

**Specimen claims on the football field:
Analysis/explanation/comments mainly from the standpoint
of candidates for the EQE**

Page 2 Specimen Claims

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Specific Comments on the Claims

Pages 27-35 Claims 1-18 are commented separately, under paragraphs 1.1 - 1.12 for claim 1, etc.

CLAIMS

1. An installation for playing a game, comprising a generally horizontal playing area and a goal structure installed on the playing area, the goal structure having an opening for the passage of a propellable playing object such as a ball,

characterised in that the goal structure is associated with an object-receiving recess formed of see-through material which is arranged to receive playing objects propelled into the recess through the object-passage opening and which damps movement of such propelled playing objects that come into contact with said material.

2. The installation of claim 1, wherein the goal structure comprises two spaced apart uprights extending above the playing area and a substantially horizontal cross-bar connecting the uprights above the playing area.

3. The installation claim 2, wherein the cross bar is attached to the top of the uprights, the cross-bar being longer than the uprights.

4. The installation of claim 2 or 3, wherein the object-receiving recess is delimited sideways by the uprights and upwards by the cross-bar, and is located above a relatively small part of the playing area that is situated beyond a main part of the playing area from which in use players can propel a playing object through the object-passage opening, said see-through material preventing or reducing rebound of a playing object propelled from the main part of the playing area back towards said main part.

5. The installation of any preceding claim, wherein the see-through material is a net or net-like flexible material.
6. The installation of any preceding claim, wherein the see-through material is attached to the goal structure and to the playing area.
7. The installation of any preceding claim, wherein the playing area is a solid surface having lines marked thereon.
8. The installation of claim 7, wherein the playing area is a field [covered at least partially with natural or synthetic grass].
9. The installation of any preceding claim, wherein the playing area is generally rectangular, the installation comprising two facing goal structures located at or adjacent to opposite ends of the rectangular playing area.
10. The installation of claim 9, wherein the facing goal structures are identical and centrally located relative to a short side of the rectangular playing area.
11. The installation of any preceding claim, wherein the playing area is located inside a stadium having standing room and/or seating capacity for accommodating a crowd of spectators around the playing area, the see-through material of the object-receiving recess(es) allowing spectators located at different vantage points in the stadium to see when a playing object is propelled into the object-receiving recess(es).

12. The installation of any preceding claim in combination with a plurality of players movable over the playing area and a playing object such as a ball propellable over the playing area by the players.

13. The combination of claim 12, comprising two groups of players wearing garments that are visually alike for players of each group and are visually differentiable from those of players of the other group.

14. The combination of claim 12 or 13, wherein the players are movable by foot over the playing area and the playing object is a ball propellable by contact with the players.

15. The combination of claim 12, 13 or 14, wherein the see-through material of the object-receiving recess is a net and the playing object is a hollow spherical ball whose diameter is substantially less than the dimensions of the ball-passage opening and substantially greater than the dimensions of the net's apertures.

16. The combination of claim 14 or 15, wherein the ball is of such dimensions that it can be gripped firmly by a player's two hands but not by a single hand.

17. A goal structure accessory of an installation as claimed in claim 4 or any one of claims 5 to 11 when dependent on claim 4, comprising an expanse of flexible see-through material which is deployed or deployable to form an object-receiving recess of the goal structure as defined in claim 4, said expanse having a top section adaptable to the cross-bar of a goal structure, two side panels adaptable to the uprights of a goal structure and which each have a lower part adapted to extend rearwardly of the uprights, and a back panel which extends from the top section between the side panels.

18. Use of a flexible see-through material as a goal structure accessory for damping movement of a propellable playing object such as a ball brought into contact with the material and for confining such object while allowing the object to remain visible through the material.

Note: the specimen set of claims is more elaborate than what can be done in a group exercise (2-3 hours) and is more voluminous than what is expected for the EQE: mechanical 10-12 claims; chemical 15-20 claims of a type easier to draft.

