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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRENT COX

Appeal 2017-011583
Application 14/017,891
Technology Center 3600

Before JOSIAH C. COCKS, WILLIAM A. CAPP, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

This is a decision on appeal by Appellant under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3, 6–10, 12–14, 17, 19, and 20 of Application 14/017,891 (“the ’891 application”).^{1, 2} We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. Reference Relied on by the Examiner

Brey US 2011/0311311 A1 Dec. 22, 2011

B. Rejections on Appeal

The Examiner rejected claims 1, 3, 6–10, 12, and 13 under 35 U.S.C. § 102(a)(1) as anticipated by Brey.

The Examiner rejected claims 14, 17, 19, and 20 under 35 U.S.C. § 103 as unpatentable over Brey.

C. The Invention

The Specification of the ’891 application characterizes the field of the disclosed invention as follows:

The present invention relates to blowout preventer systems for use with subsea wells. More particularly, the present invention relates to capping stacks as used in association with the

¹ In this opinion, we make reference to the Examiner’s Answer mailed June 6, 2017, 2017 (“Ans.”), Appellant’s Appeal Brief filed January 26, 2017 (“App. Br.”), and the Final Rejection mailed June 29, 2016 (“Final Rej.”)

² Appellant identifies the real party-in-interest as TRENDSETTER ENGINEERING, INC. App. Br. 5.

wellhead or blowout preventer. More particularly, the present invention relates to capping stacks having a plurality of flow passageways formed therein so as to allow the fluid from the subsea well to pass upwardly therethrough and therefrom.

Spec. ¶ 1.

Claims 1 and 11 are independent. Claim 1 is illustrative and is reproduced below:

1. A capping stack for use with a subsea well, the capping stack comprising:

a body having a flow passageway extending therethrough, said flow passageway of said body having an inlet end and an outlet end, said outlet end having a surface extending transverse to a longitudinal axis of said flow passageway, said inlet end adapted to communicate with a fluid passageway of a blowout preventer or to a wellhead of the subsea well, said body having a first bore having one end opening through said surface so as to communicate with said outlet of said flow passageway, said first bore extending upwardly at an acute angle of 60° or less to vertical from said flow passageway, said body having a second bore having one end opening through said surface, said second bore extending upwardly from said flow passageway, said first bore diverging away from said second bore in a direction away from said outlet end of said flow passageway;

a first flow line affixed to said first bore and extending upwardly therefrom;

a second flow line affixed to said second bore and extending upwardly therefrom, each of said first and second flow lines comprising:

a first portion having a first end and a second end, said first end connected to the respective bore, said first portion extending in axial alignment with the respective bores; and

a second portion extending from said second end of said first portion and extending vertically upwardly therefrom;

a first valve cooperative with said first flowline so as to be movable between an open position and a closed position, said open position allowing fluids from the subsea well to flow through said first flow line, said closed position suitable for blocking fluids from passing outwardly of said first flow line;

a second valve cooperative said second flowline so as to be movable between an open position and a closed position, said open position of said second valve suitable allowing fluids from the subsea well to flow through said second flow line, said closed position of said second valve suitable for blocking fluids from passing outwardly of said second flow line and a connector affixed to a lower end of said body, said connector adapted to directly connect said body to either the blowout preventer or the wellhead.

App. Br. Claims App'x 21–22.

II. ANALYSIS

A. Anticipation Rejection Under 35 U.S.C. § 102

The Examiner determined that claims 1, 3, 6–10, 12, and 13 are anticipated by Brey.

1. Overview of Brey

Brey is titled “Method and System for Confining and Salvaging Oil and Methane Leakage from Offshore Locations and Extraction Operations.” Brey (54). Brey’s Figure 9 is reproduced below.

