

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte JOHN IDONE

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Appeal No. 2002-2186  
Application No. 09/822,289

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ON BRIEF

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Before ABRAMS, FRANKFORT, 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 15, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a system for flushing liquid and solid waste that allows a partial-flush or a full-flush (specification, p. 1). Claims 1 and 5, the independent claims on appeal, read as follows:

1. A system for flushing material, comprising:  
means for containing flushing fluid; and  
means for transporting flushing fluid from the means for containing, wherein the means for transporting is located in the means for containing and includes a first opening located at a low volume level and a second opening located directly adjacent to a bottom surface of the means for containing.
  
5. A system for flushing material, comprising:  
a tank for containing flushing fluid; and  
a tube for transporting flushing fluid from the tank, wherein the tube is located in the tank and includes a first opening located at a low volume level and a second opening located directly adjacent to a bottom surface of the tank.

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

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|------------------|-----------|---------------|
| Tedei            | 4,110,850 | Sept. 5, 1978 |
| Ricalde Medina   | 5,121,510 | June 16, 1992 |
| Navarrette       | 5,175,893 | Jan. 5, 1993  |
| Kolb, Sr. (Kolb) | 5,903,931 | May 18, 1999  |

Claim 2 stands rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Navarrette.

Claims 5 to 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tedei in view of Navarrette.

Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over Tedei in view of Navarrette and Ricalde Medina.

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Tedei in view of Navarrette and Kolb.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the first Office action (Paper No. 3, mailed June 25, 2001) and the answer (Paper No. 12, mailed May 21, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 11, filed May 10, 2002) and reply brief (Paper No.

### 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 teachings of Navarrette**

Navarrette's invention relates to a dual flush valve assembly for a toilet tank. More particularly, Navarrette's invention relates to a valve assembly, the construction of which includes a hollow body provided with a pair of pivotally mounted lever arms actuating a pair of valves adapted for causing a partial or full discharge of water from the tank through an opening in the bottom wall thereof. It is the principal object of Navarrette's invention to provide an improved dual flush valve assembly adapted for connection with a conventional toilet tank.

Figure 1 of Navarrette is a front elevational view of the valve assembly installed in a toilet tank with parts broken away. As shown, a conventional toilet water tank 10,

vertically oriented overflow tube 20. The free end portion of arm 13 is provided with a plurality of holes 23 adapted for attachment of two separate chains 68 and 76. Bottom wall 18 is provided with a conventional drain opening 14 in which is positioned a suitable gasket to insure a liquid-tight seal between lower inlet 34 and drain opening 14. Water is discharged from tank 10 into the toilet bowl through aligned opening 36 in discharge pipe 24 extending downwardly and secured to bottom wall 18 by internally threaded locking nut 26. Bottom wall 18 has also an opening for a filler pipe (not shown) which is needed to fill toilet tank 10 when emptied with water with the aid of a conventional float (not shown).

The main, one-piece, hollow body 22 of the valve assembly is positioned in the interior of tank 10 in generally central portion thereof. The hollow body 22 is substantially of L-shape configuration having a vertically disposed leg portion 22a and a horizontally disposed, by way of a gentle curve, leg portion 22b and includes upright overflow tube 20 positioned generally in the center of body 22 forming an integral part therewith for uninterrupted water circulation inside thereof. In order to insure a dual flush function of the assembly, two inlets are provided in body 22. Thus upper inlet 32

pivotally connected by its conventional clevis having a pair of apertures 60 to ears 64 projecting from outflow tube 20. Flap valve 44 pivots to about 45° when in its open position. Lower inlet 34 is disposed likewise at an acute angle to horizontal with the lower edge thereof being situated adjacent top surface of bottom wall 18 in close proximity thereto. As shown in Figure 1, the lower inlet 34, while in close proximity to the bottom wall 18, is nevertheless spaced from the bottom wall 18. Lower flap valve 46 disposed on the other side of overflow tube 20 is pivotally mounted at a lower level than flap valve 44 on the lower end portion of leg 22b of overflow tube 20 by a pair of apertures 62 in its projecting clevis attached to ear 66 projecting from each side of overflow tube 20. Lower flap valve 46 which is vertically spaced from upper valve 44 likewise rests on lower valve seat 42 and is positioned at a less acute angle to horizontal than upper valve 44 to keep lower inlet 34 closed in its normal position.

