical, a golf club shaft can be cradled in the recess, keeping the grip off the turf and preventing it from becoming wet from moisture on the grass.

14 Claims, 3 Drawing Sheets

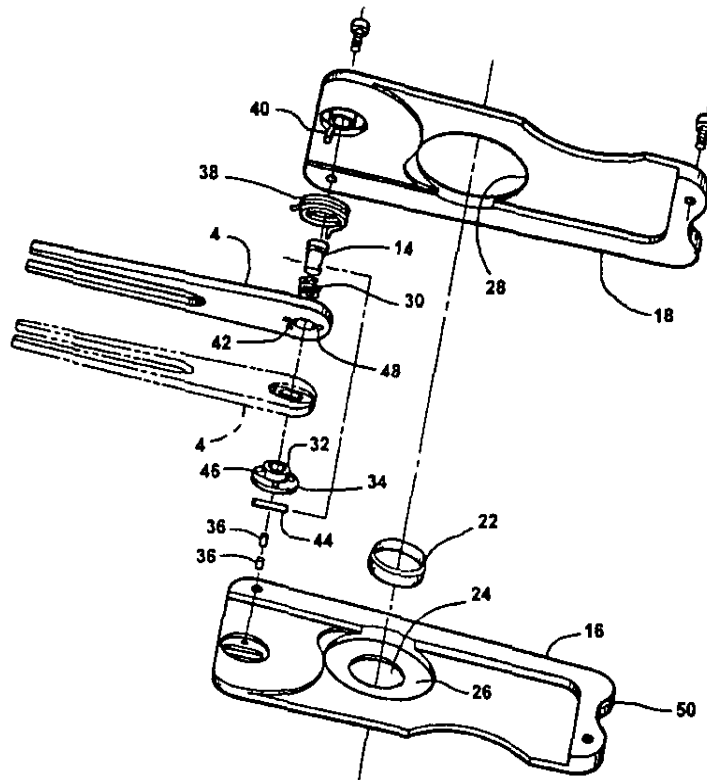


EXHIBIT 1

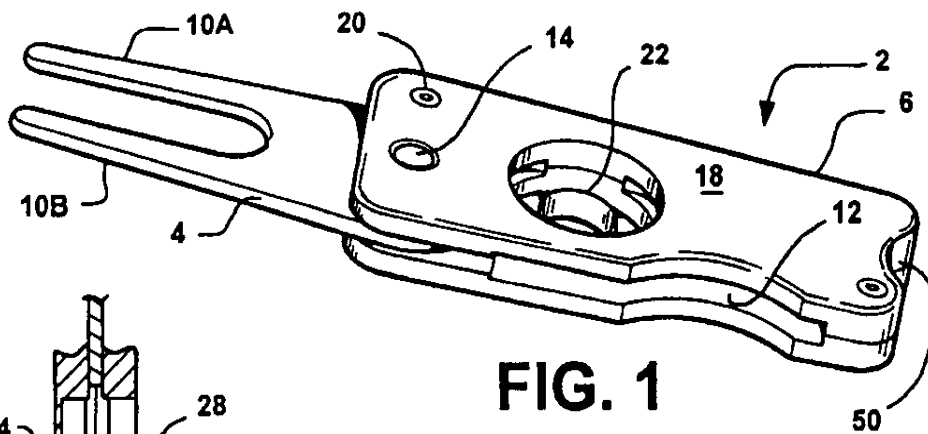


FIG. 1

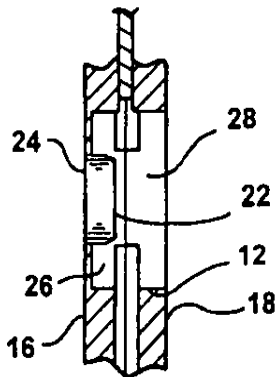


FIG. 4

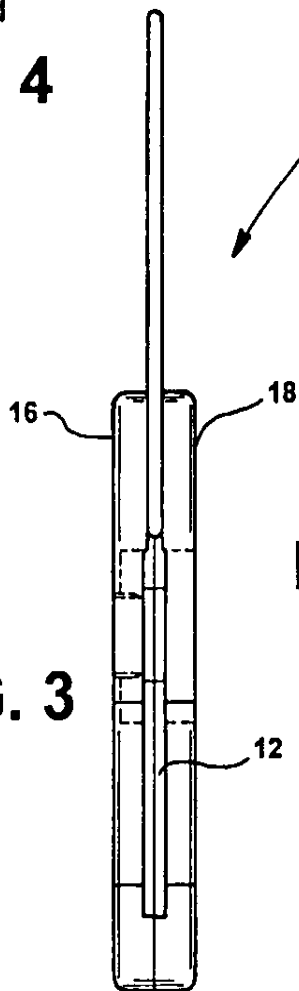


FIG. 3

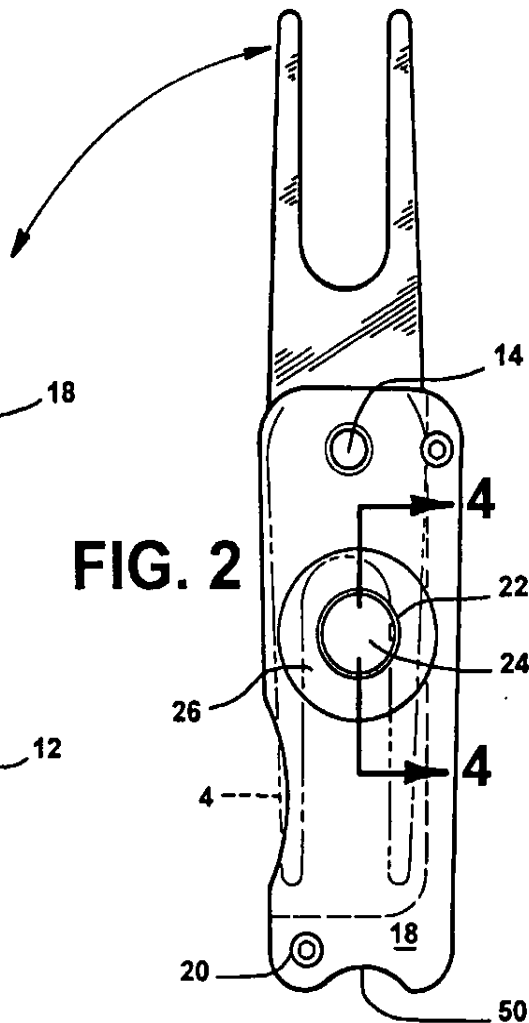


FIG. 2

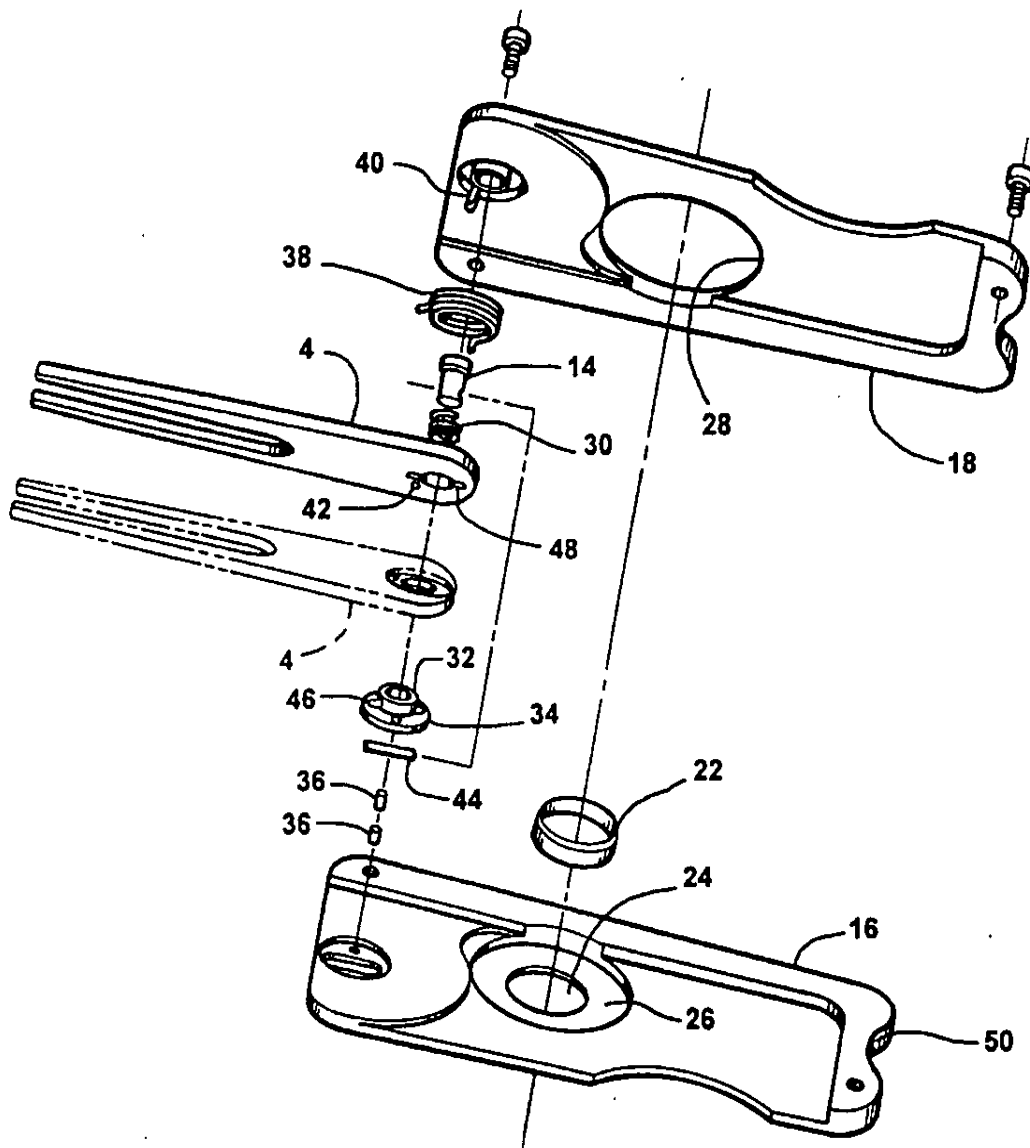


FIG. 5

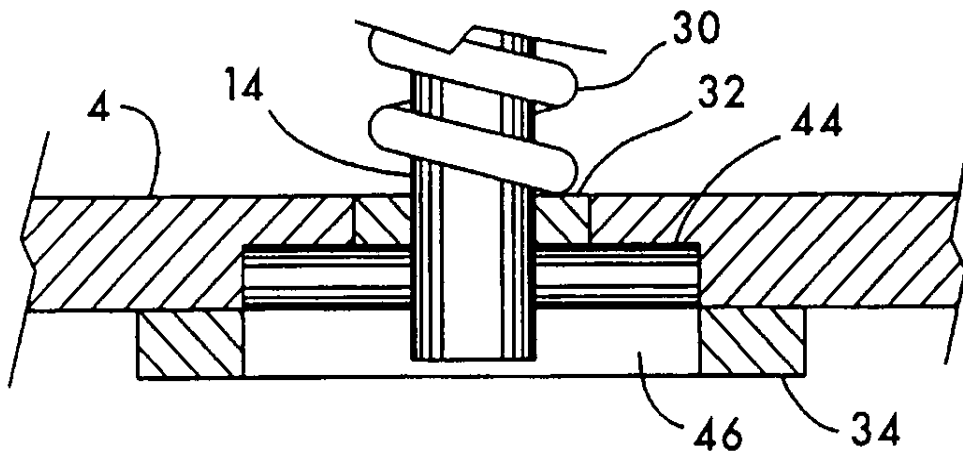


FIG. 6

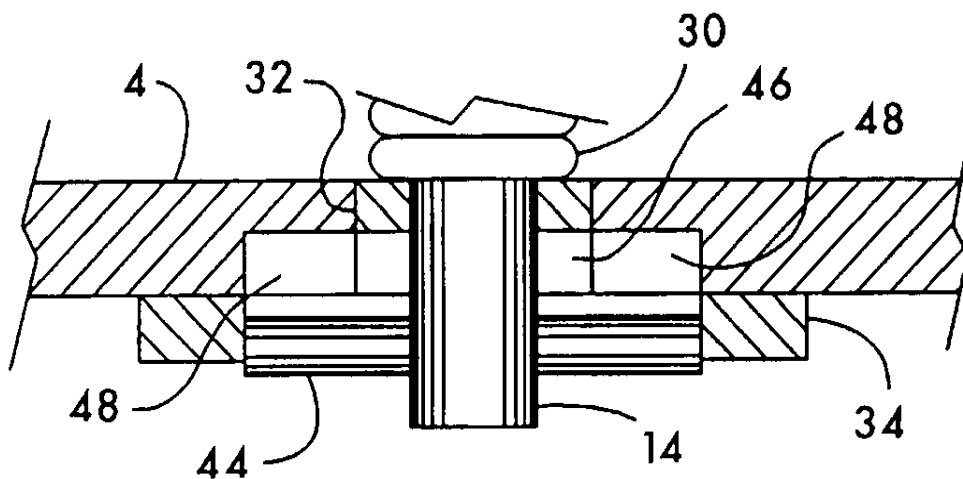


FIG. 7

6,162,137

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MULTIPLE-USE HAND TOOL FOR GOLFERS

BACKGROUND OF THE INVENTION

This invention relates in general to small hand tools for golfers, and more particularly to multi-use tools which can repair marks made in golf greens by the impact of golf balls.

