

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte WILLIAM T. BALL and DUANE CONDON

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Appeal No. 2006-0305  
Application No. 10/370,545

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ON BRIEF

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Before McQUADE, CRAWFORD and BAHR, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

**DECISION ON APPEAL**

William T. Ball et al. appeal from the non-final rejection (mailed January 25, 2005) of claims 1, 4-6, 8, 10 and 11. Claims 14-16, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

THE INVENTION

The invention relates to an assembly for pressure testing a plumbing system. Representative claims 1 and 8 read as follows:

1. A testing assembly for pressure testing a plumbing system in a building where the building has a shower station with a bottom drain and a shower spout, the testing assembly comprising:

a drain adapter having a hose end fitting and a bottom drain sealing element in fluid communication with the hose end fitting, the sealing element adapted to be in fluid communication with the bottom drain;

a hose fitting on the shower spout;

a hose removably connecting the shower spout and the drain adapter;

wherein the drain adapter further comprises a fastener, the fastener being an externally threaded centrally located post adapted to removably engage the bottom drain to form a watertight seal between the sealing element and the bottom drain; and

wherein the fastener is adapted to removably engage the bottom drain via a threaded surface centrally located in the bottom of the drain.

8. A testing assembly for pressure testing a plumbing system in a building where the building has a shower station with a shower inlet, the testing assembly comprising:

an externally threaded tub overflow drain adapted to be placed in the shower station and in fluid communication with the plumbing system;

a drain adapter having a hose end fitting and an overflow end fitting in fluid communication with the hose end fitting, the overflow end fitting being internally threaded to removably engage the externally threaded overflow drain to form a water tight seal;

a hose fitting on the shower inlet; and  
a hose removably connecting the shower inlet and the drain  
adapter.

THE PRIOR ART

The references relied on by the examiner as evidence of  
obviousness are:

Merritt	608,207	Aug. 02, 1898
Coles	964,954	Jul. 19, 1910
Jones	1,013,175	Jan. 02, 1912
Davis	2,966,311	Dec. 27, 1960
Lewis	2002/0032926	Mar. 21, 2002

THE REJECTIONS

Claims 1 and 4-6 stand rejected under 35 U.S.C. § 103(a) as  
being unpatentable over Merritt in view of Jones and Davis.

Claims 8, 10 and 11 stand rejected under 35 U.S.C. § 103(a)  
as being unpatentable over Coles in view of Lewis, Jones and  
Davis.

Attention is directed to the main and reply briefs (filed  
April 25, 2005 and July 11, 2005) and answer (mailed May 25,

2005) for the respective positions of the appellants and examiner regarding the merits of these rejections.<sup>1</sup>

## DISCUSSION

### I. The 35 U.S.C. § 103(a) rejection of claims 1 and 4-6 as being unpatentable over Merritt in view of Jones and Davis

Merritt discloses a device for cleaning the waste or drain pipes of slop sinks, kitchen sinks, washbowls, bathtubs, stationary washtubs, and the like (see page 1, lines

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<sup>1</sup> On pages 7, 12 and 14 in the answer, the examiner discusses U.S. Patent No. 2,992,437 and/or Reissue Patent No. 25,175 in an effort to support the appealed rejections. These references, however, do not appear in the statement of either rejection. Where a reference is relied on to support a rejection, whether or not in a minor capacity, there is no excuse for not positively including the reference in the statement of the rejection. See *In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970), and MPEP § 706.02(j). Accordingly, we have not considered the foregoing references in reviewing the merits of the appealed rejections.

14-16). As shown in Figure 1, the device includes a pressure cup C, a rubber gasket D in an annular channel a at the lower edge of the pressure cup, a tubular portion E on the top of the pressure cup, a spider F inside the tubular portion, openings I in the spider allowing for the passage of water, a spindle G passing through a boss F' in the spider, a wingnut H on an upper threaded end of the spindle, a reducer I' coupled to the upper end of the tubular portion, and a threaded socket L in the lower end of the spindle.

Figure 2 illustrates a screw M designed to engage the threaded socket in the spindle and a nut associated with the drain of a bathtub or washbowl (see page 1, lines 61-70) to affix the device to the drain. In operation, the device is secured to a drain in the manner generally depicted in Figure 1 (which shows the use of hooks K rather than screw M to engage the drain) and the reducer I' is connected to "any source of water-pressure or a good force-pump" (page 1, lines 59-60) to clean the drain.

