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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for 15/269,784 and examiner KRCHA, MATTHEW D.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STANLEY MARCUS MEYER and JASON SCOTT MEYER

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Appeal 2022-000384  
Application 15/269,784  
Technology Center 1700

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Before BEVERLY A. FRANKLIN, LILAN REN, and  
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *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 finally rejecting claims 1–24. We have jurisdiction under 35 U.S.C. § 6(a).

We AFFIRM IN PART and ENTER A NEW GROUND OF REJECTION pursuant to 37 C.F.R. § 41.50(b).

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<sup>1</sup> “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies J.S. Meyer Holdings Co, a Missouri Corporation, as the real party in interest. Appeal Br. 4.

The invention “to systems and methods for processing organic compounds, such as manure or other organic waste, and subsequent processing of resulting biogas. Some embodiments of the present disclosure process manure or organic waste through anaerobic digestion vessels, remove and process undesired compounds from the resulting biogas, and provide for odor control.” Spec. 2. Claims 10 and 13, reproduced from the Appeal Brief’s Claims Appendix, illustrate the invention:

10. A system for processing a hydrogen sulfide-containing gas stream, the system comprising:

a chamber containing a water, wherein the chamber is a lagoon with a surface of the water being exposed to an air; and,

the hydrogen sulfide-containing gas stream having a discharge being disposed below the surface of the water, wherein the chamber receives a hydrogen sulfide-containing gas at a location having sufficient carbon dioxide, oxygen and bacteria, whereby at least a portion of a hydrogen sulfide is converted to an elemental sulfur.

13. The system of claim 10, wherein the chamber is configured to receive the hydrogen sulfide-containing gas about two to thirty feet below a surface of the water.

Appellant requests review of the following rejections from the Examiner’s Final Office Action dated April 15, 2020:

- I. claim 12 rejected under 35 U.S.C. § 112(d) as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends;
- II. claims 6 and 10–13 rejected under 35 U.S.C. § 101 because the claimed invention is directed to a natural phenomenon without significantly more;
- III. claims 6, 10–12, 14, 15, 21, and 23 rejected under 35 U.S.C. § 103 as unpatentable over Ishida (US 4,354,936, issued

- October 19, 1982) and Gustafson (US 6,146,507, issued November 14, 2000);<sup>2</sup>
- IV. claims 1–5, 7, and 9 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, and Norddahl (WO 2015/004146 A1, published January 15, 2015);<sup>3</sup>
  - V. claim 8 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, Norddahl, and Callahan (US 3,388,057, issued June 11, 1968);
  - VI. claim 13 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, and Callahan;
  - VII. claims 16–20 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, Khan (US 2004/0050777 A1, published March 18, 2004), and Martez (WO 2013/033841 A1, published March 14, 2013);
  - VIII. claims 22 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, and Vit (US 6,059,971, issued May 9, 2000);
  - IX. claim 24 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, and Khan; and
  - X. claims 24 rejected under 35 U.S.C. § 103 as unpatentable over Ishida, Gustafson, Prebble (US 2013/0171710 A1, published July 4, 2013), and Khan.

## OPINION

### *REJECTION UNDER 35 U.S.C. § 112(d) (REJECTION I)*

Appellant does not present arguments for the rejection of dependent claim 12 under this ground. *See generally* Appeal Br.<sup>4</sup>

Accordingly, we summarily affirm this rejection.

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<sup>2</sup> The Examiner withdrew the rejection of claim 13 under this ground. Ans. 7.

<sup>3</sup> The Examiner withdrew the rejection of claim 8 under this ground. Ans. 7.

<sup>4</sup> Appellant did not file a Reply Brief.

*REJECTIONS UNDER 35 U.S.C. §§ 101 AND 103 (REJECTIONS II–X)*

For reasons we give below, we determine that the subject matter of claims 1–24 is indefinite. Therefore, we are unable to determine the propriety of the rejection under 35 U.S.C. § 101 (subject matter eligibility) as well as the prior art rejections of these claims. The review of the rejections of claims 1–24 under 35 U.S.C. §§ 101 and 103 would require considerable speculation as to the scope of the claims. Such speculation would not be appropriate. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962). We, therefore, procedurally reverse the rejections under 35 U.S.C. §§ 101 and 103. We emphasize that this is a technical reversal and not a reversal based upon the merits of the rejections.

Thus, without reaching the merits of these rejections, we REVERSE the Examiner’s rejections under 35 U.S.C. §§ 101 and 103.

We enter the following NEW GROUND OF REJECTION for claims 1–24 pursuant to our authority under 37 C.F.R. § 41.50(b).

*NEW GROUND OF REJECTION UNDER  
35 U.S.C. § 112(b) - Indefiniteness*

Claims 1–24 are rejected under 35 U.S.C. § 112(b) as indefinite.

