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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID ROMAN GORE

Appeal No. 2001-1886
Application No. 09/166,713

ON BRIEF

Before ABRAMS, STAAB, and BAHR, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 22. Claims 11-13, 18, 23, 24, 28 and 29 have been allowed, and claims 5, 25 and 27 have been objected to. The remaining claims have been cancelled.

WE REVERSE.

BACKGROUND

The appellant's invention relates to a toilet with an apparatus for flushing water from a storage tank. The claim on appeal has been reproduced in the appendix to the appellant's Brief.

The prior art reference of record relied upon by the examiner in rejecting the appealed claim is:

Ellis	3,187,947	June 8, 1965

Claim 22 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Ellis.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the Answer (Paper No. 26) for the examiner's complete reasoning in support of the rejection, and to the Brief (Paper No. 25) 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.

It is the examiner’s opinion that claim 22 is anticipated by Ellis. Anticipation is established only when a single prior art reference discloses, either expressly or under the

principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

Ellis discloses an apparatus for maintaining predetermined concentrations of chemical treating agents in liquid handling systems such as water boilers and the like (column 1, lines 8-11). The patent explains that "[i]n most of these systems, fresh water must be added continuously to replace water which is lost through evaporation, transportation out of the system on articles being treated, etc. and since fresh water must be added to the system, fresh water treating agent must be added to maintain the predetermined concentration" (column 1, lines 18-23). In furtherance of this objective, Ellis discloses an apparatus comprising a tank, a reservoir in the tank for containing a volume of treating agent and a supply of water with which it is mixed, and a mechanism for sensing a lowered level of water in the tank and operating a valve to replenish the water in the tank and to bleed a portion of that water into the reservoir, which causes some of the mixture of water and treating agent to be dispensed from the reservoir into the tank.

Claim 22 is directed, inter alia, to the combination of a toilet, an apparatus for flushing water from a water storage tank to a toilet and automatically supplying detergent to the water storage tank, and a supply of solid detergent (lines 1-3). None of these elements are disclosed or taught by Ellis. Notwithstanding the fact that the Ellis apparatus has some

areas of commonality with the claimed structure, it is not a toilet and it does not include an apparatus for flushing water from a tank to a toilet. Nor does it disclose a solid detergent, as is required by the claim, but a “chemical treating agent” for a boiler or the like, which is not explicitly described as a detergent, nor is there any reason to conclude that it would inherently be or function as a detergent. Finally, claim 22 requires that the water supply means deliver water to the vessel in which the detergent solution is contained “during a portion of the time water is flowing into the tank” and, from our perspective, there is no teaching in Ellis upon which to base a conclusion that such is the case.

For the aforesaid reasons, it is our conclusion that Ellis does not disclose or teach all of the subject matter recited in claim 22, and therefore does not anticipate the claim.

SUMMARY

The rejection is not sustained.

The decision of the examiner is reversed.

NEAL E. ABRAMS Administrative Patent Judge	)	
LAWRENCE J. STAAB Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

NEA:lbg

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APPEAL NO. 2001-1886 - JUDGE ABRAMS
APPLICATION NO. 09/166,713

APJ ABRAMS

APJ STAAB

APJ BAHR

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 21 Mar 02

FINAL TYPED: