

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(2) is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte R. PAUL CLARK

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Appeal No. 96-2058  
Application 08/147,090<sup>1</sup>

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ON BRIEF

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Before GARRIS, ELLIS, and WALTZ, Administrative Patent Judges.  
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed November 3, 1993.  
According to appellant, this application is a continuation of  
Application 07/829,959, filed February 3, 1992, now abandoned.

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This is a decision on an appeal from the final rejection of claims 1, 2 and 4 through 31 which are all of the claims remaining in the application.

The subject matter on appeal relates to a method for removing hydrocarbon contaminants from ground water and/or wastewater comprising the steps of subjecting the surface area of the groundwater and/or wastewater to at least a partial vacuum, introducing a purge gas so that the gas will form a large volume of small bubbles serving to remove the hydrocarbon contaminants from the groundwater and/or wastewater as they travel upward to the surface area of the groundwater and/or wastewater, and removing the contaminated gases from the surface area of the groundwater and/or wastewater. This appealed subject matter is adequately illustrated by representative independent claim 1 which reads as follows:

1. A method for removing hydrocarbon contaminants from ground water and/or wastewater comprising the steps of:

subjecting the surface area of said groundwater and/or wastewater to at least a partial vacuum;

providing in said groundwater and/or wastewater a plurality of conduits, each of said conduits having a distal end and a proximal end, wherein the distal ends are submerged

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therein and the proximal ends are located above said groundwater and/or wastewater;

introducing a purging gas under at least atmospheric pressure into the proximal ends of said conduits, each of said conduits having a small diameter chosen so that said gas will form a large volume of small bubbles as it flows from the distal ends thereof, said bubbles serving to remove said hydrocarbon contaminants from said groundwater and/or wastewater as they travel upward to the surface area of said groundwater and/or wastewater; and

removing the contaminated gases from the surface area of said groundwater and/or wastewater.

The references relied upon by the examiner in the rejections

before us are:

Ely et al. (Ely)	4,765,902	Aug. 23, 1988
Gorelick et al. (Gorelick)	5,180,503	Jan. 19, 1993

Claims 28 through 30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gorelick.

The remaining claims on appeal stand variously rejected under 35 U.S.C. § 103 as being unpatentable over Gorelick or Gorelick in view of Ely.

As a preliminary matter, we observe that the claims on appeal will stand or fall together; see page 5 of the brief and 37 CFR § 1.192(c)(7)(1995).

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We refer to the brief and to the answer for a complete exposition of the opposing viewpoints expressed by the appellant and the examiner concerning the above noted rejections.

OPINION

For the reasons set forth in the answer and below, we will sustain each of the rejections before us on this appeal.

As background, an affidavit under 37 CFR § 1.131 was filed by the appellant in an attempt to antedate the Gorelick patent. However, the examiner considers this affidavit to be ineffective on the grounds that the appellant and Gorelick are claiming the same invention. On this appeal, it is the appellant's fundamental position that his claimed method and patentees' claimed method are not the same allegedly because the "at least a partial vacuum" feature of the appealed claims is not practiced in the method defined by the patent claims. In rebuttal, the examiner contends that the vapor venting feature embraced by Gorelick's method claims would inherently produce at least a partial vacuum on the surface area of the water undergoing treatment as required by the appellant's claims.

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This venting feature is provided by a ventilator shown as element 36 in, for example, Figure 1 and described in lines 29 through 32 in column 5 of the Gorelick patent. According to the appellant, "[b]y common definition of a ventilator, as is well known to the person of ordinary skill in the art, a ventilator does not provide a vacuum" (brief, page 8). On the record of this appeal, no evidentiary support has been proffered by the appellant for this proposition.

Nevertheless, our independent research reveals that a "ventilator" is defined as "[a] device used with an adjustable aperture for regulating the flow of fresh or stagnant air" or "[a] mechanical apparatus for producing a current of air, as a blowing or exhaust fan" (Technical Terms, second edition, page 1712, McGraw-Hill Book Company, 1978; copy attached). From our perspective, the examiner's aforementioned inherency position would be well founded if, in fact, the ventilator of Gorelick constitutes "[a] mechanical apparatus for producing a current of air, as a blowing or exhaust fan".

Based on our study of the Gorelick patent disclosure, we find that patentees' ventilator is in fact a "mechanical apparatus" of the above discussed type. This finding is

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supported by the overall patent disclosure but most particularly by lines 57 through 60 in column 13 wherein Gorelick teaches that the vapors can be removed at the top of the well (i.e., vented) "through forced air ventilation" (emphasis added). Also see previously noted lines 31 and 32 in column 5 wherein the ventilator function is described as "vapor extraction" (emphasis added) as well as patent claim 7 which recites "means connected across said vapor extraction line for drawing VOC vapor from the top of the well"

In light of the foregoing, it is our determination that the venting feature of patentees' method (e.g., see method claim 21), when interpreted as it must be in light of patentees' specification, embraces a ventilator in the form of "[a] mechanical apparatus for producing a current of air, as a blowing or exhaust fan". Further, we are convinced that such a mechanical apparatus would necessarily and inherently create at least a partial vacuum upstream thereof, namely, at the surface area of the water being treated as required by the claims on appeal.

In summary, for the reasons set forth in the answer and above, the here claimed method fails to distinguish over the

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method claimed by Gorelick in the manner argued by the appellant on this appeal. It follows that we will sustain each of the examiner's above noted rejections.

The decision of the examiner is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

	Bradley R. Garris	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Joan Ellis	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	Thomas A. Waltz	)	
	Administrative Patent Judge	)	

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Richard E. Jenkins  
Suite 1510  
University Tower  
3100 Tower Boulevard  
Durham, NC 27707