

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLUIDMASTER, INC.

Petitioner

v.

DANCO, INC.
Patent Owner

Case No. IPR2024-00633
U.S. Patent No. 9,139,993 B1

PETITIONER'S REQUEST FOR REHEARING

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Exh. No.	Description of Exhibit
EX1001	U.S. Patent No. 9,139,993 to Schuster et al.
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EX1005	U.S. Patent No. 10,934,698 to Schuster et al.
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EX1007	U.S. Patent No. 9,103,105 to Schuster et al.
EX1008	Prosecution History of U.S. Patent No. 9,103,105 to Schuster et al. (Application No. 14/457,697, filed August 12, 2014)
EX1009	Prosecution History of U.S. Patent No. 8,650,671 to Schuster et al. (Application No. 13/346,355, filed January 9, 2012)
EX1010	Prosecution History of U.S. Patent No. 8,104,105 to Schuster et al. (Application No. 12/786,904, filed on May 25, 2010)
EX1011	Prosecution History of U.S. Patent No. 7,743,436 to Schuster et al. (Application No. 10/958,797, filed October 5, 2004)
EX1012	Prosecution History of U.S. Patent No. 6,823,889 to Schuster (Application No. 10/798,606, filed on Mar. 11, 2004)
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EX1014	U.S. Patent No. 6,546,568 B1 to Schuster issued April 15, 2003 from Application No. 09/969,320 filed October 1, 2001, as a continuation of Application No. 09/634,249 filed August 8, 2000 (now U.S. Patent No. 6,295,660)

Exh. No.	Description of Exhibit
EX1015	Registered Utility Model Publication Number CN2447417Y to Guoxin published September 12, 2001
EX1016	Certified Translation (together with a statement that the translation is true and accurate) of Registered Utility Model Publication Number CN2447417Y to Guoxin published September 12, 2001
EX1017	U.S. Patent No. 5,926,868 to Bjerke issued July 27, 1999
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EX1019	U.S. Patent No. 989,251 to Hall issued April 11, 1911
EX1020	Canadian Patent No. 1,320,235 to Kimber granted and published July 13, 1993
EX1021	U.S. Patent No. 3,086,546 to Brown issued April 23, 1963
EX1022	U.S. Patent No. 5,862,538 to Ho issued June 26, 1999
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EX1028	U.S. Patent No. 6,219,856 to Alles issued April 24, 2001
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Exh. No.	Description of Exhibit
EX1033	Declaration of Ranjini Acharya in Support of Petitioner's Motion for Admission <i>Pro Hac Vice</i> of Ranjini Acharya
EX1034	Order Granting Defendant's Motion to Stay Case Pending IPR (Dkt. 48) in <i>Danco, Inc. v. Fluidmaster, Inc., et al.</i> , Case No. 8:23-cv-01156 (C.D. Cal.), entered April 3, 2024
EX1035	Comparison of Annotated Figures in Petition (Paper 1) and Expert Declaration (EX1004)
EX1036	Supplemental Expert Declaration of Dr. Kimberly K. Cameron, Ph.D., dated March 19, 2025
EX1037	Transcript of Deposition of Michael Jobin, taken March 11, 2025
EX1038	Demonstrative of Figure 7 of EX1022 (Ho), marked during deposition of Michael Jobin, taken March 11, 2025

GLOSSARY

Abbreviation	Term
'606 Application	U.S. Patent App. No. 10/798,606
'698 Patent	U.S. Patent No. 10,934,698
'904 Application	U.S. Patent App. No. 12/786,904
'105 Patent	U.S. Patent No. 9,103,105
'993 Patent	U.S. Patent No. 9,139,993
Board	USPTO Patent Trial and Appeal Board
Challenged Claims	Claims 1-20 of the '993 Patent
Danco, Patent Owner, or PO	Danco, Inc.
Fluidmaster or Petitioner	Fluidmaster, Inc.
FWD	Final Written Decision, IPR2024-00633 Paper 45
Institution Decision, or ID	IPR2024-00633, Paper 21
Parties	Danco and Fluidmaster, collectively
Petition	IPR2024-00633, Paper 1
POR	IPR 2024-00633, Paper 26 (Patent Owner Response)
POSITA	Person of Ordinary Skill in the Art
Reply	IPR 2024-00633, Paper 30 (Petitioner's Reply)
USPTO	United States Patent and Trademark Office

I. PRECISE RELIEF REQUESTED

Petitioner respectfully requests rehearing of the FWD under 37 C.F.R. § 42.71(d) as it relates to Ground 5 of the Petition.¹

The FWD misapprehends or overlooks key record evidence on the threshold issue that controls Ground 5: whether the '993 Patent is entitled to the March 11, 2004 filing date of the '606 Application. The FWD treats the '606 Application as disclosing not only an adjustable “bowl fill valve,” but also the broader class of fixed, non-adjustable “water flow regulators,” and on that basis finds that the '993 Patent is entitled to the March 11, 2004 priority date. FWD at 48–50. That conclusion turns on three misapprehensions.

