

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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINHOLD KAUS

Appeal No. 2001-0685
Application No. 09/171,613

HEARD: July 11, 2001

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 11, which are all of the claims pending in this application.¹

We REVERSE.

¹ Claim 1 was amended subsequent to the final rejection.

BACKGROUND

The appellant's invention relates to a urinal cone. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

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

Bartlett et al. 1959 (Bartlett)	2,878,486	Mar. 24,
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Cicio	WO 93/11691	June 24, 1993
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Claims 1, 5, 6 and 8 to 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bartlett.

Claims 3, 4, 7 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bartlett.

Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Bartlett in view of Cicio.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 19, mailed August 7, 2000) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 18, filed June 27, 2000) and reply brief (Paper No. 20, filed October 10, 2000) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 1, 5, 6 and 8 to 10 under 35 U.S.C. § 102(b).

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claim 1, the sole independent claim on appeal, reads as follows:

A urinal cone, particularly for a person of the female gender, to apply to the genital region of the person for the purpose of urinating, which urinal cone can be set up from an essentially triangular shape to form a funnel-shaped body, comprising an envelope with an upper opening of a large diameter and an opposite-positioned lower opening of a small diameter wherein the outside contour of the upper opening has a continuously tapered radius of curvature and the upper opening of the envelope can be applied to the genital area of the person in such a way that this area is enclosed tightly in order for the person to urinate in a variety of positions including sitting, standing and squatting.

Bartlett discloses a sanitary device intended to be used by females in a standing position to conduct urine away from the body in a substantially narrow stream. As shown in Figures 1 to 5, the sanitary device 10 includes a tapered

passageway 12 extending from an upper opening to a lower opening. The upper opening is defined by an end limit periphery 20 which includes both curved and straight portions as shown in Figures 1-4.

The examiner asserts (answer, p. 4) that the claimed limitation that the upper opening "has a continuously tapered radius of curvature and the upper opening of the envelope can be applied to the genital area of the person in such a way that this area is enclosed tightly in order for the person to urinate in a variety of positions including sitting, standing and squatting" is met by the curved portion of Bartlett's end limit periphery 20 as shown in Figure 4. The appellant argues (reply brief, pp. 1-2) that the curved portion of Bartlett's end limit periphery 20 shown in Figure 4 is not a curve having a continuously **tapered** radius of curvature as set forth in claim 1 on appeal.

After reviewing the disclosure of Bartlett, we conclude that Bartlett does not disclose that the curved portion of his end limit periphery 20 shown in Figure 4 is a curve having a

continuously **tapered** radius of curvature as set forth in claim 1 on appeal. In that regard, it is well-settled that under principles of inherency, when a reference is silent about an asserted inherent characteristic, it must be clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

Since all the limitations of claim 1 are not found in Bartlett for the reasons set forth above, the decision of the examiner to reject claim 1, and claims 5, 6 and 8 to 10 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

The obviousness rejections

We will not sustain the rejection of claims 2 to 4, 7² and 11 under 35 U.S.C. § 103. We have reviewed Bartlett and the Cicio reference additionally applied in the rejection of claim 2 but find nothing therein which makes up for the deficiencies of Bartlett discussed above. That is, nothing in the combined teachings³ of the applied prior art would have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified the curved portion of Bartlett's end limit periphery 20 to be a curve having a continuously **tapered** radius of curvature as set forth in claim 1 on appeal. Accordingly, we cannot sustain the examiner's rejection of appealed claims 2 to 4, 7 and 11 under 35 U.S.C. § 103.

² Claim 7 includes the phrase "reeding or the like." The examiner should determine if this phrase complies with definiteness requirement of the second paragraph of 35 U.S.C. § 112 (i.e., that the claim language define the metes and bounds thereof with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976)).

³ The test for obviousness is what the combined teachings of the 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).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 5, 6 and 8 to 10 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 2 to 4, 7 and 11 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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Administrative Patent Judge)	

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