

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WILLIAM SYKES,
Petitioner,

v.

SMART VENT PRODUCTS, INC.,
Patent Owner.

Case IPR2019-01061
Patent 9,909,302 B2

Before KRISTEN L. DROESCH, GEORGE R. HOSKINS, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background

William Sykes (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1, 3, 7, 11, 12, and 18 (“challenged claims”) of U.S. Patent No. 9,909,302 B2 (Ex. 1001, “’302 Patent”). Paper 7 (“Pet”). Smart Vent Products, Inc. (“Patent Owner”) elected to waive filing a preliminary response. Paper 10.

We have authority to decide whether to institute review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4. An *inter partes* review may not be instituted unless it is determined that “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

For the reasons provided below, we determine, based on the record before us, there is not a reasonable likelihood Petitioner would prevail in showing at least one of the challenged claims is unpatentable.

B. Related Proceedings

Petitioner identifies the following proceeding between Petitioner and Patent Owner as related: Case No. 1:13cv05691 (D. N.J.). Petitioner, however, asserts that the ’302 Patent is not involved in the related proceeding. *See* Pet. 3. Patent Owner asserts that they are not aware of any judicial or administrative proceeding that would affect, or be affected by, a decision in a proceeding involving the ’302 Patent. *See* Paper 5, 2.

C. The '302 Patent (Ex. 1001)

The '302 Patent relates to a flood vent having a panel for installation into an opening in a structure to equalize interior and exterior hydrostatic forces caused by floodwater. *See Ex. 1001, 1:14–27.*

Figures 1A and 1B of the '302 Patent are reproduced below.

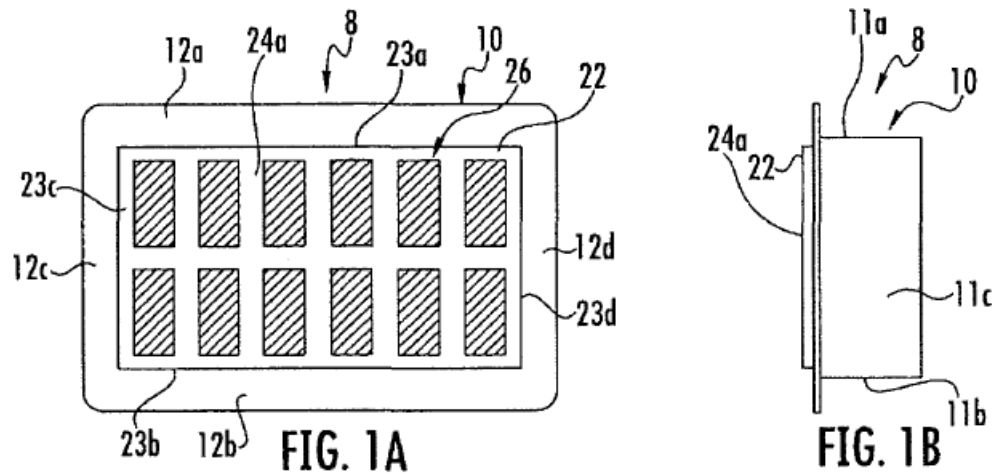
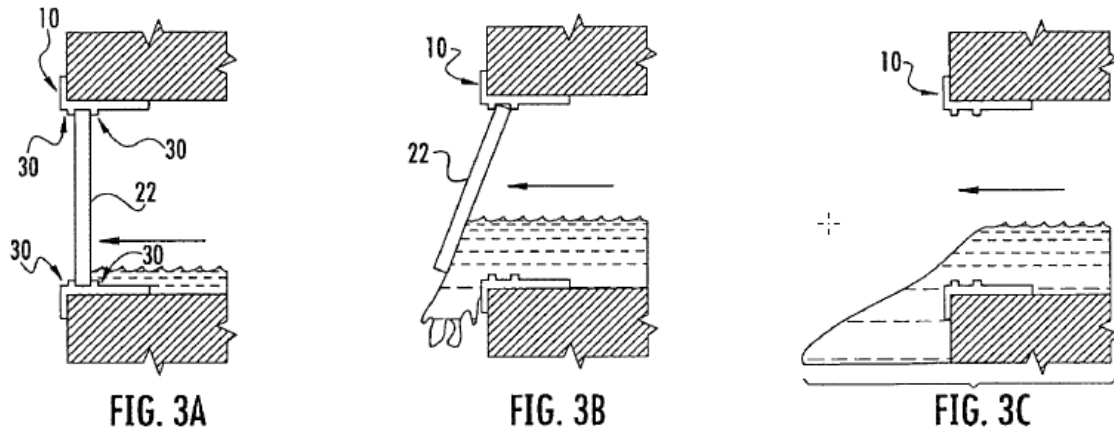


