

By Fax and by E-mail

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12 September 2002

Secretary General
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn.: Mr S.C. Tsang)

Dear Mr Tsang,

LegCo Panel on Commerce and Industry
List of outstanding follow-up actions

Thank you for your letter of 15 August 2002 enclosing a list of outstanding follow-up actions required of the Administration.

2. On Issue 1 of the list relating to the consultancy study on environmental technology in Hong Kong, you will note that we have already submitted to you our return dated 19 August 2002.
3. On Issue 2 of the list relating to the role and mission of the Hong Kong Productivity Council (HKPC), I would like to inform you of the developments since the Panel meeting on 8 July 2002.

Complaint lodged by the Integrated Solutions Limited (ISL)

4. To recap, the gist of ISL's complaint is that HKPC had breached the payment and auditing terms of a joint development agreement with ISL, and had developed a similar software (titled "EPD") to compete with the software (titled "EPN") which was the subject of the joint development

agreement.

5. During July and August 2002, HKPC held several meetings with ISL to address its complaints. Relating to the financial record keeping of the licensing business transactions, ISL representatives were given an opportunity to review all project records, invoices and transaction reports. The result of the review indicated that HKPC had reported and settled all licensing business transaction fee to ISL. Assisted by their own software expert, ISL representatives also reviewed the programme characteristics and source code of the EPD. After the review, ISL agreed that the EPN and the EPD were different and were developed separately, and there was no source code imitating issue.

6. Both parties have now clarified and satisfactorily resolved the issues of the previous complaint. They have also agreed that a new contract to replace the existing one would be the best for a new start. A new joint development agreement, with better defined role of each party, was eventually signed in August.

Complaint lodged by Waste and Environmental Technologies Limited (WETL)

7. To recap, the gist of WETL's complaint is that HKPC, being an implementation agent of the Patent Application Grant (PAG) Scheme administered by the Innovation and Technology Commission, had infringed the patent of WETL, which was an applicant of the PAG, and had developed a similar product (titled "AquaSed") for marketing.

HKPC's explanation

8. The AquaSed, a wastewater treatment system, was developed by HKPC to help the construction industry comply with the Government's discharge requirement. The engineering design of AquaSed was based on previous wastewater treatment systems which HKPC designed for different factories as early as 1991. The Short Term Patent on HKPC's AquaSed is titled "Independent Treatment System for Treating the Waste Water of the Construction Site with the Chemical Coagulation Technology". On the other hand, the Short Term Patent on WETL's System is titled "Wastewater Treatment Chamber". The design of the two systems is fundamentally different. A note explaining the differences in the operating principle of the systems provided by HKPC is at Appendix A.

Expert opinion

9. In view of the complaint, HKPC has sought third party expert

opinion of a patent attorney on the possibility of patent infringement. The expert opinion has concluded that HKPC's AquaSed does not contain some of the elements/limitations in the claim of WETL and therefore does not infringe on the patent of WETL. A copy of the expert opinion is at Appendix B.

Meetings with WETL

10. HKPC has, since July, conducted six meetings with WETL to explain the findings and opinion of the patent attorney that the AquaSed does not infringe on the patent of WETL. During these meetings, compensation and settlement issues were raised verbally by WETL. However, based on the legal advice, HKPC has no ground to take such issues further. As at to date, HKPC has not received any formal written claim or notification from WETL or its patent expert to such effect. Nevertheless, HKPC will continue its dialogue with WETL in the hope to iron out differences.

Conclusion

11. The first complaint has been resolved between the two parties. As regards the second complaint, dialogue between the two parties is ongoing. HKPC is continuing to explain to the complainant that infringement of his patent does not arise, as borne out by third party expert opinion.

12. To address the question of possible conflict of interest between HKPC's role as an implementation agent of PAG, and its involvement in developing and marketing patent products in competition with patent applicants, HKPC has decided that it will focus on technology transfer of its research and development outputs and technical know-how, and refrain from undertaking equipment or system manufacturing for marketing purpose.