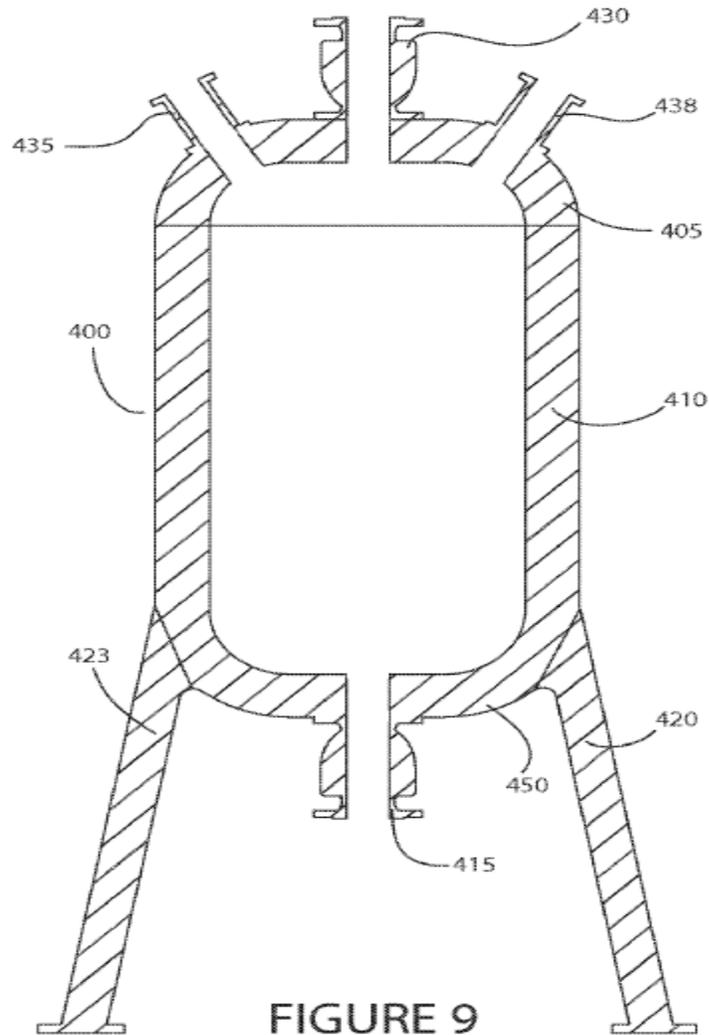


Figure 9 depicts a “cross-section view of an exemplary closed-bottom containment vessel[.]” Brey ¶ 21. As shown in Figure 9, containment vessel 400 includes hollow body 410 with flanged ports 415 and 430. *Id.* ¶ 45. Valves or ports 435 and 438 allow for selective connection of “fluid delivery devices such as risers” to the containment vessel. *Id.* ¶ 46.

Brey’s Figure 10 is reproduced below:

