

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THEODORE RYDELL

Appeal No. 2002-1906
Application 09/263,532

ON BRIEF

Theodore Rydell appeals from the final rejection of claims 1 and 2, the only claims pending in the application.

THE INVENTION

The invention relates to "fishing lures wherein multiple soft bodied plastic fishing baits are secured on multiple hooks formed of a single wire" (specification, page 1). Representative claim 1 reads as follows:

1. A soft bodied fishing lure comprising:
 - a) a double hook formed of a single length of wire and having an eye formed in the middle of the length of wire, two parallel hook shanks extending from the eye, each shank terminating in a semicircular bend and having a hook point formed at each end of the wire, and the semicircular bends are at an angle to each other so that the hook points are spaced apart from each other and the parallel shanks are resiliently biased towards each other,
 - b) a first soft bodied plastic bait partially threaded onto a first parallel shank of the double hook and the bait is clamped in place along the first parallel shank by a second parallel

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shank of the double hook and a second soft bodied plastic bait partially threaded onto said second parallel shank of the double hook and the second soft bodied bait is clamped in place along the second parallel shank by said first parallel shank.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Temple	3,400,483	Sep. 10, 1968
Bablick	3,600,838	Aug. 24, 1971
Renaud	4,750,290	Jun. 14, 1988

THE REJECTIONS

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Temple in view of Renaud.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Temple in view of Renaud and Bablick.

Attention is directed to the appellant's main and reply briefs (Paper Nos. 7 and 9) and to the examiner's final rejection and answer (Paper Nos. 4 and 8) for the respective positions of the appellant and the examiner regarding the merits of these rejections.

DISCUSSION

Temple, the examiner's primary reference, discloses in Figures 4 and 5 a combination fishhook and live bait holder formed from a single piece of wire material. The fishhook 1 consists of an eye 2, a shank 3 and a curved portion 4 having a

barb 5 at its end. The live bait holder 7, which is a continuation of the fishhook extending from the eye 2, consists of a pressure exerting loop 8, a bar clamp 9 and a curved portion 10 having a barb 11 at its end which effectively forms a second fishhook oriented at an angle to the first fishhook. To attach live bait, such as a fresh water shrimp, the pressure exerting loop 8 is pressed inwardly to expand the spacing between the bar clamp 9 and the shank 3 and the bait is slipped into the expanded spacing and firmly held between the bar clamp and shank when the pressure is released from the loop (see column 3, line 34, through column 4, line 2).

Temple does not respond to the limitations in claim 1, or to the identical limitations in claim 2, requiring first and second soft bodied plastic baits partially threaded onto respective parallel shanks of a double hook with each bait being clamped in place along its shank by the other shank. To overcome this deficiency, the examiner turns to Renaud.

Renaud discloses a double hook fishing jig comprising two spaced hooks and a soft rubber or plastic worm bait threaded onto the shank of each hook. Figures 1, 2, 4 and 5 show that the hook shanks are spaced too far apart to permit them to clamp the baits in place.

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In proposing to combine Temple and Renaud to reject claims 1 and 2, the examiner submits that

it would have been obvious to provide Temple with soft bodied plastic worms mounted on the shank of the hook as shown by Renaud to use worms of different colors to attract fish as disclosed by Renaud in column 3, lines 32-33. From Fig. 3 of Temple, which shows a worm [sic, a shrimp] clamped between the two shanks, two worms each mounted on a shank would have an equal diameter as one worm mounted between the shanks and the two worms would be clamped between the shanks [final rejection, page 3].

The examiner's position here is unsound for at least two reasons. First, there is nothing in the combined teachings of Temple and Renaud which would have suggested threading rubber worm baits, such as those disclosed by Renaud, onto the hooks of a device, such as that disclosed by Temple, specifically designed to clamp live bait between the hooks. Second, even if this modification were made, the combined teachings of the references would still lack any suggestion of the clamping relationship required by claims 1 and 2. The somewhat ambiguous conjecture advanced by the examiner that "two worms each mounted on a shank would have an equal diameter as one worm mounted between the shanks and the two worms would be clamped between the shanks" (final rejection, page 3) stems from an impermissible hindsight reconstruction of the appellant's invention. Bablick, applied in

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combination with Temple and Renaud to reject claim 2, does not cure the above noted shortcomings of the latter two references.

Thus, the reference evidence applied by the examiner is insufficient to establish a prima facie case of obviousness with respect to the subject matter recited in claims 1 and 2.¹

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 1 as being unpatentable over Temple in view of Renaud, or the standing 35 U.S.C. § 103(a) rejection of claim 2 as being unpatentable over Temple in view of Renaud and Bablick.

¹ This being so, it is unnecessary to delve into the merits of the publication evidence of non-obviousness appended to the appellant's main brief.

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SUMMARY

The decision of the examiner to reject claims 1 and 2 is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
)	
)	APPEALS AND
JOHN P. MCQUADE)	
Administrative Patent Judge)	INTERFERENCES
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