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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* NAMIKO NAKA,  
TATSUHISA NOMURA, and  
KIYOKO HASHIKAWA

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Appeal 2020-001169  
Application 14/579,419  
Technology Center 3700

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Before CHARLES N. GREENHUT, MICHAEL L. HOELTER, and  
ANNETTE R. REIMERS, *Administrative Patent Judges*.

REIMERS, *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 1–11 and 13–18. Claim 12 has been canceled. 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 Yachiyo Industrial Co., Ltd. Appeal Brief (“Appeal Br.”) 2, filed July 29, 2019.

### CLAIMED SUBJECT MATTER

The claimed subject matter “relates to crochet hooks for hand crocheting, and to grip bodies for crochet hooks.” Spec. ¶ 1. Claims 1 and 3 are independent.

Claim 1 is illustrative of the claimed subject matter and recites:

1. A crochet hook comprising:

a rod-like crochet-hook shaft having a tip formed with a hook portion, and a grip body covering a base-end side of the crochet-hook shaft, with the tip of the shaft protruding therefrom; wherein

the grip body includes a base-end portion which has a substantially uniform cross-section taken in a vertical direction to a longitudinal axis of the grip body, and a grip portion formed on a tip-end side of the base-end portion and formed with a recess on a side in its outer circumference;

the recess is formed on a side where the hook portion has a catching head, the recess having an arc-like section, with a longitudinal center region being sunken;

the crochet-hook shaft has its tip shifted at least 0.4 mm to a side which is away from the side formed with the recess, with respect to a longitudinal axis of the base-end portion.

### THE REJECTIONS

- I. Claim 6 stands rejected under 35 U.S.C. § 112(b) as indefinite.
- II. Claims 1–3, 5, 6, 9, 10, 13–15, and 18 stand rejected under 35 U.S.C. § 103 as unpatentable over Suessman (US 2,608,077, issued Aug. 26, 1952).
- III. Claims 4, 7, 8, 16, and 17 stand rejected under 35 U.S.C. § 103 as unpatentable over Suessman and Sauber (US Des. 345,290, issued Mar. 22, 1994).

IV. Claim 11 stands rejected under 35 U.S.C. § 103 as unpatentable over Suessman and Lindahl (US 7,874,182 B1, issued Jan. 25, 2011).

## ANALYSIS

### *Rejection I – Indefiniteness*

The Examiner determines that claim 6 is indefinite because: (1) “[it] is unclear how a radially outer surface can be on a radially more outer side and also on a radially more inner side of the recess area,” and (2) “it is unclear how a surface is radially more outer or radially more inner than another surface.” Final Act. 2–3; *see also* Ans. 3–4.<sup>2</sup>

Appellant contends that claim 6 is clear in light of Figures 9 and 11, which are described in paragraph 44 of the Specification. Appeal Br. 6.

We agree with Appellant. As an initial matter, the Examiner’s first assertion above indicates a misreading of the claim language. Claim 6 recites

the base-end portion is formed like a rod having a circular section, and wherein

the radially outer surface of said catching head is on a radially more outer side than the bottom surface of the recess but a radially more inner side than an outermost surface of the base-end portion on the side where the recess is formed.

Appeal Br. 19 (Claims App.). The second clause of Claim 6 recites the location of the radially outer surface of the catching head with respect to the bottom surface of the recess *and* the location of the radially outer surface of the catching head with respect to the outermost surface of the base-end

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<sup>2</sup> Final Office Action (“Final Act.”), dated July 27, 2018; Examiner’s Answer (“Ans.”), dated Sept. 27, 2019.

portion, rather than *only* the location of the radially outer surface of the catching head with respect to the bottom surface of the recess. In regard to the Examiner's second assertion, claim 6 recites "a circular section" with respect to the base-end portion of the claimed crochet hook. *Id.* In describing the limitations of claim 6, paragraph 44 of the Specification refers to Figure 11, which is a front view of the crochet hook shown in Figure 9. *See Spec.* ¶ 44.

Figure 11 is reproduced below.

FIG. 11

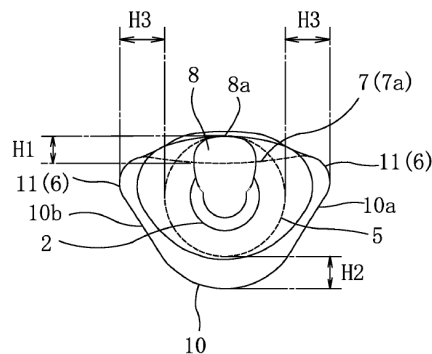


Figure 11 above of the subject invention "is a front view of the crochet hook in Fig. 1." *Id.* at ¶ 32. Figure 11 shows the outermost surface of the base-end portion 5 in phantom, i.e., the dotted circle. Thus, a skilled artisan would understand that the term "radially," when read in light of the Specification of the subject invention, is used to compare surfaces in relation to the center of Figure 11, (i.e., with respect to the longitudinal axis 9 of the crochet hook (*see* Fig. 9)). Accordingly, claim 6 is reproduced below with corresponding items from Figure 11 in parenthesis based on the description provided in Spec. ¶ 44:

the base-end portion (5) is formed like a rod having a circular section (area within dotted circle), and wherein

the radially outer surface (8a) of said catching head (8) is on a radially more outer side than the bottom surface (dotted arc 7a) of the recess (7) but a radially more inner side than an outermost surface (dotted circle 5) of the base-end portion (5) on the side where the recess (7) is formed.

