The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte GARY L. BENNIS

Appeal 2007-1788
Application 09/766,032
Technology Center 3600

Decided: July 27, 2007

Before ERIC GRIMES, LORA M. GREEN and NANCY J. LINCK, *Administrative Patent Judges*.

Opinion by GREEN, *Administrative Patent Judge*. Opinion concurring-in-part and dissenting-in-part by GRIMES, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 18, 19, and 22. We have jurisdiction under 35 U.S.C. § 6(b). The claims read as follows:

18. A two-stage fishing bobber responsive to different fishing forces comprising:

a bobber main body, said bobber main body providing a buoyant force to normally maintain the bobber main body in a floating condition; and

a spring having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to the bobber main body is approximately equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.

19. The two[-]stage fishing bobber of claim 18 wherein the force to displace said member to a down position is substantially equal to the buoyant force of the bobber main body so that the [sic] when the member is in the down position the bobber main body is submerged.

22. A two-stage fishing bobber responsive to different fishing forces comprising:

a bobber main body, said bobber main body providing a buoyant force to normally maintain the bobber main body in a floating condition; and

a member resiliently displaceable with respect to said bobber main body in response to a force on said member with the force on said member sufficient to overcome at least some if not all of the buoyant force of the bobber main body to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.

The Examiner relies on the following reference:

Riead	US 4,461,114	Jul. 24, 1984

We affirm.

BACKGROUND

"When fishing with a bobber, it can sometimes be difficult to determine when a fish is nibbling on the angler's line, especially in waters that have active waves or when one is fishing for passive or highly sensitive fish" (Specification 2). According to the Specification, the described bobber "supplies visual information to the fisherperson through a first-stage slideable rod that allows the fisherperson to visually determine if a fish is nibbling the bait by visually observing the displacement of the slideable rod with respect to a bobber main body but before visual displacement of the bobber main body can be visually detected. The second-stage permits anglers to fish in a conventional manner as visual information is provided by submersion of both the slideable rod and the bobber main body." (*Id.* at 2-3.)

The Specification describes "a two-stage fishing bobber with a main body carrying a first-stage free sliding retractable rod having a fishing line engaging member with part of the free sliding retractable rod extending sufficiently above the main body to enable a fisherperson to keep visual track of the displacement of the free sliding retractable rod with respect to the main body. When fishing for large or aggressive fishes, the second stage of the two-stage bobber is used as a conventional fishing bobber which is submerged as the fish pulls on the line. When fishing for smaller, passive or sensitive fishes, the two-stage bobber can be used as a sensitive detection device as only a slight pull on the line produces a depression of the free sliding rod with respect to the bobber main body to allow a fisherperson to visually detect when a fish is nibbling on the bait well before the main body is visually detectable as being displaceable with respect to the body of water.

By selecting the appropriate spring constant the bobber main body can be made to simultaneously submerge as a fish displaces the slid[e]able rod with respect to the bobber main body to thereby provide gradual and smoothly increasing resistance." (*Id.* at 3-4.) The Specification also discloses a preferred embodiment in which "the force required to completely depress the spring [is] approximately equal to the buoyancy force of bobber main body" (*Id.* at 9).

DISCUSSION

Claims 18, 19, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Riead.

According to the rejection set forth by the Examiner:

> The patent to Riead shows a bobber in Fig. 1 having a main body 2 providing a buoyant force to normally maintain the bobber main body in a floating condition and a spring 64 having a spring constant that is about equal to the spring constant of the bobber in water or the total force to compress the spring with respect to the bobber main body is approximately equal to the total force to submerge the bobber main body and the resiliently displaceable member 62 to allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance as disclosed in column 5, lines 1-25.

(Office Action mailed November 16, 2005, 2).

The burden is on the Examiner to set forth a prima facie case of unpatentability. *See In re Glaug*, 283 F.3d 1335, 1338, 62 USPQ2d 1151, 1152 (Fed. Cir. 2002). In order for a prior art reference to serve as an anticipatory reference, it must disclose every limitation of the claimed

invention, either explicitly or inherently. *See In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). We agree with the Examiner that Riead teaches all of the limitations of claims 18, 19, and 22, and the rejection is affirmed.

