

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JEFFREY L. OSTAHOWSKI  
and RONALD L. PANTER

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Appeal 2006-2860  
Application 10/737,502  
Technology Center 1700

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Decided: September 29, 2006

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Before PAK, WALTZ, and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal the Examiner's final rejection of claims 1-10.<sup>1</sup>

We have jurisdiction under 35 U.S.C. § 134.

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<sup>1</sup> The Examiner has indicated that the rejection of claims 6, 7, and 8 is withdrawn. (Answer 6). Appellants have indicated that the subject matter of claim 12 has been allowed and the subject matter of claim 11 has also been allowed, however, these claims have been objected to by the Examiner. (Br. 2).

We AFFIRM-IN-PART.

#### RECITATION OF REFERENCES

Weber	US 4,940,539	July 10, 1990
Ozama	US 6,187,193 B1	Feb. 13, 2001

Claims 4 and 9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-3, 5 and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Weber in view of Ozama.<sup>2</sup>

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejections, we make reference to the Answer (mailed April 28, 2006) for the Examiner's reasoning in support of the rejections and to the Brief (filed February 21, 2006) for the Appellants' arguments there against. We affirm the rejection under 35 U.S.C. § 112, second paragraph and reverse the rejection under 35 U.S.C. § 103(a). Our reasons follow.

#### DISCUSSION

Claims 4 and 9 stand rejected under 35 U.S.C. § 112, second paragraph. The Examiner has determined that the phrase "said venturi outlet below liquid level" does not have proper antecedent basis in the stated claims. (Answer 3). Appellants agree with the Examiner's determination. (Br. 4). Appellants indicate that an amendment after final was submitted concurrently with the filed Brief to overcome this rejection. The Examiner

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<sup>2</sup> The Examiner in stating the rejection appearing on page 4 of the Answer included claims 6 and 8. The Examiner unequivocally withdrew the rejection of these claims (Answer 6). The Examiner further indicated that the subject matter of claim 7 was patentable over the cited Weber and Ozama references. (Answer 6).

has indicated that the amendment has not been entered into the present record. (Answer 5). Thus, since Appellants do not dispute the Examiner's position regarding proper antecedent basis we summarily affirm the Examiner's rejection.

Now we consider the rejection of claims 1, 2, 3, 5, and 10 under 35 U.S.C. § 103(a) as unpatentable over Weber in view of Ozama.

Appellants' invention relates to an apparatus for treating organic waste. The apparatus comprises a variety of components including a tank which has been divided into an inlet chamber and an outlet chamber. Claim 1 specifies that the inlet chamber comprises a pump that is adjacent to the bottom of the chamber and comprises an outlet opening that is adjacent to the top of the inlet chamber. The claim specifies that the pump functions to circulate liquid contained in the inlet chamber from the bottom of the chamber toward the top of the inlet chamber, however, the pump outlet is below the liquid level of the inlet chamber. According to Appellants, the apparatus is useful for treating a type of waste which maybe discharged from a business such as a restaurant or manufacturing facility. (Br. 2).

Representative claim 1, as presented in the Brief, appears below:

1. An apparatus for treating organic waste comprising:

a tank having an interior chamber,

a weir disposed in said tank, said weir dividing said tank into an inlet chamber and an outlet chamber,

said tank having an inlet adapted to receive organic waste, said inlet open to said first chamber adjacent a top of said inlet chamber,

said tank having an outlet adapted to discharge liquid to a waste disposal system, said outlet adjacent a top [sic,of] said outlet chamber,

said weir having an opening positioned below said inlet and said outlet which fluidly connects said inlet and outlet chambers,

microbes capable of biodegrading organic waste in said inlet chamber,

a pump having an inlet open to said inlet chamber adjacent a bottom of said inlet chamber and an outlet open to said inlet chamber adjacent a top of said inlet chamber,

wherein upon activation, said pump circulates liquid contained in said inlet chamber from the bottom of said inlet chamber and to the top of said inlet chamber and below [sic, the] liquid level of said inlet chamber.

The Examiner asserts that Weber discloses a tank having an interior chamber that is divided into an inlet chamber and an outlet chamber by a weir. The Examiner asserts that Weber fails to specify a pump which is required by appealed claim 1. (Answer 4). To remedy the difference between the claimed invention and the Weber reference the Examiner cites Ozama. Specifically, the Examiner states "Ozama discloses a pump 9 (see FIG. 8) having an inlet open to a chamber adjacent a bottom of the chamber an outlet 13 open to the inlet chamber adjacent a top of the inlet chamber, the pump circulating liquid contained in the chamber from the bottom [of] the chamber and to the top of the inlet chamber and below liquid level of the inlet chamber and suggests that such an arrangement aerates the water surface and activates aerobic microorganisms supplied to the grease trap and such a system is simple and economical." The Examiner concludes that it would have been obvious to insert the pump of Ozama in the interior chamber of Weber. (Answer 4-5). We do not agree.

We agree with Appellants (Br. 6) that it is not exactly clear where the Examiner suggests placing the pump 9 of Ozama in the Weber device. We

also recognize that the pump described at Fig. 8 of Ozama circulates the water from the pump 9 which is placed below the water surface up through the water pipe (18) to a fountain top (13) which distributes the liquid above the water surface. As such, even if we were to combine the teachings of Ozama with that of Weber, the result would be the addition of a pump (disclosed by Ozama) that circulates the liquid from the bottom of the tank to a return fountain mechanism that distributes the liquid above the liquid level of the inlet chamber. Thus, even if we were to combine the references as suggested by the Examiner we would not meet the limitations of claim 1. As such, the Examiner has failed to establish a *prima facie* case of obviousness in this rejection because the combination of Weber and Ozama fail to teach or suggest every element of the claimed invention. The Examiner has not identified a teaching or suggestion within the cited references or within the general knowledge of those skilled in the art that would have led one skilled in the art to make the combination suggested.

Based upon consideration of the totality of the record before us we reverse the Examiner's rejection based on § 103(a).

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## CONCLUSION

The rejection of claims 4 and 9 under 35 U.S.C. § 112(b), is affirmed.  
The rejection of claims 1, 2, 3, 5, and 10 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(iv)(effective Sept. 13, 2004).

AFFIRMED-IN-PART

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