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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/671,366	03/27/2015	Kelly K. Houston	6854-006	7041
24112	7590	06/30/2020	EXAMINER	
COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518			FIORELLO, BENJAMIN F	
			ART UNIT	PAPER NUMBER
			3678	
			MAIL DATE	DELIVERY MODE
			06/30/2020	PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KELLY K. HOUSTON

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Appeal 2019-004593  
Application 14/671,366  
Technology Center 3600

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Before CHARLES N. GREENHUT, BRETT C. MARTIN, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1, 2, 4, 5, 8, 9, and 14–25. Claims 3, 6, 7, and 10–13 were canceled during prosecution. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Aerosolization Equity Investments, LLC. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed “to a system and process for applying covering or penetrating material to waste such as coal ash, mined products and various forms of contamination.” Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of aerosolizing an alternative daily covering composition and applying the alternative daily covering composition to a selected land area comprising:

directing water to an aerosolization system that includes a turbine and a turbine housing;

driving the turbine and generating a system of air that moves through the turbine housing;

pumping the water under pressure to a series of nozzles associated with the aerosolization system;

mixing the alternative daily covering composition with the water to form a water alternative daily covering composition mixture before the water is emitted from the nozzles;

entraining the water-alternative daily covering composition mixture in the system of air by pumping the water-alternative daily covering composition mixture to and through the nozzles and into the system of air generated by the turbine and passing through the turbine housing to form a water-alternative daily covering composition-air mixture;

aerosolizing the water-alternative daily covering composition-air mixture and directing the aerosolized water-alternative daily covering composition-air mixture from the turbine housing through the air and towards the selected land area where at least a portion of the alternative daily covering composition falls out of the mixture onto the selected land area; and

whereby by entraining the water-alternative daily covering composition mixture in the system of air, the system of air carries the water-alternative daily covering composition mixture to the selected land area.

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Marsh	US 2005/0220542 A1	Oct. 6, 2005
Deal, Jr.	US 7,585,135 B1	Sept. 8, 2009
Thakur	WO 01/77027 A1	Oct. 18, 2001

## REJECTIONS

Claims 1, 2, 4, 5, 8, 9, 14–21, and 23–25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Marsh and Thakur. Final Act. 4.

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over Marsh, Thakur, and Deal, Jr.. Final Act. 6.

## OPINION

### *Obviousness*

All of the Examiner’s rejections rely on the combination of Marsh and Thakur. According to the Examiner, Marsh generally teaches applying an alternative daily covering, while Thakur is relied upon for teaching the specific details of the aerosolization system, including a turbine and air system, and using a plurality of nozzles for aerosolization. Final Act. 4. The Examiner concludes obviousness by stating that one of skill in the art would have combined the two references “in order to allow multiple nozzle[s] to be utilized to efficiently spray the composition over the landfill.” Final Act. 5.

Appellant argues that “[t]he [E]xaminer’s combination requires the application of [Thakur’s] evaporation system for applying Marsh’s alternative daily covering composition” and that Thakur “filters out solids

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down to 1 micron.” Reply Br. 5. Appellant then correctly points out that “[t]his means that the cellulose or the wood pulp fibers that make up critical constituents of the alternative daily covering composition [are] removed.”

*Id.* We agree with Appellant that “[t]his is powerful evidence that [Thakur’s] evaporation system would not work with Marsh’s alternative daily covering composition.” *Id.* Because Thakur’s system would appear to be incompatible with spraying an alternative daily covering composition and the Examiner has not explained how this obstacle would be overcome, we do not sustain the rejections.

### CONCLUSION

The Examiner’s decision rejecting claims 1, 2, 4, 5, 8, 9, and 14–25 is reversed.

### DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 4, 5, 8, 9, 14–21, 23–25	103	Marsh, Thakur		1, 2, 4, 5, 8, 9, 14–21, 23–25
22	103	Marsh, Thakur, Deal, Jr.		22
<b>Overall Outcome:</b>				1, 2, 4, 5, 8, 9, 14–25

REVERSED