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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/039,759	03/03/2011	Frank A. Stauder	123-3013-U2;60137-625PUS1	1528
82074	7590	12/09/2016	EXAMINER	
Carlson, Gaskey & Olds/Masco Corporation 400 West Maple Road Suite 350 Birmingham, MI 48009			BARRY, DAPHNE MARIE	
			ART UNIT	PAPER NUMBER
			3753	
			NOTIFICATION DATE	DELIVERY MODE
			12/09/2016	ELECTRONIC

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* FRANK A. STAUDER, XAN VY DU, and  
ROBERT KROPINIEWICZ

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Appeal 2015-001889<sup>1,2</sup>  
Application 13/039,759  
Technology Center 3700

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Before PHILIP J. HOFFMANN, JAMES L. WORTH, and  
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Claim 1 is the only independent claim. *See* Appeal Br., Claims App.  
We reproduce claim 1, below, as representative of the appealed claims.

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<sup>1</sup> Our decision references Appellants’ Appeal Brief (“Appeal Br.,” filed June 16, 2014) and Reply Brief (“Reply Br.,” filed Nov. 10, 2014), as well as the Examiner’s Answer (“Answer,” mailed Oct. 1, 2014).

<sup>2</sup> According to Appellants, Masco Canada Limited is the real party in interest. Appeal Br. 1.

1. A flush valve, said flush valve comprising:
  - a valve body having an inlet and an outlet;
  - a piston disposed in said valve body between said inlet and said outlet; and
  - a seating surface disposed in said valve body for seating said piston, said seating surface tapering inward as it passes into said outlet.

*Id.*

#### REJECTIONS AND PRIOR ART

The Examiner rejects claims 1, 2, and 5–12 under 35 U.S.C. § 102(b) as anticipated by Martin (US 5,970,527, iss. Oct. 26, 1999).

The Examiner rejects claims 3 and 4 under 35 U.S.C. § 103(a) as unpatentable over Martin.

*See Answer 2–6.*

#### ANALYSIS

Independent claim 1 recites, among other features, “*a seating surface disposed in said valve body for seating said piston, said seating surface tapering inward as it passes into said outlet.*” Appeal Br., Claims App. (emphasis added). Appellants argue that the rejection is in error because Martin fails to disclose this feature. *See Appeal Br. 2–3; see also Reply Br. 1–3.* Based on our review of the record, for the reasons set forth below, we agree with Appellants. Thus, we do not sustain the rejection of claim 1.

The Examiner finds that Martin’s valve assembly 16 and valve seating surface 108 teach the claimed valve body and seating surface, respectively. *See, e.g., Answer 2.* In response to Appellants’ argument that Martin’s valve seating surface 108 is not disposed in valve assembly 16 (*see, e.g., Appeal*

Br. 2–3), the Examiner cites Martin’s Figure 3 as well as column 3, lines 51–58, and column 5, lines 5–7, as supporting the finding (*see* Answer 2, 7).

We determine that Figure 3 does not show valve seating surface 108 disposed in valve assembly 16. Further, although a portion of the cited text in Martin describes that valve cylinder 100 is included in valve assembly 16, the text describes that “cylinder 100 *terminates short of* a conical valve seating surface 108”—i.e., the seating surface is not part of or disposed in the valve cylinder. Martin col. 5, ll. 2–4 (emphasis added). This portion of Martin does not state that seating surface 108 is disposed in or a part of valve cylinder 100, or that seating surface 108 is otherwise disposed in valve assembly 16. Further, to the extent that the Examiner’s statements beginning with “[Appellant] could argue that Martin’s housing 14 is the valve body” (Answer 8) might otherwise be understood to be an alternate interpretation of the reference and reason for rejection, we are not willing to characterize this statement as an alternative interpretation of the reference or reason for rejection, inasmuch as Appellants do not, in fact, argue that Martin’s housing is the valve body. Thus, we determine that the Examiner does not support the finding with substantial evidence.

Based on the foregoing, we do not sustain the rejection of claim 1. We also do not sustain the rejections of claims 2–12 that depend from claim 1, as the Examiner does not find that any other reference remedies the deficiency in the rejection of claim 1.

Appeal 2015-001889  
Application 13/039,759

DECISION

We REVERSE the Examiner's anticipation and obviousness rejections of claims 1–12.

REVERSED