First, this reading of the '606 Application mistakenly relies on the concept of “regulated” flow, while overlooking that the disclosure ties that function to an adjustable, rather than fixed, device. As explained below, the '606 Application repeatedly identifies adjustability as a defining feature of the invention, without any disclosure of a non-adjustable or fixed device.

Second, the FWD overlooks the record evidence, particularly the testimony of Dr. Cameron, explaining how a POSITA would have understood the '606

¹ Fluidmaster reserves the right, and does not waive, its right to raise any and all issues and challenges otherwise available to it in any appeal or other review of the FWD regarding any of Ground 5 or any of the other Grounds that are the subject of the Petition and the FWD.

Application. Dr. Cameron specifically addressed the same passages relied upon by the FWD and explained that a POSITA would have understood them to disclose only the species of an adjustable bowl fill valve, not the broader genus of fixed and adjustable water flow devices. The FWD criticizes Petitioner for failing to rebut PO's expert on this point, but in so doing, erroneously overlooks Dr. Cameron's detailed explanation drawn from the specification and prosecution history.

Third, to bridge the gap from the discussion of an *adjustable* valve in '606 Application to the later-claimed *fixed* devices, the FWD erroneously credits PO's expert's testimony, wrongly equating functional language ("the flow of water is regulated") with the specific disclosure of a structure. That testimony improperly reads the later-claimed term "water flow regulator" back into the '606 Application despite record evidence (including statements made by PO during prosecution) showing that the "restriction" and "regulator" terminology was later introduced in a continuation-in-part, to broaden beyond an adjustable-only "bowl fill valve."

Correcting these misapprehensions compels the conclusion that claims 1-18 of the '993 Patent are not entitled to the 2004 priority date, and that therefore the Board should have found in favor of Petitioner on Ground 5. Accordingly, Petitioner respectfully requests that the Board grant rehearing and modify the FWD to find the challenged claims unpatentable under Ground 5 of the Petition.

II. THE FWD MISAPPREHENDED THE RECORD IN CONCLUDING THAT THE '993 PATENT IS ENTITLED TO A 2004 PRIORITY DATE

The '993 Patent claims a “water flow regulator,” a term that encompasses both adjustable and non-adjustable devices for regulating the flow of water into the bowl. Consequently, the '993 Patent can only claim priority back to the '606 Application if the '606 Application complies with the written description requirement of 35 U.S.C. § 112(a) for both adjustable and non-adjustable water flow devices – that is, if the invention as described in the '606 Application included both adjustable and non-adjustable water flow devices.²

As explained in the Petition, the priority dispute turns on whether the earlier applications disclosed anything broader than an adjustable “bowl fill valve.” Petition at 91 (“The patent applications to which the '993 patent claims priority do not include the expressions “bowl fill restriction” or “water flow regulator.”). The FWD found, contrary to Petitioner’s arguments, that the '606 Application encompassed fixed and adjustable devices, and therefore concluded that the '993

² On its face, the '993 Patent claims priority to a number of earlier parent applications, including Appl. No. 12/786,904 (“the '904 Application”), filed on May 25, 2010, now Pat. No. 8,104,105 (as a continuation) and Appl. No. 10/798,606 (“the '606 Application”), filed on Mar. 11, 2004, now Pat. No. 6,823,889 (as a continuation-in-part). *See* Petition, at 7. Therefore, while Petitioner agrees with the FWD that there is some overlap between the '904 Application and the '606 Application (*see* FWD, 47, n. 14), Petitioner notes that the specifications of the '904 Application and the '606 Application are not identical.

Patent could claim priority to the filing date of the '606 Application. FWD at 48–50.

In reaching this conclusion, the FWD cites the following passage from the '606 Application, which also appears verbatim in the specification of the '993 Patent:

[W]hen the toilet fill valve 100 is open and water flows from the water inlet 103 to the water outlets 106 and into a toilet tank, an amount of water is also supplied to the bowl fill valve inlet 113 that flows through the bowl fill valve 109 and out the bowl fill valve outlet 116. By virtue of the manual setting of handle 119 of the bowl fill valve 109, the *flow of water through the bowl fill valve 109 is regulated*. In this manner, the flow of water is *regulated so that enough water flows out of the bowl fill valve 109 to fill a toilet bowl without wasting any water down a drain*.