### **The anticipation rejection**

We will not sustain the rejection of claims 1 to 4 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

F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellant argues (brief, pp. 4-8; reply brief, pp. 1-2) that claims 1 to 4 are not anticipated since Navarrette's lower inlet 34 is not located directly adjacent to the bottom wall 18. In that regard, the appellant asserts that the phrase "directly adjacent" as used in the claims under appeal (i.e., a second opening located directly adjacent to a bottom surface of the means for containing (claim 1) and a second opening located directly adjacent to a bottom surface of the tank (claim 5) means that no step or ledge exists between the second opening and the bottom surface of the means for containing (i.e., the tank). In support thereof, the appellant refers to paragraph [0017] (pp. 7-8) of the specification and the plain and common meaning of the word "directly."

The examiner ascertained (answer, pp. 4-9) that the phrase "directly adjacent" as used in the claims under appeal reads on<sup>1</sup> Navarrette. The examiner asserts

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(answer, p. 5) that the term "directly adjacent" has been given its broadest reasonable interpretation consistent with the specification.<sup>2</sup>

The United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

In our view, the broadest reasonable meaning of the claimed phrase "directly adjacent" as it would be understood by one of ordinary skill in the art taking into account the enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellant's specification is that the second opening is located with respect to the bottom surface of the means for containing (i.e., the tank) such that no step or ledge exists between the second opening and the bottom surface

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portion 22b were to be placed into contact with the bottom surface 18 of the tank 10, the lower inlet 34 would still not be "directly adjacent" the bottom surface 18 due to the thickness of the leg portion 22b forming a step or ledge between the lower inlet 34 and the bottom surface 18 of the tank 10.

Since all the limitations of claim 1, and claims 2 to 4 dependent thereon, are not disclosed in Navarrette for the reasons set forth above, the decision of the examiner to reject claims 1 to 4 under 35 U.S.C. § 102(b) is reversed.

#### **The obviousness rejection of claim 2**

We will not sustain the rejection of claim 2 under 35 U.S.C. § 103.

In the obviousness rejection of dependent claim 2, the examiner determined (first Office action, p. 3) that the second opening being positioned at an angle of substantially 45 degrees from the bottom surface would have been obvious at the time the invention was made to a person of ordinary skill in the art. However, even if that were true, such would not arrive at the claimed invention for the reasons set forth above with respect to

### **The obviousness rejection of claims 5 to 15**

We will not sustain the rejection of claims 5 to 15 under 35 U.S.C. § 103.

In the obviousness rejections of claims 5 to 15, the examiner determined (first Office action, pp. 4-5) that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to arrive at the claimed invention. While it may have been obvious to have modified Tedei's second opening to be located adjacent the bottom wall as taught by Navarrette, such would not have arrived at the claimed invention for the reasons set forth above with respect to claim 1. In addition, we have reviewed the teachings of Ricalde Medina applied in the rejection of claim 14 and Kolb applied in the rejection of claim 15 but find nothing therein which teaches or suggests having the second opening located "directly adjacent" to a bottom surface of the tank.

For the reasons set forth above, the decision of the examiner to reject claim 5, and claims 6 to 15 dependent thereon, under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 2 and 5 to 15 under 35 U.S.C. § 103 is reversed.

REVERSED

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| NEAL E. ABRAMS              | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| CHARLES E. FRANKFORT        | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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| JEFFREY V. NASE             | ) |                 |
| Administrative Patent Judge | ) |                 |

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