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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN MICHAEL BLANKMAN

Appeal 2019-004094
Application 14/998,532
Technology Center 3600

Before JEREMY M. PLENZLER, NATHAN A. ENGELS, and RICHARD H. MARSCHALL, *Administrative Patent Judges.*

ENGELS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 17–23. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies himself as the real party in interest. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to an "Internal Air Pressure Imbalance Engine." Appeal Br. 10. Claim 17, reproduced below, is illustrative of the claimed subject matter:

> 17. A device capable of producing useful force, comprising:
> a closed container of gas; and
> one or more mechanisms that acts upon the gas in such a way as to create an imbalance in the pressure distribution throughout the container yielding a net resultant force in a desired direction.

REFERENCES

The prior art relied upon by the Examiner is:

Name	**Reference**	**Date**
Wilson	US 2005/0178920 A1	Aug. 18, 2005

REJECTIONS

Claims 17–23 stand rejected under 35 U.S.C. § 112(a) as failing to comply with the enablement requirement.

Claims 17–23 also stand rejected under 35 U.S.C. § 102(a) as being anticipated by Wilson.

OPINION

Enablement

Appellant's Specification describes what Appellant calls an "Internal Air Pressure Imbalance (IAPI) Engine." Spec. ¶ 1. Appellant's Figure 1, reproduced below, depicts one embodiment of Appellant's invention.

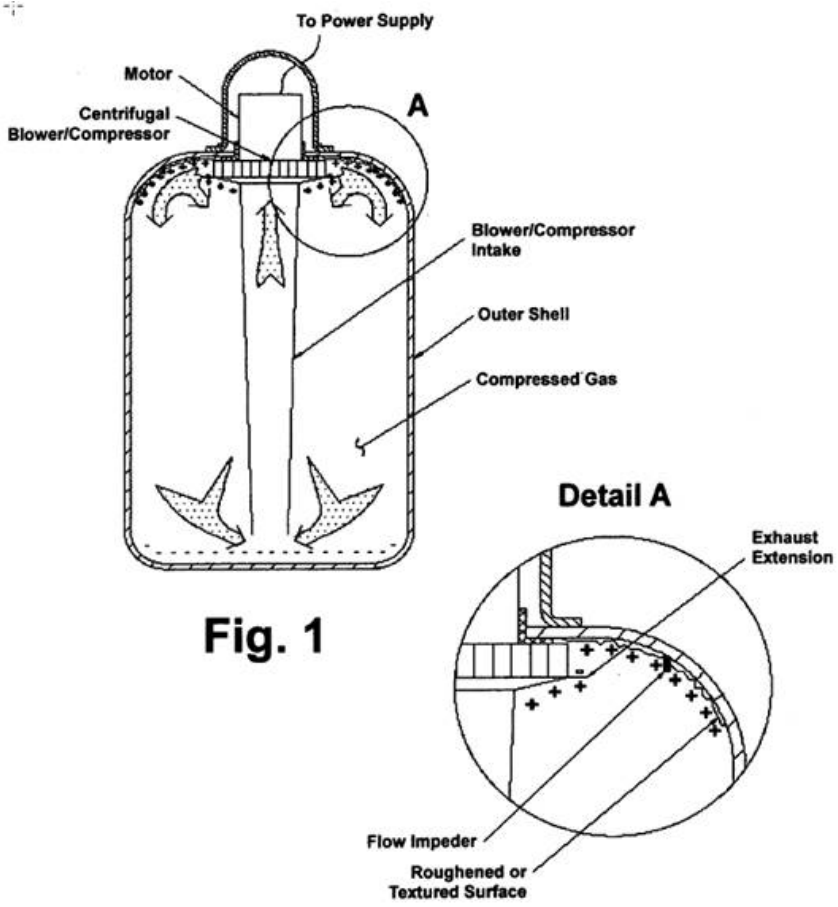

Fig. 1

Appellant's Figure 1 depicts a closed container filled with gas having a motor, a "centrifugal blower/compressor . . . at the top of the container [and] [a]n inlet tube extend[ing] from the inlet of the blower down almost to the bottom of the container." Spec. ¶ 13. The Specification states that at rest, the pressure within the container is in equilibrium throughout the container, but "[w]hen the blower/compressor is energized; gas is drawn up from the bottom of the container through the intake, compressed, and expelled across the top of the container." Spec. ¶ 13. "The action of the blower upsets the resting equilibrium; creating lower pressures in the intake tube and at the bottom of the container, and higher pressures at the top of the container." Spec. ¶ 13. In Figure 1, "areas of increased pressure are indicated by plus

signs (+), while areas of decreased pressure are signified by minus signs (-)." According to the Specification, "higher pressures now existing at the top of the container are not fully offset by the lower pressures at the bottom, thus creating a net force in the upward direction. As long as the blower is on, and the resulting internal air circulation continues, the device will produce this thrust." Spec. ¶ 13.