FWD at 48–49 (quoting EX1012 at 47, ¶ 8; EX1001 at 2:28–39) (emphasis as in FWD). The FWD relies on the emphasized portions of this passage to conclude that “the '606 Application discloses *regulating* an amount of water supplied to a toilet bowl using a valve (*i.e.*, a water flow regulator).” *Id.* (emphasis as in FWD) (*citing* EX2013, ¶ 288). From this, the FWD concludes, the '606 Application supports a claim reciting water flow regulators generally, encompassing both fixed and adjustable devices. *Id.* However, in reaching this conclusion, the FWD misapprehends the disclosure of the '606 Application and misapprehends or overlooks the testimony and evidence that demonstrates the invention, *as described in the '606 Application*, was directed to and limited to adjustable water flow devices.

The issue presented is not whether “the ’606 Application discloses *regulating* an amount of water supplied to a toilet bowl using a valve (*i.e.*, [***one type of***] a water flow regulator).” *Id.* (bolded language added). The issue is whether the ’606 Application describes the invention as encompassing the genus of water flow regulators (*e.g.*, adjustable valves and fixed restrictors) or only describes the invention as using a particular species, namely, one that is adjustable. The answer to that question is the latter. In that regard, the FWD fails to address portions of the record that establishes that the ’606 Application was directed ***only*** to adjustable valves and misapprehends the significance of the portions of the record on which the FWD relies (including the declaration of PO’s expert, Mr. Jobin).

A. The FWD Overlooks Record Evidence that the ’606 Application Discloses Only Adjustable Devices for Regulating the Flow of Water into the Bowl

Earlier in the same passage that the FWD identifies, the claimed invention of the ’606 Application (the “bowl fill valve 109”) is described as having a “handle 119” that can be manually set. EX1012 at 47, ¶ 6. The presence of the handle (described as being manually set to change the flow of fluid moving through the claimed bowl fill valve) demonstrates that the regulation of water flow in the ’606 Application is achieved through an *adjustable*, not fixed, bowl fill valve. By overlooking this portion of the quoted passage entirely, the FWD fails to address this distinction.

Moreover, other passages in the '606 Application confirm that the handle 119 is the means by which the bowl fill valve is adjusted, and by which it can be readjusted even after installation. For example, “[t]he biased positions of the bowl fill valve 109 help ensure that the bowl fill valve 109 remains in a given setting selected by a user by a manual manipulation of the handle 119 during the normal course of operation of the toilet fill valve 100.” EX1012 at 48, ¶ 11. And, “[i]f the amount of water that flows into the toilet bowl is inadequate to refill the toilet bowl during the flush cycle as described above, then one should repeat the steps of adjusting the bowl fill valve....” EX1012 at 50, ¶ 19. Thus, it is not the case that handle 119 is set once and the bowl fill valve 109 is “fixed” thereafter; rather the handle is the means by which the bowl fill valve remains adjustable throughout its life cycle.

This concept reinforces the fact that the '606 Application was clearly directed to an ***adjustable*** (and not fixed) bowl fill valve. See Reply at 25 (*citing* EX1012 at 47, ¶ 9 (“Thus, the bowl fill valve 109 is configured to supply an ***adjustable*** flow of water out of the bowl fill outlet 116...”); *id.*, 48, ¶ 16 (“The bowl fill valve 109 is configured to supply the ***adjustable*** flow of water out the bowl fill valve outlet through the tube 146...”)) (emphases added). The FWD does not address these disclosures at all, nor does the FWD address the absence of any disclosure in the '606 Application describing a static, fixed, or non-adjustable bowl fill device.

B. The FWD Relies On and Misapprehends the Significance of the Unsupported Testimony of PO's Expert

In reaching the conclusion that the '606 Application contains disclosures sufficient to disclose a fixed device including the claimed “water flow regulator” of the '993 Patent, the FWD relies on the testimony of PO's expert, Mr. Jobin. *See* FWD, 49 (*citing* EX2013, ¶ 288). But a closer examination of Mr. Jobin's declaration demonstrates that this reliance is misplaced as the FWD misapprehends the substance of Mr. Jobin's testimony.

