

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(2) is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID B. CAMERON  
JOHN M. ANTOS  
and CHARLES L. SARGENT

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Appeal No. 1998-1970  
Application 08/587,134

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HEARD: APRIL 6, 2000

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Before COHEN, FRANKFORT and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 13 and 14, the only claims remaining in the application. Claims 1-12 have been canceled.

Appellants' invention relates to a sanitary toilet system

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with a manual pump providing flush water to the toilet. Of importance to appellants is the fact that the manual pump has a piston that is in a clearance relation with the cylinder, thereby reducing the force required for operating the pump. A copy of appealed claims 13 and 14, as they appear in the Appendix of appellants' brief, is attached to this decision.

The sole prior art reference of record relied upon by the examiner in rejecting claims 13 and 14 is:

Tarnawski	971,803	Oct. 4,
1910	Claims 13 and 14 stand rejected under 35 U.S.C.	
102(b)	as being anticipated by Tarnawski.	

Rather than reiterate the examiner's explanation of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make reference to the examiner's answer (Paper No. 18, mailed November 12, 1997) for the reasoning in support of the rejection, and to appellants' brief (Paper No. 17, filed September 29, 1997) and reply brief (Paper No. 19, filed January 15, 1998) for the arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given

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careful consideration to appellants' specification and claims,  
to

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the applied prior art reference, and to the respective positions articulated by appellants and by the examiner. As a consequence of this review, we have made the following determinations:

Before addressing the examiner's rejection specifically, we note that on page 4 of the brief, appellants have indicated that "claim 14 is more limited than claim 13" and thus "more patentable than claim 13." In contrast to the examiner, we understand this statement by the appellants to indicate that claims 13 and 14 should not be grouped together. Therefore we shall treat claims 13 and 14 separately.

An anticipation under 35 U.S.C. 102(b) is established when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

However, we observe that the law of anticipation does not require that the reference teach what the appellant has disclosed but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of

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the claim are found in the reference. See Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983).

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We turn first to the examiner's rejection of independent claim 13 on appeal. The examiner sets forth that Tarnawski

discloses a toilet system comprising: a bowl 9; a tank 20 including an inlet 21; a pump including a body 25, an inlet 27 having a valve 28, an outlet 39, a piston 32, and an opening 37; and means forming a conduit 42, as claimed. The recited "clearance" is considered inherent in the Tarnawski pump body and piston. See lines 18-22 on page 2 of Tarnawski. (answer, pg 4.)

Appellants dispute the examiner's conclusion that Tarnawski inherently discloses a clearance between the pump body and the piston. Appellants argue that Tarnawski is "more likely to be supportive of an argument that the piston is tightly mounted in the cylinder than it supports an argument that the piston is in a clearance relation with the cylinder." (Brief, pg 5.) Appellants rely on the disclosure of Tarnawski at page 2, lines 18-22 to demonstrate that Tarnawski did not intend for water to flow past the piston and therefore the pump body and piston arrangement of Tarnawski is presumed to be in a non-clearance relation. Appellants further argue that Tarnawski states that during depression of the plunger, the charge of water in the pump "is forcibly injected into the bowl" and that the term 'forcibly' is

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evidence of a non-clearance relation between the piston and the cylinder (brief, pp. 5-6.)

We do not find either of appellants' arguments convincing. Reviewing the Tarnawski patent and comparing the subject matter thereof to that set forth in appellants' claim 13 on appeal, we are in agreement with the examiner's position that the sanitary toilet defined in appellants' claim 13 is anticipated by the sanitary water closet of Tarnawski. We agree with the examiner that "the Tarnawski piston moves relative to the cylinder . . . and therefore must have some 'clearance relation' therewith."

(Answer, pg 4.) It is clear to us that a person of ordinary skill in the art would know that in order for a piston to move relative to the cylinder, some "clearance" inherently exists between the pump body and the piston to allow such movement.

We are not convinced by appellants' argument that Tarnawski does not inherently disclose a pump with a clearance piston. In our opinion, the fact that Tarnawski provides an opening (37) through which water is returned back in the tank (col. 2, lines 18-23) supports the conclusion that "some"

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water escapes through a "clearance" between the piston and the pump body for ejection back into the tank. This is all that the broad language of appellants' independent claim 13 requires.

