United States District Court,
S.D. California.

ZENON ENVIRONMENTAL, INC,
Plaintiff.
v.
UNITED STATES FILTER CORPORATION,
Defendant.

Civil No. 03CV1996-B(AJB)

Nov. 9, 2004.

James T. Hannink, John David Kinton, DLA Piper US, San Diego, CA, for Plaintiff.

James L. Quarles, III, Wilmer Cutler Pickering Hale and Dorr, Washington, DC, Kate Saxton, Michael J. Summersgill, Patrick M. Callahan, William F. Lee, Wilmer Cutler Pickering Hale and Dorr, Boston, MA, Mark D. Selwyn, Wilmer Cutler Pickering Hale and Dorr, Palo Alto, CA, Robert S. Brewer, Jr., McKenna Long and Aldridge, San Diego, CA, for Defendant.

ORDER CONSTRUING CLAIMS FOR U.S. PATENT NUMBER 6,245,239

RUDI M. BREWSTER**, Senior District Judge.**

In the above identified cases, Zenon Environmental, Inc. ("Zenon") filed suit against Defendant United States Filter ("US Filter"), for patent infringement of United States Patent Number 6,245,239 ("the '239 patent"). FN1

FN1. The '239 patent issued on June 12, 2001, with 8 claims and is assigned to Zenon.

Pursuant to Markman v. Westview Instruments, 52 F.3d 967 (Fed .Cir.1995), this Court conducted a hearing on November 1-3, 2004, to construe the disputed claims of the '239 patent.FN2 At the hearing, the law firm of Gray Cary Ware & Freidenrich LLP represented Zenon, and the law firm Wilmer Cutler Pickering Hale and Dorr LLP represented U.S. Filter.

FN2. Claims 1-3 are the disputed claims of the '239 patent.

The Court, with the assistance of the parties, prepared jury instructions interpreting the pertinent claims for all claim terms at issue in the '239 patent. Additionally, a "Glossary" was prepared for terms found in the '239 patent considered to be technical in nature and which a jury of laypersons might not understand without a specific definition. As the case advances, the parties may request additional terms to be added to

the glossary as may seem helpful to the jury.

After careful consideration of the parties' arguments and the applicable law, the Court **HEREBY CONSTRUES** all disputed claim terms in the '239 patent, attached as Exhibit A. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in exhibit B, attached hereto.

IT IS SO ORDERED

EXHIBIT A

CLAIM CONSTRUCTION CHART FOR UNITED STATES PATENT NUMBER 6,245,239	
VERBATIM CLAIM LANGUAGE	**COURT'S CLAIM CONSTRUCTION**
Claim 1. A method of aerating a plurality of membrane modules immersed in water in a tank comprising the steps of: providing a flow of air to aerators below the membrane modules, the flow of air alternating between a higher flow rate of flow and a lower flow rate of flow, the lower flow rate being less than one half of the higher flow rate, in repeated cycles of are [FN1] greater than about 10 seconds and less than about 120 seconds in duration to produce transient now [FN2] conditions in the water in the tank and accelerate or decelerate the water in the tank for much of the cycle so that the water in the tank is rarely in a steady state.	Claim 1. A method of aerating a plurality of membrane modules **immersed in water in a tank [covered completely with water in a tank]** comprising the steps of: providing a flow of air to **aerators [devices for supplying air under pressure]** below the membrane modules, the flow of air alternating between a higher flow rate of flow and a **lower flow rate of flow [a flow rate that is less than the higher flow rate and that can include no flow],** the lower flow rate being less than one half of the higher flow rate, in **repeated [occurring again and again] cycles [repeated events that have a set duration]** of are greater than about 10 seconds and less than about 120 seconds in duration to produce **transient flow conditions in the water in the tank [momentary flow conditions in some portion or all of the water in the tank]** and **accelerate or decelerate the water in the tank [the velocity of the tank water is either increasing or decreasing over time]** for **much of the cycle [a large amount of the cycle]** so that the water in the tank is **rarely [infrequently, seldom]** in a **steady state [a stable condition such that the tank water does not change over time].**

FN1. The verb "are" is found in claim 1 in the issued patent but was omitted from the joint claim construction chart the parties submitted for the Markman hearing which was held November 1-3, 2004. Therefore, the court reinserts the term "are" in both columns of the claim construction chart.

FN2. The adverb "now" is found in claim 1 in the issued patent but was replaced with the term "flow" in the joint claim construction chart the parties submitted for the Markman hearing which was held November 1-3, 2004. Because both parties referred to the term "now" as "flow" during the Markman hearing, the court uses the term "now" in the verbatim claim language column, but uses the term "flow" in its definition of "transient now (*sic*) conditions in the water in the tank."

Claim 2.	Claim 2. (no change)

The method of claim 1 wherein the repeated cycles are between about 20 seconds and about 60 seconds in duration.	The method of claim 1 wherein the repeated cycles are between about 20 seconds and about 60 seconds in duration.
Claim 3.	Claim 3.
The invention of claim 2 wherein the lower flow rate is an air off condition.	The invention of claim 2 wherein the lower flow rate is an **air off condition [the flow of air to the aerators is turned off].**

EXHIBIT B

GLOSSARY OF TERMS FOR UNITED STATES PATENT NUMBER 6,245,239

CLAIM TERMS[FN3]	**DEFINITIONS**
immersed in water in a tank	covered completely with water in a tank
lower flow rate of flow	a flow rate that is less than the higher flow rate and that can include no flow
repeated	occurring again and again
cycles	repeated events that have a set duration
event	In the context of the claims, an event is a flow pattern where the flow alternates between a higher rate of flow and a lower rate of flow, meaning that the flow has a higher rate of flow, then changes from the higher rate of flow to a lower rate of flow, and then changes back from the lower rate of flow to the higher rate of flow, and the duration is the time that elapses between an instance at which the flow of air begins to change from a lower flow rate to a higher flow rate and the next such instance.
air off condition	the flow of air to the aerators is turned off

FN3. The parties in this suit agreed to the definition of these terms. With the exception of the definition of the term "event," the definitions of these terms also appear in the court's claim construction column.

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