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COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518			TORRES VELAZQUEZ, NORCA LIZ	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KELLY K. HOUSTON
Patent Owner and Appellant

Appeal 2017–006142
Reexamination Control 90/013,530
Patent 8,926,792 B1
Technology Center 3900

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

ROBERTSON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Kelly K. Houston (“Patent Owner”), the owner of the patent under reexamination (hereinafter “the ’792 Patent”), requests rehearing of our Decision on Appeal mailed May 25, 2017 (hereinafter “Decision”), in which we affirmed the Examiner’s rejection of claims 8, 9, 13, and 15–18 as anticipated by Thakur¹ (Request for Rehearing filed July 25, 2017, hereinafter “Request” 1–2).

In particular, Patent Owner requests rehearing with respect to claims 8, 15, and 18 and contends that:

1. With respect to claim 18, the Board misapprehended Figure 1 of Thakur with respect to leachate being directed to a landfill; and
2. With respect to claims 8 and 15, the Board misapprehended the disclosure of Thakur, page 14 and the meaning of “onto the solids collection area.” (*Id.*)

We have considered Patent Owner’s arguments; however, we decline to modify the Decision for the reasons that follow.

Claim 18

Patent Owner contends that the Board overlooked that claim 18 requires that the solids collection area includes at least a portion of the landfill and that the air-leachate mixture is directed over a landfill such that the suspended solids in the mixture fall onto the landfill. (Request 2 (citing Decision 17–18).) Regarding Figure 1 of Thakur, Patent Owner argues that the label “To Landfill,” relates to the location of a residue, which results from cleaning a sand filter, an optional feature of Thakur’s invention.

¹ WO 01/77027 A1, published October 18, 2001.

(Request 3 (citing Thakur 7, ll. 23–30).) Patent Owner argues that Figure 1 depicts an arrow extending from the bag filter 5 “To Landfill,” which supports the position that it is the residue, not the leachate that is directed to the landfill. (Request 3–4.) Patent Owner contends that Thakur does not disclose that the atomizing units 9 are disposed on or over a landfill. (Request 4–5.)

We are not persuaded that we misapprehended the disclosure of Thakur. (Decision 17.) For convenience, Figure 1 of Thakur is reproduced below:

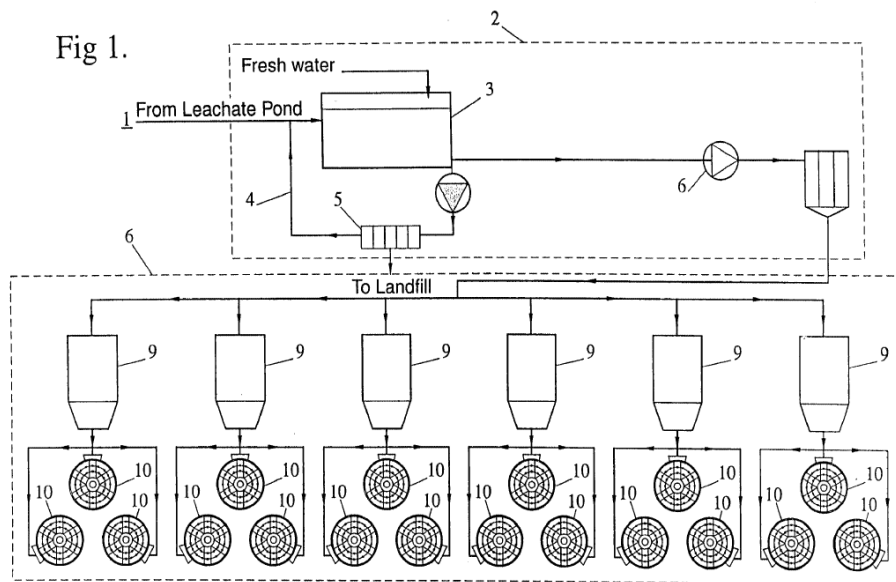


Figure 1 is a schematic flow diagram of a leachate treatment apparatus according to Thakur. (Thakur 6, ll. 26–27.) While it is true that Thakur discloses that sand filter 3, used for primary filtration of low filtrate, may be cleaned and that reject water from this process may be filtered through a bag filter 5, the residue of which is disposed of in the landfill (Thakur 7,

ll. 15–30), the “To Landfill” indication appears generally within the atomizer arrangement 8 indicated by the dotted box² at the bottom of Figure 1 and not the filtering arrangement indicated at the top of Figure 1. This is consistent with the general acknowledgement in Thakur that: “Traditionally, leachate has been managed through a combination of irrigation and reinjection into the landfill” (Thakur 1, ll. 31–32.)

