

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WILLIAM SYKES,  
Petitioner,

v.

SMART VENT PRODUCTS, INC.,  
Patent Owner

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Case IPR2019-01061  
Patent 9,909,302

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**PETITIONER’S REQUEST FOR RECONSIDERATION**

COMES NOW William Sykes (“Petitioner”) and for his Request for Reconsideration states as follows.

**A. Background**

Petitioner filed a Petition for *Inter Partes* review of U.S. Patent No. 9,909,302. On October 21, 2019, the Board issued a Decision denying institution of *Inter Partes* Review. Petitioner respectfully submits this Request for Reconsideration in response.

**B. Claims 1 and 12 and their dependent Claims (3 and 18)**

In response to the Board's Decision of October 21, 2019, Paper 11, Petitioner respectfully withdraws his request for *Inter Partes* Review of Claims 1, 3, 12, and 18.

**C. Denial of Institution of *Inter Partes* Review of Claims 7 and 11.**

In response to the Board's Decision of October 21, 2019, Paper 11, Petitioner respectfully requests that the Board reconsider its Denial of institution of *Inter Partes* Review. In particular, Petitioner respectfully submits that the Board overlooked the incorporation of materials by reference related to the claimed limitation of "0.5-5 pounds per square inch" in Claim 7 and its dependent Claim 11, and how those materials would provide one skilled in the art with prior art anticipation of the claimed limitation.

**D. Argument**

The Board has denied institution of an *Inter Partes* review of Claims 7 and 11 of the '302 patent.

Claim 7 of the '302 patent teaches the uncoupling of the panel from the frame by applying 0.5-5.0 pounds per square inch of force. The Board has stated that "Petitioner's evidence is insufficient to demonstrate that

Shook discloses, or the combination of Shook and Malitsky teach or suggest, uncoupling the panel from the frame by applying 0.5-5.0 pounds per square inch of pressure on either side of the panel. Instead, the evidence to which Petitioner directs us merely discloses that Shook's shutter 30 moves about a swing arc in response to a floodwater pressure differential in or across duct 15. . . [and] [t]he cited portion of Shook is silent as to the amount of applied pressure required to uncouple the panel from the frame . . ." Paper 11, page 13.

Despite that finding, however, Petitioner respectfully submits that the range limitation in Claim 7 for uncoupling the panel from the frame is incorporated by reference in Shook an Malitsky, as well as within the '302 patent, and more importantly is well known to those skilled in the art; that limitation would be well known by one reasonably skilled in the art of designing and building flood vents for crawl spaces, as those disclosed in the '302 patent.

Incorporation by reference provides anticipatory prior art. "To incorporate material by reference, the host document must identify with particularity what specific material it incorporates and clearly indicate where that material is found in the various documents." *Advanced System Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000).

And when making that determination, the standard that applies is that of “one reasonably skilled in the art.” *Id.* At 1283.

Flood vents are designed to be compliant with government regulations, specifically those promulgated by the Federal Emergency Management Agency. The ‘302 patent, Shook, and Malitsky all acknowledge this and incorporate that knowledge in the art by reference.

The ‘302 patent itself specifically cites to, in OTHER PUBLICATIONS:

FEMA, Openings in Foundation Walls and Walls of Enclosures, Technical Bulletin, Aug. 1, 2008, and

FEMA, Non-Residential Floodproofing, Technical Bulletin, Apr. 3, 1993.

Shook directly teaches that FEMA requirements provide the impetus for the inventive steps taken in designing flood vents:

“To eliminate or at least reduce damage due to flooding, several building code entities as well as the federal government have developed rules and regulations requiring structures with enclosed spaces located below defined flood plain levels to include automatic equalization of interior and exterior hydrostatic pressure caused by floodwaters. The rules and regulations require structures to be designed and built to allow floodwaters to move in and out of a structure freely. The Federal Emergency Management Agency (FEMA) requires compliance with FEMA Technical Bulletin 1-93. Other governmental agencies required compliance with the International

Building Code and/or ASME 24-05 and 24-98.”

Shook, Ex. 1002, 1:13-24.

And Malitksy acknowledges the same state of the art:

“With the advent of major flooding issues throughout many areas of the United States, national agencies such as Federal Emergency Management Administration (FEMA) and National Flood Insurance Program (NFIP), a flood insurance division of FEMA, have set out to that building codes mandate that new and existing structures install flood and air ventilation systems within the foundations.

To date, within FEMA defined flood zones, in order to obtain building permits and flood insurance for structures, whether newly constructed or substantially renovated that incorporate crawl spaces and/or unfinished basements, FEMA and the NFIP now require the installation of flood vents.”

Malitksy, Ex. 1003, 1:[0003]-[0004].

Malitksy further states that the Malitsky invention was specifically

designed to:

“comply with, or be adaptable to, the following standards, including but not limited to:

“FEMA/FIA Technical Bulletin TB 1-93 "Engineered Opening Requirements";

American Society of Construction Engineers (ASCE) 24-05 "Flood Resistant Design and Construction";

and

FEMA National Flood Insurance Program Regulations 44 CFR 60.3”

Malitsky, Ex. 1003, 1:[0016]-[0019].

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