Yours sincerely,

(Mrs Shirley Lau)
for Commissioner for Innovation and Technology

c.c. SCIT (Attn. Ms Ellen Choy)

Technical considerations

The AquaSed, a wastewater treatment system, was developed by HKPC to help the construction industry comply with the Government's discharge requirement. The engineering design of AquaSed was based on previous wastewater treatment systems HKPC designed for different factories as early as 1991. The system consists of a reaction chamber fitted with a motorised mixer which turns the wastewater at an optimum speed to facilitate effective coagulation and flocculation of the chemical with the suspended particles to form larger size flocs. The wastewater is then transferred into the sedimentation chamber where the larger flocs are settled at the bottom of the chamber under the laminar flow condition, and the supernatant is discharged through a V-notch weir at the top.

The operating principle of the wastewater treatment system of WETL, on the other hand, is the use of centrifugal force to remove the solids from wastewater. At the heart of its design is a conical shaped vortex reactor which is supposed to create a swirling effect to remove the solids. In HKPC's AquaSed, there is no vortex reactor, and tilted plate sedimentation system is used instead to remove the solids. The design of the two systems is fundamentally different. While the in-line mixer of the two systems may look similar or have similar functions, these mixers are available commercially in different sizes and shapes, and HKPC has used these mixers in many of its past projects. Indeed, the in-line mixer adopted in the AquaSed is based on a standard textbook design and is different from WETL's.

Under Section 73 and 76 of the Patents Ordinance, the claim of a patent is to be interpreted in a fair manner. In general, a literal interpretation of a claim is first used for infringement analysis. If the device in question does not fall within the literal scope of the claim, then a purposive construction of the claim is further performed to include variants that fall outside the literal interpretation but which may be understood by one skilled in the art to have no material effect upon the working of the invention.

Claim 1 contains the following elements and limitations:


1. 一個上面安有進水管(2), 下端設布下出口(3)的漏斗機殼(1);
2. 機架(4);
3. 速混葉片(2-2)設在進水管的管壁(2-1);
4. 注藥孔甲(2-3)設在管壁沿進水口一端的管壁;
5. 彎管(2-4)把管壁(2-1)與漏斗機殼(1)連接一起;
6. 注藥孔乙(2-5)設置在彎管上;
7. 中心管(5)設置於漏斗機殼(1)的中央沿中軸位置;
8. 螺旋升水器(6)設置於中心管中;
9. 錐形分離器(7)設置在中心管的下端下面;
10. 罐頂擋泥板(13)設置於漏斗機殼(1)的上部;
11. 罐頂擋泥板起上蓋作用, 封住未處理的水;
12. 放氣管(12)設置在泥板上;
13. 中心管又從罐頂擋泥板的中央穿出;
14. 清水箱(14)設置在罐頂擋泥板的上面;
15. 凸台在漏斗機殼之外伸出;
16. 出水管(8)設於凸台的下面, 用於出水.

Wilkinson & Grist

B. Conclusion

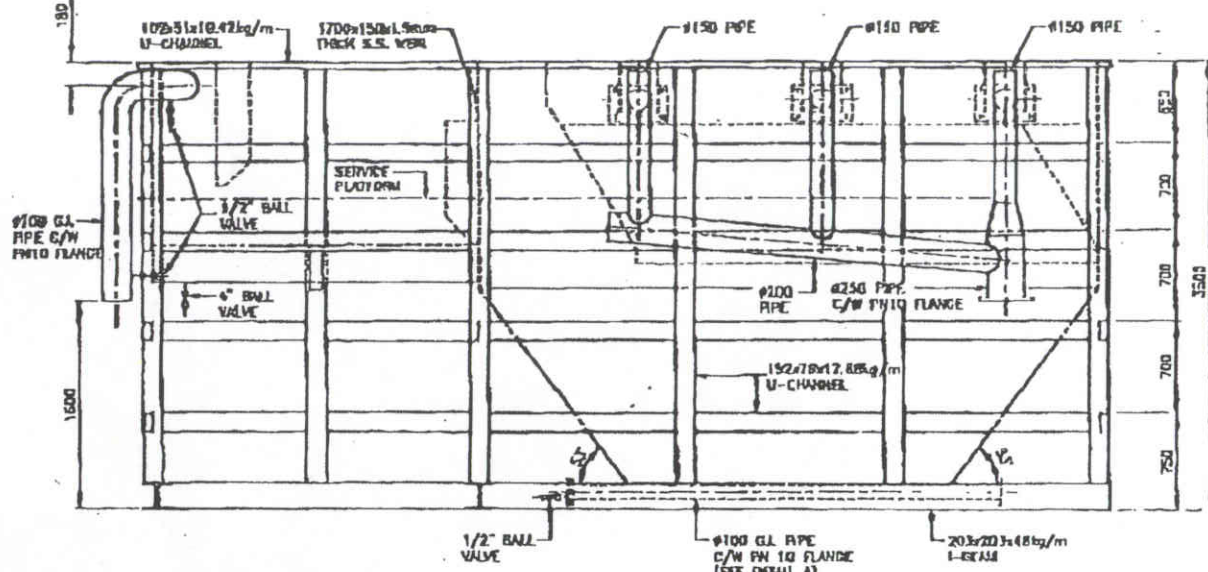
Our opinion is that the HKPC Aquased system as shown in drawing ASII-01 and the supporting frame as shown in drawing 01012987/101 do not contain elements/limitations 7, 9, 12 and 13 and therefore do not infringe on Claim 1 even upon a purposive constructive of the claim. Claims 2 to 13 contain additional limitations and therefore do not cover the system described by the above identified drawings.

