

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RICHARD H. POHLE

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Appeal No. 98-0609  
Application 08/490,203<sup>1</sup>

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ON BRIEF

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Before CALVERT, COHEN, and NASE, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 8 and 10 through 16. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a non-alpha-numeric

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<sup>1</sup> Application for patent filed June 14, 1995. According to appellant, the application is a continuation-in-part of Application 08/027,886, filed March 8, 1993, now abandoned.

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coded item. An understanding of the invention can be derived from a

reading of exemplary claim 1, a copy of which appears in the APPENDIX to the brief (Paper No. 7).

As evidence of obviousness, the examiner has applied the documents listed below:

Pond 1883	14,451	Nov. 27,
Dolan et al. (Dolan)	802,800	Oct. 24, 1905
Wilbourn	2,809,458	Oct. 15, 1957
Finley	4,383,555	May 17, 1983

The following rejections are before us for review.

Claims 1, 2, 5 through 8, and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Finley.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Finley in view of Pond.

Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Finley in view of Wilbourn.

Claims 11 through 16 stand rejected under 35 U.S.C. § 103

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as being unpatentable over Finley in view of Dolan.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper

No. 8), while the complete statement of appellant's argument can be found in the main and reply brief (Paper Nos. 7 and 9).

#### OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied patents,<sup>2</sup> and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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<sup>2</sup> In our evaluation of each of the applied patents, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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We reverse each of the examiner's rejections of appellant's claims.

Claim 1, the sole independent claim in the application, is drawn to a non-alpha-numeric coded item comprising, inter alia, a

long flexible substantially circular cross-sectional shaped member that is subject to tangling, and visible, non-alpha-numeric, code extending along the length of the member for uniquely identifying position at substantially every point along the length of the member to facilitate untangling of the member.

The examiner has concluded that the invention of claim 1 would have been obvious based upon the teaching of Finley. We disagree for the reasons set forth below.

Finley discloses (column 8, lines 28 through 43) a flexible hose with one portion that may be colored differently

from other portions, primarily for aesthetic purposes (Figure 10). Further, the patentee contemplates that different colors may also be utilized for additional laminae (Figures 7 through 9). It is also indicated that any of the rib components and webs of Figures 1 through 10 may be colored differently, e.g., for aesthetic and/or coding purposes, or where color may enhance the environmental use of the hose, such as from heat or ultra-violet considerations.

Clearly, Finley envisions color being added to the flexible hose for the specified purposes. However, it is quite apparent to us from a consideration of the Finley document, as a whole, that one having ordinary skill in the art would not have derived any suggestion therefrom for the long flexible member of claim 1 with the required code along its length that substantially continuously changes non-repetitively for uniquely identifying position at substantially every point along the length of the member to facilitate untangling of the member. As we see it, only reliance upon appellant's own teaching and the application of

impermissible hindsight would have enabled one of ordinary skill to achieve the claimed invention based upon the Finley disclosure. Since the evidence before us would not have rendered obvious the claimed invention, we are constrained to reverse the rejection of claim 1.

As to the respective rejections of dependent claims 3, 4, and 11 through 16, which rely upon the Finley document in combination with other applied prior art, we determine that the additional art does not overcome the deficiency of the Finley reference. More specifically, this panel of the board concludes that the electrical conductor of Pond with sectional bands or zones of different shades of color, the color guide for fishing lures of Wilbourn (lengths of cord successively of different colors), and the ornamental metal tubing of Dolan (ornamentation that is variable and never twice alike)<sup>3</sup> would likewise not have been suggestive to one having ordinary skill in the art of a long flexible member, subject to tangling, with the required code along its length that substantially

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<sup>3</sup> We share appellant's point of view (main brief, page 8) that Dolan does not address a long flexible member that is subject to tangling.

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continuously changes non-repetitively for uniquely identifying position at substantially every point along the length of the member to facilitate untangling of the member.

In summary, this panel of the board has:

reversed the rejection of claims 1, 2, 5 through 8, and 10 under 35 U.S.C. § 103 as being unpatentable over Finley;

reversed the rejection of claim 3 under 35 U.S.C. § 103 as being unpatentable over Finley in view of Pond;

reversed the rejection of claim 4 under 35 U.S.C. § 103 as being unpatentable over Finley in view of Wilbourn; and

reversed the rejection of claims 11 through 16 under 35 U.S.C. § 103 as being unpatentable over Finley in view of Dolan.

The decision of the examiner is reversed.

REVERSED

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IAN A. CALVERT	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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