The Merritt device responds to all of the limitations in claims 1 and 4-6 pertaining to the drain adapter. In this regard, and as correctly pointed out by the examiner, Merritt's reducer I', pressure cup C, spider F, and spindle G/screw M respectively constitute a "hose end fitting," "bottom drain sealing element," "perforated base," and "fastener" to the extent recited in these claims. Notwithstanding the appellants' arguments to the contrary, the spindle G and screw M collectively embody an externally threaded, centrally located post which is slidably received through an aperture (boss F') in a perforated base (spider F having openings I) as set forth in claims 1 and 4.

Moreover, the appellants have not cogently explained, and it is not evident, why this externally threaded, centrally located post is not adapted to removably engage a bottom drain via a threaded surface centrally located in the bottom of the drain as recited in claim 1.

As conceded by the examiner, however, Merritt does not respond to the limitations in claims 1 and 4-6 relating to the "hose" and the "hose fitting on the shower spout." To account for these deficiencies, the examiner turns to Jones and Davis.

Jones discloses a drain flushing device similar in many respects to that disclosed by Merritt. Of particular interest is Jones' teaching that the device may be conveniently connected to a faucet 18 (see Figure 1) to supply the pressurized water needed to flush the drain. To effect the connection, Jones utilizes a hose 17 which is coupled at its opposite ends to the flushing device and faucet by any usual and suitable construction such as the threaded coupling 16 shown in Figure 2 (see page 1, lines 86-98).

Davis discloses a conventional bathtub shower comprising a water output pipe 12 having an externally threaded end extending from a wall of the shower for connection to a typical shower head (see column 2, lines 11-35).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of a primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references.

Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

In the present case, the combined teachings of Merritt, Jones and Davis would have provided the artisan with ample incentive to employ the Merritt device with a hose and shower spout of the sort recited in claims 1 and 4-6. More particularly, Merritt discloses that the device can be used in conjunction with a bathtub drain and relates the need to connect the device to a source of pressurized water. Jones discloses that conveniently located and readily accessible water fixtures can be used as sources of pressurized water for such devices, and Davis demonstrates that one such conveniently located and readily accessible source or pressurized water in a typical bathtub environment would be a shower spout. Considered collectively, these teachings would have furnished one of ordinary skill in the art with the requisite suggestion to adapt the Merritt device for use in its intended bathtub environment by combining it with a hose for connection to a conventional externally threaded shower spout associated with the bathtub in order to supply the device with the pressurized water necessary for its operation. This assemblage of elements meets all of the structural limitations in claims 1 and 4-6 and clearly would be capable of testing a plumbing system as recited in the preamble of claim 1.

Accordingly, we shall sustain the standing 35 U.S.C. § 103(a) rejection of claims 1 and 4-6 as being unpatentable over Merritt in view of Jones and Davis.

II. The 35 U.S.C. § 103(a) rejection of claims 8, 10 and 11 as being unpatentable over Coles in view of Lewis, Jones and Davis

Coles discloses a drain pipe flushing attachment composed of a disk body 11 having a nipple 14 for connection to a water supply hose 17 and a depending peripheral flange 12 provided with an external screw thread 13 for engaging an internal screw thread 10 on a countersunk portion of a drain screen plate in a kitchen sink or other bowl/basin.

Suffice to say that Coles provides little response to the subject matter recited in claim 8. The examiner's reliance on Lewis, Jones and Davis to cure the extensive shortcomings of Coles in this regard is not well founded.

Lewis discloses a bathtub overflow drain pipe having an externally threaded portion extending from the front wall of the tub. As discussed above, Jones discloses a drain flushing device connected via a hose to a faucet and Davis discloses a bathtub shower having an externally threaded water output pipe 12 projecting from the wall of the shower.

In short, the only suggestion for reconfiguring and supplementing the kitchen drain flushing attachment disclosed by Coles in view of Lewis, Jones and Davis so as to

arrive at the assembly recited in claim 8 stems from hindsight knowledge impermissibly derived from the appellants' disclosure.

Consequently, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 8, and dependent claims 10 and 11, as being unpatentable over Coles in view of Lewis, Jones and Davis.

SUMMARY

The decision of the examiner to reject claims 1, 4-6, 8, 10 and 11 is affirmed with respect to claims 1 and 4-6, and reversed with respect to claims 8, 10 and 11.

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

AFFIRMED-IN-PART

JOHN P. McQUADE )  
Administrative Patent Judge )  
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 ) BOARD OF PATENT  
MURRIEL E. CRAWFORD ) APPEALS  
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