UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM E. DERMODY, III,
WILLIAM E. DERMODY, JR.,
WILLIAM E. DERMODY, IV and
VICTORIA GREEN

Appeal 2008-0086
Application 10/461,405
Technology Center 1700

Decided: January 31, 2008

Before PETER F. KRATZ, JEFFREY T. SMITH, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Statement of the Case

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 1-3, 5, 6, 8, and 9. We have jurisdiction under 35 U.S.C. § 6.

Appellants' invention relates to a braided protective sleeve comprising braided plastic monofilaments, a method of adding a reflective cover comprising braided plastic monofilaments to a brake cable on a bicycle, and a brake cable having a protective sleeving comprised of braided plastic monofilaments. Claims 1, 5, and 8 are illustrative:

> 1. A braided protective sleeve device, comprising:
>
> a plurality of plastic monofilaments braided into a tubular structure, wherein each of said plurality of plastic monofilaments is uniformly fabricated from a plastic and at least some of said plurality of plastic monofilaments are uniformly fabricated from plastic having optical reflective properties.
>
> 5. A method of adding a reflective cover to a brake cable on a bicycle, comprising the steps of:
>
> providing a tubular protective sleeve, comprised of braided plastic monofilaments, wherein each of said plastic monofilaments is uniformly fabricated from plastic and where at least some of said plastic monofilaments are uniformly fabricated from optically reflective plastic; and
>
> placing the brake cable within said tubular protective sleeve, wherein said protective sleeve surrounds the brake cable.
>
> 8. On a bicycle having a hand brake system, an brake cable having a protective sleeving comprised of braided plastic monofilaments, wherein at least some of said plastic monofilarnents are uniformly fabricated from optically reflective plastic.

The Examiner relies on the following references in rejecting the appealed subject matter:

Saunders	3,856,566	Dec. 24, 1974

Andrieu	5,300,337	Apr. 5, 1994
Hurwitz	5,639,527	Jun. 17, 1997
Nielsen	5,803,207	Sep. 8, 1998

I. Claims 1-2 stand rejected under 35 U.S.C. 102(b) as being anticipated by Hurwitz as evidenced by Saunders.

II. Claim 3 stands rejected under 35 U.S.C. 103(a) as obvious over Hurwitz as evidenced by Saunders and in view of Andrieu.

III. Claim 5-6 and 8-9 stand rejected under 35 U.S.C. 103(a) as obvious over Hurwitz as evidenced by Saunders and in view of Nielsen.

We REVERSE all the rejection of claim 1-3, 5, 6, 8, and 9.

The Examiner bears the initial burden of presenting a prima facie case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In order to establish a prima facie case of anticipation or obviousness, the Examiner must show that each and every limitation of the claim is either described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988)).

The Specification describes the invention as follows:

> The present invention is a reflective protective sleeve. The protective sleeve is formed into a tubular structure, wherein the protective sleeve defines an internal surface and an exterior surface. The sleeve is made from plastic monofilaments that are braided together. All the monofilaments are uniformly made of plastic. However, the plastic used to fabricate at least most of the monofilaments in the sleeve are fabricated from optically reflective plastic.

(Specification 4).

The Specification discusses the Hurwitz reference utilized by the Examiner as the primary reference in each of the rejections, as wire that has been chromed, anodized, or otherwise colored (or covered). Specifically the Specification states:

> Protective sleeving made from metal wire can be chromed, anodized or otherwise colored for aesthetic purposes. Such techniques are exemplified in U.S. Patent No. 5,639,527 to Hurwitz, entitled, Braided Wire Sheathing Having Chrome Appearance.

(Specification 3).

The claimed invention comprises plastic monofilaments that are braided together. All the monofilaments are uniformly made of plastic.

The Examiner has not established that Hurwitz discloses or suggest monofilaments uniformly made of plastic.

The Examiner asserts that Hurwitz discloses

> the plurality of monofilaments are fabricated from wire coated with polyurethane enamel (column 2, lines 20 - 34) having optical reflective properties (the outer surface of the enamel is smooth as specularly reflective; column 4, lines 13-17) and are uniformly fabricated by the polyurethane enamel (the coating is uniformly thick around the entire surface; column 4 lines 15-17) having optical reflective properties. With regard to the claimed aspect of at least some of the plurality of plastic monofilaments being at least in part fabricated from plastic, Saunders teaches that polyurethane enamel is a plastic (column 2, lines 9-15); the plastic monofilaments are therefore fabricated in part from plastic.

(Answer 3-4).

In contrast to the assertion in the Answer, the claimed invention does not require the "plastic monofilaments being at least in part fabricated from plastic." Rather, the claimed invention specifies that all the monofilaments are uniformly made of plastic. A wire uniformly coated with plastic is not a monofilament uniformly made of plastic.[1] The Examiner has failed to identify monofilaments in the cited references.

ORDER

The Examiner's decision rejecting claims 1-3, 5, 6, 8, and 9 is reversed.

REVERSED

tf/clj

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[1] A monofilament is single strand of untwisted synthetic fiber, such as nylon.