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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

MOMENTUS GOLF, INC., )

Plaintiff, )

v. )

CONCEPT SPORTS, INC., )

Defendant. )

No. **4:01-CV-90458**

COMPLAINT

Plaintiff Momentus Golf, Inc., by and through the undersigned counsel, pursuant to Federal Rule of Civil Procedure 57, hereby brings this action seeking declaratory relief, and in support thereof states:

A. Jurisdiction

1. This Court has jurisdiction over the subject matter of the complaint, pursuant to Title 28 U.S.C. Section 1338(a). Specifically, Plaintiff's Claims are for declaratory relief in accord with 28 U.S.C. Sections 2201 and 2202, seeking declaratory judgment that United States Patent No. 5,215,307 is invalid and/or that Plaintiff's "MOMENTUS® Strength Trainer" illustrated in Exhibit "A" attached does not infringe United States Patent 5,215,307, attached hereto as Exhibit "B" (hereafter, the "307" patent), all in accord with 35 U.S.C. Section 281.

B. Parties

2. Plaintiff, Momentus Golf, Inc. (hereinafter "MOMENTUS"), is a corporation

incorporated under the laws of the State of Oklahoma and domiciled in Henry County, Iowa with headquarters in Winfield, Iowa.

3. Defendant, Concept Sports, Inc. (hereinafter "CONCEPT"), is a corporation incorporated under the laws of the State of Iowa and domiciled in Polk County, Iowa, with headquarters in Des Moines, Iowa.

C. Factual Overview

4. MOMENTUS markets the MOMENTUS® Strength Trainer, which is a golf swing training device.

5. CONCEPT is the apparent owner by assignment of the '307 patent issued on June 1, 1993 for a Golf Swing Training Exercise Method.

6. CONCEPT has, by telephone communications and by letter attached hereto as Exhibit "C," accused the MOMENTUS® Strength Trainer of infringing the '307 patent, threatened MOMENTUS with litigation based on the alleged infringement of the '307 patent and has attempted to coerce MOMENTUS to enter a license agreement in order to avoid such litigation.

7. MOMENTUS is continuing to market the accused MOMENTUS® Strength Trainer.

8. MOMENTUS has a real and reasonable apprehension of being sued for patent infringement.

9. MOMENTUS has a risk of potential liability.

D. Plaintiff's First Claim

10. MOMENTUS adopts the foregoing paragraphs as if the same were set forth fully herein.

11. MOMENTUS' First Claim is for declaratory relief in accord with 28 U.S.C.A. Sections 2201 and 2202, seeking a declaratory judgment that the MOMENTUS® Strength Trainer does not infringe the '307 patent.

12. Integral to all the claims of the '307 patent are at least the following limitations:

- a. the providing of a device that is counterbalanced;
- b. the providing of a device with counterbalanced weights on opposite ends thereof;
- c. the providing of a device having weights which are symmetrical about a longitudinal axis; and
- d. the providing of a device having no ball striking face thereon.

13. The MOMENTUS® Strength Trainer is lacking in all of the above-stated limitations as well as other limitations of the claims of the '307 patent.

WHEREFORE, MOMENTUS prays the Court enter judgment on its behalf, to the effect that the MOMENTUS® Strength Trainer does not infringe the '307 patent. Plaintiff asks for such other relief, including attorney's fees and costs, as the Court may deem just and appropriate.

E. Plaintiff's Second Claim

14. MOMENTUS adopts the foregoing paragraphs as if the same were set forth fully

herein.

15. MOMENTUS' Second Claim is for declaratory relief in accord with 28 U.S.C.A. Sections 2201 and 2202, seeking a declaratory judgment that the '307 patent is invalid under 35 U.S.C. Section 112 for failing to distinctly claim the invention.

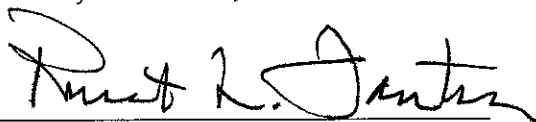
16. Integral to all the claims of the '307 patent are at least:

- a) the providing of a device;
- b) the performing of a backswing, downswing and follow-through of a golf club swing; and
- c) the simulation of hitting a golf ball from a golf tee without striking a golf ball while one of the weights is spaced a substantial distance above a ball teed position.