Golfers must travel long distances on golf courses as they sequentially play the holes. This usually means that once a golfer starts a round of golf, he or she will only be able to use the equipment, accessories and tools that he or she brings along. For this reason, golfers generally carry a multiplicity of clubs, balls, tees, and accessories to ensure their availability when needed. Therefore, a tool which can perform several golf-related functions but which is small and light is a desirable accessory for a golfer.

One feature of this invention is for repairing ball marks. When a long driven ball impacts the surface of a green it often makes a dent in the green, a depression in the grass and underlying ground, commonly called a "ball mark." Common courtesy and golfing protocol require that golfers repair their ball marks. This is usually done by poking an implement in the ground around and beneath the mark, and prying up the dent to make it level. Because of the heretofore lack of a handy little tool specifically designed for repairing ball marks, the implement most often used is a golf tee, which is not very satisfactory since it catches very little dirt and grass and must be used several times around the dent to even inadequately raise it.

This invention includes a tool specifically designed for repairing ball marks. It has a prier of suitable size and strength to raise a ball mark typically in a single try without damaging the turf. The prier is retractable into a handle for convenient storage in a golfer's pocket, and is deployed by the push of a button, similar to a switch-blade knife.

Another feature of this invention is for keeping a golf club's grip off wet grass. For a variety of reasons, golfers start teeing off very early in the morning, but one disadvantage of an early start is that golf courses are often still wet from condensation or watering during the night, causing anything laid down on the grass to become wet. This poses a problem when a golfer must lay down a club. For example near a green, golfers often leave their bag or cart near the next tee, and take a putter and a chipping iron to finish the hole. While making a chip or pitch shot, there is usually no place to put the putter except on the ground causing its grip to become wet. Then while putting, there is usually no place to put the chipping iron except on the ground causing its grip to also become wet. This is undesirable since grips can be damaged by moisture if not quickly dried. Also, a wet grip is a slippery grip.