Figure 1A illustrates a front view and Figure 1B illustrates a side view of an example flood vent. *See Ex. 1001, 3:65–67.* Flood vent 8 includes frame 10 and panel 22. *See id.* at 4:41–42. Frame 10 is configured to be inserted into an opening in a structure such as a building, wall, foundation, basement, garage, etc., located below base flood plain levels, and configured to form a fluid passageway through the opening in the structure. *See id.* at 4:22–28, 4:41–46. Frame 10 includes top edge 11a, bottom edge 11b, and two side edges 11c, that define an outer perimeter of frame 10. *See id.* at 4:46–49. Frame 10 also includes top rail 12a, bottom rail 12b, and side rails 12c and 12d. *See id.* at 4:49–50. Panel 22 includes top edge 23a, bottom edge 23b, two side edges 23c, 23d, first side 24a, and second side 24b (not shown) opposite first side 24a. *See id.* at 7:4–8.

Figures 3A through 3C of the '302 Patent are reproduced below.



Figures 3A through 3C illustrate a flood vent having a first example of connectors. *See* Ex. 1001, 4:6–7, 8:37–38. Connectors 30 are configured to couple panel 22 to frame 10 and uncouple panel 22 from frame 10. *See id.* at 8:38–41. Connector 30 may be one or more raised bumps or lips that allow panel 22 to be installed in frame 10, thereby coupling panel 22 to frame 10. *See id.* at 9:24–28; Fig. 3A. Panel 22 may rest in a gap or be sandwiched in between a first set of bumps and a second set of bumps, thereby coupling panel 22 to the frame 10. *See id.* at 9:28–34; Fig. 3A. The raised bumps may continue to couple panel 22 to frame 10 until a predetermined amount of pressure is applied to panel 22, forcing panel 22 past one set of the raised bumps, which uncouples panel 22 from frame 10 and causes panel 22 to be completely separated from frame 10 and carried away from frame 10. *See id.* at 9:34–43; Figs. 3B, 3C.

Figure 4D of the '302 Patent is reproduced below.

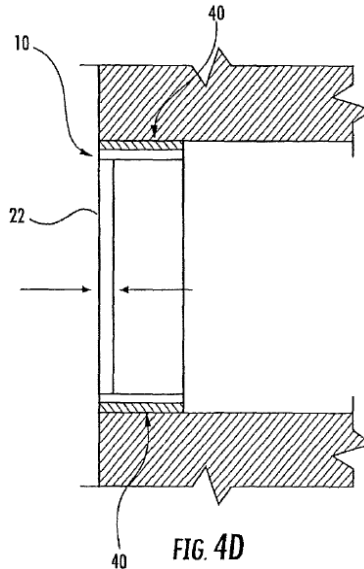


Figure 4D illustrates a flood vent having a second example of connectors. *See Ex. 1001, 4:8–9.* Connectors 40 are configured to couple frame 10 to a structure (not numbered in Fig. 4D) and uncouple frame 10 from the structure. *See id.* at 16:63–67. Connectors 40 are configured to uncouple frame 10 from the structure if a predetermined amount of pressure is applied to either side of panel 22, such as, when flooding fluids enter flood vent 8 from either inside or outside the structure. *See id.* at 22:14–24.

D. Illustrative Claims

Claims 1, 7, and 12 are independent. Claims 3, 11, and 18 depend respectively from claims 1, 7, and 12. Claims 1 and 7 are illustrative and reproduced below:

1. A flood vent, comprising:
 - a frame configured to form a fluid passageway through an opening in a structure;
 - a panel configured to be coupled to the frame in the fluid passageway so as to at least partially block the fluid passageway through the opening in the structure;

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