Mr. Jobin's declaration included specific definitions of “valve,” “restrictor,” and “regulator.” *See* EX2013, ¶¶ 281–288. He began by expressly characterizing a “valve” as “an *adjustable* device.” EX2013, ¶ 281 (emphasis added). He then conceded that the term “restrictor,” which he described as a “typically static (i.e. non-adjustable) device” does not appear anywhere in the '606 Application. *Id.*, ¶ 284. That point is significant, because PO took the position during prosecution that when it replaced “bowl fill valve” with “bowl fill restriction” (which it did for the first time in the application that led to the '993 Patent), that it intended to capture something that was *broad*er than the claimed “bowl fill valve” of the '606 Application. *See* EX1002 at 133. Mr. Jobin agreed with that characterization.

EX2013, ¶ 286.³ Petitioner pointed out and relied on this prosecution history, which the FWD does not address. *See, e.g.*, Reply at 26.

Mr. Jobin then offered testimony regarding a “regulator,” which he opined covers the genus of both fixed devices (restrictors) and adjustable devices (valves). *See* EX2013, ¶ 287. But Mr. Jobin did not (and indeed could not) suggest that the specific claim term “water flow regulator” of the ’993 Patent appears in the ’606 Application. (It does not). In the absence of that specific disclosure, Mr. Jobin points to a passage that states that “the *flow* of *water* through the bowl fill valve 109 is *regulated*,” and concluded ***solely*** on this basis that the ’606 Application therefore contains “sufficient disclosure” to show that the patentee was also in possession of the broader “water flow regulator.” EX2013, ¶¶ 288-289 (emphasis in original). The FWD relies on this specific testimony from Mr. Jobin’s declaration to conclude that the ’606 Application discloses both the species (adjustable bowl fill valve) and the genus (fixed or adjustable water flow regulators). *See* FWD, 49.

But Mr. Jobin’s conclusion does not support the inference that the FWD draws. The description of the ***function*** of a species is not sufficient to satisfy the

³ Moreover, PO has conceded that its subsequent replacement of “bowl fill restriction” with “water flow regulator” in the ’993 Patent was a merely “***stylistic***” replacement (POR at 5), which confirms that the claimed “water flow regulator” of the ’993 Patent is likewise ***broader*** than the claimed adjustable “bowl fill valve” of the ’606 Application.

written description requirement so as to disclose the *structure* of a genus. Reply at 26 (*citing Regents of the Univ. of California v. Eli Lilly & Co.*, 119 F.3d 1559, 1568 (Fed. Cir. 1997) (“The description requirement of the patent statute requires a description of an invention, not an indication of a result that one might achieve if one made that invention.”)); *see also* Petition at 89 (*citing Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1350 (Fed. Cir. 2010) (*en banc*) (in requiring that the written disclosure must identify either a representative number of species or common structural features, the reviewing court noted “[m]erely drawing a fence around the outer limits of a purported genus is not an adequate substitute for describing a variety of materials constituting the genus and showing that one has invented a genus and not just a species.”)).

By relying on Mr. Jobin’s improper conclusion, the FWD misapprehends the significance of this testimony. In fact, Mr. Jobin’s declaration as to whether the claimed “water flow regulator” of the ’993 Patent has sufficient written support in the ’606 Application, does not cure the absence of disclosure in the ’606 Application and therefore cannot support the FWD’s priority determination.

C. The FWD Misapprehended the ’606 Application as Discussing Both Fixed and Adjustable Devices

The ’606 Application discloses several types of valves, namely, “a ball valve, a gate valve, a globe valve, a plug valve, a diaphragm valve, a butterfly valve, a

needle valve, a sliding gate, a quick turn valve, a knife valve or any other appropriate type of valve as can be appreciated by those with ordinary skill in the art.” FWD, 49 (quoting EX1012 at 48). In his declaration, Mr. Jobin opined that a “valve” is understood as an adjustable (not fixed) device. *See* EX2013, ¶ 281. Accordingly, the list does not provide any examples of fixed devices. Nevertheless, he opined, a POSITA would have understood the ’606 Application to disclose both adjustable and non-adjustable flow control structures. *Id.* ¶ 290. He offered only one example: a “flow control valve” (which is not listed in the disclosure of the ’606 Application), which he opined is “static (*i.e.* non-adjustable) devices that restrict the flow rate through the device.” *Id.*

The FWD relies on this testimony to conclude that a POSITA would have understood the phrase “or any other appropriate type of valve” in the ’606 Application to include static, non-adjustable devices with no moving parts. FWD, 49 (*citing* EX2013, ¶¶ 290, and “Ex. 2009 (disclosing a static flow control valve)”). This reliance again reflects a misapprehension of the evidence in the record that would properly inform a POSITA’s understanding of the ’606 Application as of 2004.

