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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/477,309	05/22/2012	Alan Fitzgerald	H-KN-02182	5873
112227	7590	11/01/2016	EXAMINER	
Covidien (Rhodes Donahoe) Attn: IP Legal Department 15 Hampshire Street Mansfield, MA 02048			CERIONI, DANIEL LEE	
			ART UNIT	PAPER NUMBER
			3736	
			NOTIFICATION DATE	DELIVERY MODE
			11/01/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ALAN FITZGERALD, CIARA DEIGHAN,  
PAUL J. DALY, and TOM ROBINSON

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Appeal 2015-001490  
Application 13/477,309  
Technology Center 3700

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Before JENNIFER D. BAHR, LINDA E. HORNER, and  
BRANDON J. WARNER, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Alan Fitzgerald et al. (“Appellants”)<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–3 and 5–17, which are all the pending claims. *See* Appeal Br. 1. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> According to Appellants, the real party in interest is Covidien LP. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Appellants' disclosed invention relates to "a urine meter for monitoring the flow of urine from a catheterised patient." Spec. ¶ 1. Claim 1, reproduced below with emphasis added, is the sole independent claim and is representative of the subject matter on appeal.

1. A urine meter having *a housing which includes a base wall*, a top wall substantially parallel to the base wall, an inlet and an outlet, the housing further including a first measurement chamber and a second measurement chamber separated by an interior wall extending from the base wall to the top wall and arranged such that liquid entering the inlet enters the first measurement chamber before passing to the second measurement chamber, wherein the housing is further provided with a first non-return valve between the first and second measurement chambers,

wherein the interior wall in combination with the first non-return valve prevent the flow of liquid from the second measurement chamber to the first measurement chamber with the first non-return valve in a closed position,

wherein the first non-return valve is supported on an internal partition included as a portion of the interior wall, and

wherein the first chamber and the second chamber are laterally adjacent to one another such that the interior wall has an overall vertical orientation, with the internal partition oriented in a substantially horizontal orientation.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Steigerwald	US 4,490,144	Dec. 25, 1984
Voges	US 6,348,046 B2	Feb. 19, 2002

## REJECTIONS

The following rejections are before us for review:

- I. Claims 1–3, 5–10, and 12–14 stand rejected under 35 U.S.C. § 102(b) as anticipated by Steigerwald.
- II. Claims 11 and 15–17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Steigerwald and Voges.

## ANALYSIS

Independent claim 1 recites, in relevant part, a urine meter including “a housing which includes a base wall.” Appeal Br. 16, Claims App. (emphasis added). Appellants argue that Steigerwald does not disclose a base wall as claimed. *See* Appeal Br. 5–9; Reply Br. 2–6. We agree.

In rejecting the claim, the Examiner found that “Steigerwald discloses a urine meter (10) . . . having a housing (12) . . . which includes a base wall (68, 70).” Final Act. 3 (citing Steigerwald, Figs. 1, 2, 4; col. 2, ll. 28–31; col. 3, ll. 53–55). More specifically, the Examiner relied on Steigerwald’s receptacle 12 to support the position that Steigerwald discloses a housing, and relied on valve element 68 and circular disc 70 to support the position that Steigerwald discloses a base wall. *Id.* The Examiner explains that the Specification does not explicitly define “a base wall,” and the broadest reasonable interpretation of this claim language, read in light of Appellants’ Specification, encompasses “a bottom structure that separates one area from another.” Ans. 14. According to the Examiner, “Steigerwald’s valve element (68) and circular disc (70) reads on the ‘base wall’ . . . because Steigerwald’s valve element (68) and circular disc (70) can be considered ‘a bottom structure that separates one area from another.’” *Id.* at 16; *see also*

*id.* (explaining that “[r]eference numerals ‘68’ and ‘70’ point to the lowest most structure in Fig. 4”).

We agree with Appellants that “[t]he structure relied on in rejecting claim 1 does not provide a ‘base wall’ under any reasonable interpretation.” Appeal Br. 6. To the extent that Steigerwald’s valve element 68 and circular disc 70 may be interpreted as a bottom structure that separates one area from another, these elements would represent a bottom structure of valve 18 (*see* Steigerwald, Fig. 2), but not a bottom structure of receptacle 12, which the Examiner identified as the claimed housing. Moreover, although Figure 4 of Steigerwald shows valve element 68 and circular disc 70 as the lowest structure of valve 18, neither of these elements is the lowest structure of receptacle 12 (i.e., the housing). Rather, as noted by Appellants, “valve (18) of Steigerwald is located in an upper region of the housing (12).” Reply Br. 3. Thus, the Examiner has not established by a preponderance of the evidence that Steigerwald discloses, either expressly or inherently, “a housing which includes a base wall,” as called for in claim 1.

Accordingly, based on the record before us—because an anticipation rejection requires a finding in a single reference of each and every limitation as set forth in the claims—we cannot sustain the rejection of independent claim 1, and its associated dependent claims 2, 3, 5–10, and 12–14, as anticipated by Steigerwald. Regarding Rejection II, we note that this rejection is premised on the same purported disclosure from Steigerwald, and that Voges is relied on for teaching additional features, but not to cure the deficiency of Steigerwald identified above. *See* Final Act. 6–9. Consequently, we also do not sustain the rejection of dependent claims 11 and 15–17 as being unpatentable over Steigerwald and Voges.

Appeal 2015-001490  
Application 13/477,309

DECISION

We REVERSE the Examiner's decision rejecting claims 1–3, 5–10, and 12–14 under 35 U.S.C. § 102(b) as anticipated by Steigerwald.

We REVERSE the Examiner's decision rejecting claims 11 and 15–17 under 35 U.S.C. § 103(a) as being unpatentable over Steigerwald and Voges.

REVERSED