Appellant argues that Riead does not show that spring 64 has a spring constant to compress the spring 64 with respect to the main body 2 "approximately equal to the total force to submerge the bobber main body 2 and Riead's washer 62 ' . . . to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance . . .' as called for in Appellant's claims 18 and 19." (Br. 8.) Appellant points to column 5, lines 1-25 of Riead, which teaches that the spring 64 has a tension that provides sufficient sensitivity to the lamp switch 40 such that the lamp is lighted by an additional leader load less than that required to submerge the float completely (Br. 8-9). Thus, Appellant argues, as Riead teaches that the compression of spring 64, which leads to the lighting of the lamp by an additional leader load less than that required to submerge the float completely, that Riead does not teach the subject matter of claims 18 and 19 as the patent does not provide for "simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance." (Br. 9.)

Claim 18 requires: (1) a bobber main body, said bobber main body providing a buoyant force to normally maintain the bobber main body in a floating condition; and (2) a spring having a spring constant that is *about* equal to the spring constant of the bobber in water or the total force to compress the spring with respect to the bobber mail body is *approximately*

equal to the total force to submerge the bobber main body and a resiliently displaceable member to thereby allow the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance.

Riead teaches a bobber having a hollow buoyant body member (the bobber main body of claim 18) that is at least partially transparent and contains an electric bulb, wherein tension on the leader line actuates the bulb (Riead, abstract). Figure 2 is a cross-sectional view of the bobber of Riead, and is set forth below:

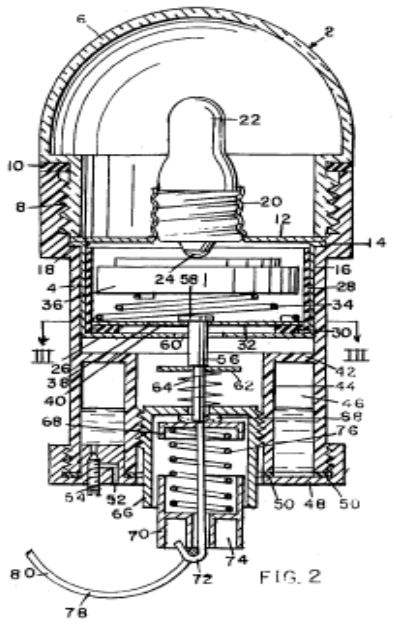

FIG. 2

As noted by the Examiner in the rejection, **2** applies generally to the main body of the bobber. Spring **64** is disposed between the washer **62** and the collar **66**, and the closure of the switch is yieldably resisted by the spring **64** (Riead, col. 3, ll. 47-58). Riead teaches that:

> Turning collar **66** adjusts the tension of spring **64**, and the adjustment may be made with the float in the water, taking care that the lamp does not light under normal leader load, or under any normal and reasonable agitation of the float, but does light

> in response to a downward pull on the leader, before the float body submerges completely. Spring switch arm **40** is sufficiently delicate that, when spring **64** is completely relaxed, arm **40** will provide the desired sensitivity under the lightest normal leader load likely to be encountered, while spring **64** is sufficiently heavy to be capable of reducing the switch sensitivity to a level adapted to the greatest normal leader load likely to be encountered.

(*Id.*, col. 5, ll. 12-25.)

As further explained by Riead:

> If the float body is equipped with a lamp bulb as described, the problem is compounded, since the sensitivity of the lamp actuating switch must be *closely* correlated to the buoyancy of the float body. If the switch is too sensitive, the lamp may light even when a fish has not taken the bait, the switch being closed by the normal leader load alone, or by ripples at the water surface. If the switch is too insensitive, the leader load occasioned by a fish's taking the bait may not close the switch at all, or only after the float is submerged, in view of the already only slight float buoyancy. Therefore, for maximum efficiency, the float buoyancy should be only very *slightly greater* than its own weight plus the variable leader load applied thereto, so that it is submerged by only a *slight increase* in leader load which occurs when a fish takes the bait, and the lamp switch sensitivity should be such that the switch is closed by a *still smaller increase* in the leader load.

(*Id.*, col. 1, ll. 51-68 (emphasis added).)