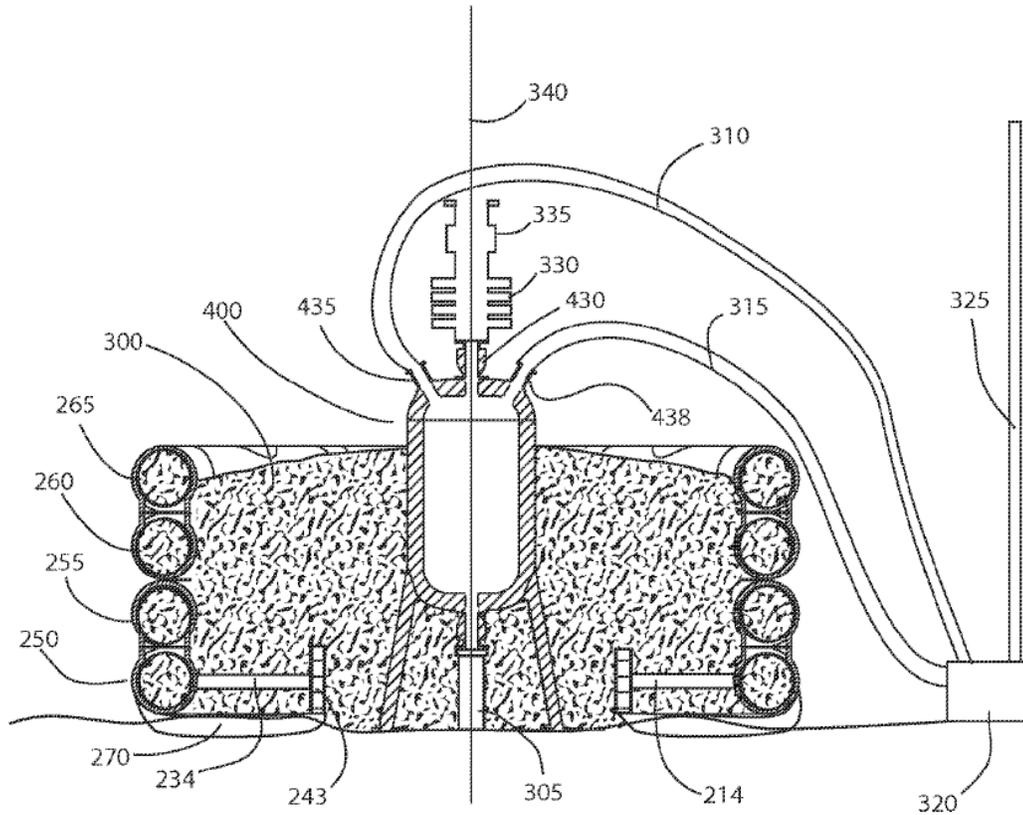


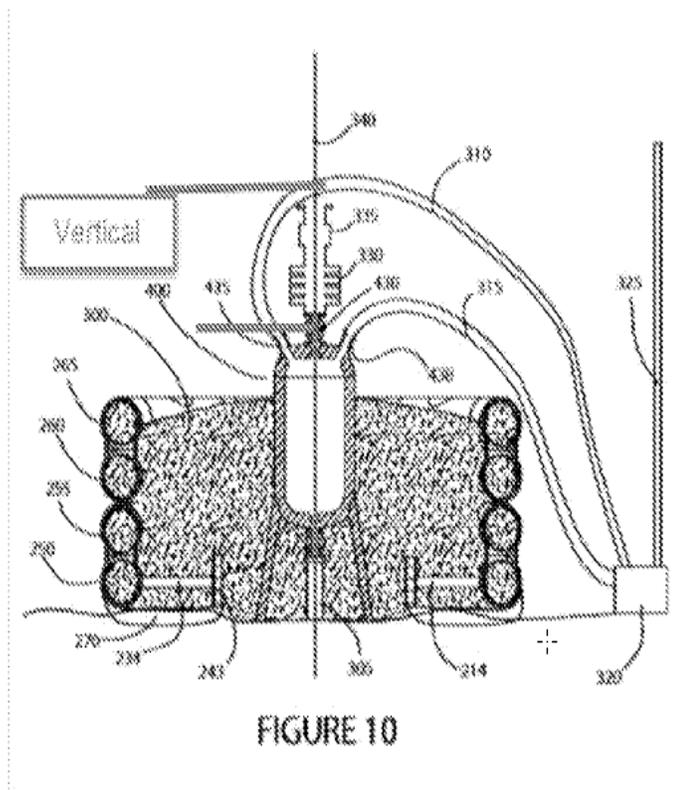
FIGURE 10

Brey describes its Figure 10 as “a section view of an exemplary closed-bottom containment vessel, partially embedded in pumped concrete surrounded by a containment barrier with a catenary gasket, collar and supported braces according to principles of the invention.” *Id.* ¶ 22. Brey describes that “[a] pair of risers extend from ports 435, 438 to a fluid delivery device 320 which may be a manifold and pump and/or meter.” *Id.* ¶ 48.

2. *Discussion—Anticipation*

Anticipation under 35 U.S.C. § 102 is established if every element in a claim, arranged as recited in the claim, is found in a prior art reference. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). The Examiner found that all of the features required by claims 1, 3, 6–10, 12, and 13 were present in Brey and arranged as required by those claims. Final Rej. 2–4. Appellant disagrees. The core basis of that disagreement centers on the requirement in claim 1 of first and second flowlines, each with a first and second portion where the second portion is “extending vertically upwardly” from an end of the first portion. App. Br. 15–18. In accounting for that requirement, the Examiner pointed to items 310 and 315 in Brey’s Figure 10. Final Rej. 6. More specifically, the Examiner provided an explanation, which is reproduced below.

24. With respect to claims 1 and 14 and the Brey Figure 10 is annotated below:



25. As shown in the annotated Figure 10 above, the second portion (riser 310) extends vertically from the second end of the first portion from the valve 435. The plain language of claims 1 and 14 do not limit how far vertically the second portion must extend, nor do they limit the second portion from connecting to something lower than the interface between the two portions.

Id. The Examiner also states that “[t]he drawings, the description, and the word choice of Brey clearly indicate the flowlines 310 and 315 extend vertically upward from the connections [435 and 438].” Ans. 4.