Appellants' further argue that Tarnawski discloses a tight fitting piston that forcibly injects water into the bowl is equally unconvincing. As a preliminary matter, we find no mention in Tarnawski of a tight-fit or sealing arrangement between the piston and the pump body and appellants have pointed to none. A person of ordinary skill in the art would know that a given level of force from the pump is required to inject the water into the bowl such that the water travels with a circular motion around the interior of the bowl as the bowl is being flushed. Furthermore, appellants' claim 13 indicates that the piston is downwardly moveable within the pump body toward the pump outlet so as to "force water" from the pump body through the pump outlet (claim 13, lines 15-16). Thus, the mere indication in Tarnawski that the water is forcibly injected into the bowl, in no way serves to distinguish the water closet of Tarnawski from that set forth

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in appellants' claim 13 on appeal.

In addition, like the examiner (answer, pg 5), we are of the view that Figure 3 of Tarnawski clearly shows a clearance between the piston and the pump body which would allow some water in the bottom portion of the pump body below the upper edge of the spout (38) to be pushed past the piston into the cylindrical portion of the pump body as a consequence of the piston moving downward past the intersection of the cylindrical portion of the pump body (25) with spout (38). Because "some water" escapes past the piston

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during the downward stroke of the piston in the pump body of Tarnawski, the force needed to move the piston entirely to the bottom of its stroke is necessarily reduced.

Dependent claim 14 on appeal differs from claim 13 in that claim 14 specifically requires that the piston and pump body are "substantially circular in cross section and said piston has

a diameter which is less than a diameter of said pump body by 0.004 to 0.020 inches." The Examiner has failed to point to any disclosure in Tarnawski as to the relative diameters of the piston (32) and the cylindrical pump body (25), and we find none. Therefore, we will not sustain the examiner's rejection of claim 14 under 35 USC 102(b).

In light of the foregoing, we sustain the examiner's rejection of claim 13 under 35 U.S.C. 102(b) and reverse the examiner's rejection of claim 14 under 35 U.S.C. 102(b) based on Tarnawski. Accordingly, the decision of the examiner is affirmed-in-part.

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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-IN-PART

IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	)
	)	)
	)	)
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	)
Administrative Patent Judge	)	APPEALS AND
	)	)
	)	INTERFERENCES
	)	)
JOHN P. McQUADE	)	)
Administrative Patent Judge	)	)

CEF:hh

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HARNESS, DICKY & PIERCE  
P.O. BOX 828  
BLOOMFIELD HILLS, MI 48303

APPENDIX

13. A sanitary toilet system comprising:

a bowl having an open upper end and a bottom discharge outlet;

a tank for holding a quantity of flush water, said tank having an inlet through which said tank is filled with water;

a manually operable pump at least partially disposed in said tank for pumping flush water from said tank to said toilet bowl, said pump having a generally upright pump body defining an axis and having a lower end, said pump body having a water inlet with a valve at said lower end for receiving water from said tank and a pump outlet at said lower end through which water is pumped to said bowl; and

means forming a conduit between said pump outlet and said toilet bowl whereby water pumped through said pump outlet is delivered to said toilet bowl;

said pump further having a piston slidable within said pump body for pumping movement axially thereof, said piston being upwardly movable within said pump body away from said lower end so as to draw water into said pump body through said inlet and said piston being downwardly movable within said pump body toward said pump outlet so as to force water from said pump body

through said pump outlet, means forming an opening in said pump body above said piston whereby water in said pump body can flow between said tank and said pump body and a clearance between said piston and said pump body so that some of the water in said pump body escapes movement out of said pump body when said piston is moved downward by flowing through said clearance between said piston and said pump body whereby movement of said piston in said pump body is with

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reduced force on the piston relative to pumps in which the piston is in a sealing relation with the pump body

APPENDIX

14. The sanitary toilet system of claim 13 wherein said piston and said pump body are substantially circular in cross section and said piston has a diameter which is less than a diameter of said pump body by 0.004 to 0.020 inches.