Our mandate is to give claims their broadest reasonable interpretation. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004). "An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed,

as much as possible, during the administrative process." *In re Zletz*, 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Claim 18 uses the terms "about" and "approximately." We first look to the Specification to determine whether Appellant has acted as his own lexicographer in defining "about" and "approximately." *See Merck & Co., v. TEVA Pharmaceuticals USA, Inc.*, 395 F.3d 1364, 1369-70, 73 USPQ2d 1641, 1646 (Fed. Cir. 2005). Our review of the Specification, however, does not reveal that "about" and "approximately" have been defined in way different from their ordinary meaning.[1] We thus interpret those terms consistent with their ordinary meaning. *See id.* "About" may be defined by its ordinary and accepted meaning of "approximately." *See id.*, 395 F.3d at 1372, 73 USPQ2d at 1648. Turning to "approximately," that term may be defined as "nearly exact, not perfectly accurate or correct."[2] Thus, as Riead teaches that the float buoyancy of the bobber (*i.e.* the spring constant of the bobber in water) is *only slightly greater* than switch sensitivity, which is

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[1] The dissent would limit "approximately equal" to the embodiment shown in Figures 11-13. While the Specification at page 9 states that Figures 11-13 show an alternate preferred embodiment of the invention wherein the force required to completely depress the spring 12 *approximately equal* to the buoyancy force of bobber main body 15, there is nothing that limits the language "approximately equal" to only that preferred embodiment. There are many embodiments that fall between the embodiment shown in Figures 2-4 and Figures 11-13, and the bobber that is described by Riead demonstrates one of those embodiments. In our view, the dissent is reading limitations from the specification into the claims, a practice that the Court of Appeals for the Federal Circuit, our reviewing court, cautions against. *See SuperGuideCorp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868-69 (Fed. Cir. 2004).

[2] Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. http://dictionary.reference.com/browse/approximately (accessed: June 28, 2007).

imparted by spring **64** (*i.e.*, the spring constant of the spring), Riead teaches that the float buoyancy of the bobber is about or approximately the same as the spring constant of the spring **64**.

As to the limitation of allowing "the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance," there is nothing in the claim that requires that once the spring is in its fully displaced position that the bobber be completely submerged. Giving the claim its broadest reasonable interpretation consistent with the discussion above, we interpret this limitation as requiring that the bobber be more submerged when the spring is displaced, such as when a fish bites the baited hook, than before any displacement of the spring, that is, the level of the bobber in the water before the fish takes the bait. Given Riead's description of the bobber described by the patent, *i.e.,*, that the float buoyancy of the bobber (*i.e.*, the spring constant of the bobber in water) is *only slightly greater* than switch sensitivity, upon a fish taking the bait, more of the bobber main body would be submerged upon lighting of the lamp when compared to the level of submersion of the bobber main body when no fish has taken the bait.

As to claim 19, Appellant argues that Riead does not teach a force to displace the washer 62 as being substantially equal to the buoyant force of body 2, such that when the washer is in the down position the body is submerged (Br. 10). Rather, Appellant urges, Riead teaches the opposite by teaching that the washer 62 is first displaced without submergence of the body 2 to light the lamp in order to provide a visual cue that a fish has taken the bait, and it is only after the light has been lit does the body submerge (Br. 10).

Claim 19 requires that "the force to displace said member to a down position is *substantially* equal to the buoyant force of the bobber main body." As we can find no definition for "substantially" in the Specification, we use its ordinary and accepted meaning of "to a great extent or degree."[3] We thus interpret claim 19 as requiring that the force to displace said member to a down position is almost the same as, but not necessarily equal to, the buoyant force of the bobber main body. As explained above, Riead teaches the float buoyancy of the bobber (*i.e.* the spring constant of the bobber in water) is *only slightly greater* than switch sensitivity, and "only slightly greater" reads on "substantially." Thus, even though Riead teaches that the washer **62** is first displaced without submergence of the body **2** to light the lamp in order to provide a visual cue that a fish has taken the bait, and it is only after the light has been lit does the body submerge, because of only the slight difference, the lamp would light and then only slightly thereafter the body would be completely submerged.

As to claim 22, Appellant argues that Riead does not teach "the simultaneous submersion of the bobber main body and the displacement of the member with respect to the bobber main body so as to provide gradual resistance." (Br. 12.) Appellant asserts that the washer 62 is located underneath the body 2, and thus would be submerged before the body (*id.*). Thus, according to Appellant, Riead does not provide for gradual resistance, and is not even concerned with the advantage of providing for gradual resistance.

