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C/O CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART  
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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Koch-Glitsch, LP  
Requester and Cross-Appellant

v.

Sulzer Chemtech AG  
Patent Owner and Appellant

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Appeal 2012-007842  
Reexamination Control 95/001,451  
Patent 7,434,794 B2  
Technology Center 3900

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Before RICHARD M. LEBOVITZ, JEFFREY B. ROBERTSON, and  
RAE LYNN P. GUEST, *Administrative Patent Judges*.

ROBERTSON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appeal 2012-007842  
Reexamination Control 95/001,451  
Patent 7,434,794 B2

Third-Party Requester Koch-Glitsch, LP (hereinafter “Requester”) requests rehearing of our decision dated August 30, 2012 (hereinafter “Decision”) under 37 C.F.R. § 41.79(a), in which we reversed the Examiner’s decision to reject claims 1-3 and 5-10 and affirmed the Examiner’s decision not to reject claim 4. (Request for Rehearing Under 37 C.F.R. § 41.79(a), hereinafter “Request” at 2.)

Requester contends that we incorrectly found that the P2 packing disclosed in United States Patent 7,434,794 B2 (hereinafter the “’794 Patent”), which contains a 5% perforation proportion, was not an example of an “unperforated” packing, as claimed. (Request 2-3.) Requester argues that if the P2 packing is not representative of an unperforated packing, there is no remaining guidance as to what constitutes an unperforated packing, such that the term as recited in the claims would be indefinite and fail to satisfy the requirements of 35 U.S.C. § 112(a) and (b). (Request 2.) Requester argues that in the ‘794 Patent, the P2 packing is compared to the P1 packing to establish unexpected results and as a result, the P2 packing should be considered as an unperforated packing. (Request 3.)

Patent Owner Sulzer Chemtech AG (hereinafter “Patent Owner”) contends that Requester’s arguments are improperly based on 35 U.S.C. § 112(a) and (b), which is not a proper subject for a reexamination, and further argues that the Board’s interpretation of the claims is correct. (Patent Holder’s Comments in Opposition to the Third-Party Requester/Respondent’s Request for Rehearing under 37 CFR 41.79(c) filed October 11, 2012.)

## DISCUSSION

We are not persuaded that we misapprehended or overlooked any aspects of the '794 Patent's disclosure regarding the term "unperforated" such that we erred in determining that packing P2 was not an unperforated packing as recited in the claims.

Initially, we do not disagree with the Examiner's position that "unperforated" in the '794 Patent, means "largely free of perforations or other openings." (Decision 8; '794 Patent, col. 1, ll. 64-65; Ans. 17.) However, we stand by our analysis in the Decision, pages 8-9, where we stated:

we find the Examiner's reliance on the P2 packing example as being representative of unperforated metal fabrics according to the claimed invention to be improper. Specifically, the '794 Patent refers to comparative measurements carried out on "fabric packings whose perforation proportions were of different size." (Col. 2, ll. 20-22.) As discussed above [Decision, pages 7-8], the '794 Patent then describes measurements that were performed on two different packings, the P1 and P2 packings, which each have different perforation proportions. (Col. 3, l. 30 – col. 4, l. 12.) Following the description of the results from the P1 and P2 packings, the '794 Patent goes on to disclose: "In the method in accordance with the invention, the metal fabric forms a carrier for the liquid stream that is largely free of perforations or of other openings." (Col. 4, ll. 13-15.) Thus, while the P1 and P2 packings may have been used to establish the unexpected nature of the pressure drop results, the '794 Patent clearly distinguishes between the P1 and P2 packings as comparative examples and packings according to the invention, in which "one should largely or completely leave out a perforation in the fabric packing." (See col. 2, ll. 20-28.)

The '794 Specification refers to comparative measurements carried out with fabric packings (col. 2, ll. 20-22), which would be understood to refer to the P1 and P2 packings in the examples. Based on results obtained with P1 and P2 packings, the inventors conclude "one should largely or completely leave out a perforation in the fabric packing under the recited conditions." (Col. 2, ll. 27-28). These experiments were conducted so that it could be determined whether the pressure loss "was due to the change in the number of perforations." (Col. 4, ll. 7-8). In other words, the trend observed with packings with different amounts of perforation led the inventors to claim a packing "largely free of perforation or of other openings."

The '794 Specification refers to a surprising result with "perforation-free fabric packing." (Col. 2, ll. 13-15.) However, this result appears to correspond to a third experiment described at col. 4, ll. 13-44, in which the packing has "no perforation." (Col. 4, l. 32.)

Indeed, the '794 Patent does not characterize the P2 packing as being "unperforated" or "largely free of perforation or of other openings." Rather, the '794 Patent expressly characterizes the P2 packing as having "a smaller portion of perforation." (Col. 3, ll. 24-25.) This express difference in the terms used to characterize the P2 packing and the "unperforated" packing according to the invention further supports our reasoning reproduced above that the P2 packing having 5% perforation is not an unperforated packing as recited in the instant claims.

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Additionally, as pointed out by Patent Owner, to the extent Requester's arguments are based in 35 U.S.C. § 112, such rejections are beyond the scope of reexamination of the present claims.

Therefore, we decline to make any changes in the Decision mailed August 30, 2012. Accordingly, the Request for Rehearing is denied

DENIED

PATENT OWNER:

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