The combination tool of this invention includes a cradle feature specifically designed for keeping a club grip off wet grass. A club's head can rest on the turf while its shaft leans on the cradle to keep the grip spaced from the turf.

Another feature is not limited to use on a golf course but does come in handy for golfers who smoke cigars. The combination tool of this invention further includes a cigar cutter. Usually at least one end of a cigar is covered by one or more protective tobacco leaves which must be penetrated to draw air through the cigar. The cigar cutting feature of this invention can be used to easily cut out a small plug from a cigar end, but again, the use of this tool to trim cigars is not limited to a golf course but can be used wherever desired.

Other advantages and attributes of this invention will be readily discernable upon a reading of the text hereinafter.

2

SUMMARY OF THE INVENTION

An object of this invention is to provide a small collapsible tool for repairing ball marks.

An additional object of this invention is to provide a ball mark repair tool including an efficient prier which minimizes damage to the turf.

An additional object of this invention is to provide a ball mark tool including a spring-operated prier which deploys automatically by the push of a button.

An additional object of this invention is to provide a ball mark tool including at least a pair of tines of sufficient size and strength to quickly repair ball marks without damaging the turf.

An additional object of this invention is to provide a ball mark tool which includes a feature for propping a golf club grip above the ground.

An additional object of this invention is to provide a ball mark tool which includes a cradle defined in its handle for propping a golf club grip above the ground.

An additional object of this invention is to provide a ball mark tool which includes a cigar cutter.

An additional object of this invention is to provide a cigar cutter disposed in a hole defined in the handle of a ball mark tool.

An additional object of this invention is to provide a cigar cutter in the handle of a golf accessory tool which will cut a shallow cylindrical plug out of the end of a cigar.

A further object of this invention is to provide a golf accessory tool which combines a ball mark repair tool, a club support and a cigar cutter.

These objects, and other objects expressed or implied in this document, are accomplished by a device for repairing a ball mark having a handle and a prier for being inserted into turf in which the ball mark is defined. The prier is movable between two operable positions, a first position at which the prier is retracted, i.e., folded into the handle, and a second position at which the handle can be used to leverage the prier to pry up the turf. The device also includes a mechanism for releasably locking the prier at either position. Preferably the prier includes a shank and a plurality of tines projecting therefrom for insertion into turf. Preferably the prier is pivotable between the two operable positions, and the handle defines a slot into which the prier is pivoted to be in its first position. The device also preferably includes a torque spring for urging the prier to its second position whenever the prier is released from being locked in its first position. Preferably a detent locks the prier in either of its two operable positions when the detent is engaged, and the detent is disengaged in response to pressure from a user's finger or thumb. Preferably the detent is disengaged by a push pin in the handle, the pin being movable axially over a range and biased to reside at one extent of its range, the detent being engaged whenever the pin is at said one extent of its range and the prier is in one of its two operable positions. The device can also include a feature for spacing a leaning shaft of a golf club up from wet turf beneath. When the prier is in its second (fully opened) position it can be stuck generally vertically into the turf, and a concave recess defined by the handle on a side opposite the open prier can be used to cradle the shaft of a leaning golf club keeping it off wet grass below. The device can further include a recessed blade for cutting an end of a cigar. Preferably a depression is defined by the handle, the depression being large enough in girth for an end of a cigar to press against a base of the depression, and a circular cutting blade is

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affixed to the base of the depression. Preferably the depression intersects the prier slot, and the prier blocks access to the cutting blade whenever the prier is in its first (retracted) position.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a pictorial view of the invention.

FIG. 2 is a plan view of FIG. 1.

FIG. 3 is an elevation view of FIG. 2.

FIG. 4 is a cross-sectional view along the line 4—4 of FIG. 2.

FIG. 5 is an exploded view including a view of both sides of a prier, one in solid lines and the other in phantom lines.