General Comments§1. Structure - Claim types

- Claim 1 is an independent claim to the installation, defined by generalisation over the given facts.
- Claims 2-11 are dependent claims concerning particular embodiments of the installation defined by its essential features in claim 1 (Rule 29(3)).
- Claim 12 covers the (fixed) installation in combination with temporary items which are present during play (Players - propellable playing object/ball). This combination covers the installation when in use and is considered to be an independent claim in the same category as claim 1.
- Claims 13-16 are dependent claims concerning particular embodiments of the combination defined by its essential features in claim 12 (Rule 29(3)) i.e. more precise definitions of the propellable playing object/ball and the players.
- Claim 17 is a sub-combination claim covering a goal structure accessory (the net). This is considered to be an independent claim in the same category as claim 1.
- Claim 18 is an independent claim directed to use of a flexible see through material (net). This independent claim is in a different claim category to claim 1.

Various aspects of these claims and the underlying principles are discussed below.

§2. General coverage and implicit coverage (disclosed features and undisclosed features/embodiments)

- Claim 1 is a "broad" claim developed by generalising the given features of the client's disclosure.
- Claims 2-11 cover specific embodiments based mainly on information given by the client.
- Claim 1, and the claims from which each successive dependent claim depend, each cover undisclosed embodiments of the playing installation, in addition to the specific embodiments claimed in claims 2-11.

For example, claim 1 covers, as playing area, a swimming pool (water polo) or an ice rink (ice hockey). Though these further "applications" are not described, the inventive concept of the disclosed goal structure with net can equally apply to such situations, so they can be embraced within the general coverage as legitimate extrapolations.

Moreover claim 1 covers games with quite different goal structures/nets, even a basketball installation having a net hanging below a loop or a billiard table fitted with ball-receiving recesses as defined. This goes considerably beyond the client's original disclosure but can be protected as an extrapolation of the technical effect obtained by associating a goal structure with a net.

In drafting for the EQE you must make use of the clients facts but not bring in additional "expert" facts from your own knowledge or imagination. Compare this to drafting in usual work conditions where the possibility of communicating with the applicant makes it possible to introduce new embodiments (new

drawings/examples etc) needed to support the extrapolated breadth of protection.

In EQE conditions, a broad claim (e.g. including basketball) can only be sustained if it can be drafted clearly as a solution to the problem as expressed in the introduction (see §13). In EQE conditions, it is not possible to disclose basketball or other imagined variations specifically as additional embodiments in order to support the breadth of coverage.

- Claims 2-11 (see specific comments below) illustrate how generalised sub-claims directed to specifically disclosed features/embodiments can be used to support the preceding claims and "induce" broad protection in the claims from which they depend.
- See also the comments under §8: generalisation of claim 1 by converting superfluous/inessential features into dependent claims.

§3. The principle of claim differentiation

- Under Rule 29(3) any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.
- It follows that each successive dependent claim must be more specific than its preceding claim*.
- In other words, each preceding main claim is necessarily broader in scope than any following dependent claim.

* "Modification" claims (Guidelines CIII.3.7a) are a special category: such claims are considered to be independent claims and are necessarily of different scope to the claim(s) they modify.

European patents are not granted twice for identical inventions. All claims whether independent or dependent are supposed to have different scope.

- Consider claim 1 (see-through material) and claim 5 (net). Claim 5 covers flexible see-through materials other than nets, for instance a sheet of transparent plastic material (not disclosed). Claim 1 by implication covers non-flexible materials capable of damping ball movement.
- Consider claims 1, 2 and 3. Claim 2 makes it clear that claim 1 covers a goal structure with only one upright (an American football goal with a catching net attached to its upper U: or even without any upright or horizontal cross-bar (basketball goal structure with a horizontal ring, above ground). Claim 3 makes it clear that claims 1 and 2 cover a retrofitted rugby field (net attached to the bottom goal part, uprights projecting above the goal). Etc.
- An important claim strategy is to claim preferred embodiments specifically and cover non-preferred/less useful embodiments implicitly.

§4. Broad/specific coverage

- In drafting for the EQE candidates are expected to obtain the broadest possible valid coverage and to provide a reasonable number of fall-back positions in dependent claims.
- Generalising the features of the main independent claim leads to identification of specific features suitable for sub-claims.

This leads to "double credit" : more credit for the breadth of protection of the independent claim and extra credit for suitably generalised sub-claims.

- Introducing unnecessary features into the main independent claim leads to a "double penalty": loss of coverage in the independent claim and less possibility for credit in a dependent claim.