Although it does not appear that Brey expressly refers to reference characters 310 and 315 in its specification, we agree with the Examiner that the structures designated 310 and 315 in Brey’s Figure 10 are inferred reasonably as constituting the “risers” described in Brey. *See, e.g.,* Brey

¶ 48 (“[a] pair of risers extend from ports 435, 438 to a fluid delivery device 320 . . .”) Although those risers are illustrated as ultimately extending in a downward direction towards fluid delivery device 320, Appellant’s contention that they “immediately curve downwardly” to device 320 is, in our view, not accurate. *See* App. Br. 17. Rather, it is readily apparent from Brey’s Figure 10 that portions of the “risers” 310 and 315 initially extend above ports 435 and 438. Appellant’s claim 1 broadly recites that the flowlines include some structure regarded as a second “portion” extending vertically upwardly from some structure regarded as a first “portion.” Brey’s risers 310 and 315 are understood reasonably as being composed of multiple “portions” as a part of their structure. As both of those risers extend in a vertical direction above ports 435 and 438, it is reasonable to conclude that a second “portion” of the risers is configured to be “extending vertically upwardly” of a first “portion.” We do not discern error in the Examiner’s position to that effect.

Other than the claim feature discussed above, Appellant does not contend that Brey lacks disclosure of any other feature set forth in claims 1, 3, 6–10, 12, and 13. We do not conclude that the Examiner’s decision to reject that those claims as anticipated by Brey should be reversed.

B. Obviousness Rejection Under 35 U.S.C. § 103

The Examiner also rejected claims 14, 17, 19, and 20 as unpatentable based on Brey. Claim 14 is an independent claim directed to a “flow diverting system for use with a subsea well.” App. Br. Claims App’x 23. Like claim 1, claim 14 requires the feature of an “extending vertically

upwardly” orientation of a second portion relative to a first portion of a flowline. We are satisfied that the Examiner has accounted for that feature in claim 14.

Claim 14 additionally requires a “blowout preventer” that is arranged with an upper end connected to a body of the flow diverting system.³ The Examiner characterizes that requirement as stating that the blowout preventer is “below the body.” Ans. 4. According to Appellant, “Brey fails to disclose the body of the capping stack connected to the upper end of the BOP,” and it would not have been obvious to orient a blowout preventer with respect to a body in the manner required by claim 14. App. Br. 18–19.

Figure 10 of Brey does disclose a blowout preventer 330 that is attached to top port 430, and thus is oriented above body 400 rather than below that body. Brey Fig. 10; ¶ 48. That, however, is not the extent of Brey’s disclosure when it comes to the positioning of a blowout preventer with respect to body 400. To that end, Brey also discloses that “the flange of the bottom port 415 is configured to engage a well pipe or blow-out preventer of a well.” *Id.* ¶ 45. Thus, Brey contemplates that a blowout preventer may be positioned below body 400 and configured to connect with bottom port 415. A reference stands for all of its specific teachings, as well as the inferences one of ordinary skill in this art would have reasonably been expected to draw therefrom. *In re Fritch*, 972 F.2d 1260, 1264–65 (Fed. Cir. 1992). The Examiner’s view that a skilled artisan would have recognized or inferred from Brey’s teachings that a blowout preventer may also be

³ A “blowout preventer” is also referred to in the record as a “BOP.”

positioned beneath the body of a capping system and connected thereto is reasonable. *See* Ans. 5.

Appellant does not offer any additional arguments that Brey lacks disclosure of any other features of claims 14, 17, 19, and 20. We do not conclude that there is error in the Examiner's decision to reject those claims as unpatentable over Brey.

III. CONCLUSION

We have fully considered the record before us, including Appellant's briefing, the Examiner's Final Rejection, and the Examiner's Answer. For the reasons discussed above, we are not persuaded on the record before us that the Examiner was incorrect in rejecting claims 1, 3, 6–10, 12–14, 17, 19, and 20 over the prior art.

In summary:

Claims Rejected	Basis	Outcome
1, 3, 6–10, 12, 13	§ 102	AFFIRMED
14, 17, 19, and 20	§ 103	AFFIRMED

IV. ORDER

The Examiner's decision to reject claims 1, 3, 6–10, 12–14, 17, 19, and 20 the prior art is *affirmed*.

AFFIRMED