FIGS. 6 and 7 are partial cross-sections respectively taken along a detent median and illustrating locked and unlocked shanks.

DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring to the FIGS. 1-4, a combination ball mark repair tool, club support and cigar cutter, generally designated 2, is illustrated to include a prier, shown in a fully opened position, for prying up a ball mark. The illustrated prier has a shank 4 pivotally connected to a handle 6, and a pair of tines, 10A and 10B, integral with the shank and extending therefrom at an end opposite the handle. The prier can pivot between a retracted position, in which it is fully inside a slot 12 defined by the handle, and a fully opened position in which it is out of the slot and locked in alignment with the handle, as shown in FIGS. 1-3. A fully retracted prier is shown in phantom in FIG. 2. Retraction of the prier allows the tool to be easily stored or carried. The prier's shank 4 turns on an axis concentric with a push pin 14 disposed at one end of the elongated handle 6. The top of the pin is exposed on one side of the handle so that it can be depressed axially, e.g. pushed down by a user's finger or thumb, to unlock the shank. Preferably the top of the push pin is flush with the handle. When depressed, the push pin is biased to return to a normal, undepressed position, and when the pin is in its normal position the shank is locked in place at either of two positions: fully opened or retracted.

Referring again to the figures, the handle 6 is preferably assembled from a pair of mating sides, a back side 16 and a front side 18, each having congruent outlines. The designation of the sides is an arbitrarily chosen directional reference, the "front side" 18 corresponding to the side on which the push pin is exposed. The sides are preferably joined by fasteners 20, preferably Allen screws disposed in recessed holes in one side and mating with threaded, blind holes in the other side.

Referring to FIGS. 5-7, a compression spring 30 is disposed around the push pin 14, in an annular space defined by the handle 6, to resist depression of the pin. The shank 4 pivots on a cylindrical boss 32 extending centrally from a plate 34 which is affixed to a handle back side 16 by dowels 36. The boss and the plate define a central through-hole through which the push pin extends. A coiled spring 38 disposed in an annular space around the push pin gets wound tighter when the shank is retracted and exerts a torque on the shank urging the prier to be in the fully opened position. One end of the torque spring is fixed in place by hooking a tongue 40 extending from the handle front side, and the other end of the spring rotates with the shank because it resides in a hole 42 defined by the shank near its pivot point. When the push pin is released, a detent locks the shank when it is either fully opened or fully retracted.

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Referring again to FIGS. 5-7, the detent is illustrated to include a rod 44 sticking through the push pin 14 near the pin's base and projecting normally therefrom on opposite sides. As the push pin is depressed and released, the protruding ends of the rod travel parallel to the shank pivot axis in a confining channel 46 defined by the plate 34 and its boss 32. The shank defines a rod seat 48 symmetrically intersecting the shank's pivot hole in which the boss 32 is disposed. When the push pin is released the rod is urged toward the shank and, if the rod seat 48 and the rod channel 46 are aligned, the rod will be seated in the rod channel, as best illustrated in FIG. 6. Once seated, the rod will prevent the shank from further pivoting. Preferably the channel and seat will be aligned only when the shank is either fully opened or fully retracted. To unlock the shank, the pin 14 is pushed down until the rod is unseated, as best illustrated in FIG. 7, freeing the shank to pivot on boss 32. Once the shank is unlocked, the torque spring 38 urges it to swing out to its fully opened position if it was retracted, or force can be applied to retract the shank if it was opened. When the push pin is subsequently released, the detent re-locks the shank when the rod channel and rod seat again become aligned. The top of the push pin in its normal position is preferably flush with the outer surface of the handle which in the preferred embodiment is flat. Also, preferably the edge of handle hole surrounding the pin is outwardly beveled to provide more room for a person's thumb to adequately depress the pin to unlock the shank.

