

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

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. JOHNSON and GREGORY L. SESSER

Appeal No. 2000-1415
Application No. 09/197,947

ON BRIEF

Before CALVERT, COHEN, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 20 and 23. Claims 17 through 19, 21, and 22 stand withdrawn from consideration by the examiner pursuant to an election of species requirement. These claims constitute all of the claims remaining in the application.

Appeal No. 2000-1415
Application 09/197,947

Appellants' invention pertains to a toilet sealing ring adapter assembly for use in forming a connection to a sewer pipe. A basic understanding of the invention can be derived from a reading of exemplary claim 20, a copy of which appears in the APPENDIX to the brief (Paper No. 11).

As evidence of obviousness, the examiner has applied the documents listed below:

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|-----------|-----------|---------------------|
| Gaddy | 3,012,252 | Dec. 12, 1961 |
| Pickard | 3,501,172 | Mar. 17, 1970 |
| Izzi, Sr. | 4,482,161 | Nov. 13, 1984 |

The following rejection is before us for review.

Claims 20 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pickard, Gaddy, and Izzi, Sr.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer

Appeal No. 2000-1415
Application 09/197,947

(Paper No.12), while the complete statement of appellants' argument can be found in the brief (Paper No. 11).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification, drawing, and claims 20 and 23,¹ the applied teachings,² and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

¹ The specification should be amended to provide clear support and antecedent basis for the terms and phrases used in the claims; 37 CFR 1.75(d)(1).

² In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Appeal No. 2000-1415
Application 09/197,947

We cannot sustain the rejection of appellants' claims under 35 U.S.C. § 103.

In applying the test for obviousness,³ we reach the conclusion, as did the examiner, that it would have been obvious to one having ordinary skill in the art, from a combined consideration of the Pickard, Gaddy, and Izzi, Sr. disclosures, to modify the closet ring 30 and seal means 56 of Gaddy, as proposed by the examiner. As we see it, the threaded conical spigot section 24 and annular expansion sealing sleeve 36 of Gaddy would have been readily appreciated by one having ordinary skill as an alternative in the art to the second annular portion 54 and seal means 56 of Pickard. Additionally, it is clear to us, as it apparently was to the examiner, that one having ordinary skill would have viewed the gasket construction 30 of Izzi, Sr., with its central sealing ring 31 engaging a sloped surface 33 of the flange unit 20, as

³ The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Appeal No. 2000-1415
Application 09/197,947

simply an alternative in the art for the arrangement of the seal 70 and exhaust flange 13 of Pickard.

Notwithstanding the above obvious modifications of the Pickard teaching, like appellants (brief, pages 8 and 9), we recognize that differences remain between the claimed subject matter and the applied prior art. From our perspective, the evidence of obviousness before us simply would not have been suggestive to one having ordinary skill in the art of first and second cone shaped portions that "directly intersect" as required by claim 20, nor of a second cone shaped portion "at an angle of taper less than" the angle of taper of the first cone shaped portion as specified in claim 23. In the present case, as to the "directly intersect" recitation, in particular, it is our opinion that this difference cannot be dismissed as simply an obvious matter of ordinary design.

In summary, this panel of the board has not sustained the rejection on appeal.

Appeal No. 2000-1415
Application 09/197,947

The decision of the examiner is reversed.

REVERSED

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| IAN A. CALVERT |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| IRWIN CHARLES COHEN |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
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| |) | |
| |) | |
| JEFFREY V. NASE |) | |
| Administrative Patent Judge |) | |

Appeal No. 2000-1415
Application 09/197,947

ICC/

COHEN

APPEAL NO. 2000-1415 - JUDGE

APPLICATION NO. 09/197,947

APJ COHEN

APJ CALVERT

APJ NASE

DECISION: REVERSED

PREPARED: Feb 11, 2002

OB/HD

PALM

ACTS 2

DISK (FOIA)

REPORT