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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MASAYUKI WATANABE, NORIO NASU, and MASARU AKIBA

Appeal 2019-006995
Application 14/345,383
Technology Center 3600

Before JENNIFER D. BAHR, JAMES P. CALVE, and BRANDON J. WARNER, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

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[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Globeride, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Appellant's invention is directed to "a fishing line guide that is formed of a resin material impregnating a reinforced fiber, and a fishing rod including the fishing line guide." Spec. ¶ 1. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A fishing line guide comprising a fishing line guide section guiding a fishing line along a fishing rod, a first leg portion extending in a first direction from an end portion of the fishing line guide section and having a fixed portion disposed at a tip, and a second leg portion branching from either one of the end portion of the fishing line guide section and the first leg portion to extend in a second direction and having a fixed portion disposed at a tip are integrally configured, the fishing line guide comprising:
>
> a first fiber-reinforced resin sheet, a second fiber-reinforced resin sheet, and a third fiber-reinforced resin sheet;
>
> each sheet comprising a laminated structure with a flat bonding surface, the laminated structure comprising a plurality of sheet-shaped synthetic resins containing reinforced fibers that are laminated together,
>
> where the laminated structure of the first fiber-reinforced resin sheet forms the fishing line guide section and the first leg portion;
>
> where the laminated structure of the second fiber-reinforced resin sheet is fixed to the first fiber-reinforced resin sheet via their flat bonding surfaces, the second fiber-reinforced resin sheet branching to a branching position from which the second leg portion branches;
>
> where the laminated structure of the third fiber-reinforced resin sheet extends from the first leg portion to the second leg portion through the branching position and is fixed to the first fiber-reinforced resin sheet and the second fiber-reinforced resin sheet via its flat bonding surface; and
>
> a branching gap member disposed in a gap that is formed at the branching position and is surrounded by the first

> fiber-reinforced resin sheet, the second fiber-reinforced sheet, and the third fiber-reinforced sheet, the branching gap member and the gap being surrounded by each of the flat bonding surfaces of the first fiber-reinforced resin sheet, the second fiber-reinforced resin sheet, and the third fiber-reinforced resin sheet and positioned at the branching position,
>
> wherein the first direction is a forward direction along the fishing rod, and
>
> wherein the second direction is a backward direction along the fishing rod.

REJECTION

Claims 1–12 stand rejected under 35 U.S.C. § 102(b) as anticipated by Akiba et al. (US 2011/0239519 A1, published Oct. 6, 2011, hereinafter "Akiba").

OPINION

Claims 1–5

Appellant groups independent claims 1, 2, and 5 together, and does not present any separate arguments for claims 3 and 4, which depend from claim 1. We decide the appeal of the rejection of claims 1–5 on the basis of claim 2, and claims 1 and 3–5 stand or fall with claim 2. *See* 37 C.F.R. § 41.37(c)(1)(iv) (permitting the Board to select a single claim to decide the appeal as to a single ground of rejection of a group of claims argued together).

The Examiner finds that the Figure 20 embodiment of Akiba discloses a fishing line guide as recited in claim 2, including, in pertinent part, first, second, and third fiber-reinforced resin sheets (fiber bundles 25, 25B, 25C formed from stacked prepreg sheets 25*c*), each of which is formed by stacking a number of sheets forming a laminated structure as shown in

Figure 12G, and a branching gap member (reinforcing member 100) disposed in a gap formed at the branching position (the triangular gap surrounded by fiber bundles 25, 25B, 25C illustrated in Figure 20. *See* Final Act. 3–4.

Appellant argues that Akiba's member 100 is not provided at a gap formed at a branching position and is not surrounded by resin sheets, as recited in claim 2. Appeal Br. 12. Appellant's argument focuses specifically on the location (opening region 200) of reinforcing member 100 shown in Figure 26A of Akiba. *Id.* (contending that this "location of member 100 of Akiba is simply not the same or equivalent to the location of the 'gap' of claims 1, 2, and 5").

Appellant's argument is not persuasive because Akiba discloses that a reinforcing member can be placed at a gap of any branch part divided in two legs or at a region in which the fiber bundle is curved, which would include center part P2 of branch 30A of Figure 20. *See, e.g.*, Akiba ¶¶ 110, 160. Further, Akiba points out that a branch may be formed at various positions, including at branch 30A in the embodiment of Figure 20. *Id.* ¶ 108.

Appellant argues that Akiba's disclosure of lowering the relative rigidity at the branch by increasing the ratio of the synthetic resin at center parts P1, P2 appears to teach away from providing a branching gap member in a gap surrounded by sheets as recited in claims 1, 2, and 5. Appeal Br. 13 (citing Akiba ¶ 109). This argument is not persuasive because Akiba discloses that reinforcing member 100 may be made of synthetic resin. Akiba ¶¶ 159–160. Notably, claim 2 does not specify the material, or any material properties, of the "branching gap member," and, thus, does not exclude a reinforcing member having a relatively higher ratio of synthetic

resin. Further, Appellant's Specification discloses synthetic resin as a suitable branching gap member material. Spec. ¶ 27.

