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| ZARLEY LAW FIRM P.L.C.<br>CAPITAL SQUARE<br>400 LOCUST, SUITE 200<br>DES MOINES, IA 50309-2350 |             |                      | SKAIST, AVI T.      |                  |
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ALAN JAMES SHEEHY,  
BRIAN W. G. MARCOTTE, MICHAEL THOMAS CARROLL, and  
COLIN KENNETH HILL

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Appeal 2016-003470  
Application 14/147,355  
Technology Center 3600

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Before STEVEN D.A. MCCARTHY, LYNNE H. BROWNE, and  
NATHAN A. ENGELS, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Alan James Sheehy et al. (Appellants) appeal under 35 U.S.C. § 134 from the rejection of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

CLAIMED SUBJECT MATTER

Sole independent claim 1, reproduced below, is illustrative of the claimed subject matter:

1 A method of determining fluid flow in an oil reservoir and connections thereof, comprising the steps of:  
    delivering a nutrient package to an oil reservoir;  
    permitting the nutrient package to stimulate resident microorganisms causing growth and compositional change to the resident microorganisms;  
    taking and analyzing a sample of fluid from wells in the oil reservoir; and  
    determining the movement of fluids in the oil reservoir based upon changes in the resident microorganisms.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

|        |              |              |
|--------|--------------|--------------|
| Bryant | US 4,905,761 | Mar. 6, 1990 |
|--------|--------------|--------------|

REJECTIONS<sup>1</sup>

Claims 1–4, 8, and 12–14 stand rejected under 35 U.S.C. § 102(b) as anticipated by Bryant.

Claims 5–7 and 9–11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Bryant.

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<sup>1</sup> The rejection of claims 5–7 under 35 U.S.C. § 112(b) was withdrawn by the Examiner in the Advisory Action mailed June 15, 2015.

## DISCUSSION

### *Rejection I*

The Examiner finds that Bryant discloses each and every limitation of claim 1. *See* Final Act. 3–4. In particular, the Examiner finds that Bryant discloses the step of “permitting the nutrient package to stimulate resident microorganisms causing growth and compositional change to the resident microorganisms.” *Id.* at 3 (citing Bryant 14:25–31).

Noting that “[c]laim 1 requires, in part, the step of permitting a nutrient package to stimulate resident microorganisms causing growth and compositional change to the resident microorganisms,” Appellants contend that “Bryant does not teach this step.” Appeal Br. 3. In support of this contention, Appellants note that, “[i]n contrast, Bryant teaches injecting a microbial formulation into an injection well along with molasses.” *Id.* (citing Bryant 14:11–19).

Responding to this argument, the Examiner determines that “Bryant does indeed disclose stimulating injected organisms, once the organisms have been injected they are thereafter considered ‘resident’ organisms, inasmuch as they are now located within the reservoir and moreover, have increased in number (any organisms produced while in the reservoir are certainly considered ‘resident’).” Ans. 2. The Examiner further notes that Appellant has not provided a definition for the claim term “resident.” *See id.* at 3.

In construing claim terms, we apply “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in [Appellants’] specification.” *In re Morris*, 127 F.3d 1048, 1054

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(Fed. Cir. 1997). During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Prater*, 415 F.2d 1393, 1404–05 (CCPA 1969). The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1319 (Fed. Cir. 2005) (en banc).

Neither the Examiner nor Appellants have proffered a definition of the claim term “resident.” An ordinary and customary definition of “resident” is “living in a place for some length of time” or residing. *See Merriam-webster.com*, <http://www.merriam-webster.com/dictionary/resident> (last visited February 8, 2018). *See In re Trans Texas Holdings Corp.*, 498 F. 3d 1290, 1299 (Fed. Cir. 2007) (Dictionaries may clarify the meaning of claim terms during prosecution).

The Specification’s use of the claim term “resident” is consistent with this definition. *See Spec.* 1–4. Accordingly, we adopt this definition as the broadest reasonable interpretation of the claim term “resident.” As noted by Appellants’ the microorganisms in Bryant’s method are introduced along with the nutrient package. *See Appeal Br.* 3; *Bryant* 14:12–14. Bryant’s microorganism do not reside in the reservoir and, thus, cannot fairly be construed to be “resident” microorganisms as claimed.

For this reason, we do not sustain the Examiner’s decision rejecting claim 1, and claims 2–4, 8, and 12–14 which depend therefrom.

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*Rejection II*

The rejection of claims 5–7 and 9–11 suffers from the same deficiency as the rejection of claim 1 discussed *supra*. Accordingly, we do not sustain the Examiner’s decision rejecting these claims for the same reason.

DECISION

The Examiner’s rejections of claims 1–14 are REVERSED.

REVERSED