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Procopio / KYOCERA Corporation Procopio, Cory, Hargreaves & Savitch LLP 525 B Street Suite 2200 San Diego, CA 92101			LARSEN, JEFFREY R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KAZUNORI TAKENOUCI, KAZUAKI TAKIGAWA,  
YUKI SONODA, and KAZUHITO OMURA

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Appeal 2019-002596  
Application 14/415,103  
Technology Center 3600

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Before JENNIFER D. BAHR, DANIEL S. SONG, and  
CHARLES N. GREENHUT, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1, 2, 4–6, 10, and 11. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Kyocera Corporation. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a fishing line guide member, and fishing line guide and fishing rod provided with the same. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A fishing line guide member, comprising:

a guide member having a ring shape which defines an inner circumferential side space serving as a guide hole for a fishing line and has a curve surface curved from an inner circumferential side toward an outer circumferential side of the ring shape in a cross-sectional view with respect to a cross-section of the guide member taken along a cut plane including an axis line L of the guide member which passes through a center of the guide hole for the fishing line,

the curve surface of the guide member having

a maximum width W in the cross-sectional view demarcated by boundary line B-B' extending through the curve surface in a direction parallel to the axis line L passing through the center of the guide hole and a maximum thickness T in the cross-sectional view in a direction transverse to axis line L and demarcated by boundary line A-A' extending from the inner circumferential side to the outer circumferential side of the guide member;

the inner circumferential side being on a side of the guide hole for the fishing line, the outer circumferential side being opposed to the guide hole for the fishing line, and the boundary line B-B' through the curve surface demarcating the inner circumferential side from the outer circumferential side of the curve surface,

an inner circumferential side curve surface of the curve surface comprising:

a first curve surface portion having a curvature radius R1 and extending from an inner end A of boundary line A-A' to ends of a boundary line D-D' parallel to and spaced from boundary line B-B';

a second curve surface portion having a curvature radius R2 and extending from the ends of boundary line D-D' to ends of

boundary line B-B', where curvature radius R1 is larger than curvature radius R2; and

a third curve surface portion having a curvature radius R3 and being located on the outer circumferential side of the curve surface and extending from the ends of boundary line B-B',

the radius R1 being greater than radius R2, and the radius R3 being equal to or greater than radius R2, and

a ratio T/W of the maximum thickness T to the maximum width W being 0.2 or more and 0.7 or less.

(Claims App. A-1–A-2).

#### REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Ohmura	US 6,067,743	May 30, 2000

#### REJECTIONS

Claims 1, 2, 4–6, 10, and 11 are rejected under 35 U.S.C. § 112(b) as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor regards as the invention. Final Act. 2.

Claims 1, 2, 4, 5, 6, 10, and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ohmura. Final Act. 3.

#### OPINION

##### *Indefiniteness*

In the Advisory Action of May 1, 2018 the Examiner indicated Appellant's proposed amendment of March 21, 2018, which included deleting the two instances of the word "the," which the Examiner considered to raise an antecedent basis issue (Final Act. 2), would be entered for

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purposes of appeal. Appellant correctly pointed out both in the remarks entered March 21, 2018 (“Remarks”) and in the Appeal brief that the other basis for the Examiner’s holding of indefiniteness was premised on the erroneous determination that ratios require a unit of measure. Remarks at 5; App. Br. 5. The Examiner did not include any discussion of indefiniteness in the Advisory Action when indicating how the amended claims would be rejected or indicate the status of the indefiniteness rejection in the Answer. Rather, in the Answer, the Examiner summarily stated, “[e]very ground of rejection set forth in the Office action dated 01/22/2018 from which the appeal is taken is being maintained by the examiner.” Ans. 3. To the extent the indefiniteness rejection remains pending we reverse this rejection for the reasons stated by Appellant. App. Br. 5.

#### *Anticipation*

Regarding the contested limitation requiring “R3 being equal to or greater than radius R1” (App. Br. 9) the Examiner’s rejection states, in its entirety on this point: “[see e.g. Examiner-annotated FIG. 22 below and FIGS. 24, 25].” Final Act. 4. In response to Appellant’s arguments in the Final Action the Examiner reproduced the same annotated figure and asserted “Radius R3 is ‘equal to or greater than radius R2’. Thus, Ohmura teaches radius R3 ‘being equal to or greater than radius R2’.” Final Act. 7. In the Answer, the Examiner states, “Examiner annotated FIG. 22 of Ohmura shows . . . a curvature radius R3 that is equal to or greater than radius R2 where the curvature radius equals the radius of the circular arc which best approximates the curve at a particular point.” Answer 4.

Appellant reasonably argued based on the Examiner’s annotation without further explanation in the Final Action that the Examiner appears to

have conflated “curvature radius” with arc length. App. Br. 6. However, the Examiner’s comment from the Answer, reproduced above, appears to indicate that the Examiner was not equating arc length to curvature radius. This being the case, it is unclear how the Examiner can consider the section labeled by the Examiner as R3 as having a larger or equal radius of curvature to the section labeled by the Examiner as R2. The general rule is that precise dimensions or proportions should not be deduced from patent drawings not indicated as drawn to scale.<sup>2</sup> Based on the figure reproduced by the Examiner alone reasonable minds may differ as to whether the section labeled R3 has a larger radius of curvature than the section labeled by the Examiner as R2. The fact that the drawing does not clearly convey the relative curvatures of these areas demonstrates that the drawing is inconclusive on this point and, thus, cannot be relied upon to show R3 being equal to or greater than radius R2. Thus, the drawing does not sufficiently disclose the relationship between the radii in question.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). As the Examiner has not established how the limitation requiring “R3 being equal to or greater than radius R2” is satisfied by the cited prior art, the Examiner’s anticipation rejection cannot be sustained on the basis presently set forth.

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<sup>2</sup> See, e.g., *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956 (Fed. Cir. 2000). (“[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”).

CONCLUSION

The Examiner's rejections are reversed.

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 4-6, 10, 11	112(b)	indefinite		1, 2, 4-6, 10, 11
1, 2, 4, 5, 6, 10, 11	102(b)	Ohmura		1, 2, 4-6, 10, 11
<b>Overall Outcome</b>				1, 2, 4-6, 10, 11

REVERSED