In rejecting claims 17–23 for lack of enablement, the Examiner states that the claimed invention violates the laws of physics, including Newton's laws of motion. Final Act. 4–6. According to the Examiner, with no net force exerted on the claimed container, the invention disclosed and claimed will not work. Final Act. 5.

Appellant argues the Examiner is misapplying the laws of physics. Appeal Br. 7; Reply Br. 2. According to Appellant, "the local force the gas applies to the shell at a given location, is the equal and opposite reaction to the force the shell applies to the gas at that location to prevent it from escaping the containment." Appeal Br. 8. Further, Appellant contends "[t]he forces acting within the shell to propel the shell in one direction, and the forces within the shell acting in the opposite direction, are not a Newton's 3rd Law action-reaction couple." Appeal Br. 8. Appellant contends "[t]he pressure within the container won't balance itself out until the engine is shut off" and, according to Appellant, if there is not a uniform pressure distribution throughout the container, the force applied to the shell at one location cannot be assumed to be the same as the force applied to the shell at some other location. Reply Br. 3–4. Finally, Appellant argues the claimed invention does not violate the laws of physics because the invention

uses external energy sources to drive the internal workings such that the invention is not a perpetual motion machine. Reply Br. 6.

We agree with the Examiner that Appellant's invention is inoperable and therefore does not satisfy the enablement requirement of § 112(a). As cited by the Examiner, Newton's third law of motion requires that for every action, there is an equal and opposite reaction. Final Act. 5; Ans. 5. As one example of how that law applies to Appellant's invention, if a blower inside a closed container of gas applies a force to move gas in one direction, the gas applies an equal force against the blower in the opposite direction.[2] Because Newton's third law requires that the force acting against the blower is equal to the force acting against the gas, and the blower is connected to the container, even if it were possible to impart all of the force from the blower onto the container via movement of the gas, movement of the gas within the closed container cannot yield "a net resultant force in a desired direction," as claimed. Appellant's arguments (Reply Br. 2–4) regarding the Examiner's explanation of the forces and different action-reaction pairs misses the point—Appellant does not, and cannot, enable a person of

[2] We also note that the gas laws require that pressure in a closed container changes with changes in temperature, mass, and volume. Appellant does not suggest that the pressure changes within a sealed container due to change in mass or volume, and instead relies on movement of the gas and/or temperature within the container to create "a net resultant force." Among other laws of physics, Appellant's suggestion that a mechanism acting on gas within a container can create "an imbalance in the pressure distribution throughout the container yielding a net resultant force in a desired direction" cannot be reconciled with the gas laws. Even if it were possible to create "an imbalance in the pressure distribution throughout the container" by acting upon the gas within the container, physics requires the gas to reach equilibrium, not to produce a net resultant force in a desired direction.

ordinary skill to create a net resultant force in a desired direction from a mechanism acting on gas in a closed container.

Accordingly, we agree with the Examiner and sustain the Examiner's rejection of claims 17–23 under 35 U.S.C. § 112(a) for lack of enablement.

Anticipation

Wilson discloses a spacecraft having a "pressure hull" designed to contain a fluid such as air. Wilson ¶ 12. A propulsion system within the pressure hull can include, for example, counter-rotating propellers inside the pressure hull acting on the fluid inside the pressure hull "permitting the propeller to generate its propulsive force." Wilson ¶ 22.

The Examiner finds that Wilson discloses each limitation of, and therefore anticipates, claims 17–23. Final Act. 7. Although we agree with the Examiner that Wilson discloses each structure recited in claim 17, a prior art reference must be enabled to anticipate a claim. *In re Antor Media Corp.*, 689 F.3d 1282, 1291 (Fed. Cir. 2012). For the same reasons that claims 17–23 are inoperable and therefore do not satisfy the enablement requirement, Wilson's propulsion system would also violate the laws of physics and is therefore not enabled.

Appellant does not directly address Wilson in terms of enablement, but Appellant's arguments addressing the inoperability of Wilson's embodiments are akin to contesting Wilson for lack of enablement. *See* MPEP § 2120 ("Where a reference appears to not be enabling on its face . . . an applicant may successfully challenge the cited prior art for lack of enablement by argument without supporting evidence.") (citing *In re Morsa*, 713 F.3d 104, 110 (Fed. Cir. 2013)). Appellant argues, for example, that

"[e]ven someone of only very limited skill in the art ought to know better than to fire up a rocket, or a turbojet, inside a closed container." Reply Br. 18. Appellant's arguments are sufficiently close to arguing enablement to overcome the presumption that Wilson is enabled.

Accordingly, we do not sustain the Examiner's rejection of claims 17–23 as anticipated by Wilson.

CONCLUSION

The Examiner's rejection of claims 17–23 under 35 U.S.C. § 112(a) is affirmed. The Examiner's rejection of claims 17–23 under 35 U.S.C. § 102(a) is reversed.

DECISION SUMMARY

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
17–23	102	Wilson		17–23
17–23	112(a)	Enablement	17–23	
Overall Outcome			17–23	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED