

FILE

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 15

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BOARD OF PATENT APPEALS  
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* JOHN E. OCHSENREITER

Appeal No. 95-5044  
Application 08/163,672<sup>1</sup>

ON BRIEF

Before ABRAMS, FRANKFORT, Administrative Patent Judges and  
CRAWFORD, Acting Administrative Patent Judge.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 22 through 24. Claims 1 through 14 have been allowed, and claims 15 through 21 have been canceled.

<sup>1</sup> Application for patent filed December 7, 1993.

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The appellant's invention is directed to a solenoid latching valve for use in automatic toilet and urinal flushing systems. The subject matter before us on appeal is illustrated by reference to claim 22, which reads as follows:

22. A solenoid latching valve comprising an electromagnetic coil, a plunger, said plunger including valve means, a rubber magnet, a spring, a body including an inlet, an outlet and a valve seat, a plunger guide including a stop, said spring disposed between said plunger stop and said plunger, said plunger having first and second positions, said spring urging said plunger to said first position and said valve means engaging said valve seat prohibiting communication between said inlet and outlet, said plunger being spaced apart from said plunger stop in said first position, said rubber magnet and a first momentary direct current impulse in said electromagnetic coil magnetically urge said plunger to said second position whereby said valve means permits communication between said inlet and outlet and said plunger engages said plunger stop, said rubber magnet maintaining said plunger in said second position upon the discontinuation of said first momentary direct current impulse, said spring and a second momentary direct current impulse in said electromagnetic coil urge said plunger to said first position, and said spring maintaining said plunger in said first position upon the discontinuation of said second momentary direct current impulse.

#### THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Patel et al. (Patel)	5,067,687	Nov. 26, 1991
Kunz et al. (Kunz)	5,259,416	Nov. 9, 1993

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#### THE REJECTIONS

Claims 22 and 24 stand rejected under 35 USC §103 as being unpatentable over Kunz.

Claim 23 stands rejected under 35 USC §103 as being unpatentable over Kunz in view of Patel.

The rejections are explained in Paper No. 5.

The opposing viewpoints of the appellant are set forth in the Brief and the Reply Brief.

#### OPINION

Our reviewing court has provided us with the following guidance in evaluating rejections under 35 USC §103: The examiner bears the initial burden of presenting a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). A *prima facie* case of obviousness is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976). The test for obviousness is what the teachings of the references would have suggested to one of ordinary skill in the art. See *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985); *In*

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*re Kaslow*, 707 F.2d 1366, 217 USPQ 1089 (Fed. Cir. 1983); *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is not necessary that the required suggestion be found within the four corners of the references themselves; a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See *In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969).

Claim 22 is directed to a solenoid latching device comprising some eleven components. It is the examiner's position that the combination recited in claim 22 would have been obvious to one of ordinary skill in the art in view of the teachings of Kunz. The only issue raised by the appellant in rebuttal is with regard to the magnet, to wit, that Kunz does not disclose or teach the use of a "rubber magnet" (emphasis added), as required by the claim, and it would not have been obvious to modify Kunz by utilizing such a magnet in place of the one disclosed (Brief, pages 4 through 6).

The Kunz latching valve comprises, *inter alia*, a permanent magnet assembly 27 which includes a magnetically conductive cylindrical first body portion 29 and a magnetically conductive annular second body portion 42 surrounding the first body portion. The first and second body portions are of stainless steel, and are in turn surrounded by a flexible

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magnetic strip 44 which is "readily shapable, to be flexible and resilient to shock," and is of "commercially available magnet material." The composition of this flexible magnetic strip is not set forth. See column 4, line 7 *et seq.*

The Kunz magnet is of compound construction and includes a component - a flexible, shapable, resilient magnetic strip of material - that might be of rubber, but which is not disclosed as being of rubber. Therefore, Kunz does not explicitly disclose a "rubber magnet." However, the issue here is whether it would have been obvious to utilize a "rubber magnet" in the Kunz device, and we find ourselves in agreement with the examiner on this point that it would. We first note in this regard that in the appellant's specification the full extent of the disclosure of the magnet is that it is "cylindrically shaped" and in the preferred embodiment is "a rubber bonded ferrite magnet" (page 7, lines 12 through 14). No definition of "a rubber bonded ferrite magnet" is provided and no description is offered. Nor is there any recitation in the disclosure, or other evidence of record, which establishes that the "rubber bonded ferrite magnet" recited in the specification or the "rubber magnet" recited in the claims solves a particular problem or presents a novel or unexpected result over other types of magnets. Thus, there is no evidence to contradict our conclusion that it would have been obvious to one of ordinary skill in the

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art to modify Kunz by replacing the magnet disclosed with another known type of magnet, including a "rubber magnet," for the self-evident advantages thereof, which would have been known to the artisan. See *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). Of course, in an obviousness assessment skill is presumed on the part of the artisan, rather than the lack thereof. *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985).

It therefore is our conclusion that the examiner has established a *prima facie* case of obviousness with respect to the subject matter recited in claim 22, and the rejection of that claim is sustained. Since the appellant has chosen to group claim 23 with claim 22 (Brief, page 8), it falls therewith.

Claim 24 adds to claim 22 the limitation that the body of the device have an exterior surface which "includes first and second recesses." This broad recitation finds correspondence in Kunz at least in the two places pointed out by the examiner, in our view.

A *prima facie* case of obviousness also has been established with regard to the subject matter of claim 24.

Once a *prima facie* case of obviousness is established, it is incumbent upon the applicant to go forward with objective evidence of nonobviousness. See *In re Rinehart*, *supra*. This can be in the form of evidence of commercial success, unexpected results, failure of others who tried to solve the problem, etc.

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See *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). The appellant has chosen not to do so in this case, but has merely presented argument and conclusionary statements, which do not constitute objective evidence of nonobviousness. See *In re DeBlauwe*, 736 F.2d 699, 222 USPQ 191 (Fed. Cir. 1984).

We have, of course, carefully considered all of the arguments presented by the appellant. However, they have not convinced us that the decision of the examiner was in error. Our position with respect to the arguments should be apparent from the foregoing recitations. In addition, we note that, contrary to the appellant's assertion in the Brief, the claims do not call for a "one piece" rubber magnet (page 6), and thus this argument is not commensurate with the scope of the claims. Finally, there is nothing in claim 24 which limits the recesses recited therein to particular purposes; all that is required are merely "annular recesses," which are disclosed in Kunz, for whatever the purposes. In this regard, although Patel has not been applied against this claim, we point out in passing that it discloses first recesses in which sealing rings are installed and second recesses by which the device is attached to other components of the system, which are the same purposes for which the appellant's recesses were disclosed in the specification.

The decision of the examiner is affirmed.

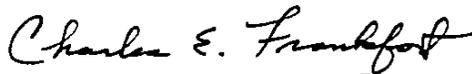
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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

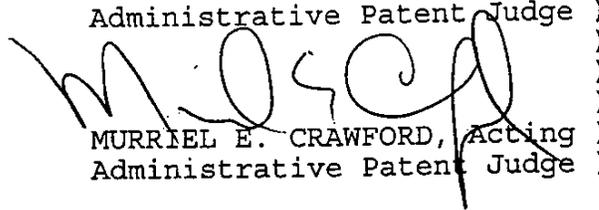
AFFIRMED



NEAL E. ABRAMS )  
Administrative Patent Judge )



CHARLES E. FRANKFORT )  
Administrative Patent Judge )



MURRIEL E. CRAWFORD, Acting )  
Administrative Patent Judge )

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