

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES L. JOHNSON JR.,
HOWARD J. BROWN and WILLIAM F. BRINTON JR.

Appeal No. 1996-1914
Application 08/159,739¹

ON BRIEF

Before CAROFF, GARRIS, and KRATZ, Administrative Patent
Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This decision on appeal relates to the final rejection of
claims 1, 3, 5-15 and 18-25, all the claims pending in the

¹ Application for patent filed November 30, 1993.

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involved application.

The claims relate to a system and process for treating wastewater. The claimed invention essentially involves a solids separation operation followed by the sequential treatment of separated liquid in a sequencing batch bioreactor and a reed bed (otherwise known as a "constructed wetland": specification,

p. 21). Solids from the separation operation, the bioreactor and the reed bed are then transported to a composting station. Claim 1, the broadest of three independent claims, is

illustrative:

1. A system for treating high strength wastewater, said system comprising:

first means for receiving raw wastewater containing solids and liquid and for allowing said solids to settle and substantially separate from said liquid;

second means for treating a liquid influent from said receiving means so as to remove organic pollutants and nitrogenous compounds present in the influent and form a pretreated septage liquid; and

third means for receiving said pretreated septage liquid and for treating said pretreated septage liquid with aerobic and facultative bacterias to form an effluent suitable for discharge to the groundwater;

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means for composting said solids separated from said liquid in said first means and solids removed from said second and third means; and

means for transporting said solids from said first, second and third means to said composting means.

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The following references of record are relied upon by the examiner:

Seidel 1973	3,770,623	Nov. 6,
Bogart 1991 Northrop 7, 1992	4,999,103 5,078,882	Mar. 12, Jan.

The following rejections are before us for consideration:²

(1) Claims 1, 3, 11-15 and 18-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Northrop.

(2) Claims 7-10 and 24-25 stand rejected under 35 U.S.C. § 103 as being obvious from Northrop.

(3) Claims 5-6 stand rejected under 35 U.S.C. § 103 as being obvious from Northrop in view of Seidel.

(4) Claims 21-23 stand rejected under 35 U.S.C. § 103 as being obvious from Northrop in view of Bogart.

Based on the record before us, we agree with appellants that the examiner has failed to establish a prima facie case

²We note that claim 18 was additionally rejected under 35 U.S.C. § 112, second paragraph, in the final rejection (Paper No. 7). Since there is no reference to the 35 U.S.C. § 112 rejection in the examiner's answer, we presume that rejection has been withdrawn by the examiner as having been obviated by an amendment (Paper No. 11) after final rejection which, according to the examiner's answer (page 1), has been entered.

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of anticipation or obviousness. Accordingly, we shall reverse each of the rejections at issue.

For emphasis, we note that the teachings of Northrop are crucial to each of the extant rejections. Accordingly, we shall focus our remarks upon the shortcomings of that reference and, in doing so, note that neither Seidel nor Bogart remedy the deficiencies of the primary reference.

While we can agree with many of the points articulated by the examiner, we cannot agree that the formation of humus within the ecoreactor (constructed wetland) of Northrop would be considered by those of ordinary skill in the art as being synonymous with a composting operation. The examiner has failed to satisfy his burden of presenting credible evidence to support this allegation.

Even if it were true that humus formation as in Northrop could be considered a form of composting, the examiner apparently has failed to appreciate that all of appellants' independent claims clearly require, in one form or other, that solids be "removed" from the settling/separation unit, the bioreactor and the reed bed and "transferred" to the composting station. Thus, as we read the claims, the

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composting unit must be separate and distinct from the other subsystems.

Referring to Northrop, we note that the Northrop ecoreactor, which is a constructed wetland system (col. 3, l. 49-50), corresponds to appellants' reed bed. Even if the formation of humus in Northrop's ecoreactor could be considered a form of composting, the examiner has failed to explain why it would have been obvious, within the context of 35 U.S.C. § 103, to transfer solids from the ecoreactor to a separate composting station. In this regard, we find no basis whatsoever for the examiner's allegation that humus formation or a composting operation takes place in the Northrop georeactor, or even that any solids from the other subsystems are transferred to the georeactor.

For the foregoing reasons, the decision of the examiner is reversed.

REVERSED

MARC L. CAROFF)
Administrative Patent Judge)

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