Appellant additionally argues that "Akiba does not relate to using sheets, but rather to a fiber bundle that is itself made from sheets." Appeal Br. 15. Appellant contends that the fiber bundle illustrated in Figure 12G, which is "formed by stacking a plurality of prepreg sheets 25c cut in a narrow width," has a configuration that "is totally different than the recited sheet that contains fibers therein." *Id.* (quoting Akiba ¶ 100). Appellant fails to persuade us that the Examiner errs in reading the claimed "fiber-reinforced resin sheet" on the type of fiber bundle illustrated in Figure 12G of Akiba. Akiba describes the fiber bundle of Figure 12G as being formed by stacking a number of prepreg sheets 25*c* cut in a narrow width, wherein each prepreg sheet 25*c* comprises synthetic resin impregnating a number of fibers arranged side by side. Akiba ¶ 100, Fig. 12G. The fact that Akiba's stacked prepreg sheets 25*c* are cut in a narrow width does not change the fact that they are *sheets*, albeit sheets of narrow width. In this regard, we note that, once frame 8 of Appellant's fishing line guide is cut from prepreg molded article 20, which is itself formed from three fiber-reinforced laminated sheets, the sheets are of narrow width. The fact that the sheets forming Akiba's fishing guide frame are cut to narrow width before being joined together and formed into the fishing guide, while Appellant joins the sheets together first to form a prepreg molded article from which one or more frames 8 are cut, as illustrated in Appellant's Figure 6a, does not

distinguish the end product (i.e., the fishing line guide) of Akiba from Appellant's claimed fishing line guide.[2]

For the above reasons, Appellant does not apprise us of error in the rejection of claim 2. Accordingly, we sustain the rejection of claim 2, and of claims 1 and 3–5, which fall with claim 2.

Claims 9–11

Claims 9–11 depend from claims 1, 2, and 5, respectively, and further recite "wherein the branching gap member is adhered to each of the flat bonding surfaces of each of the first, second, and third fiber-reinforced resin sheets." Claims App. Appellant groups these claims together in contesting the rejection. Appeal Br. 16–17. We decide the appeal on the basis of claim 10, and claims 9 and 11 stand or fall with claim 10. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant essentially reiterates the argument, discussed above, that Akiba's reinforcing member 100 is not disposed in the location called for in claims 1, 2, and 5, but, instead, is provided in opening region 200 between two branch legs of its front leg. Appeal Br. 16. This argument is not persuasive, for the reasons discussed above.

Appellant further contends that Akiba fails to disclose a branching gap member that is "adhered to each of the flat bonding surfaces of the recited resin sheets," as claimed. Appeal Br. 16. In addressing this limitation, the Examiner explains that Akiba's reinforcing member 100 may be arranged at a gap part of a branch part, is made of the same fiber-reinforced synthetic resin material as the fiber bundle for molding the frame, and may employ an

[2] Notably, Appellant's claims are directed to the fishing line guide itself, not to any particular method of making the fishing line guide.

adhesive rubber based resin. Final Act. 9 (citing Akiba ¶¶ 94, 159, 160); *see also* Akiba ¶ 144 (disclosing molding the frame). Appellant does not identify any deficiencies or error in the Examiner's findings with respect to the limitation of claim 10.

Thus, Appellant does not apprise us of error in the rejection of claim 10. Accordingly, we sustain the rejection of claim 10, and of claims 9 and 11, which fall with claim 10.

Claim 12

Claim 12 depends from claim 1 and further recites that "the first leg portion has an opening region of a V shape provided below the fishing line guide section." Claims App. Akiba expressly discloses such a V-shaped opening (through hole 7A) between sides 7a and 7b of connection part 7 in the first three disclosed embodiments (Figures 1, 10, 11, 13, and 15), as well as the "preferred" embodiment of Figure 22 (*see* Akiba ¶¶ 43, 146), but does not expressly indicate whether either of connecting parts 57, 58 of the embodiment of Figure 20 is comprised of branching sides, such as sides 7a and 7b, with a V-shaped opening, such as through hole 7A, between them. The Examiner appears to rely on Akiba's disclosure in paragraph 116 that "the structure described above may also be applied to the fishing line guide type shown in FIG. 20" as indicating that the left and right sides with through hole structure of connection part 7 of the first three embodiments also applies to connecting parts 57, 58 of the Figure 20 embodiment. Final Act. 10; *see also* Ans. 9 (stating that "[i]t is any part of the structure that may be applied to the fishing line guide shown in FIG. 20 and not just the curved portions and connecting parts").

