

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 LLP, Washington, DC, Kate Saxton, Michael J. Summersgill, Patrick M. Callahan, William F. Lee, Wilmer Cutler Pickering Hale and Dorr, LLP, 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 6,550,747

Hon. 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 6,550, 747 ("the '747 patent"). FN1

FN1. The '747 patent issued on April 22, 2003, with 23 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 '747 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. Claim 20 is the only disputed claim of the '747 patent.

The Court, with the assistance of the parties, prepared jury instructions interpreting the pertinent claims for all claim terms at issue in the '747 patent. Additionally, a "Glossary" was prepared for terms found in the '747 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 '747 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 6,550,747	
VERBATIM CLAIM LANGUAGE	COURT'S CLAIM CONSTRUCTION
Claim 20.	Claim 20. (no change)
An apparatus to aerate tank water in one or more tanks containing one or more immersed membrane modules comprising:	An apparatus to aerate tank water in one or more tanks containing one or more immersed membrane modules comprising:
(a) an air delivery network having a plurality of distinct branches;	(a) an air delivery network having a plurality [two or more] of distinct branches;
(b) one or more aerators in fluid communication with the distinct branches of the air delivery network and mountable below the membranes;	(b) one or more aerators [devices for supplying air under pressure] in fluid communication with the distinct branches of the air delivery network and mountable below the membranes;
(c) an air supply to provide an initial air flow at an initial flow rate;	(no change)
	(c) an air supply to provide an initial air flow at an initial flow rate;
(d) one or more valves in a valve set in fluid communication with the air supply and having distinct outlets in fluid communication with the distinct branches of the air delivery network; and,	(no change)
	(d) one or more valves in a valve set in fluid communication with the air supply and having distinct outlets in fluid communication with the distinct branches of the air delivery network; and,
(e) a valve set controller to control the valves of the valve set; wherein	(e) a valve set controller [a device for sending signals to a valve set] to control the valves of the valve set; wherein
(f) the valve set controller automatically operates the valves to (i) split the initial air flow such that at least one of the distinct branches of air delivery network receives air at a higher flow rate and at least one other of the distinct branches of the air delivery network receives air at a lower flow rate, the lower flow rate being less than one half of the higher flow rate, and (ii) switch which branch or branches of the air delivery network receive air at	(f) the valve set controller automatically operates the valves to (i) split the initial air flow such that at least one of the distinct branches of air delivery network receives air at a higher flow rate and at least one other of the distinct branches of the air delivery network receives air at a lower flow rate [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, and (ii) switch which branch or branches of the air

the higher flow rate and the lower flow rate in repeated cycles;	delivery network receive air at the higher flow rate and the lower flow rate in repeated cycles;
(g) the valve set controller is operable to switch which branch or branches of the air delivery network receive air at the higher flow rate and the lower flow rate in repeated cycles of less than about 120 seconds in duration; and	(g) the valve set controller is operable [able to operate] to switch which branch or branches of the air delivery network receive air at the higher flow rate and the lower flow rate in repeated cycles of less than about 120 seconds in duration; and

(h) the time required to fully open or close the valve or valves associated with a distinct branch of the air delivery network is less than about 5 seconds.

(no change)

(h) the time required to fully open or close the valve or valves associated with a distinct branch of the air delivery network is less than about 5 seconds.

EXHIBIT B

GLOSSARY OF TERMS FOR UNITED STATES PATENT NUMBER 6,550,747
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CLAIM TERMS^[FN1]

DEFINITIONS

FN1. The parties in this suit agreed to the definition of these terms. The definitions of these terms also appear in the court's claim construction column.

valve set controller	a device for sending signals to a valve set
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lower flow rate	a flow rate that is less than the higher flow rate and that can include no flow
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S.D.Cal.,2004.

Zenon Environmental, Inc. v. U.S. Filter Corp.

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