§5. The importance of broad coverage

- The introduction of unnecessary limitations in a patent claim can lead to disastrous consequences. Consider the impact in the "Epilady" claim of the "helical spring with windings" limitation.
- In the football field example:
 - Limitation of the main claim to a net would offer competitors an easy way of evading the protection: using a flexible transparent sheet.
 - Limiting to the goal structure (uprights/crossbar), the client's main embodiment would be protected, but not substantial variations (basketball, etc).
 - Limiting to the cross bar being attached to the top of the uprights would allow easy evasion, with a less preferred arrangement : fitting a net on rugby posts, leaving the top parts sticking up.
 - Limiting to the net/material being attached to the structure (uprights/cross-bar) would allow easy evasion : a net structure placed behind but not attached to the goal structure.
 - Limiting to having two structures would protect the main application, but not practice areas with only one

goal post. Having two structures is not necessary for setting up the problem-solution.

- Limiting to a rectangular field with lines etc would also protect the main application, but not deviations like ice hockey or water polo. If such undisclosed applications were commercialised by competitors, this could represent an important loss or could lead to difficulties of enforcement.
- Specifically reciting the disclosed "preferred" features as sub-claims can help to support the breadth of the main independent claim.
- The importance of broad coverage (generalisation) also applies to dependent claims. "Fingerprint" claims are not expected in the EQE.
- For the EQE, candidates are asked to confine themselves to "significant" dependent claims which provide a good fall back position) in case of failure of the preceding claim(s). This means that dependent claims should be drafted in general terms and should be directed to preferred embodiments for which there is support for inventive step (unobvious solution to a technical problem, mechanical/electrical; specific experimental support in the Chemical paper).
- In the EQE banish trivial sub-claims. In the specimen set of claims, claim 8 (the field) would be considered trivial, adequate broad protection being given by claim 7 (solid surface with lines).
- It's not recommendable in the EQE to explicitly claim non-preferred embodiments. In everyday practice this may be justified to provide support for broad claims.

§6. Functional Wording

- Functional features may be included provided that a skilled person would have no difficulty in providing some means of performing the function without exercising inventive skill. Guidelines CIII.2.1
- A claim may broadly define a feature in terms of its function, even where only one example of the feature has been given in the description, if the skilled reader would appreciate that other means could be used for the same function. Guidelines C.III.6.5.
- Claims which attempt to define the invention as a result to be performed ... may be allowed if the invention :
 - either can only be defined in such terms; or
 - cannot otherwise be defined more precisely without (unduly) restricting the scope of the claims*;
 - and if the result is one which can be directly and positively verified by tests or procedures adequately specified in the description or known to the person skilled in the art and which do not require undue experimentation. T 65/85; Guidelines CIII.4.7.
- Use structural-functional wording where possible and resort to "means for" only where necessary ("amplifier" in preference to "means for amplifying").
- Consider these principles governing functional wording in conjunction with the above claim 1: - playing area - goal structure - opening for the passage ... object-receiving recess + definition of the recess's function.

* This can be used as a blanket justification for functional wording.

§6B Functional wording – Use Limitations

- When correctly used, functional language does not imply that the actual performance of the function (device or apparatus in use) is necessary for determining the protection conferred (catching an “infringer”).
- However, if a claim to a device/apparatus/installation contains limitations requiring actual use, that would be usually regarded as a serious restriction in the patentee’s possibilities to enforce the claim against an “infringer”.
- Claim 1 covers the installation **for** playing a game, the goal structure having an opening **for** the passage of ... and the recess is “arranged to receive objects ...”. Claim 1 covers the installation both when in use to play a game, or out of use, or used for practice.
- Claim 4 recites the playing area from which **in use** players can propel a ball. This defines the installation by what happens during use, but is not limited to actual use.
- Claim 11 covers the installation/stadium with capacity “for accommodating a crowd”. The claim could be infringed even by an empty stadium, which would make enforcement easier by not having to stop play.
- Claim 12 requires the presence of players, but not necessarily the playing of a match or the scoring of a goal. It covers also practice play.
- Claim 17 attempts to cover the net deployed (fixed to the goalposts) or deployable (in a package).
- Though claim 18 covers use, it is as an accessory **for** damping movement... The scope of protection of this claim will depend on interpretation by the national court; in principle the protection should include manufacture and sale of a goal structure accessory made of the given material and capable of performing the function.