Referring to FIGS. 1-4, the base of a cylindrical cutting blade 22 is affixed to and around the margin of a circular hole 24 defined in the bottom of a concentric recess 26 defined in the handle's back side 16. The cutting edge of the blade faces a through-hole 28, congruent with recess 26, defined by the handle's front side 18. The hole 28 and recess 26 are sized in girth to allow an end of a cigar to pass through to be cut by the cutting blade 22. To use the cigar cutter, the pivot pin 14 is depressed by a user's digit, allowing the torque spring to open the prier. When the prier is retracted into its slot, the prier blocks the cutting blade 22. With the prier out of the way, the tip of a cigar can be pressed onto the cutting blade, causing the blade to cut into the cigar until the tip abuts the base of the annular recess 26. The cigar is then rotated axially and pulled out, leaving a shallow circular plug of tobacco inside the cutting blade which is easily extracted.

Referring to FIGS. 1 and 2, an end 50 of the handle 6 opposite the prier, when the prier is opened, is concave to act as a support cradle for a golf club grip. The cradle is generally centered in the end of the handle and preferably has a radius suitable to accommodate the grip end of a golf club shaft. The cradle is also deep enough to confine the shaft when the cradle is generally upright. In operation, a user opens the prier and sticks it in the ground so that the handle is generally vertical with the cradle facing upward. A golf club can then be propped up with its shaft or grip resting in the cradle, and thus supported above the turf. As previously explained, this is a convenient way for a golfer to lay a club down without getting the grip wet.

The ball mark prier is preferably made of hardened steel, allowing its tines to be inserted into the grass and soil repeatedly without becoming damaged. In addition to being hardened, the tines and shank are preferably sufficiently thick and/or strong enough to prevent the tines from bending while prying up ball marks. Although the shank can terminate in a shape other than tines (e.g. a blade or a shovel-like head), the tines are preferable for prying up depressed turf without significantly damaging it. They make small holes,

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are long enough to penetrate the turf deep enough to pry up a mark, and are spaced close enough to lever the depressed turf without ripping it apart.

The foregoing description and drawings were given for illustrative purposes only, it being understood that the invention is not limited to the embodiments disclosed, but is intended to embrace any and all alternatives, equivalents, modifications and rearrangements of elements falling within the scope of the invention as defined by the following claims.

What is claimed is:

1. A device for repairing a ball mark in turf comprising:
 - (a) a handle,
 - (b) means, connected to the handle, for prying up a ball mark in turf, the means for prying being pivotable between two operable positions, a first position at which said means is retracted into the handle and a second position at which the handle can used leverage to pry up the turf, and
 - (c) means for releasably locking the means for prying at both positions.
2. The device according to claim 1 further comprising means for spacing a grip end of a golf club up from turf beneath said means for spacing being lockable in position.
3. The device according to claim 2 further comprising means for cutting a cylindrical plug out of an end of a cigar.
4. The device according to claim 2 wherein the means for spacing comprises:
 - (a) the means for prying being in its second position so that it can be generally vertically inserted into turf, and
 - (b) cradle means, defined by the handle on a side opposite the means for prying, for vertically supporting the shaft of a leaning golf club.
5. The device according to claim 1 further comprising means for cutting a cylindrical plug out of an end of a cigar.
6. The device according to claim 5 wherein the means for cutting comprises:
 - (a) a depression defined by the handle, the depression being sized in girth for an end of a cigar to press against a base of the depression, and

