

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES TESKEY

Appeal No. 97-1366
Application No. 08/281,318¹

HEARD: August 4, 1999

Before McCANDLISH, Senior Administrative Patent Judge and
PATE and GONZALES, Administrative Patent Judges.

GONZALES, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2 and 4 through 10. These claims

¹ Application for patent filed July 28, 1994. According to appellant, this application is a continuation of application no. 08/023,836, filed February 23, 1993, now abandoned.

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constitute all of the claims remaining in the application.²

Appellant's invention pertains to a closet flange for connecting an outlet of a toilet bowl with a waste water drain conduit through an opening in a floor. According to appealed claim 10, the closet flange includes an outer flange (24) and a discharge tube (26). The outer flange (24) includes at least two first apertures (32, 34) for connecting the outer flange to a floor and at least two second apertures (36, 36) for connecting the outer flange to a toilet bowl. The discharge tube (26) is rotatably connected to the outer flange by means of a press catch connector (62, 66). The press catch connector permits rotation of the discharge tube relative to the outer flange without raising or lowering the discharge tube relative to the outer flange. The discharge tube (26) further includes (i) an interiorly-positioned seal seat located proximate the outer flange which defines a first substantially circular opening, (ii) a distal end for coupling

² Claims 1 and 10 have been amended subsequent to final rejection.

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to a waste water drain conduit, and (iii) a curved tubing section (54) extending between the first substantially circular opening and the distal end and defining a curved centerline immediately below and continuously from the first substantially circular opening.

A correct copy of independent claims 1 and 10 is appended to the examiner's answer. A correct copy of dependent claims 2 and 4 through 9 can be found in the appendix to appellant's brief.

The references relied upon by the examiner as evidence of obviousness are:

McFarland	310,298	Jan. 06,
1885		
O'Donnell	1,091,697	Mar. 31,
1914		
McEwen	3,775,780	Dec. 04, 1973
Olsson	WO 92/19901	Nov. 12, 1992
(PCT Application)		

The following rejections are before us for review:

Claims 1 and 10 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to

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particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

Claims 1, 2, 4 through 7, 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over McEwen in view of McFarland and Olsson.

Claims 1, 2 and 4 through 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over McEwen, McFarland and Olsson, as applied to claims 1 and 10 above, and further in view of O'Donnell.

Reference is made to the appellant's brief (Paper No. 30) and to the examiner's answer (Paper No. 32) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

OPINION

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

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Turning first to the examiner's rejection of claims 1 and 10 under 35 U.S.C. § 112, second paragraph, it is the examiner's position that the claims are indefinite because (i) the "claims are unclear as to the structure defined by the language 'without raising or lowering . . . flange'" and (ii) the relationship between the "floor" recited in the body of the claims and the "floor" recited in the preamble of the claims is unclear (answer, pages 4 and 5). Appellant points out that it is the press catch connector which permits relative rotation between the outer flange and the discharge tube without raising or lowering the discharge tube relative to the outer flange, i.e., without any vertical displacement of the discharge tube (brief, pages 5 and 6). Appellant also believes that the amendments made to claims 1

and 10 subsequent to the final rejection clarified the use of the term "floor" (brief, page 5).

The definiteness of claim language is analyzed, not in a vacuum, but always in light at the teachings of the prior art

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and of the particular application disclosure as it would be interpreted by one possessing an ordinary level of skill in the pertinent art. In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). Claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976).

In our opinion, the recitation that the press catch connector permits rotation of the discharge tube relative to the outer flange without raising or lowering the discharge tube relative to the outer flange, when read in light of appellant's specification and drawings, would have apprised a person skilled in the art of the scope of the claims. It is also clear to us that the floor referred to in the body of the claims is the same

floor mentioned in the preamble. Since the examiner has not presented any reason why a person having ordinary skill in the

art would not understand the scope and meaning of claims 1 and

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10, we will not sustain the rejection of claims 1 and 10 under 35 U.S.C. § 112.

Turning next to the rejection of claims 1, 2, 4 through 7, 9 and 10 under 35 U.S.C. § 103 as being unpatentable over McEwen in view of McFarland and Olsson, the examiner describes Figure 1 of McFarland as teaching a discharge tube (A) including a curved tubing section and contends that "it would have been obvious to one of ordinary skill in the art to associate a curve with the McEwen tubing section in order to facilitate installation" (answer, page 6).

We share appellant's view that even if McEwen and McFarland were combined in the manner proposed, the resulting device still would fall short of meeting the limitation in claims 1 and 10 of a curved tubing section defining a "curved centerline immediately below and continuously from said first substantially circular opening." As correctly pointed out by the appellant (brief, page 9), Figure 1 of McFarland shows the upper end of pipe (A) extending downwardly from the flange (B) in a direction perpendicular to the flange. In fact, McFarland describes the end of the pipe (A) connected to the flange (B) as a "short

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vertical cylinder" (page 1, lines 98 and 99), that is, pipe
(A)

has a straight centerline immediately below the flange (B).
In order to meet the limitation in question, the art would
have to teach or suggest a tubing section defining a curved
centerline immediately below the seal seat (16) of McEwen. In
other words, the limitation in question precludes a tubing
section defining a straight centerline immediately below the
seal seat. The advantages of appellant's curved tubing
section are described at pages 7 and 8 of appellant's
specification. We can find nothing in the combined teachings
of McEwen and McFarland which would have suggested the
elimination of McFarland's upper straight section of pipe.
Olsson does not cure the foregoing deficiency in the McEwen-
McFarland combination.

Thus, the examiner's conclusion that the differences
between the subject matter recited in claims 1, 2, 4 through
7, 9 and 10 and the applied prior art are such that the
subject matter as a whole would have been obvious at the time
the invention was made to a person having ordinary skill in

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the art is not well founded. Accordingly, we will not sustain the 35 U.S.C. § 103 rejection of these claims based on McEwen, McFarland and Olsson.

The last of the examiner's rejections for our review is that of claims 1, 2 and 4 through 10 under 35 U.S.C. § 103 as being unpatentable over the combined teachings of McEwen, McFarland,

Olsson, and O'Donnell. The examiner considers O'Donnell as teaching the "continuously curved" and "non-edge bearing" language of independent claim 1 and concludes, that in any event, the feature is old and well known (answer, page 5).

Our review of O'Donnell reveals that the centerline of the tubing section of O'Donnell's pipe (1) immediately below the annular depression or seal seat (6) is straight, not curved. Thus, O'Donnell does not cure the deficiency in the McEwen-McFarland-Olsson combination that we discussed, supra.

With regard to the examiner's assertion that the "continuously curved" and "non-edge bearing" language is old and well known, we note that the assertion has been timely challenged by appellant and the examiner has provided no

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evidence to support the assertion. At any rate, for the reasons we have set forth above, we find that the limitation in claims 1 and 10 of a curved tubing section defining a "curved centerline immediately below and continuously from said first substantially circular opening" is not taught or suggested by the combined teachings of the applied prior art. Thus, we find that the examiner has not established a prima facie case of obviousness with regard to the claimed subject matter.

Accordingly, we will not sustain the 35 U.S.C. § 103 rejection of claims 1, 2 and 4 through 10 based on McEwen, McFarland, Olsson and O'Donnell.

Since we have found that the examiner has not established a prima facie case of obviousness with regard to the claimed subject matter, it is unnecessary for us to consider appellant's argument regarding the declarations filed under 37 CFR § 132.

To summarize, all rejections are reversed.

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REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
WILLIAM F. PATE, III)	APPEALS AND
Administrative Patent Judge)	
INTERFERENCES)	
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)	
JOHN F. GONZALES)	
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