- §7. Broad claims - Speculative claims
- The EPC allows broad protection, providing the claim is clear, supported and meets up to the requirements for patentability.
- Broad claims are unallowable if they:
 - lack novelty (Art 54);
 - do not solve a technical problem (Art 56, with Rule 27(1)(c) + Case Law);
 - rely on obvious/trivial features to distinguish over the prior art;
 - lack support (Art 84);
 - are unclear (Art. 84).
- Broad claims that lack support are sometimes referred to as "broad and speculative" claims.
- For sufficiency, Art 83, a single example may suffice but where the claims cover a broad field, the application should not usually be regarded as satisfying the requirements of Art. 83 unless the description gives a number of examples or describes alternative embodiments extending over the area covered by the claims. Guidelines CII.4.9.
 - when drafting in normal working conditions with the possibility of dialogue with the inventor/applicant, newly devised embodiments can be introduced to support claim breadth.
 - drafting in the conditions of the EQE precludes dialogue with the inventor/applicant. The candidates should confine themselves to the given facts, and

should not introduce new embodiments to support a broad claim.

- although the client submitted only a single example of the football field, splitting the features and arranging them in a hierarchy as a set of claims with each claim notionally covering one or more separate embodiments provides the required support for the broad main claim.

- In the mechanical/electrical area substantial generalisation is possible from the given embodiments. In the chemical area, generalisation will normally be restrained by the need to support inventive step throughout the claimed area, and the availability of support.
- The unallowability of broad claims is often related to lack of clarity. Consider the following claim to the football field:

A playing area comprising a goalpost structure with a ball-passage opening, characterised by means for limiting the penetration of a ball through the ball-passage opening.

- The claim lacks novelty: penetration of balls through the ball-passage opening of the prior playing field is limited by air-resistance, the presence of advertising panels, or a stadium wall or spectator area, etc.
- "Playing area" and "goalpost structure" are also vague. The claim would cover a door in a building outside which children play ball games. Penetration of a ball in the building is necessarily limited.
- Claim 1 as presented has also been generalised to the extent that it is likely to be objected to by an EPO Examiner for lack novelty, say over a school

playground with an adjacent building having an open window behind which is a see-through curtain ... Such attack relies on broadly interpreting vague wording like "recess". An objection like this could be overcome by demonstrating that a curtain does not form "an object-receiving recess". Once novelty is established over such an "accidental anticipation", it is usually easy to demonstrate inventive step because there is no incentive to convert the curtain into an "object-receiving recess".

- In EQE drafting, it is important to generalise as far as possible, but not lose sight of the need for novelty. Presenting a non-novel claim will lead to a serious loss of credit (say 25 out of 50 marks).

§8. Superfluous wording - padding - lack of conciseness - unnecessary limitations

Consider the following draft claim (which was a predecessor of the above claim 1). Note the parts [in square brackets] that were identified as "superfluous" and included in dependent claims. The "client" in the EQE specifically instructs you to aim for the broadest claim meeting all requirements, including conciseness.

To achieve this, it is generally easier/safer to make a preliminary draft with superfluous features that, once recognised as such, can be relegated to dependent claims. Starting from an excessively broad claim that omits essential features, it is more difficult to recognise defects.

Draft Claim (predecessor of claim 1 above):

1. An installation for playing a game [in which movable players dispersed over a playing area can propel a mobile object such as a ball over the playing area and through an opening in a goal structure], the installation comprising a generally horizontal playing area and a goal structure installed on the playing area, the goal structure comprising [two spaced apart uprights extending above the playing area and a substantially horizontal cross-bar connecting the uprights above the playing area to define therebetween] an object-passage opening,

characterised in that the goal structure is associated with an object-receiving recess [which is delimited sideways by the uprights and upwards by the cross-bar, and is located above a relatively small part of the playing area that is situated beyond a main part of the playing area from which in use players can propel a mobile object through the object-passage opening], the inside of the object-receiving recess being accessible to a thus-propelled object [only] through the object-passage opening,

the object-receiving recess being formed of [flexible] see-through material that damps movement of an object propelled thereagainst [and prevents or reduces rebound of such object propelled from the main part of the playing area back towards said main part].

