

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS RUMP,
NORBERT PIEPER,
JORG HILLER
and JAN SCHWARZE

Appeal No. 98-3297
Application 08/564,044¹

ON BRIEF

Before MEISTER, FRANKFORT and GONZALES, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed November 30, 1995. According to appellants, the application is a National stage application under 35 U.S.C. 371 of PCT/EP95/01016 filed March 18, 1995.

Appeal No. 98-3297
Application 08/564,044

This is a decision on appeal from the examiner's final rejection of claims 3 and 4, the only claims remaining in the application. Claims 1 and 2 have been canceled.

Appellants' invention relates to a method for automatically triggering flushing of a urinal with water. As explained on page 2 of the specification,

[w]ith the inventive method a flushing event is triggered, independent of the respective absolute temperature within the siphon and even for slow temperature changes due to heating or cooling of the ambient air, when the speed of the temperature change, i.e., the change of the detected temperature over time, exceeds a certain preset value, for example, due to introduction of urine or waste water into the urinal. Since with the inventive method it is not the absolute temperature, but the temperature increase over time that is detected with the aid of the control and computing device, the invention prevents extraneous flushing events which could be caused by an increase or decrease of the absolute temperature resulting from heating or cooling of the ambient air and detected by the temperature sensor. On the other hand, a relatively small change of the temperature gradient, for example, a temperature change of 0.2^oC per second, is sufficient to trigger the desired flushing event because such a change of the temperature gradient cannot be caused by heating or cooling with ambient air, but exclusively by introducing urine or waste water.

Appeal No. 98-3297
Application 08/564,044

Independent claim 3 is representative of the subject matter on appeal and a copy of that claim may be found in the Appendix to appellants' brief.

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

Egli	3,751,736	Aug. 14,
1973		
Lissau ²	4,309,781	Jan. 12,
1982		

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Egli. In both the final rejection (Paper No. 9, page 2) and the examiner's answer (Paper No. 16, page

² While this reference was not separately listed by the examiner on page 3 of the answer as "relied upon in the rejection of claims under appeal," it is clear from a review of the record that it is still being relied upon in the rejection of claim 4 on appeal. The examiner's failure to list this reference and the rejection of claim 4 under § 103 in the examiner's answer appears to be an oversight based somehow on appellants' indication in the brief (page 4) that claims 3 and 4 "are to stand or fall together." Thus, we have considered both the Lissau reference and the rejection of claim 4 relying thereon in deciding this appeal.

Appeal No. 98-3297
Application 08/564,044

4), the examiner has urged that "[t]he normal installation/operation of the Egli urinal would render the method for triggering a flushing event, as claimed, obvious."

Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Egli in view of Lissau.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the examiner's answer (Paper No. 16, mailed January 26, 1998) for the reasoning in support of the rejections, and to appellants' brief (Paper No. 15, filed December 16, 1997) and reply brief (Paper No. 17, filed March 30, 1998) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims,

Appeal No. 98-3297
Application 08/564,044

to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's rejections will not be sustained. Our reasons follow.

Like appellants, we see no disclosure, teaching or suggestion in Egli concerning a method of triggering a urinal flushing event based on a calculated or determined temperature gradient exceeding a preset limit. Indeed, as urged by appellants in their reply brief, it appears that the system of Egli is incapable of determining a temperature gradient, since it has no structural feature which would allow (or be capable of) calculating or determining a temperature gradient. The examiner's position in the answer (page 4) that the control of Egli "may be (should such be selected) responsive to a temperature change over time" and that "[t]he control, then, would be operable for 'determining' a temperature gradient since the sensed changing temperature can only initiate flushing when a preset time period has been surpassed," in our opinion, is clearly based on impermissible hindsight gained

Appeal No. 98-3297
Application 08/564,044

only from first having viewed appellants' disclosure, since there is nothing in Egli which would have been suggestive to one of ordinary skill in the art of selecting temperature gradient as a parameter of interest in controlling automatic triggering of flushing of a urinal with water. As for the examiner's reference in the rejection of claim 3 to Egli column 1, lines 53-56, and column 4, lines 47-50, we share appellants' view as expressed on pages 4 and 5 of the reply brief.

For the above reasons, we will not sustain the examiner's rejection of claim 3 on appeal under 35 U.S.C. § 103 based on Egli.

Having further reviewed the reference to Lissau, relied upon by the examiner in the § 103 rejection of dependent claim 4, we find nothing therein which provides that which we have found above to be lacking in Egli. Accordingly, the examiner's rejection of claim 4 on appeal under 35 U.S.C. § 103 based on Egli in view of Lissau will likewise not be sustained.

Appeal No. 98-3297
Application 08/564,044

The decision of the examiner is reversed.

REVERSED

JAMES M. MEISTER)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
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Appeal No. 98-3297
Application 08/564,044