

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT A. BENNETT

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Appeal No. 2005-0455  
Application No. 08/974,341

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ON BRIEF

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Before KIMLIN, OWENS and DELMENDO, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claim 8, the only claim remaining in the present application. Claim 8 is reproduced below:

8. A fisherman's bobber comprising a hollow one-piece spheroid formed from joining free-edged cup-like mating halves, the density of the spheroid being less than the density of the aqueous medium into which the bobber is to be deployed, said bobber further having a living hinge joining together the said mating halves of the spheroid, said hinge further including hinge segments extending outwardly from the edge of each of the cup-like halves and the edge of the cup-like mating halves being configured to interlock the mating halves of the spheroid when

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the halves are pressed together in mating relationship and to permit the halves to be unlocked and swing apart when squeezed together along the seam of joinder between the mating halves, and the living hinge being capable of holding a fishing line when the mating halves of the spheroid are interlocked.

The examiner relies upon the following references as evidence of obviousness:

Gregory et al. (Gregory)	1,240,043	Sep. 11, 1917
Sitzler et al. (Sitzler)	3,107,451	Oct. 22, 1963

Appellant's claimed invention is directed to a bobber for a fishing line comprising cup-like mating halves that have edges which are configured to lock together when the halves are pressed together and to be unlocked when squeezed together. A living hinge joins the mating halves together and is capable of holding a fishing line when the halves are interlocked.

Appealed claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sitzler in view of Gregory.

We have carefully reviewed the respective positions advanced by appellant and the examiner. In so doing, we are in agreement with appellant that the examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

A fundamental flaw in the examiner's § 103 rejection is that the combination of Sitzler and Gregory does not result in the presently claimed bobber. Neither reference teaches or suggests

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the claimed living hinge that is capable of holding a fishing line when the mating halves are interlocked. The only explanation given by the examiner for this deficiency in the combined teachings of the references is that "[i]t would have further been obvious to hold the line in the hinge since the function is the same and no showing of unexpected results was made" (page 3 of Answer, second full sentence). To the extent the examiner's position is based upon obvious design choice, appellant explains that the claimed structure for accommodating the fishing line avoids the problem of permitting the line to slip its way between the mating halves of the bobber, as discussed by Sitzler at column 3, lines 60 et. seq. Moreover, it is axiomatic that a showing of unexpected results is not necessary until the examiner establishes a prima facie case of nonobviousness. Inasmuch as the applied references, either singularly or in combination, fail to teach or suggest the claimed hinge which holds a fishing line, we find that the examiner has failed to establish a prima facie case of obviousness.

Moreover, we concur with appellant that neither reference teaches or suggests the claimed mating halves that are configured to interlock when they are pressed together in matching

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relationship. Although the halves of Gregory's bobber may mate together at their edges, they are not disclosed as interlocking. Gregory employs spring lock 11 to lock the two halves together.

In conclusion, based on the foregoing, we are constrained to reverse the examiner's rejection.

REVERSED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
TERRY J. OWENS	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
	)	
ROMULO H. DELMENDO	)	
Administrative Patent Judge	)	

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