17. The limitations of "providing," "performing," "backswing," "downswing," "follow-through," "golf club swing," "simulation," "hitting a golf ball," "without striking," "spaced," "substantial distance," "above" and "ball-teed position," considered separately and/or together, are all so vague, indefinite, ambiguous and confusing as to render the invention not distinctly claimed.

WHEREFORE, MOMENTUS prays the Court enter judgment that the '307 patent is invalid and for such other relief, including attorney's fees and costs, as the court may deem just and appropriate.

Respectfully submitted,



Robert L. Fanter



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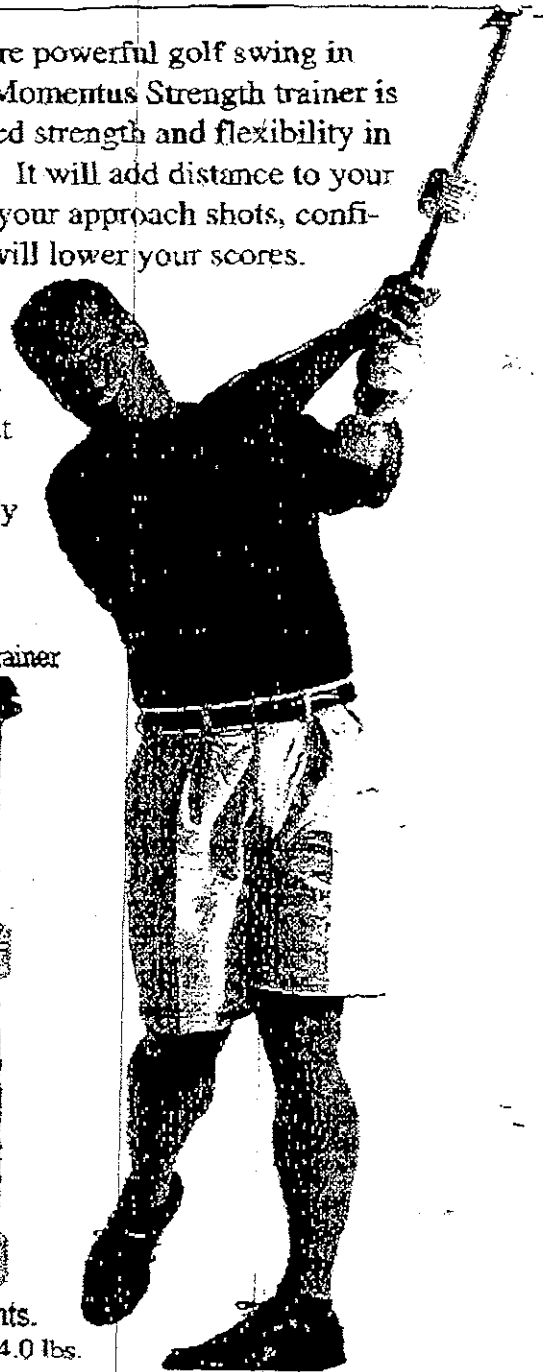
# MOMENTUS

## STRENGTH Trainer

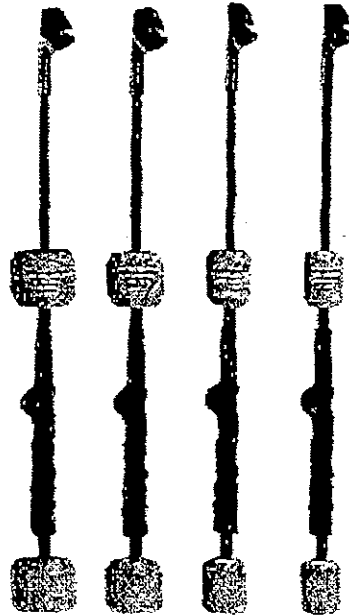


Create a stronger and more powerful golf swing in just minutes a day! The Momentum Strength trainer is designed to build increased strength and flexibility in the golf specific muscles. It will add distance to your drives, greater control to your approach shots, confidence to your game and will lower your scores.

The uniquely weighted design insures that not only will you be strengthening your golf swing, but also synchronizing the proper hand, arm and body movements to hit longer and straighter golf shots.



### MOMENTUS STRENGTH trainer



Available in 4 different weights.  
11.5 lbs., 9.0 lbs., 6.5 lbs. and 4.0 lbs.



