

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY DONALD SMART and STEVEN CRAIG TOMASI

Appeal No. 2006-1507
Application No. 10/114,567

ON BRIEF

Before OWENS, CRAWFORD and LEVY, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-4, 8, 11-18 and 23. Claims 5-7, 9, 10 and 19-22 stand withdrawn from consideration by the examiner as claiming a nonelected invention. Claims 24-44 have been canceled.

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THE INVENTION

The appellants claim a rigging harness and a fishing lure system that includes the rigging harness. Claim 14 is illustrative:

14. A fishing lure system comprising:

a lure comprising a fish-shaped body comprising a mouth, a tail, and a body extending therebetween, said body comprises a back surface and a lower surface, and has a cavity defined therein; and

a rigging harness configured to couple said lure to a line, said rigging harness comprising a single wire comprising an integrally-formed eye-loop and at least one loop, said loop axially spaced from said eye-loop, said rigging harness inserted partially within said lure cavity such that at least a portion of the single wire extending between the at least one loop and the eye loop extends through the fishing lure such that said eye-loop extends outwardly from said lure mouth when said rigging harness is coupled to said lure, and such that said at least one loop extends outwardly from an outer surface of said lure body when said rigging harness is coupled to said lure.

THE REFERENCE

Chilcott

2,093,954

Sep. 21, 1937

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THE REJECTION

Claims 1-4, 8, 11-18 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chilcott.^{1,2}

OPINION

We affirm the aforementioned rejection.

The appellants do not provide a substantive argument as to the separate patentability of the dependent claims. Hence, we limit our discussion to the independent claims, i.e., claims 1 and 14. See 37 CFR § 41.37(c)(1)(vii) (2004).

Chilcott discloses a trolling hook having a shank that is formed from a single piece of wire and has an eye at one end for attachment to a fishing line and receiving a tie if a number of hooks are to be tied together, and an eye at the hook end for properly positioning bait on the hook (page 1, left column, lines 1-15 and 43-44). The hook is hidden to a large extent by the bait (page 1, left column, lines 16-18).

1 The statement of the rejected claims is correct in the office action summary in the final rejection (mailed September 15, 2004). In the body of the final rejection (page 2) and in the examiner's answer (page 3) the rejected claims are incorrect set forth as claims 1-4, 8-11 and 23.

2 In the examiner's answer (page 9) the examiner relies upon US 2,562,605 to Embree et al. That reference is not included in the statement of the rejection and, therefore, is not properly before us. See *In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). Consequently, we have not considered Embree et al. in reaching our decision.

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The appellants point out that Chilcott's claim 1 recites that the hook has "an eye which lies within the minnow when the barbed-hook is disposed forwardly and constitutes line-attaching means when said barbed-hook is disposed rearwardly", and that eye 13 in Chilcott's figures 2-7 always remains within the bait (brief, pages 14-15). The appellants argue that there is no suggestion in Chilcott that the hook be configured in any other way with respect to eye 13 (brief, pages 15-22).

The appellants' claim 1 claims only a rigging harness, not a rigging harness in combination with a fishing lure. Chilcott's trolling hook has eyes at both ends (figures 1 and 8) and, therefore, is capable of being used with a fishing lure that is shorter than the distance between the eyes such that both eyes extend outwardly from the lure. Consequently, the appellants' claim 1 does not patentably distinguish the rigging harness over Chilcott.

The appellants' claim 14 claims a rigging harness in combination with a lure and requires that both the eye loop and another loop extend outwardly from the lure. Chilcott does not exemplify that configuration. However, Chilcott discloses that the hook end eye (14) can extend outwardly from the lure regardless of whether it is at the mouth end or the tail end of the minnow lure (figures 4 and 6), and that the eye 13 end can

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have an auxiliary hook (figures 2 and 3). Those disclosures would have fairly suggested, to one of ordinary skill in the art, a trolling hook having hooks and eyes at both ends such that the eyes extend outwardly from the lure for ease of attachment of the line, ties and bait. Chilcott's teaching that the hook is to be hidden to a large extent (i.e., not completely) by the bait (page 1, left column, lines 16-18) would have indicated to one of ordinary skill in the art that such a configuration would be suitable because although both eyes would extend outwardly from the bait, the trolling hook would be hidden to a large extent by the bait.

For the above reasons we are not convinced of reversible error in the examiner's rejection.

DECISION

The rejection of claims 1-4, 8, 11-18 and 23 under 35 U.S.C. § 103 over Chilcott is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

TERRY J. OWENS)
Administrative Patent Judge)
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) BOARD OF PATENT
) APPEALS
) AND
MURRIEL E. CRAWFORD) INTERFERENCES
Administrative Patent Judge)
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STUART S. LEVY)
Administrative Patent Judge)

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