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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/538,419	06/29/2012	Aubra D. MCKISIC	091078.1699	8507
5073	7590	12/02/2016	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			SMITH, JASON C	
			ART UNIT	PAPER NUMBER
			3617	
			NOTIFICATION DATE	DELIVERY MODE
			12/02/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AUBRA D. MCKISIC

Appeal 2014-010004
Application 13/538,419
Technology Center 3600

Before JILL D. HILL, LISA M. GUIJT, and ERIC C. JESCHKE,
Administrative Patent Judges.

JESCHKE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Aubra D. McKisic (“Appellant”) seeks review under 35 U.S.C. § 134(a) of the Examiner’s decision, as set forth in the Final Office Action dated November 8, 2013 (“Final Act.”), and as further explained in the Advisory Action, dated January 13, 2014 (“Adv. Act.”), rejecting claims 1–9 and 11–22.¹ The Examiner objects to claim 10 but indicates that it would be allowable if rewritten in independent form. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellant identifies Trinity Industries, Inc. as the real party in interest. Br. 3.

BACKGROUND

The disclosed subject matter “relates generally to supports or gussets for tank car nozzles and tank cars including such gussets for reinforcing nozzles.” Spec. ¶ 1. Claims 1 and 16 are independent. Claim 1 is reproduced below, with emphasis added:

1. A tank car, comprising:
 - a body comprising a wall;
 - a nozzle opening formed in the wall, the nozzle comprising a projecting portion extending from the wall;
 - a reinforcing pad disposed on the wall, adjacent to the nozzle,
 - a gusset configured to support the nozzle, the gusset comprising:
 - a portion of a cylinder having a predetermined radius,*
 - the portion of the cylinder comprising a first edge disposed adjacent to a surface of the nozzle and a second edge disposed adjacent to a surface of the reinforcing pad,* such that an axis of the portion of the cylinder intersects an axis of the nozzle at a predetermined angle,
 - wherein the predetermined radius and the predetermined angle are configured such that an arc of the portion of the cylinder extends less than approximately 180 degrees.

REJECTION

Claims 1–9 and 11–22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Dalrymple '554 (US 2006/0185554 A1, published Aug. 24, 2006) and Dalrymple '719 (US 5,467,719, issued Nov. 21, 1995).

DISCUSSION

Independent claim 1 recites “a gusset configured to support the nozzle, the gusset comprising: a portion of a cylinder having a predetermined radius, the portion of the cylinder comprising a first edge disposed adjacent to a surface of the nozzle and a second edge disposed adjacent to a surface of the reinforcing pad” and independent claim 16 recites “[a] gusset for a nozzle of a tank car . . . comprising: a portion of a cylinder having a predetermined radius, the portion of the cylinder comprising a first edge configured to be coupled to a circumferential surface of the nozzle and a second edge configured to be coupled to a circumferential surface of the reinforcing pad.” Br. 18, 21 (Claims App.). To address these limitations in the Rejection, the Examiner identified angled external reinforcement 250 in Dalrymple '554 as the “gusset.” *See* Final Act. 2–3 (citing Dalrymple '554, Fig. 4).

Appellant contends that angled external reinforcement 250 “does not describe a portion of a cylinder,” but rather, “is a portion of a solid figure of which one end is circle, and the other end is a point, much like a portion of a cone.” Br. 12. According to Appellant, the term “cylinder” describes a solid figure defined by “a *straight line moving parallel* to itself along a curved surface having a fixed radius.” *Id.* (citing the Oxford English Dictionary). Appellant argues that the surface of angled external reinforcement 250 “does

not disclose, teach, or suggest a straight line moving parallel to itself as required by the definition of a cylinder” and that, instead, “a straight line running along the surface of the conical gusset 250 . . . would intersect a straight line defining any other portion of the surface of conical gusset 250.” *Id.* at 13.

The Examiner responds, “since [A]ppellant is only claiming ‘a portion’, then the circle of the gusset of Dalrymple ’554 meets this claimed limitation.” Ans. 2. The Examiner also states, “[A]ppellant does not specify what ‘a portion’ consists of, so therefore it has been interpreted that the top portion of gusset (250) of Dalrymple [’554] meets this limitation.” *Id.*

Here, the Examiner has identified angled external reinforcement 250 as the recited “gusset” and has identified “the circle” (or “the top portion”) of angled external reinforcement 250 as the recited “portion of a cylinder.” *See* Final Act. 2–3; Ans. 2.² Even assuming that the identified structures satisfy the requirement for a “gusset” comprising “a portion of a cylinder,” claims 1 and 16 recite additional requirements for “the portion of the cylinder.” Specifically, claim 1 recites “the portion of the cylinder comprising a first edge disposed adjacent to a surface of the nozzle and a second edge disposed adjacent to a surface of the reinforcing pad” and claim 16 recites “the portion of the cylinder comprising a first edge configured to be coupled to a circumferential surface of the nozzle and a second edge configured to be coupled to a circumferential surface of the reinforcing pad.”

² We understand “the circle” (or “the top portion”) of angled external reinforcement 250 as the portion of angled external reinforcement 250 adjacent cylinder portion 232 of protective housing 238. *See* Dalrymple ’554, Figs. 3, 4.

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Br. 18, 21 (Claims App.). Here, the Examiner has not shown that “the circle” (or “the top portion”) of angled external reinforcement 250—i.e., the identified “portion of a cylinder”—satisfies these additional requirements.

For these reasons, we do not sustain the rejection of claims 1 and 16, and also do not sustain the rejection of claims 2–9 and 11–15 (which depend from claim 1) or claims 17–22 (which depend from claim 16).

DECISION

We REVERSE the decision to reject claims 1–9 and 11–22 under 35 U.S.C. § 103(a).

REVERSED