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[3] Dictionary.com. *WordNet® 3.0*. Princeton University. http://dictionary.reference.com/browse/substantially (accessed: June 28, 2007).

First, the fact that the washer would be submerged before the main body of the body is submerged is irrelevant, as there is nothing in the claim that requires that the main body of the bobber to be submerged before the "member resiliently displaceable with respect to said bobber main body," *i.e.*, the washer. Moreover, as taught by Appellant, it is the action of the spring and the spring constant that provides the gradual resistance (Specification, 14). Thus as the bobber of Riead also has a spring with a spring constant that is displaced by a fish taking the bait, the bobber of Riead would also inherently provide gradual resistance. "[W]hen the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). "When the claimed compositions are not novel they are not rendered patentable by recitation of properties, whether or not these properties are shown or suggested in the prior art." *Id.* at 709, 15 USPQ2d at 1658.

CONCLUSION

In summary, we find that Riead teaches all of the limitations of claims 18, 19, and 22, and the rejection is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (2006).

AFFIRMED

GRIMES, *Administrative Patent Judge*, concurring-in-part and dissenting-in-part.

I agree with the majority that Riead anticipates claim 22. However, I do not agree that Riead anticipates claims 18 and 19. I would reverse the rejection of those claims.

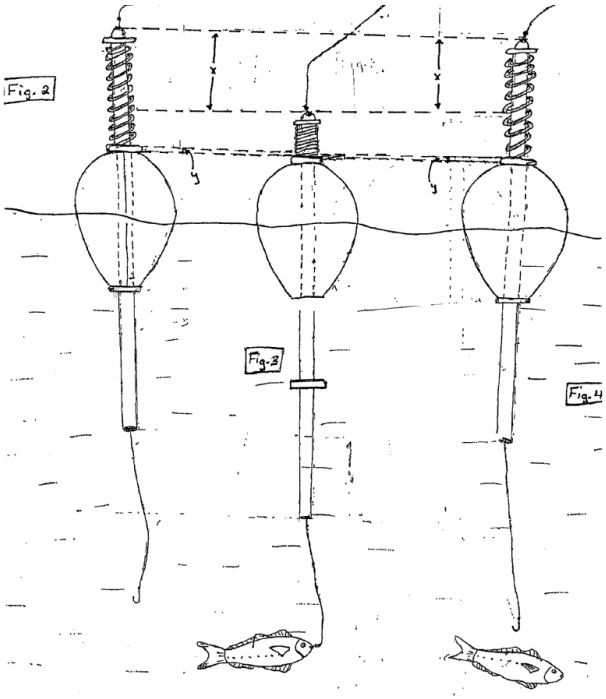
Claim 18 requires the bobber to have "a spring having a spring constant that is *about equal* to the spring constant of the bobber in water or the total force to compress the spring with respect to the bobber main body is *approximately equal* to the total force to submerge the bobber main body" (emphases added). Similarly, claim 19 requires that the "force to displace said member to a down position is *substantially equal* to the buoyant force of the bobber main body" (emphasis added). I do not agree that Riead meets these limitations.

The instant Specification describes and illustrates two embodiments of the disclosed bobber:

> [In] the two-stage fishing bobber of Figures 2-4 the force required to depress spring 12 is *sufficiently less* than the force required to submerge the bobber main body 15. . . . An alternate preferred embodiment of the invention is to have the force required to completely depress the spring 12 *approximately equal* to the buoyancy force of bobber main body 15. This embodiment is illustrated in Figures 11- 13.