US005215307A

**United States Patent** [19]

Huffman

[21] Patent Number: **5,215,307**[45] Date of Patent: **Jun. 1, 1993**[54] **GOLF SWING TRAINING EXERCISE METHOD**[75] Inventor: **Larry C. Huffman, Des Moines, Iowa**[73] Assignee: **Concept Sports, Inc., Des Moines, Iowa**[21] Appl. No.: **926,052**[22] Filed: **Aug. 3, 1992**[51] Int. Cl.<sup>5</sup> **A63H 89/26**[52] U.S. Cl. **273/193 A; 273/26 R; 273/29 A**[58] Field of Search **273/193 A, 193 B, 194 A, 273/194 B, 35, 81 R, 26 B, 186 A, 81 A, 77 A, 81 B, 81 C, 165, 166, 81.2, 81.3, 81.4, 80 A; 482/92, 93, 97, 98, 106, 107, 108**[56] **References Cited****U.S. PATENT DOCUMENTS**

1,138,196	3/1915	Dick	
1,664,257	1/1928	McCallough	273/81.4
2,331,281	1/1966	Wallo	273/193 A
4,029,312	6/1977	Wright	272/123
4,203,598	3/1980	Sniff	273/77 A
4,463,479	3/1984	Mitchell	273/81 A
4,555,111	11/1985	Abner	273/26 B
4,600,195	3/1986	Shaw	273/61 A
4,602,783	7/1986	Wendt	273/193 A
4,602,788	7/1986	Wendt	273/193

4,682,773	8/1987	Fomula	273/26 B
4,878,673	11/1989	Pullard	273/186
4,887,815	12/1989	Hughes	273/77 A
5,026,063	5/1991	Rhode	273/193 A
5,083,780	1/1992	Wheatley	273/193 A
5,121,925	6/1992	Rimdo	273/193 A

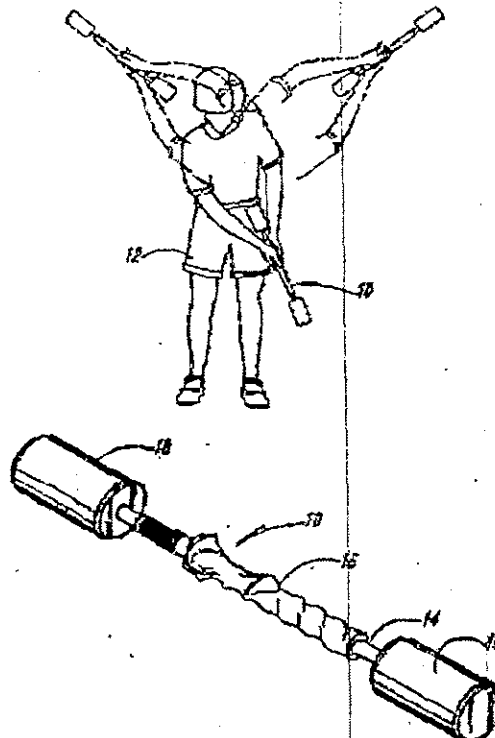
**OTHER PUBLICATIONS**

Fench Bat for Golfers Build Forearm Strength; Grooves Your Grip and Swing as You Exercise Indoors! #G570 Protator, p. 38.

Primary Examiner—Theatrice Brown  
 Attorney, Agent, or Firm—Zarley, McKee, Thoms, Voorhees, & Sease

[57] **ABSTRACT**

A golfer, tennis player or baseball player is able to maintain normal balance while swinging a counter weighted training device in a fashion normal to the sport in question. The appropriate grip is placed on a shaft having oppositely disposed weights on each end. The amount of weight on each end may be varied but one of the weights is always between the user's hands and body while swinging the training device thereby allowing the user to maintain normal balance throughout the swing of the training device.

