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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIAAN P. VAN DIJK and LOWELL D. FRALEY

Appeal No. 95-3500
Application No. 08/065,438[1]

ON BRIEF

Before RONALD SMITH, CAROFF and METZ, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This decision on appeal relates to the final rejection of claims 1-10, 16 and 20-27, all the claims remaining in the involved application.

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[1] Application for patent filed May 24, 1993. According to the appellants, the application is a division of Application No. 07/762,505, filed September 19, 1991, now Patent No. 5,245,110.

The claims on appeal relate to a method for preparing an oxygen-enriched gas stream using a gas turbine system.

Appellants acknowledge on page 8 of their brief that the claims stand or fall together for the purposes of this appeal. Accordingly, we will limit our consideration to representative claim 1 which reads as follows:

1. A method for preparing a gas stream containing nitrogen which contains greater than 21 mole % oxygen using a gas turbine comprising an air compressor unit and an energy production unit comprising a combustor unit and a first expander mechanically linked to the air compression unit by a shaft carrying a thrust bearing, comprising the steps of:

(a) compressing air in a compressor unit of a gas turbine;

(b) contacting at least a portion of such compressed air with a means which is preferential for the separation of O_2 from said compressed air to produce one gas stream which is enriched in O_2 relative to nitrogen and a second gas stream which is depleted in O_2 relative to nitrogen;

(c) passing said oxygen depleted gas stream to the combustor unit of said turbine;

(d) recovering said O_2 enriched gas stream in an amount which exceeds the capacity of the thrust bearing; and

(e) maintaining a mass flow within the energy production unit in an amount which is within the capacity of the thrust bearing by adding a non-combustible fluid to said energy production unit.

All of the claims on appeal stand solely rejected under

35 U.S.C. § 112, second paragraph, for indefiniteness regarding the term “mass flow” as employed in step (e) of the claims.

After having considered the entire record in light of the respective positions advanced by appellants and the examiner, we agree with appellants that the claims are sufficiently definite to comply with the second paragraph of 35 U.S.C. § 112. Accordingly, we shall reverse the rejection at issue.

We entirely agree with appellants that, on their face, the claims clearly define which of the recited fluids is fed to the energy production unit, namely the oxygen - depleted gas stream and the non-combustible fluid. Moreover, as amply demonstrated by appellants, the instant specification is replete with references to “mass flow” within the energy production unit and adequately discusses the significance of each fluid input and output stream. In this regard, pages 27, 29-30, 33-34, 37-38,
42 and 56 are particularly pertinent. The claims cannot be read in a vacuum but, rather, must be read in light of the instant specification as it would be interpreted by a person possessing the ordinary level of skill in the pertinent art.

See In re Johnson, 558 F.2d 1008, 1016, 194 USPQ 187, 194 (CCPA 1977);

In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971).

The decision of the examiner is reversed.

REVERSED

RONALD H. SMITH Administrative Patent Judge	)	
MARC L. CAROFF Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ANDREW H. METZ Administrative Patent Judge	)	

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Appeal No. 95-3500
Serial No. 08/065,438

Judge CAROFF

Judge RONALD SMITH

Judge METZ

Received: 13 Aug 98

Typed: 13&18 Aug 98
Revision: 19 Aug 98

DECISION: REVERSED

Send Reference(s): Yes No
or Translation(s)

Panel Change: Yes No

3-Person Conf. Yes No

Heard: Yes No

Remanded: Yes No

Index Sheet-2901 Rejection(s):

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Acts 2: _____

Palm: _____

Mailed:

Updated Monthly Disk: _____

Updated Monthly Report: ___