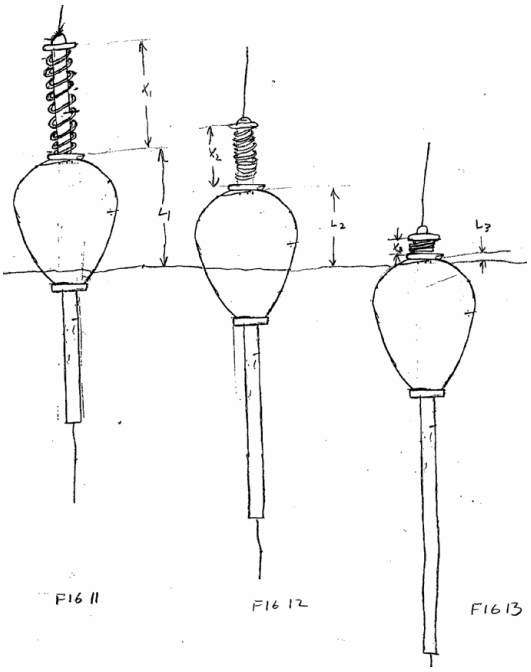
(Specification 9: 6-20.) Thus, the Specification describes the embodiment of Figures 2-4 as having a spring constant "sufficiently less" than the bobber's buoyant force (see also Specification 7: 24 to 8:23), while in the embodiment of Figures 11-13 the spring constant is "approximately equal" to the bobber's buoyant force (see also Specification 15: 1 to 17:4).

Figures 2-4 of the instant application are reproduced below (with reference numerals omitted for clarity):



The figures illustrate the embodiment in which the spring constant is "sufficiently less" than the bobber's buoyant force. In this embodiment, the force required to fully compress the spring causes only minor submersion of the bobber main body (see Fig. 3).

Figures 11-13 are reproduced below (reference numerals omitted):



These figures illustrate the embodiment in which the spring constant is "approximately equal" to the bobber's buoyant force. In this embodiment, the force required to fully compress the spring also causes complete submersion of the bobber main body (see Fig. 13).

In my view, when claims 18 and 19 are read in light of the Specification, they are directed to the embodiment depicted in Figures 11-13, but do not read on the embodiment depicted in Figures 2-4. That is, I would read the "about equal" (or "approximately" or "substantially" equal) limitations to require an effect like that shown in Figures 11-13: the force required to fully compress the spring also causes complete submersion of the bobber main body.

Riead does not disclose the bobber of claims 18 and 19, properly interpreted. Riead describes a bobber containing a lamp bulb (Riead, Abstract). The circuit of lamp bulb 22 is closed when a resilient switch arm 40 is moved downwardly (*id.* at col. 3, ll. 20-22). Closure of this switch is resisted by spring 64 (*id.* at col. 3, ll. 55-58). When a fish pulls on the

leader, it compresses the spring, closes the switch, and actuates the bulb (*id.* at Abstract).

As noted by the majority, Riead describes adjusting the buoyancy of the float and the sensitivity of the lamp-actuating switch:

> [F]or maximum efficiency, the float buoyancy should be only very slightly greater than its own weight plus the variable leader load applied thereto, so that it is submerged by only a slight increase in leader load which occurs when a fish takes the bait, and the lamp switch sensitivity should be such that the switch is closed by a still smaller increase in the leader load.

(*Id.* at col. 1, ll. 51-68.) Riead states that the switch sensitivity "must be sufficiently great that the lamp will be lighted by an additional leader lead *less than that required to submerge the float completely*. Otherwise the lamp might not light at all, or only after the float was submerged, when it would be useless." (*Id.* at col. 5, ll. 9-13, emphasis added.) Thus, Riead describes adjusting "the tension of spring 64, . . . [so] that the lamp . . . light[s] in response to a downward pull on the leader, *before the float body submerges completely*" (*id.* at col. 5, ll. 13-19, emphasis added).

That is, Riead requires that spring 64 be compressed completely, to close the switch and actuate the light bulb, before the bobber is submerged. In contrast, claims 18 and 19 require the spring to be completely compressed only when the bobber main body is completely submerged.

As discussed above, I would interpret the term "about equal" (or "approximately equal" or "substantially equal"), in light of Appellant's Specification, to exclude the embodiment depicted in instant Figures 2-4. In my view, the majority's interpretation is unreasonably broad. As I interpret the claims, they do not read on the teaching in Riead of a bobber

having a float buoyancy that is greater than the spring constant that controls its switch sensitivity.

In sum, I agree that Riead describes a bobber according to claim 22. However, I do not agree that Riead describes all of the limitations of claims 18 and 19. Therefore, in my view, the rejection of claims 18 and 19 should be reversed.

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CARL L. JOHNSON
JACOBSON AND JOHNSON
SUITE 285
ONE WEST WATER STREET
ST. PAUL MO 55107-2080