

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. BAXTER KRUGER

Appeal No. 2002-1969
Application No. 09/665,907

ON BRIEF

Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 8, all of the claims remaining in this application. Claims 9 through 16 have been canceled.

Appellant's invention is directed to a method of constructing a fishing lure and, more particular, to a method of making a life-like fishing lure having a tail slot and a nylon hair strand tail affixed in the tail slot. Independent claim 1

Appeal No. 2002-1969
Application No. 09/665,907

is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Wrege	1,459,042	Jun. 19, 1923
Cordell, Jr. (Cordell)	3,191,336	Jun. 29, 1965
Root et al. (Root)	4,908,975	Mar. 20, 1990

Claims 1 and 4 through 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cordell in view of Wrege.

Claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cordell in view of Wrege as applied to claim 1 above, and further in view of Root.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the final rejection (Paper No. 5, mailed August 15, 2001) and examiner's answer (Paper No. 8, mailed March 26, 2002) for the reasoning in

Appeal No. 2002-1969
Application No. 09/665,907

support of the rejections, and to appellant's brief (Paper No. 7, filed January 14, 2002) and reply brief (Paper No. 9, filed May 28, 2002) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Independent claim 1 sets forth appellant's novel method of constructing a fishing lure (Fig. 1) including a tail slot (54) in the rear end of tail section (16) of the lure and a tail (12) affixed in the slot. That method includes, *inter alia*, the steps of a) providing a plurality of nylon strands; b) binding an insert end of the strands; c) shaping the bound insert end to fit in the tail slot; d) trimming a flared end of the strands, opposite the insert end, into a desired shape; and e) affixing the bound insert end in the tail slot. A description of appellant's claimed method is set forth on pages 5 and 6 of the

Appeal No. 2002-1969
Application No. 09/665,907

specification, wherein it is clear that the lure includes a tail section (16) with a pre-existing tail slot (54) into which a tail formed of nylon fibers or strands is to be mounted.

Turning to the examiner's rejection of claims 1 and 4 through 8 under 35 U.S.C. § 103(a), we note that the examiner's position is set forth on pages 2 and 3 of the final rejection, which has been incorporated into the examiner's answer by reference (answer, page 3). According to the examiner, Cordell discloses all of the steps of appellant's method set forth in claim 1 except for using nylon strands to form the tail and trimming a flared end of the strands opposite from the insert end into a desired shape. Wrege is relied upon for its showing of what the examiner urges is a "trimmed tail 6." In the examiner's view, it would have been obvious to one of ordinary skill in the art to provide Cordell with a trimmed tail as shown by Wrege for the purpose of making the tail resemble the tail of a fish. With respect to the requirement for nylon strands, the examiner takes the position that it would have been obvious to employ nylon since the material is based on the suitability for the intended purpose (citing In re Leshin, 277 F.2d 197, 199, 125 USPQ 416, 417-18 (CCPA 1960)).

Appeal No. 2002-1969
Application No. 09/665,907

The examiner's findings with regard to Cordell are set forth as follows:

Cordell shows providing a plurality of fibers 30, binding an insert end of the strands 31, shaping the bound insert end to fit in the tail slot (as shown in Fig. 6), and affixing the bound insert end in the tail slot by casting the lead body around the bound insert as shown in Fig.7.

Appellant contends that the examiner has mischaracterized the Cordell patent and that Cordell does not separately bind then shape a plurality of bound nylon strands at the bound insert end to fit in a tail slot, and then subsequently affix the bound insert end into the slot, as required in claim 1 on appeal. We agree with appellant.

Cordell discloses a process of forming a fishing lure wherein an end portion of the filament tuft (16) or (30) can be embedded directly in the lead body (15)/(29) of the lure during the process of molding the lure body. More particularly, the end portion of the filament tuft which is to be embedded in the lead body is first enclosed in a sleeve (30) or jacket (17) which can be in the form of a metallic strip that is wrapped around the end portion of the filament tuft (col. 2, lines 54-56). The material of the sleeve or jacket is selected to have a melting point

Appeal No. 2002-1969
Application No. 09/665,907

higher than that of lead, so that when the sleeve enclosed end portion of the filament tuft is placed in a mold (Figs. 3 and 6) and molten lead is poured around the same, the sleeve/jacket effectively protects the filaments against heat damage and the filament tuft becomes securely embedded in the lead body as the latter cools. Figure 6, pointed to by the examiner, shows the jacket or sleeve (31) inserted in a mold (32), along with the shank (26') of a fish hook, prior to the time that molten lead is poured into the mold via inlet (19).

In looking at Cordell, it is clear that no slot exists in a lure body during the time that the filament tuft (16) or (30) and jacket (17) or sleeve (31) are being assembled and formed, indeed no lure body exists in Cordell at all at that time. Thus, there is no step in Cordell, or need of a step, of "shaping the bound inset end to fit in the tail slot" of a lure, as in appellant's claim 1 on appeal. While there may be some shaping of the sleeve (31) or jacket (17) in Cordell to ensure a proper fit in the mold, there is no shaping of the bound insert end to fit in a tail slot of the lure, as required in appellant's claims on appeal. In Cordell, the molten lead conforms to the shape of that portion of the filament sleeve or jacket in the mold and

Appeal No. 2002-1969
Application No. 09/665,907

thereby forms around the sleeve or jacket creating a secure embedment of the same in the lead body as the latter cools. Thus, even if Cordell and Wrege were to be combined in the manner urged by the examiner, the result would not be a method like that set forth in appellant's claims 1 and 4 through 8 on appeal.

Since we have determined that the teachings and suggestions which would have been fairly derived from Cordell and Wrege would not have made the subject matter as a whole of independent claim 1 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 103. In addition, we observe that it follows from the above determination that the examiner's rejection of dependent claims 4 through 8 on the basis of the combined teachings of Cordell and Wrege also will not be sustained.

The next rejection for our review is that of claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Cordell, Wrege and Root. We have reviewed the added reference to Root, but find nothing therein which overcomes or provides for the deficiencies we have noted above with regard to the basic

Appeal No. 2002-1969
Application No. 09/665,907

combination of Cordell and Wrege. Accordingly, the examiner's rejection of dependent claims 2 and 3 under 35 U.S.C. § 103(a) will likewise not be sustained.

In view of the foregoing, the examiner's decision rejecting claims 1 through 8 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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LAWRENCE J. STAAB)	
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Appeal No. 2002-1969
Application No. 09/665,907

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