This claim covers the client's main interest but contains several unnecessary limitations. It does not conform to the EQE requirement of maximum valid protection, and would lose a substantial amount of the available credit. It could obtain say 25-35 of 50 points, and there would be a corresponding loss for absent dependent claims.

§9. The client's wishes / instructions

When you have the opportunity of dialogue, the client may insist on including various features (like the uprights/cross-bar) as being essential for technical or commercial reasons. Likewise, in the EQE - especially in the Chemical paper - pay attention to the client's indications as to what is essential any why it is essential.

The lack of dialogue in the Exam situation is compensated by the fact that the client provides you with indications of his interests in the instructions to candidates and in the written description of the invention to be protected.

The client's expressed wishes are given facts and you should use them. The Patent Attorney's job is to protect the client's interests, which implies understanding the client's interests.

This may lead you to restrict the claim according to the client's wishes. But remember, the EQE client's overall instruction is to obtain the broadest valid scope.

Claim 1 of the specimen claims was directed to the "field (installation) with a generalised net" approach as this seemed most important from the client's point of view.

An alternative approach offering broad protection (but where the given facts did not provide such good support for inventive step) would be: main claim with pre-characterising part = preamble of claim 1 + features of claim 2, characterised by the features of claim 3.

In fact the client could only obtain optimum protection by filing two patent applications. Credit can be gained in the EQE for pointing out a viable alternative approach in this way.

§10. Multiple Independent Claims

- Rule 29(2) (in force since beginning 2002) restricts the number of claims in the same category to specified types.
- The illustrated claim structure contains "technically" independent claims in the same category (but written in dependent format): claim 1 to the installation; claim 12* to the combination of installation, players and ball; and claim 17* to the "goal structure accessory". If written as truly independent claims, these should be regarded as "a plurality of inter-related products", Rule 29(2)(a).
- Claim 18 to the use of the flexible see-through material (net) is an independent claim in a separate category (product, process, apparatus or use).

Note: It seems likely that Rule 29(2) will be by passed for claims in the same category, when these are written as dependent claims related by reference to other claims, if the claims are clear and it is easy to see they have different scope. Most likely, the EPO will be even more severe than in the past in refusing multiple independent claims with repetitive wording, US style.

* Under EPO practice, claim 12 is considered as a dependent claims under Rule 29(4) because it includes all the features of claim 1. This makes examination easy because if claim 1 is deemed allowable/patentable, claim 12 will be allowable as a consequence of this. Likewise for claim 17 which should be interpreted to include all of the features of claim 1. For dealings with the EPO, we can regard these as dependent claims.

§11. Designation of the subject matter

- Rule 29(1) specifies that wherever appropriate the claim shall contain a statement indicating the designation of the subject-matter of the invention.
- This designation ("An installation for playing a game", for claim 1) is a technical designation of the invention (it should relate to a technical area) and is part of the definition of the claimed subject-matter.
- For claim 1, the designated installation is defined in terms of the technical features of its components, the playing area, the goal structure and the installation of the goal structure on the playing area, all of which make up the designated installation for playing a game.
- Independent claims in the same or different categories can usually be identified by different designations of their subject-matter.
- The designation(s) of the subject-matter of the claims will usually be discussed in the introduction of the patent application, under "Technical Field".

§12. Claim dependencies/cross-references

European practice allows multiple claim dependencies and cross-references to claims, subject to the requirement of clarity. Therefore only feasible claim combinations should be included. See for instance the convoluted dependency of claim 17, linked back to claim 4 (definition of the object receiving recess which is claimed as a sub-combination in claim 17).

Generally, the more different claim combinations are covered, the more it becomes necessary to use complex claim dependencies to avoid lack of clarity. Some drafters prefer to achieve clarity by using simple claim dependencies; however, potential combinations may be lost.

Whatever format is chosen (e.g. "The installation of claim --, wherein"; or "An installation as claimed in claim 1 in which") it is important to maintain consistency and use varied wording only when a different meaning is intended : see claim 12 to the combination; or claim 17 to the goal structure accessory, "comprising".

When you use multiple claim dependencies, be prepared to convert to simpler dependencies for other jurisdictions, like the USA.

§13. The Introduction - Problem-Solution

To comply with Rule 27(1) the description shall:

- specify the technical field
- indicate the known background art
- disclose the invention as claimed in such terms that the technical problem and its solution can be understood
- state any advantageous effects with reference to the background art.

Specimen Introduction:

This invention relates to installations for playing a game of the type set out in the precharacterising part of claim 1.

Document A discloses such an installation for playing a game wherein teams of players compete to propel an oval ball towards opposite ends of a playing field equipped with goal structures of H shape, the U-shaped upper part of the goal structure constituting a ball-passage opening where credit is gained to score a goal when a player propels the ball from the field through this U-shaped upper part.

Document A's installation is used for playing games with a crowd of spectators around the field, and officials are employed to control operation of the game and keep score. As any uncertainty regarding the scoring of a goal could lead to disputes between the players, the officials and the crowd, several officials are needed to ascertain with accuracy

whether or not the ball has passed through the U-shaped upper part to score a goal. This increases the operating cost and may even make operation commercially unattractive.

An object of the invention* is to provide an installation for playing a game of the specified type with which it is easier to ascertain whether or not a goal has been scored by propelling a ball or other playing object through the goal structure's ball-passage opening, without increasing the operating cost.

This is achieved as set out in the characterising part of claim 1 by associating with the goal structure an object-receiving recess formed of see-through material, typically a net. This recess is arranged to receive playing objects such as a ball propelled into the recess through the object-passage opening.

When a ball or other playing object is propelled into this recess and comes into contact with the see-through material, this material damps movement of the playing object. The officials, players and spectators can therefore see with greater certainty whether the playing object has penetrated into the ball passage opening to score a goal or has passed outside the goal structure.

This installation can consequently be operated with less officials without sacrificing the goal counting reliability, providing a corresponding substantial reduction in the operating cost.

Moreover, tests have demonstrated that by enhancing the spectators perception of goal scoring, the

* An "object of the invention" clause is an acceptable way of expressing the "problem to be solved".

installation according to the invention is on average more attractive to spectators and can generate large operating revenues for a modest outlay corresponding to the cost of the object-receiving recess.

The invention concerns the installation as such, further aspects of which are set out in claims 2-11, the combination of the installation with players and a ball or other playing object as set out in claims 12-16, a goal structure accessory for such installations as set out in claim 17, and the use of a flexible see-through material as a goal structure accessory as set out in claim 18.

The above introduction is sufficient for EQE purposes. The candidates are not asked to support the dependent claims.

In "real-life" drafting, it is often useful to provide verbal support for the dependent claims (and extra independent) claims, usually in a given hierarchy ("In a preferred embodiment,--" etc.) possibly also commenting on the advantages, if any, associated with the extra features. This is not required in the EQE and as no credit is available, is a waste of time.

§14. Reliance on Information Provided by the Client

- The claims and introduction were drafted based on the assumption that the information provided by the client was correct: namely that the football goal structure with a net was new and the rugby goal structure and game was old.
- In day-to-day practice assumptions of this type can be checked by reference to the drafter's general knowledge, and by carrying out searches.
- Even when pre-filing searches are done, we have to proceed on the basis of the assumption that the prior art we know is exhaustive, but catering for the possibility that closer prior art may be revealed later, for example by the official search.
- In EQE conditions, candidates are instructed to accept the facts presented by the client, including the client's information about the new invention (including its advantages) and the given prior art.
- The candidates are instructed to limit themselves to the facts given in the paper.
- Limiting to the given facts means that EQE candidates are to assume that the information given is complete, i.e. they must not request further details from the client, nor present alternative embodiments not provided by the client.
- Additionally, candidates are instructed not to use specialist knowledge of the field of the invention.

- However, candidates are expected to know and apply common facts of everyday knowledge, therefore not to claim as new and inventive an aspect that fails based on everyday general knowledge but where there is no explicit novelty-destroying prior art.
- Knowing exactly how to proceed in EQE conditions therefore requires particular care
- In particular candidates should avoid directing claims to aspects where the client has provided no support for novelty and inventive step. In the football field exercise, there is no indication that a net per se or a round ball is new. Therefore, they should not be claimed.
- In the football exercise, it can safely be assumed that in the known rugby game if the ball is propelled through the rugby post it will sooner or later slow down and stop. Broadly claiming "means for stopping the ball" is bound to be objectionable, even if the facts given do not explicitly mention such means.

Specific Comments on the Claims

Claim 1

1.1. "An installation for playing a game... "

"Installation" implies that the components are in place ready for use. This excludes the components as a kit-of-parts ready to be installed.

"For" is interpreted to mean "suitable for" not "specially adapted for"; Guidelines C.III.4.8.

"Playing a game" (as such) is presumably excluded as non industrially applicable. An installation for playing a game is not excluded.

1.2. "Playing area"

- This is a generalisation meant to cover fields, indoor playing surfaces like a gym floor, ice rinks (ice hockey) or swimming pools (water polo). It would also extend to any area like a street or a normal inside room, where games may be played.

1.3. "Generally horizontal" "substantially horizontal"

- Horizontality of the playing area seems to be a requirement for the types of games envisaged, but exact horizontality is not required.

Generally horizontal includes horizontal and minor deviations, like a slight slope.

Substantially horizontal has about the same meaning. Some drafters like to specify "horizontal or substantially horizontal"

1.4. "Object-passage opening"

"opening for the passage of a propellable playing object" is a functional term that later can be abbreviated as "object-passage opening".

The fact that other objects (like players) may or may not be able to enter the recess is immaterial. The opening could be a ring just big enough to pass a ball, like in basketball.

1.5. "Propellable playing object such as a ball"

"Such as a ball" purports to limit the propellable playing object by ruling out propellable playing objects that are unlike a ball e.g. an arrow or a hockey stick. "Such as a ball" would for instance include a puck (ice hockey).

"Such as" is tolerated if it does not introduce ambiguity. In the present context, it probably contributes to clarity by qualifying the vague term "playing object".

However, "such as" is not officially regarded as limiting, Guidelines C.III.4.6. The same applies to "in particular a ball". Such non-limiting wording is found frequently in the opposed claims of Paper C, but is unlikely to gain credit in the drafting paper. Avoid such wording in the EQE.

1.6. The claim preamble

The precharacterising part of claim 1 is based on Rule 29(1)(a) taking the rugby field as closest prior art. Note that only the features in common with the rugby field which are necessary for the definition of the claimed subject matter are included. The common features of uprights and crossbar are not included in

claim 1, as they are not necessary for all embodiments of the invention, and they are not necessary to solve the problem (see §13).

1.7 "Associated with"

This is a convenient way of defining the relationship without specifying whether or not the recess/net is attached to the structure.

1.8. "Object-receiving recess"

How to define the configuration of a football net in such generality that it might include other shapes? Would a basketball net (tubular) come under "recess"?

Recess implies that the ball goes through the opening in the structure into the recess. This rules out use of a rebounding net across the posts that prevents passage of the ball.

1.9. "See-through material"

How to define a football net in terms of the function it performs?

"See-through" is related to the need to keep the ball in sight to see if it has passed into the goal.

This covers a net and obvious variations like a sheet of plastic with or without lines drawn on it.

1.10 "which is arranged to receive playing objects propelled into the recess through the object-passage opening"

This is a functional statement of what the recess does.

1.11 "and which damps movement of such propelled playing objects that come into contact with said material."

Is this further functional statement necessary? This covers flexibility without being limited to a flexible material. It includes a sort of semi-rigid cage covered with soft material that would damp the ball.

If damping of the ball is only preferred, and we envisage a more-or-less rigid cage, the damping feature could be removed from claim 1 and placed in a sub-claim.

Claim 2

2.1 This covers the uprights/cross-bar, i.e. features in common with the rugby post.

2.2 It implies that claim 1 covers non-vertical goal structures.

Claim 3

3.1 This rules out H shaped structures, also tall inverted U structures.

3.2 By implication, claim 1 and claim 2 cover a retrofitted H shaped rugby post with a net.

3.3 Alternative wording could be "the uprights being no longer than the cross-bar".

3.4 Note that claim 3 distinguishes over the rugby post, whereas claim 2 does not.

3.5 The features of this claim could be patented independently in combination with claim 1's preamble + claim 2.

Claim 4

4.1 This claim provides a substantial fall-back position to a football-type goalpost/net or variations thereof, like for ice-hockey or water polo.