Appellant disagrees with the Examiner's interpretation of paragraph 116 of Akiba and argues that, "upon closer reading of paragraph [0116] . . . of Akiba, the structure that may also be applied to the fishing line guide shown in FIG. 20–at best–refers instead to the curved portions 82, 83 and connecting parts 57, 58." Appeal Br. 23. According to Appellant:

> When considered in context, para. [0116] would reasonably be construed as referring, at best, to the curved portions 82, 83 and connection parts 57,58 as opposed to any and every part of the fishing guide shown in Fig. 20. Indeed, para. [0116] offers clarification by stating:
>
> > … [t]hat is, in the two-leg type of fishing line guide … the amount of reinforced fiber of the curved portions 82, 83 may be larger than that of the connecting parts 57, 58, or the ratio (weight %) of synthetic resin may be higher than that of the connecting parts 57, 58, or the connecting part 57, 58 may be formed thicker, the sectional area may be larger… (Emphasis added.)
>
> Thus, it is apparent that para. [0116] refers specifically to the configuration of the curved portions 82, 83 and connection parts 57,58 and not "any part of the structure."

Reply Br. 1.

Although the Examiner's interpretation of "the structure described above" in paragraph 116 of Akiba as referring to all of the structure disclosed in the entirety of the portion of the written specification preceding paragraph 116 is a plausible interpretation, Appellant's interpretation of this language as referring specifically to the curved portions 82, 83 formed between fixing parts 75, 76 and connecting parts 57, 58 is at least equally plausible. Paragraph 115 discusses the relative amounts of reinforced fiber in fixing part 6, the curved portion of fixing part 6, and connection part 7. Paragraph 116 begins by stating that "the structure described above may also

be applied to the fishing line guide type shown in FIG. 20." Paragraph 116 then continues by stating: "That is, in the two-leg type of fishing guide, curved portions 82, 83 are formed between a pair of fixing parts 75, 76 and the connecting parts 57, 58," and then discussing the possible relative ratios of synthetic resin and fiber in the curved portions and the connecting parts, as well as the relative thicknesses of the curved portions and connecting parts. This suggests that "the structure" of interest to Akiba in the discussion of paragraph 116 includes the relative fiber content and/or thickness of the curved portions and connection parts.

In summary, considering the first sentence of paragraph 116 of Akiba in context, it is ambiguous as to whether "the structure described above" refers to all of the structure disclosed in the entirety of the preceding portions of the written specification (most notably the elements 7a, 7b and 7A of the connecting part) or only to the relative degree of reinforcement between the curved portions and the connecting parts. Further, the Examiner does not identify, nor do we discern, any reason why the V-shaped opening (through hole 7A) of the other embodiments of Akiba would necessarily/inherently be included in the Figure 20 embodiment. It is well established that an anticipation rejection cannot be predicated on an ambiguous reference. Rather, disclosures in a reference relied on to prove anticipation must be so clear and explicit that those skilled in the art will have no difficulty in ascertaining their meaning. *In re Turlay*, 304 F.2d 893, 899 (CCPA 1962).

For the reasons set forth above, the Examiner fails to establish by a preponderance of the evidence that Akiba anticipates the subject matter of claim 12.[3] Accordingly, we do not sustain the rejection of claim 12.

Claims 6–8

Claims 6 and 8 recite that the plurality of fiber sheets in the frame main body include:

> a short-width fiber sheet provided between the fiber sheets and extending along an extension direction of the frame main body but having an edge on an end portion thereof that does not reach the end surface of the frame main body such that the short-width fiber sheet is embedded in the frame main body.

Claims App.

The Examiner's findings with respect to this feature, which are set forth on pages 6 and 8 of the Final Action, appear to rely on Akiba's disclosure in paragraph 100 of sheets cut in a narrow width and including a number of fibers arranged side by side, in conjunction with Akiba's disclosure in paragraph 60 that "the frame may be reinforced by a plurality of fiber bundles arranged in the whole of the frame." We agree with Appellant that this does not satisfy the aforementioned limitations of claims 6 and 8. *See* Appeal Br. 18 (noting that Akiba's disclosure of sheets "having a 'narrow width' [is] not equivalent to sheets having an edge on an end portion that does not reach the end surface of the frame main body," as

[3] Our decision with respect to the anticipation rejection of claim 12 should in no way be construed as a determination as to whether or not the subject matter of claim 12 would have been obvious in view of the teachings of Akiba. The Final Action does not include a rejection of claim 12 under 35 U.S.C. § 103(a) for our review.

required by the claims). Accordingly, we do not sustain the rejection of claims 6 and 8, or of claim 7, which depends from claim 6.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–12	102(b)	Akiba	1–5, 9–11	6–8, 12

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED IN PART