

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ASHOK CHAURUSHIA, STEVE ODABASHIAN,
ARNOLD COMPRONI and JORGE MILLAN

Appeal No. 2000-0496
Application No. 08/795,626

ON BRIEF

Before OWENS, DELMENDO, and MOORE, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the refusal to allow claims 3-7 and 10 as amended after final rejection.¹ These are all of the claims remaining in the application.

¹ The examiner has indicated (advisory action mailed April 15, 1999, paper no. 19) that the appellants' amendment to claim 10 after final rejection (filed April 7, 1999, paper no. 18) would be entered upon filing an appeal. Consequently, we consider the claim in its form in this amendment. The examiner has not had this amendment clerically entered, and should do so.

THE INVENTION

The appellants' claimed invention is directed toward a portable air pollution control apparatus. Claim 10 is illustrative:

10. A portable air pollution control apparatus for capturing airborne pollutants, said apparatus comprising:

a) a wheeled, single chamber mobile housing generally airtight when in a closed configuration and having a generally non-obstructed linear flow path for incoming pollutant-containing air upon collection until initiation of filtration thereof, said housing hand movable while in operation within a space to a point source site within said space where pollution is originating, and having at least one flexible, extendably maneuverable airborne-pollutant collector member having at least one articulatable exterior support structure and a distal end positionable at a point source site of pollutant origin;

b) a vacuum system within the mobile housing in communication with the at least one collector member to draw airborne pollutants into the mobile housing through said collector member and to a filter system; and

c) a filter system comprising a plurality of removable filters within the mobile housing and to which airborne pollutants drawn into said housing from the collector member are delivered to be trapped and retained.

THE REFERENCES

Ray et al. (Ray)	5,281,246	Jan. 25, 1994
Vross et al. (Vross)	5,591,244	Jan. 7, 1997
Fujii et al. (JP '212) ² (Japanese patent)	H4-298212	Oct. 22, 1992

² Citations herein to JP '212 are to the English translation thereof which is of record.

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THE REJECTION

Claims 3-7 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combined teachings of JP '212, Vross and Ray.³

OPINION

We affirm the aforementioned rejection. Because our rationale differs substantially from that of the examiner, we denominate the affirmance as involving a new ground of rejection under 37 CFR § 1.196(b).

The appellants state that the claims stand or fall together (brief, page 3). We therefore limit our discussion to one claim, i.e., claim 10, which is the sole independent claim. See *In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7) (1997).

JP '212 discloses a welding fume collector which is shown as having wheels and, therefore, being portable (figure 1a). The welding fume collector has a single mobile chamber housing

³ In the examiner's answer (page 6) the examiner relies upon U.S. 4,350,504 to Diachuk. This reference is not included in the statement of the rejection and, therefore, is not properly before us. See *In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). Accordingly, we do not consider this reference in reaching our decision.

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containing a welding fume passage having toothed ruggedness (14), a filter (4) and a fan (5) (page 6; figure 1(a)).

The appellants' specification does not discuss the limitation "generally air-tight when in a closed configuration" in claim 10.⁴ However, because the appellants' polluted air input device (cone hood 12 and flexible hose 14) appears to be comparable to that of JP '212 (suction nozzle 1 and hose 2), and the appellants' cleaned gas outlet device (vents 44) appears to be comparable to that of JP '212 (silencer 6 through which the cleaned gas passes out of the housing as shown in figure 1(a)), it reasonably appears that the JP '212 housing is "generally air-tight when in a closed configuration" as that phrase is used by the appellants. Moreover, the disclosure that the JP '212 housing collects pollutants (pages 5-6) would have led one of ordinary skill in the art to make the housing generally air-tight when closed to better contain the pollutants.

The JP '212 housing has a generally non-obstructed linear flow path for incoming pollutant-containing air until filtration thereof is initiated in the welding fume passage having toothed

⁴ In the event of further prosecution, the examiner and the appellants should address on the record whether the appellants' original specification provides adequate written descriptive support for "generally air-tight when in a closed configuration" in claim 10.

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ruggedness (figure 1(a)). The appellants' specification discloses exemplary filters (page 4, lines 6-26), but does not define "filtration". Hence, we give this term its ordinary meaning,⁵ which is "[a] process of separating particulate matter from a fluid, such as air or a liquid, by passing the fluid carrier through a medium that will not pass the particulates."⁶ In the JP '212 welding fume passage having toothed ruggedness the relatively heavy welding fumes collide with the toothed ruggedness and, consequently, accumulate by adhesion in the recessed parts of the toothed ruggedness (page 6). Thus, relatively heavy welding fumes which had passed the prior art spatter trap and been captured on the prior art filter are captured in the welding fume passage having toothed ruggedness. See *id.* Hence, in the JP '212 apparatus, filtration is initiated in the welding fume passage having toothed ruggedness.

The JP '212 housing is shown as having wheels (figure 1(a)), and in operation the suction nozzle is placed in the vicinity of the place of welding (page 6). Hence, it reasonably appears that the housing is hand movable while in operation within a space to

⁵ See *Allen Engineering Corp. v. Bartell Industries Inc.*, 299 F.3d 1336, 1344, 63 USPQ2d 1769, 1772 (Fed. Cir. 2002).

⁶ *McGraw-Hill Dictionary of Scientific and Technical Terms* 755 (Sybil P. Parker ed., McGraw-Hill 5th ed. 1994).

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a point source site within the space where pollution is originating.

The JP '212 apparatus has an airborne pollutant collector hose which is shown as appearing flexible and extendably maneuverable and having a distal end positionable at a point source site of pollutant origin (figures 1(a) and 3(a)). JP '212 does not disclose at least one articulatable exterior support structure for the hose. However, the disclosure by Ray that a conventional gas spring (45) is effective for supporting an air pollutant capture arm (44) at any desirable angular disposition relative to the housing (12) (col. 3, lines 33-38) would have led one of ordinary skill in the art to obtain this benefit in the JP '212 apparatus by using such a gas spring to support the hose.

The JP '212 housing contains a vacuum system (fan 5) in communication with the hose to draw airborne pollutants into the housing through the hose to a filter system (14, 4) (pages 6-7).

The JP '212 filter system includes a plurality of removable filters (14, 4) within the housing and to which airborne pollutants drawn into the housing from the hose are delivered to be trapped and retained (pages 7-8).

The appellants argue that Vross' metal impingers (39) do not function in the removal of airborne oil, grease and solvent residues as alleged by the examiner (brief, page 7). That

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argument is not applicable to the JP '212 welding fume passage having toothed ruggedness because, as discussed above, relatively heavy welding fumes accumulate and are captured in the recessed parts of the toothed ruggedness.

For the above reasons we conclude that the appellants' claimed invention would have been obvious to one of ordinary skill in the art over the prior art applied by the examiner.

DECISION

The rejection of claims 3-7 and 10 under 35 U.S.C. § 103 over the combined teachings of JP '212, Vross and Ray is affirmed. This affirmance is denominated as involving a new ground of rejection under 37 CFR § 1.196(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that, "A new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of

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rejection to avoid termination of proceedings (§ 1.197(c)) as to
the rejected claims:

(1) Submit an appropriate amendment of the claims
so rejected or a showing of facts relating to the
claims so rejected, or both, and have the matter
reconsidered by the examiner, in which event the
application will be remanded to the examiner. . . .

(2) Request that the application be reheard under
§ 1.197(b) by the Board of Patent Appeals and
Interferences upon the same record. . . .

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED, 37 CFR § 1.196(b)

TERRY J. OWENS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ROMULO H. DELMENDO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JAMES T. MOORE)	
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