4.2 "Relatively small part/main part of playing area"

Relative wording is to be avoided if it leads to unclarity. Here the relationship is clear.

Claim 5

5.1 "wherein the see-through material is a net or net-like flexible material".

5.2 Alternatively: "wherein the object-receiving recess is formed of a flexible see-through material such as a net".

5.3 Claim 5 could be split into two claims, one for "flexible" the other for "net".

Claim 6

6.1 By specifying attachment, this claim implies that the preceding claims cover a structure where the recess is not attached but somehow placed behind/against it.

Claim 7

7.1 By specifying a solid surface, this claim implies that the preceding claims cover non-solid playing areas like water in a swimming pool.

Claim 8

8.1 This sub-claim to the field would be regarded as unsatisfactory under EQE drafting conditions, because it would not provide a substantial back up position beyond claim 7.

8.2 "covered with grass" still does not improve the claim as a back-up position. This could go into the description.

Claim 9

9.1 This claim covers the same overall configuration of the field known from rugby. Doubtful as a back-up claim under EQE conditions.

Claim 10

10.1 This claim also covers the same overall configuration of the field known from rugby. Doubtful as a back-up claim under EQE conditions. Maybe combine claims 9 and 10.

Claim 11

11.1 This claim covers the same overall configuration of the field and stadium known from rugby, however the configuration of the stadium/spectators is related to the inventive idea of the visibility of the ball in the goal-net.

11.2 This claim is attractive for the client as it provides an easily-identified basis for use royalties levied on spectator income.

Claim 12

12.1 This claim is also attractive for the client as it provides an easily-identified basis for use royalties levied on playing the game.[If and when TV is invented, claims 11 and 12 will come in handy].

12.2 Players could be humans, animals or machines, or a combination (riders on horses for polo or on motorcyces for motorcycle polo).

12.3 There is no bar to patenting humans or animals as components of a system [Greenpeace may have a different view].

12.4 The playing object could be propelled directly by the players (as by kicking) or indirectly, as by a hockey stick.

Claim 13

13.1 This claim covers the same type of clothing as in rugby, but leaves open the possibility for each group (team) to have a player with different clothing (the goalkeeper).

Claim 14

14.1 This is the same as in rugby or hockey where the ball is propellable by the hockey stick and by the player.

Claim 15

15.1 This claim is more specific to football.

Claim 16

16.1 This is the same as in rugby. The claim dependency means that it covers a round ball or an oval ball.

Claim 17

17.1 This claim attempts to cover the net, when erected or before installation.

17.2 This is a sub-combination claim referring back to claim 4. As for many sub-combination claims, to achieve novelty (or at least to try and achieve novelty), the net is more specifically defined than in the installation claims.

- 17.3 The cross-reference to claim 4 helps to show unity of invention with the other aspects.
- 17.4 In EQE drafting, if the client provides no information supporting the novelty/inventive step of the net, this claim should not be attempted.
- 17.5 Moreover, the net claim is unattractive for the client whose main interest is operating revenue. The claim (if accepted) may turn out to be useful against net manufacturers, especially for supply of nets/goal structures equipped with nets to non-patent territories. These are ancillary considerations that come up in real-life drafting. In the EQE, go for the claim only if it supports the client's declared interest and there is support for patentability.

Claim 18

- 18.1 Use claims are fashionable in EPO practice. It is less common to include use claims in "mechanical" inventions.
- 18.2 The use has to meet up to all requirements of patentability, including industrial activity which should be acknowledged for claim 18.
- 18.3 Use claims directed to playing/operating the game or a claim to a method of playing/operating the game would be regarded as lacking industrial applicability.
- 18.4 As claim 18 does not mention "recess" enforcement against a basketball net may be easier than claim 1.
- 18.5 Claim 18 covers use as an accessory **for** damping movement... The scope of protection of this claim will depend on interpretation by the national court; in principle the protection should include manufacture and sale of a goal structure accessory made of the given material and capable of performing the function.