**7 Claims, 2 Drawing Sheets**

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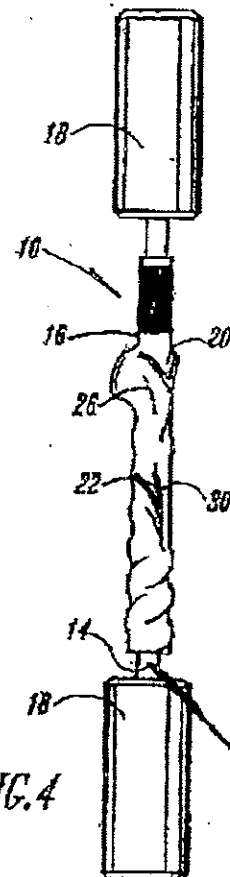
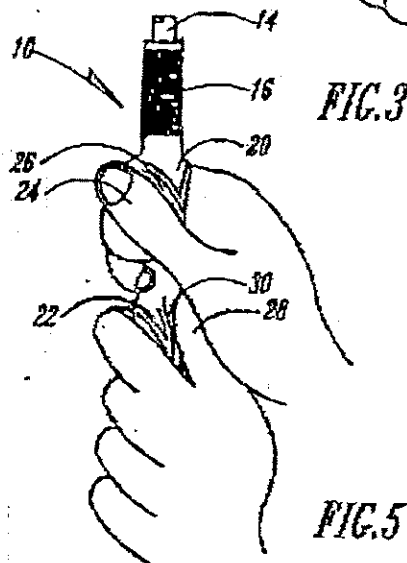
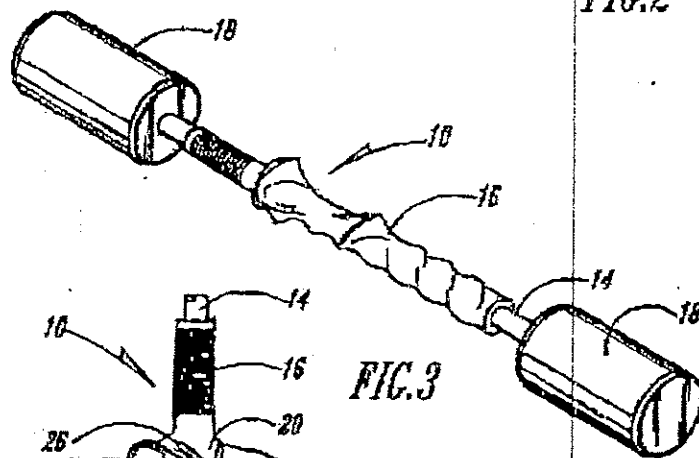
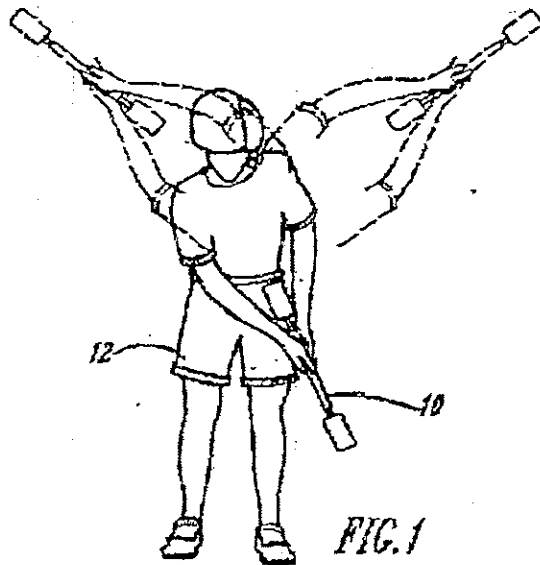


EXHIBIT B



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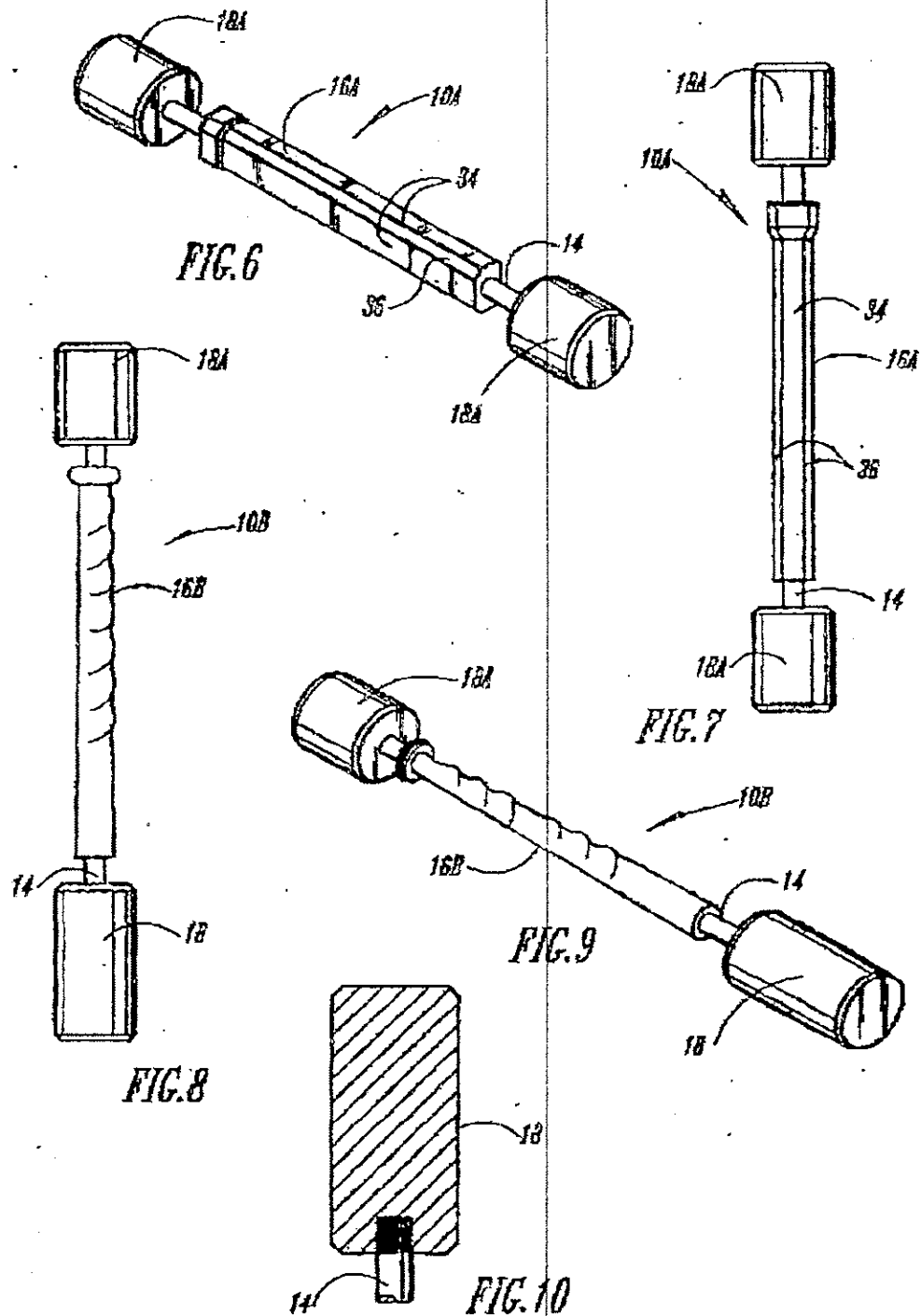


EXHIBIT B

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## GOLF SWING TRAINING EXERCISE METHOD

## BACKGROUND OF THE INVENTION

Weight training to build up body muscles is popular among many athletes. Weight training exercises specific to a particular sport, however, are less common. In golf, weighted golf clubs have been used but the additional weight on the end of the golf club shaft adversely affects the balance of the golfer. The weight tends to pull the golfer toward the weight. Representative of other weighted exercise devices for improving the golf swing is the device disclosed in the Pollard U.S. Pat. No. 4,878,673 which shows a pair of training sticks with each stick being held at one end by a different hand. The other end of the stick has a weighted ball connected by a flexible cable.

What is needed is a weighted exercise device that will allow the user to practice the specific swing of a given sport such as golf, tennis or baseball but not affect the balance of the user while performing the exercise. The weights used should be sufficient to strengthen the specific muscles required for the specific sport in question.

## SUMMARY OF THE INVENTION

This invention provides a counter balanced shaft having a grip for the specific desired sport and the opposite ends of the shaft carry counter balanced weights. In golf, a conventional golf grip may be provided between the weights on the shaft or a training grip which specifically positions the golfer's hands in a correct position may be used. The tennis exercise device utilizes a conventional tennis racket handle and grip between the counter balanced weights. In baseball, a baseball bat handle is provided on the shaft carrying the counter balanced weights at opposite ends.

The counter balancing of weights on a golf club, tennis racket or baseball bat is critical to maintaining balance during the swing particularly when heavier weights are being used. The weights may be easily interchanged as they are threadably attached to the shaft. The weights are cylindrical and elongated and their length will vary with their weight. As appropriate, the weight at one end may be different from the weight at the opposite end. The effective length of the exercise device is substantially less than the conventional golf club and is also less than a tennis racket or a baseball bat. This length will ordinarily vary between 15 and 30 inches. The individual weights will vary between approximately two and six pounds.

