

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

IN RE: CHRISTOPHER JOHN RUDY,
Appellant

2018-2106

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. 10/360,681.

Decided: July 18, 2019

CHRISTOPHER JOHN RUDY, Port Huron, MI, pro se.

THOMAS W. KRAUSE, Office of the Solicitor, United
States Patent and Trademark Office, Alexandria, VA, for
appellee Andrei Iancu. Also represented by MARY L.
KELLY, JOSEPH MATAL, COKE MORGAN STEWART.

Before DYK, CHEN, and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

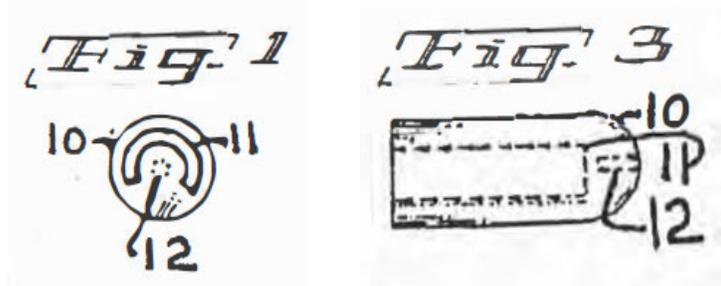
Christopher John Rudy appeals a decision of the Patent Trial and Appeal Board (the “Board”), upholding the Patent Examiner’s rejection of claims 48, 50–52, and 55–56 of U.S. Patent Application No. 10/360,681 (“the ’681 application”). We conclude that the Board erred by holding

claim 52 anticipated by the asserted prior art, but we discern no reversible error in the Board's determinations with respect to claims 48 and 50. Accordingly, we vacate the decision of the Board with regard to claim 52 and remand for further proceedings consistent with this opinion. Because claims 55 and 56 depend from claim 52, we also vacate the Board's decision with respect to those claims.

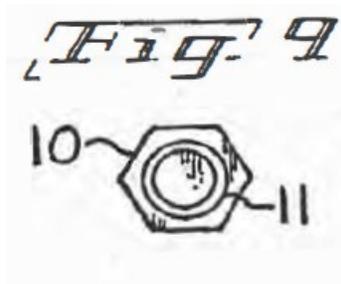
BACKGROUND

I

The claims of the '681 application are directed to a "web-mounting fishing plug comprising a body having a slot or aperture into which a web can be inserted." J.A. 17. According to the specification, a web is an insert such as a postage stamp, photograph, drawing, or piece of foil that can "enhance [the plug's] appeal to the fisherman and perhaps even the fish." J.A. 29. The claimed invention is designed to be "readily adaptable for conveniently mounting a web from a wide variety of webs," thus permitting the addition of customized webs as well as devices producing light, movement, sound, or smell. J.A. 18. Figure 1 and Figure 3 of the '681 application disclose a front and side view of an embodiment of the claimed web-mounting fishing plug:



J.A. 36. In this embodiment, the body 10 is generally solid and has a slot 11 into which web can be inserted. J.A. 23. In another embodiment, depicted in Figure 9, the web receiving slot is circular:



J.A. 36.

Claim 48 reads as follows:

48. A web-mounting fishing plug comprising a plug body of a solid material that at least in part can transmit light; and, in the plug body, a narrow slot essentially along a front to rear or rear to front direction – wherein:

the plug body is substantially thicker than the narrow slot;

the narrow slot is:

blind on one end from the plug body and open on an opposite end to the blind end such that from the open end to the blind end a first dimension is defined along a first direction;

characterized in having a first wall having a linear and/or curved second dimension along a linear and/or curved second direction substantially perpendicular to the first direction and a second wall conforming in shape to that presented by the first wall by registering substantially therewith but spaced apart closely from the first wall to define a third dimension between

the first and second walls such that the first dimension and the second dimension are both substantially greater than the third dimension; and

the plug further comprises the following:

the thin web inserted into the narrow slot;

a closure attached to the plug body, which covers the narrow slot to protect the thin web from moisture when fishing with the plug;

at least one eye for receiving fishing line associated with the plug body; and

attached directly or indirectly to at least one of the plug body and the closure, at least one fishing hook.

J.A. 589.

Claim 50 and 51 recite:

50. The plug of claim 48, wherein the web is a photograph including a person, a postage stamp, a trading stamp, a tax stamp, a cartoon, a fishing license, a business card, paper currency, or a sheet including a logo.

51. The plug of claim 48, which further comprises the following:

in the plug body, a cavity separate from the slot into which an insert additional to the thin web inserted into the narrow slot, which is selected from the group consisting of a sound-emitting insert, a light-emitting insert, a movement-providing insert, and a smell emitting insert; and

the insert additional to the thin web inserted into the narrow slot.

J.A. 589–90.

Claim 52 includes many of the same limitations as the above claims, but recites a “kit from which a web-mounting fishing plug can be assembled in a home environment, which comprises,” in relevant part: (1) “one and only one plug body,” (2) “at least one eye for receiving fishing line,” (3) “a closure that can be attached to the plug body,” and (4) “at least one fishing hook” attachable to the plug body or closure. J.A. 590. Claim 52’s requirement of “one and only one plug body” is not found in claims 48, 50, or 51. Claim 55 adds to the kit of claim 52 the features of claims 50 and 51, and claim 56 further adds that the “closure can be attached to the plug body with the inclusion of threading of the closure to the plug body through provision of threads on the closure itself corresponding to threads on the plug body itself.” J.A. 591.

II

Mr. Rudy primarily challenges the Board’s affirmance of the Examiner’s rejection of claims 48 and 52 as anticipated by U.S. Patent No. 3,423,868 (Le Master). Le Master discloses a “tail portion for the main body of a fishing lure” that is “adapted to produce an animated motion attractive to fish.” J.A. 638 col. 1 ll. 12, 23–24. Le Master’s lure

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