Because the latter statement expressly teaches reinjection into the landfill, one of ordinary skill in the art would have reasonably understood it to inform the relationship between Thakur’s atomizers 9 and the landfill, contrary to Patent Owner’s contention. (Request 5.) Thus, Thakur’s disclosure informs the understanding of how the atomizers would be arranged based on the knowledge and experience of one of ordinary skill in the art. Thus, any lack of perceived express disclosure in Thakur as to where the output from the atomizer arrangement is directed, is attributed to the understanding of one of ordinary skill in the art that the output would be directed over the landfill, in order to avoid affecting another area of land with suspended solids that fall out of the air-leachate mixture.

Claims 8 and 15

Patent Owner contends that the Board misapprehended that Thakur discloses that an air-leachate mixture falls out onto a solids collection area. (Request 6 (citing Decision 16–17).) In particular, Patent Owner argues that the disclosure on page 14 of Thakur discussing the suspended particle

² The dotted box is mislabeled as reference number 6, rather than reference number 8, in Figure 1.

concentrations measure 45 meters from the atomizer arrangement does not support the position that suspended solids have accumulated on a solids collection area. (Request 6–7.) Patent Owner contends that measuring suspended particle concentrations is different than measuring suspended solids that have accumulated on a collection surface and Thakur does not disclose where the measurement was taken. (Request 7.) Patent Owner’s position is that Thakur is measuring particles suspended in the air. (Request 7.) Patent Owner also contends that Thakur only discloses that the amount of suspended particles is below levels recommended as safe at a distance of 45 meters, and as such, there is no disclosure in Thakur that suspended particles were found. (Request 7–8.) Patent Owner argues that Thakur is concerned with air pollution and the concentration of suspended particles in the air, which is not evidence of what is claimed. (Request 8–9.)

Patent Owner contends that the Board misapprehended the meaning of “onto the solids collection area,” which means that “the suspended solids move from the air-leachate mixture to a surface where the suspended solids accumulate or are deposited on the surface.” (Request 9–10.) As a result and because Thakur at most discloses that a concentration of suspended particles 45 meters in some direction from an atomizer and found that the concentration was below levels recommended to be safe, Patent Owner argues that Thakur does not provide evidence that the suspended solids fall out of an air-leachate mixture “onto a solids collection area” as recited in the claims. (Request 10.)

Patent Owner’s argument, although labeled as points “misapprehended” by the Board in the Decision, appears to be a

disagreement with the outcome of the Decision, which is not appropriate grounds for requesting rehearing. To the extent, Patent Owner’s argument may be considered proper, we are not persuaded that we misapprehended the nature of Thakur’s disclosure in relation to suspended particles falling out of the air-leachate mixture on to a solids collection area.

That is, Thakur makes clear that suspended particle concentrations measured at 45 meters from the atomiser arrangement were below levels recommended as safe. (Decision 10, FF 11.) Patent Owner’s attempt to cast doubt on that teaching by arguing that it is unclear where such measurements are taken and by attempting to frame the argument as a claim construction issue does not change that finding. In particular, the contention that Thakur would not measure such suspended particle concentrations in areas in line with the direction of atomiser output is illogical. In addition and in conjunction with the arguments regarding claim 18 addressed above, the contention that Thakur does not disclose a solids collection area, when Thakur expressly discloses and acknowledges that the air-leachate mixture discharged from atomiser arrangement contains suspended particles, and then measures the concentration an express distance from the atomiser arrangement is without merit. Thakur’s disclosure in this regard is evidence that the suspended particles are directed to and fall out into a designated solids collection area.

Thus, we decline to make any changes to the outcome of the Decision mailed May 25, 2017.

DENIED

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Reexamination Control 90/013,530
Patent 8,926,792 B1

FOR PATENT OWNER:

COATS & BENNETT
1400 CRESCENT GREEN
SUITE 300
CARY, NC 27518

FOR THIRD-PARTY REQUESTER:

ICE MILLER LLP
ATTN: BARBARA BACON
250 WEST STREET
SUITE 700
COLUMBUS, OH 43215