There is no evidence that a POSITA would have known of a “flow control valve” in 2004, much less have understood the ’606 Application to encompass it. During his deposition, Mr. Jobin conceded that EX2009 was provided to him by

PO's counsel and that he did not know the date, author, or provenance of EX2009. EX1037 at 58:20–62:13; *see also* Reply at 25, n. 16. Thus, there is in fact ***no evidence*** that the inventors possessed an invention that extended to fixed or static devices as well as adjustable valves, nor that a POSITA would have understood “any other appropriate type of valve” to encompass both fixed and adjustable devices. *Id.*

D. The FWD Overlooks Petitioner's Evidence Rebutting PO's Arguments Regarding a POSITA's Understanding Attributed to the '606 Application

The FWD criticizes Petitioner for failing to “sufficiently rebut Mr. Jobin's testimony as to what a POSITA would know from these disclosures of the '606 Application.” FWD at 49 (*citing* EX1004, ¶¶ 325–333). That overlooks material, un rebutted record evidence. Dr. Cameron in fact specifically described what a POSITA would have understood from the '606 Application – namely, that the flow of water into the bowl was regulated by an ***adjustable*** valve.

Specifically, Dr. Cameron pointed to the same list of embodiments listed in the '606 Application and explained that this disclosure identifies only the species of adjustable valves and not the genus of fixed water flow devices. EX1004, ¶ 332 (“Every embodiment disclosed for a bowl fill valve required some type of valve, including “any other appropriate type of valve,” and if the inventors had intended to more broadly capture any fixed mechanisms as well, then “the inventors had every

opportunity to disclose such a mechanism, but did not do so.”); *see also* Petition at 91.⁴

Dr. Cameron further explained that, consistent with all the disclosed embodiments, the ’606 Application quite clearly framed the invention (and therefore a POSITA would have understood the invention to be limited to) one in which water flowing into the bowl is regulated by an adjustable valve and not a fixed restrictive device. *See* Petition at 91 (*citing* EX1004, ¶ 328 (prior to the filing for the ’993 Patent, all the applications, including the ’606 Application, were titled “Toilet Fill Valve *with Adjustable Bowl Fill Flow*” with an Abstract stating “*The bowl fill valve is configured to supply an adjustable flow of water* out the bowl fill outlet port for filling a toilet bowl during a flush cycle of a toilet.”); ¶¶ 329-330 (quoting several statements in the specifications making it clear that adjustability of the bowl fill valve is a desirable and indeed essential feature of the invention)).

Dr. Cameron also noted that PO asserted that the later-claimed “bowl fill restriction” (and then “water flow regulator”) was a broader category of “fixed or adjustable” devices, as opposed to the original (adjustable) “bowl fill valve,” which also confirmed that a POSITA would have understood the ’606 Application to

⁴ And Mr. Jobin agreed that a POSITA would generally understand “valves” to refer to the species, *i.e.* adjustable (non-fixed) devices. *See* EX2013, ¶ 281.

disclose and claim only the species and not the genus. *See, e.g.,* EX1036, ¶¶ 13–14; Reply at 21.

Finally, Dr. Cameron testified that because a fluid flow restrictor (which is typically a static fixed device) is not capable of being adjusted once installed, replacing the bowl fill valve with a non-adjustable restricting mechanism would defeat the purpose of the invention of the '606 Application. *See* Petition at 91 (*citing* EX1004, ¶ 330). In this regard, Dr. Cameron's testimony is in fact consistent with Mr. Jobin, who conceded during his deposition that—contrary to PO's claim that once installed, "the 'valve' is not adjusted further," (POR at 74)—the claimed "bowl fill valve" *can* be adjusted after installed. *See* Reply at 25-26 (*citing* EX1037 at 22:12–21). This testimony of Dr. Cameron thus refutes the notion that the '606 Application also describes non-adjustable water flow structures.

Accordingly, because the priority determination in the FWD rests on overlooking disclosures in the '606 Application that are limited to adjustable valves, and on crediting testimony that improperly reads later-claimed concepts back into that earlier application, the FWD misapprehends the record in concluding that the '606 Application supports the full scope of the claimed "water flow regulator," and rehearing is warranted as to Ground 5.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Board overlooked material evidence in denying Ground 5. When the record is properly considered, the '606 Application discloses only an adjustable bowl fill valve and does not support the priority determination adopted in the FWD. Petitioner therefore respectfully requests that the Board grant rehearing and modify the FWD to find the challenged claims unpatentable under Ground 5.

Dated: January 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 14, 2026, a true copy of the foregoing **PETITIONER’S REQUEST FOR REHEARING** and all exhibits/attachments thereto were served in their entirety via electronic mail on the following attorneys of record:

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Dated: January 14, 2026

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