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- (b) a circular cutting blade affixed to the handle at the base of the depression.
7. The device according to claim 6 wherein the depression intersects the opening defined by the handle for the means for prying which blocks access to the cutting blade whenever the means for prying is in the opening.
8. The device according to claim 1 wherein the means for prying comprises an opening defined by the handle in which the means for prying is disposed when in its first position.
9. The device according to claim 8 wherein the means for prying comprises a shank and a plurality of tines projecting therefrom.
10. The device according to claim 8 further comprising means for urging the means for prying to its second position whenever the means for prying is released from being locked in its first position.
11. The device according to claim 10 further comprising:
 - (a) a detent for locking the means for prying in either of its two operable positions when the detent is engaged, and
 - (b) means for disengaging the detent in response to pressure from a user's finger or thumb.
12. The device according to claim 11 wherein the means for disengaging, the detent comprises:
 - (a) a push pin movable axially over a range, and
 - (b) means for biasing the pin to reside at one extent of its range, the detent being engaged whenever the pin is at said one extent of its range and the means for prying is in one of its two operable positions.
13. The device according to claim 12 wherein the means for urging the means for prying comprises a torque spring.
14. The device according to claim 1 further comprising means for urging the means for prying to its second position whenever the means for prying is released from being locked in its first position.

* * * * *

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,162,137
DATED : December 19, 2000
INVENTOR(S): Todd Jones and Greg Bark

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In column 3, line 2, the word "prior" should be replaced with the word --prier--.

In column 3, line 3, the word "prior" should be replaced with the word --prier--.

In column 5, line 18, the word --for-- was omitted and should be added immediately after the word "used".

Signed and Sealed this
Eighth Day of May, 2001

Attest:



NICHOLAS P. GODICI

Attesting Officer

Acting Director of the United States Patent and Trademark Office

Int. Cl.: 28

Prior U.S. Cls.: 22, 23, 38 and 50

United States Patent and Trademark Office

Reg. No. 2,437,273

Registered Mar. 20, 2001

**TRADEMARK
PRINCIPAL REGISTER**

DIVIX

GT KNIVES, INC. (CALIFORNIA CORPORATION)
7734 ARJONS ROAD
SAN DIEGO, CA 92126

FIRST USE 8-0-1999; IN COMMERCE 8-0-1999.

SER. NO. 76-042,224, FILED 5-5-2000.

FOR: GOLF ACCESSORY IN THE NATURE OF A
DIVOT REPAIR TOOL, IN CLASS 28 (U.S. CLS. 22, 23,
38 AND 50).

REBECCA SMITH, EXAMINING ATTORNEY

EXHIBIT 2

AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
05cv1488	7/26/05	United States District Court, Southern District of California
PLAINTIFF Divix Golf, Inc		DEFENDANT Mohr
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,162,137	12/09/00	Jones
2		
3		
4		
5		

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill
	<input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Director

Copy 3 - Upon termination of action, mail this copy to Director

Copy 2 - Upon filing document adding patent(s), mail this copy to Director

Copy 4 - Case file copy

CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

DIVIX GOLF, INC., a California corporation

DEFENDANTS

JEFFERY P. MOHR; REMEDY GOLF, INC., a California corporation; BANDWAGON, INC., a Massachusetts corporation; DIANA SARCOZ; and FELIX HOANG

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego County (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego County (IN U.S. PLAINTIFF CASES ONLY)

05 JUL 26 PM 2:55

COURT U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas J. Tighs, Calif. State Bar # 83091 6265 Greenwich Drive, Suite 103 San Diego CA 92122-5619 858-450-1881 Voice 858-450-1898 Fax

ATTORNEYS (IF KNOWN)

DEPUTY

'05 CV 1488

JAH (POR)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff Federal Question (U.S. Government Not a Party) U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- Citizen of This State Incorporated or Principal Place of Business in This State Citizen of Another State Incorporated and Principal Place of Business in Another State Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Plaintiff is suing for Patent Infringement, Conversion and Conspiracy to Convert; Trademark & Trade Dress Infringement; Breach of Fiduciary Duty; Missappropriation of Trade Secrets; and State and common law unfair competition. 28:133P

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 610 Agriculture, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding Removal from State Court Remanded from Appellate Court Reinstated or Reopened Transferred from another district (specify) Multidistrict Litigation Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23 DEMAND \$ Damages unknown, preliminary injunction JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number 5521 LT02 DATE July 26, 2005 SIGNATURE OF ATTORNEY OF RECORD Thomas J. Tighs

115765 \$250.00