## DESCRIPTION OF THE DRAWINGS

FIG. 1 is a front view of a golfer practicing a golf swing using the counter balanced swing training device of this invention.

FIG. 2 is a side view of the golfer of FIG. 1.

FIG. 3 is perspective view of a counter balanced golf swing training device.

FIG. 4 is a top plan view of the counter balanced golf swing training device.

FIG. 5 is an enlarged fragmentary perspective view of the golf grip showing the hands positioned thereon.

FIG. 6 is a perspective view of a counter balanced tennis swing training device.

FIG. 7 is a top plan view thereof.

FIG. 8 is a top plan view of a counter balance baseball swing training device.

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FIG. 9 is a perspective view thereof.

FIG. 10 is an enlarged cross sectional view of a weight at one end of the shaft showing it threadably connected thereto.

## DESCRIPTION OF PREFERRED EMBODIMENT

The counter balanced golf swing training device of this invention is referred to in FIG. 3 generally by the reference numeral 10 and is shown in use in FIGS. 1 and 2 by a golfer 12. It is seen that the device 10 is held and swung like a conventional golf club.

The counter balanced golf swing training device 10 includes a shaft 14 having a golf grip 16 and elongated cylindrical solid weights 18 threadably connected at opposite ends of the shaft 14.

The golf grip 16 may be that of a conventional golf club or a training grip as seen in FIGS. 1-5. The training grip 16 includes a front V-shaped shoulder 20 and a rear V-shaped shoulder 22. The thumb 24 of the right hand is pressed against one side 26 of the front shoulder 20 while the thumb 28 of the left hand is pressed against the opposite side of the rear shoulder 22 as seen in FIG. 5. The grip 16 assures that the golfer uses the correct golf grip when using the counter balanced golf swing training device 10.

Use of the counter balanced golf swing training device 10 as illustrated in FIGS. 1 and 2 not only grooves the swing, but substantially strengthens the muscles used for the golf swing thereby providing the golfer with a greater potential to hit the ball a longer distance. As a golfer ages, strength and distance may be maintained or increased by exercising with the counter balanced golf swing training device 10 of this invention.

In FIGS. 6 and 7 a counter balanced tennis swing training device 10A is shown having a tennis handle grip 16A. The weights 18A are shown smaller to illustrate that the weights may be varied in length and weight as desired. The user's hands are both placed on the tennis grip 16A as a two handed tennis player typically does during actual play. The grip 16A has four flat surfaces 34 with beveled corner surfaces 36 therebetween.

A counter balanced baseball swing training device is shown in FIGS. 8 and 9 and is referred to generally by the reference number 10B. The baseball swing training device 10B includes a conventional baseball handle grip 16B on the shaft 14. For illustrative purposes, a small weight 18A is provided at one end of the shaft 14 with the heavier, longer weight 18 being provided at the opposite end between the user's hand and body.

It is thus seen in use that whether it be golf, tennis or baseball, the user is able to practice the natural swing of his or her sport without adversely affecting balance during the swing regardless of the weight used. The key is the counter balanced weights at opposite ends of the shaft with one of the weights being between the hands on the grip and the user's body. The position of this weight allows for maintenance of the user's balance during a normal swing specific to the sport in question.

What is claimed is:

1. A method of training a person to properly swing a golf club and strengthen the muscles for swinging a golf club comprising the steps of:

providing a counterbalanced golf club training device having an elongated shaft with a golf grip located between substantially similar, symmetrical about the longitudinal axis of said shaft, counterbalanced weights on opposite ends thereof, said weights

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- having no ball striking face thereon for striking a golf ball, and performing the backswing, downswing and follow-through of a golf club swing to simulate hitting a golf ball from a golf tee without striking a golf ball while one of said weights is spaced a substantial distance above a ball teed position.
2. The method of claim 1 wherein each of said weights weigh between 2 and 6 pounds.
3. The method of claim 1 wherein the length of the training device is between 15 and 30 inches.
4. The method of claim 1 wherein each of said weights are cylindrical in shape.