Stated differently, in viewing Figure 11, the top of line 8a is located above line 7a. Further, the top of line 8a, while “shifted” (*see* Spec. ¶ 44), remains located within (i.e., “radially more inner”) the dotted circle 5. We thus find the language of claim 6 to be clear in light of Figure 11 and paragraph 44 of the Specification.

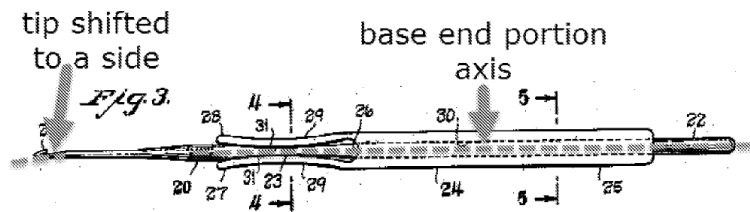
Accordingly, for the above reasons, we do not sustain the Examiner’s rejection of claim 6 as indefinite.

*Rejection II – Obviousness over Suessman*

As to independent claim 1, the Examiner finds that Suessman’s crochet hook includes a crochet-hook shaft in which “the crochet-hook shaft has its tip (with 21) shifted to a side (i.e. bottom side) which is away from the side (28 with 29) formed with the recess, with respect to a longitudinal axis of the base-end portion (25).” Final Act. 4 (citing Suessman Fig. 3). The Examiner makes similar findings as to independent claim 3. *Id.* at 6; *see also* Ans. 4–6.

Appellant argues that “the Suessman reference [appears] to show a cut-out portion adjacent to the tip” and “the tip of the Suessman reference is not shown as displaced to any extent.” Appeal Br. 10.

The Examiner’s annotated Figure 3 of Suessman is reproduced below.



Final Act. 5. Annotated Figure 3 of Suessman above shows a side elevation view of Suessman’s device with a crochet needle. Suessman 1:50–54. The Examiner’s added dotted line on the left is labeled as “tip shifted to a side” and the added dotted line to the right is labeled as “base end portion axis.”

Final Act. 5.

When a reference does not disclose that the drawings are to scale and is silent as to dimensions, the drawing features are of little value in establishing measurements. *See* Manual of Patent Examining Procedure (MPEP) § 2125; *Hockerson-Halberstadt, Inc. v. Avia Group Int’l, Inc.*, 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.”); Appeal Br. 7–8 (citing MPEP § 2125).<sup>3</sup> Here, at best, the Examiner’s annotated dotted line on the left of Suessman’s Figure 3 identifies an external surface of a cutout portion of the hook shaft of Suessman’s crochet needle. *See* Reply Br. 3<sup>4</sup> (“The Suessman reference merely shows a cut-out portion in the side of the crochet hook.”); *see also*

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<sup>3</sup> At the same time, we have been instructed by our reviewing court that they “did not mean that things patent drawings show clearly are to be *disregarded*.” *In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972) (emphasis in original). The key term here being “clearly.”

<sup>4</sup> Reply Brief (“Reply Br.”), filed Nov. 27, 2019.

Appeal Br. 7–10. The Examiner does not direct us to any passages of Suessman indicating that the tip of the hook shaft or the longitudinal axis of the hook shaft is shifted or slanted with respect to the longitudinal axis of the base-end portion, as required by claims 1 and 3. *See* Reply Br. 3 (“[T]he Suessman reference merely shows a cut-out and not a slanting of the longitudinal axis of the crochet-hook shaft, much less[,] th[e] specific . . . slanting” required by the claims); *see also* Appeal Br. 7–10. As such, the Examiner’s finding that Suessman’s tip of the hook shaft or the longitudinal axis of the hook shaft is shifted or slanted with respect to the longitudinal axis of the base-end portion, is based on speculation and is not supported by a preponderance of the evidence. *See* Reply Br. 3 (“[T]he Suessman reference does **not** teach **any** shifting of the tip and longitudinal axis of the crochet hook.”); *see also* Appeal Br. 7–10. The Examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in the factual basis. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

Accordingly, for the above reasons, we do not sustain the Examiner’s rejection of claims 1–3, 5, 6, 9, 10, 13–15, and 18 as obvious over Suessman.

*Rejections III and IV – Obviousness over Suessman and either Sauber or Lindahl*

Claims 4, 7, 8, 11, 16, and 17 depend directly or indirectly from claim 1 or claim 3. Appeal Br. 19–22 (Claims App.). The Examiner relies on Sauber for a grip portion having a generally triangular cross-section (Final Act. 9) and Lindahl for a hook shaft made of metal (*id.* at 11). Thus, the Examiner does not rely on the teachings of either Sauber or Lindahl in any



manner that remedies the deficiencies of Suessman discussed above. Accordingly, for reasons similar to those discussed above in reference to claims 1 and 3, we do not sustain the Examiner's obvious rejections of claims 4, 7, 8, 11, 16, and 17 over Suessman and Sauber or Suessman and Lindahl.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
6	112(b)	Indefiniteness		6
1-3, 5, 6, 9, 10, 13-15, 18	103	Suessman		1-3, 5, 6, 9, 10, 13-15, 18
4, 7, 8, 16, 17	103	Suessman, Sauber		4, 7, 8, 16, 17
11	103	Suessman, Lindahl		11
<b>Overall Outcome</b>				1-11, 13-18

REVERSED