

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM R. DONATI

Appeal No. 97-0441
Application No. 08/511,841¹

ON BRIEF

Before COHEN, FRANKFORT, and PATE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

¹ Application for patent filed August 7, 1995. According to appellant this application is a continuation of Appliation No. 08/227,005, filed April 13, 1994; which is a continuation-in-part of Application No. 08/134,281, filed October 7, 1993, now U.S. Patent No. 5,406,657, issued April 18, 1995; which is a continuation-in-part of Application No. 07/978,814, filed November 19, 1992, now U.S. Patent No. 5,251,346, issued October 12, 1993.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2, 4, 5 and 17, which are all of the claims

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remaining in the application. Claims 1, 3 and 6 through 16 have been canceled.²

Appellant's invention relates to an electrically operated toilet tank flush valve system which aids in water conservation. As explained on pages 6-7 of the specification, the system includes an adjustable electrical float sensor switch unit (700), seen best in Figures 12 and 14 of the drawings, operationally connected to a solenoid valve (200) for allowing filling of the toilet tank (50) to a predetermined maximum level as desired or as required by local code. Independent claim 17 is representative of the subject matter on appeal and a copy of that claim appears in the Appendix to appellant's brief.

² Claims 2 and 5 were amended subsequent to the final rejection (see Paper Nos. 14 and 23). According to the examiner (Paper No. 15), the rejection of claims 2, 4 and 5 under 35 U.S.C. § 112, second paragraph, found on pages 3-4 of the final rejection has been overcome.

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The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Kimball 1992	5,084,920	Feb. 4,
Veal 3, 1994	5,307,524	May

Claims 2, 4, 5 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kimball in view of Veal.

Rather than reiterate the examiner's full statement of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the examiner's answer (Paper No. 18, mailed May 9, 1996) for the examiner's reasoning in support of the rejection, and to appellant's brief (Paper No. 17, filed May 1, 1996) and reply brief (Paper No. 19, filed July 9, 1996) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective

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positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's position is not supported by the applied prior art references and will therefore not be sustained. Our reasons follow.

Like appellant, when we consider the collective teachings of Kimball and Veal, we find nothing therein which would have been suggestive to one of ordinary skill in the art of substituting or employing the float operated, adjustable signal means of Veal, seen in Figures 8, 12A and 12B, in place of the float (28) and switch (29) of Kimball. In our opinion, the examiner's position is based on impermissible hindsight gleaned from appellant's own disclosure and not from any fair teaching or suggestion found in the applied patents themselves. Absent the disclosure of the present application, it is our opinion that one of ordinary skill in the art would not have been motivated by the teachings of the applied prior art to modify the toilet flushing system of Kimball in the manner urged by the examiner so as to arrive at the subject

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matter set forth in appellant's independent claim 17 on appeal.

If anything, it would appear to us that one of ordinary skill in the art would have been led by the combined teachings of the applied references to merely incorporate the automatic toilet seat arrangement of Veal into the toilet of Kimball so as to gain the benefits of such an automatic seat arrangement, while also employing and maintaining the water recycling system as disclosed in Kimball. As urged by appellant in the brief and reply brief, there is nothing in either Kimball or Veal which addresses varying the desired maximum water level in the toilet tanks disclosed therein as a possible water conservation measure, or which would have been suggestive to one of ordinary skill in the art that the amount of water used in flushing a toilet can be controlled or varied by placing a vertically adjustable electrical float switch in the toilet tank to control an electrically operated solenoid valve, which in turn controls the inlet water to the tank and the volume of water admitted to the tank to thereby control the desired water level in the tank.

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Like appellant (reply brief, pages 2-4), we find that the examiner's interpretation of claim 17 on appeal (answer, pages 5-7) totally ignores the clear import of the claim language when the claim is viewed from the perspective of one of ordinary skill in the art who has read appellant's specification. It is a well-settled maxim of our Patent law that, in proceedings before the Patent and Trademark Office, claims must be given their broadest reasonable interpretation consistent with the specification, and that the claim language cannot be read in a vacuum, but instead must be read in light of the specification as it would be interpreted by one of ordinary skill in the pertinent art. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). This the examiner has clearly not done.

For the above reasons, the examiner's rejection of appellant's claims 2, 4, 5 and 17 under 35 U.S.C. § 103 as being

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unpatentable over Kimball in view of Veal will not be sustained, and the decision of the examiner rejecting claims 2, 4, 5 and 17 of the present application is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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WILLIAM F. PATE, III)	
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REVERSED

Prepared: September 21, 1999