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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID ALLEN DORE, ROBERT C. TUCKER, and CHAD A. GRAND

Appeal 2019-002952
Application 14/579,780
Technology Center 2600

Before CARL W. WHITEHEAD JR., DAVID M. KOHUT, and IRVIN E. BRANCH, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–6. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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[1] We use "Appellant" to reference the applicant as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as "Safezone Safety Systems, LLC." Appeal Br. 2.

STATEMENT OF THE CASE

Appellant's Invention

Appellant's invention relates to "hotwork" and, more particularly, to an enclosure that isolates welding activities therein from combustible gas outside (e.g., from fumes of an oil drill platform). Spec. 10, l. 18–11, l. 13. Claim 1, reproduced below with emphasis on argued subject matter, is the only independent claim.

> 1. A method of detecting a combustible gas entering an enclosure by detecting a pressure drop in the atmosphere within the enclosure comprising:
>
> a. transferring air from an exterior of the enclosure to an interior of the enclosure;
>
> b. detecting a level of combustible gas in or near to a source of the air transferred from the exterior of the enclosure to the interior of the enclosure;
>
> c. stopping said transferring of air from the exterior of the enclosure to the interior of the enclosure in response to said detecting a level of combustible gas; and
>
> ***d. detecting a pressure drop in the atmosphere within the enclosure so as to detect a combustible gas entering the enclosure.***

Appeal Br., Claims Appendix.

Rejections

Claims 1–6 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1–7 of Dore (US 8,947,249 B1; Feb. 3, 2015) in view of Pregeant (US 6, 783,054 B1; Aug. 31, 2004). Final Act. 3–4.

Claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as being anticipated by Pregeant. Final Act. 5–6.

Claims 3–6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pregeant. Final Act. 6–7.

RELATED APPEALS

The present application is a related application of US 14/580,323 (Appeal Br. 2), which had a pending appeal (2019-003171). We have addressed that appeal in another decision.

OPINION

We agree with Appellant that all rejections rely on an erred interpretation of Pregeant's hotwork enclosure. Appeal Br. 3 (summary of arguments), 5–6 (explanation of Pregeant), 6 (explanation of Appellant's invention), 9–10 (arguing against the § 102 rejection), 12 (same arguments for the § 103 rejection), 13 (same arguments for the double patenting rejection); *see also* Reply Br. 5–6. We therefore begin with the Examiner's reliance on Pregeant.

The Examiner finds the above-emphasized limitation of claim 1 (*see supra*, reproduced claim 1) is taught by Pregeant's pressure detector 53 located within the chamber of a hotwork enclosure. Ans. 3–4; Final Act. 4 (double patenting rejection), 5 (§ 102 rejection), 8. Specifically, the Examiner finds: the pressure detector 53 determines a drop in the chamber's ambient pressure; and the drop in pressure is presumed to result in an infiltration of combustible gas. *Id.* In support, the Examiner notes that Pregeant pressurizes—and accordingly monitors the pressure of—the chamber to prevent combustible gas from entering. *Id.*

Appellant argues:

> Pregeant detects combustible gas entering the enclosure simply by direct detection via exterior gas detectors, and in no way does Pregeant teach or suggest using the detection of a pressure drop (e.g. via a pressure detector) within the enclosure as an indirect method of . . . detecting a combustible gas entering the enclosure.

Appeal Br. 3; *see also* Reply Br. 5 (same statement). We agree with Appellant for two reasons.

First, we agree with Appellant (*Id*.) that Pregeant does not expressly correlate pressure detection and combustible gas detection.

Second, we agree with Appellant (*Id*.) that Pregeant does not indirectly correlate pressure detection and combustible gas detection. Instead, we find that Pregeant describes the hotwork enclosure responds to a detected pressure drop in a manner exactly opposite of how the enclosure responds to an entry of combustible gas. Pregeant col. 6, l. 57–col. 7, l. 8; col. 7, ll. 42–44, 48–63. Specifically, if a pressure drop is detected by the pressure detector 53 (e.g., because a door was opened), then the enclosure's blowers remain active to return the chamber's pressure to a level that prevents exterior air (which might include combustible gas) from entering the chamber. *Id.* at col. 6, l. 57–col. 7, l. 8; col. 7, ll. 42–44. If combustible gas is detected by the combustible gas detectors 54, 57–60 (which sense that combustible gas is entering the chamber), then the blowers are immediately shut off. *Id.* at col. 7, ll. 48–63.

In view of the foregoing, we conclude Pregeant's pressure detector 53 only determines that the chamber's ambient pressure has dropped below a threshold pressure needed to prevent exterior air from entering the chamber. As a result, we determine that Pregeant's pressure detector 53 does not

implicitly govern an entry of combustible gas. We are accordingly persuaded of error and therefore do not sustain the rejections.

OVERALL CONCLUSION

We reverse the Examiner's decision to reject claims 1–6.

DECISION SUMMARY

Claims Rejected	Basis	Reference/s	Affirmed	Reversed
1–6	nonstatutory double patenting	Dore (claims 1–7), Pregeant		1–6
1, 2	35 U.S.C. § 102(b)	Pregeant		1, 2
3–6	35 U.S.C. § 103(a)	Pregeant		3–6
Overall Outcome				1–6

REVERSED