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5. The method of claim 1 wherein each of said weights is threadably attached to opposite ends of said shaft.
6. The method of claim 1 wherein said grip includes a pair of longitudinally front and rear spaced apart V-shaped shoulders and the thumb of the right hand is placed against one side of the front shoulder and the thumb of the other hand is placed against the other side of the rear shoulder while gripping and swinging the training device to practice the proper golf grip on a golf club.
7. The method of claim 1 wherein each of said weights is elongated, cylindrical, solid and threadably attached to opposite ends of said shaft.

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**Concept Sports, Inc.**  
**Joseph G. Romeo, President**  
**1318 SW McKinley Avenue**  
**Des Moines, IA 50315**  
**(563) 242-6669, (515) 669-4428, (515) 287-6200**

May 10, 2001

Mr. Jim Sorenson  
Momentum Golf, Inc.  
111 North Locust  
Winfield, IA 52659

Dear Mr. Sorenson:

Following up on our recent telephone conversations, I am enclosing information pertaining to Concept Sports, Inc. patented Swing PRO golf swing training device. Concept Sports is the assignee of US Patent # 5,215,307 issued by the United States Patent and Trademark office on June 1, 1993.

The patent claims the following:

"A method of training a person to properly swing a golf club and strengthen the muscles for swinging a golf club comprising the steps of;

providing a counterbalanced golf club training device having an elongated shaft with a golf grip located between substantially similar, symmetrical about the longitudinal axis of said shaft, counterbalanced weights on opposite ends thereof; said weights having no ball striking face thereon for striking a golf ball, and

performing the backswing, downswing and follow through of a golf club swing to simulate hitting a golf ball from a golf tee without striking a golf ball while one of said weights is spaced a substantial distance above a ball teed position.

2. The method of claim 1 wherein each of said weights weigh between 2 and 6 pounds.

3. The method of claim 1 wherein the length of the training device is between 15 and 30 inches.

4. The method of claim 1 wherein each of said weights are cylindrical in shape.

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5. The method of claim 1 wherein each of said weights is threadably attached to opposite ends of said shaft.

6. The method of claim 1 wherein said grip includes a pair of longitudinally front and rear spaced apart V-shaped shoulders and the thumb of the right hand is placed against one side of the front shoulder and the thumb of the other hand is placed against the other side of the rear shoulder while gripping and swinging the training device to practice the proper golf grip on a golf club.

7. The method of claim 1 wherein each of said weights is elongated, cylindrical, solid and threadably attached to opposite ends of said shaft. "

We have recently purchased your Momentus Strength trainer, and have compared it to the patented Swing PRO golf swing trainer. Based on our comparison, we believe that the following patent claims are in issue here.

Claim 1 pertaining to a method for training a person to properly swing a golf club and strengthen the muscles for swinging a golf club; including the use of the counterbalanced golf club training device (i.e. the Swing PRO).

Claim 2 pertaining to the use of weights having a weight of between 2 and 6 pounds.

Claim 3 wherein the length of the training device is between 15 and 30 inches.

Claim 4 pertaining to the method of claim 1 wherein each weight is shaped like a cylinder.

Claim 5 pertaining to the use of a special grip that includes a pair of longitudinally front and rear spaced apart v-shaped shoulders, where the thumb and fore finger of each hand is placed against one side of each shoulder while gripping and swinging the training device to practice the proper golf grip on a golf club.

As a result of these similarities in design of the Momentus Strength trainer with the Concept Sports Swing PRO, and in light of the similar use to which your Momentus Strength trainer is intended to be put as portrayed in advertisements and promotional literature, including a video tape showing the use of the Strength trainer, we conclude that the Momentus Strength trainer violates those claims of US patent # 5,215,307 set forth above.

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You are hereby placed on notice that we believe the Momentum Strength trainer is an infringing device regarding the aforementioned claims made under US Patent # 5,215,307 issued June 1, 1993 by the United States Patent and Trademark office.

At this juncture, rather than issuing you and Momentum Golf, Inc. a cease and desist letter, we are willing to discuss a licensing arrangement that will enable you to continue the active sale and marketing of the Momentum Strength trainer.

Please call me to discuss this matter.

Sincerely,

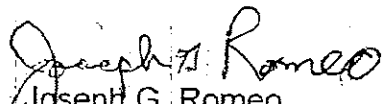
  
Joseph G. Romeo  
President  
Concept Sports, Inc.

EXHIBIT C

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