The text of 35 U.S.C. § 112(b) requires “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.” “As the statutory language of ‘particular[ity]’ and ‘distinct[ness]’ indicates, claims are required to be cast in clear—as opposed to ambiguous, vague, indefinite—terms.” *In re Packard*, 751 F.3d 1307, 1313 (Fed. Cir. 2014). Claims comply with 35 U.S.C. § 112(b) if “the claims, read in light of the specification, reasonably apprise those skilled in

the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits.” *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1385 (Fed. Cir. 1986) (citing *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624 (Fed. Cir. 1985)). Thus, the test for determining the question of indefiniteness may be formulated as whether the claims “set out and circumscribe a particular area with a reasonable degree of precision and particularity.” *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971). With regard to the reasonableness standard, one must consider the language in the context of the circumstances. *Packard*, 751 F.3d at 1313. Language is an imprecise method of drawing boundaries delineating patent rights, thus unreasonable precision cannot be demanded. *Id.* On the other hand, the claims must notify the public of what they are excluded from making and using. *Id.* For this reason, while exact precision is not required, an applicant is required to use language as precise as the subject matter reasonably permits. *Id.*

Claim 10 recites a system for processing a hydrogen sulfide-containing gas stream comprising a lagoon as a chamber and a “hydrogen sulfide-containing gas stream having a discharge being disposed below the surface of the water” in the lagoon.

The claim language “hydrogen sulfide-containing gas stream having a discharge being disposed below the surface of the water” raises an issue of indefiniteness. We first note that claim 10 does not recite any structure associated with the claimed “discharge.” Hence, it is not clear how the “hydrogen sulfide-containing gas stream” itself can have a discharge. Nor it is clear whether this term is meant to associate the discharge with a particular structure. Because structure is lacking, the disputed can also be

interpreted as merely indicating an intended location or action to feed the stream into the lagoon. Thus, the disputed language is subject to more than one interpretation. “[I]f a claim is amenable to two or more plausible claim constructions, the USPTO is justified in requiring the applicant to more precisely define the metes and bounds of the claimed invention by holding the claim unpatentable under 35 U.S.C. § 112[b].” *Ex parte Miyazaki*, 89 USPQ2d 1207, 1211–12 (BPAI 2008) (precedential).

We note the Specification describes “[a] fluid pipeline connecting a container and a first anaerobic digestion chamber may serve as a feed stream.” Spec. 6. However, as we note above, claim 10 lacks any language describing a structure associated with the claimed “discharge,” much less a “pipeline” structure. Moreover, given the multiple interpretations of the disputed language, it is not proper to import limitations from the Specification into the claims. *Cf. SuperGuide Corp. v. DirectTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004). We note that the additional language in claim 13 does not overcome the deficiencies of claim 10 because it also fails to describe a structure.

After careful review of the record before us, we determine that the Specification does not provide guidance as to what the disputed claim language means. The disputed claim language is ambiguous, vague, and indefinite because, when read in light of the specification, it does not reasonably apprise those skilled in the art both of the utilization and scope of the invention. *Packard*, 751 F.3d at 1313; *Hybritech*, 802 F.2d at 1385. Thus, we are unable to determine the metes and bounds of the subject matter of independent claim 10 because the claim does not particularly point out

and distinctly claim the subject matter which a joint inventor regards as the invention.

Claims 1–9 and 11–24 depend ultimately from independent claim 10 and, therefore, also include the disputed claim language. Thus, these claims are indefinite for the reasons we give in our discussion of claim 10.

Accordingly, on this record, claims 1–24 are indefinite for the reasons we give above.

### CONCLUSION

We affirm the Examiner’s rejection of claim 12 under 35 U.S.C. § 112(d).

We procedurally reverse the Examiner’s rejection of claims 6 and 10–13 under 35 U.S.C. § 101.

We procedurally reverse the Examiner’s rejections of claims 1–24 under 35 U.S.C. § 103.

Because the affirmed rejection does not reach all the claims on appeal, our decision is an affirmance in part.

We also enter a new ground of rejection for claims 1–24 under 35 U.S.C. § 112(b).

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>	<b>New Ground</b>
12	112	Improper Dependency	12		
6, 10–13	101	Eligibility		6, 10–13	



6, 10–12, 14, 15, 21, 23	103	Ishida, Gustafson		6, 10–12, 14, 15, 21, 23	
1–5, 7, 9	103	Ishida, Gustafson, Norddahl		1–5, 7, 9	
8	103	Ishida, Gustafson, Norddahl, Callahan		8	
13	103	Ishida, Gustafson, Callahan		13	
16–20	103	Ishida, Gustafson, Khan, Martez		16–20	
22	103	Ishida, Gustafson, Vit		22	
24	103	Ishida, Gustafson, Khan		24	
24	103	Ishida, Gustafson, Prebbie, Kahn		24	
1–24	112	Indefiniteness			1–24
<b>Overall Outcome</b>			12	1–11, 13–24	1–24

#### TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered

by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

AFFIRMED IN PART; 37 C.F.R. § 41.50(b)