Yours sincerely,


YVONNE CHUA
WILKINSON & GRIST

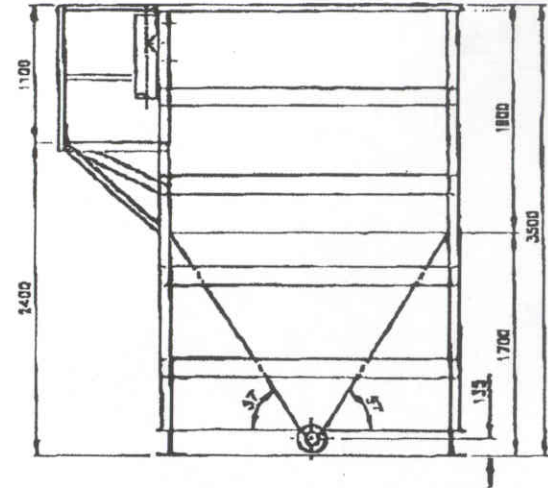

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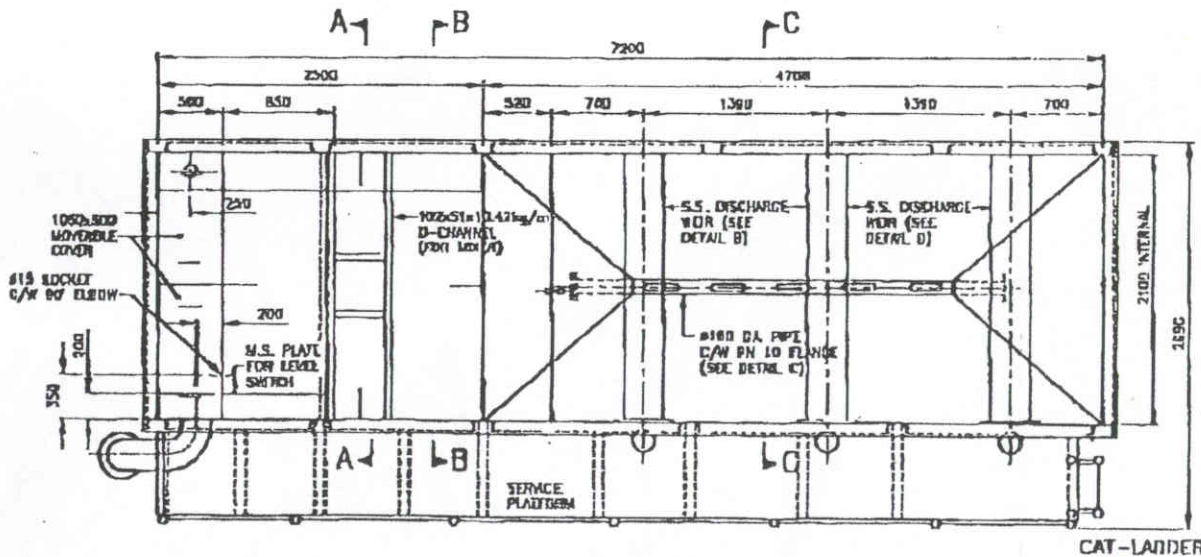


ELEVATION

(SERVICE PLATFORM & CAT-LADDER HAVE NOT SHOWN)



END ELEVATION



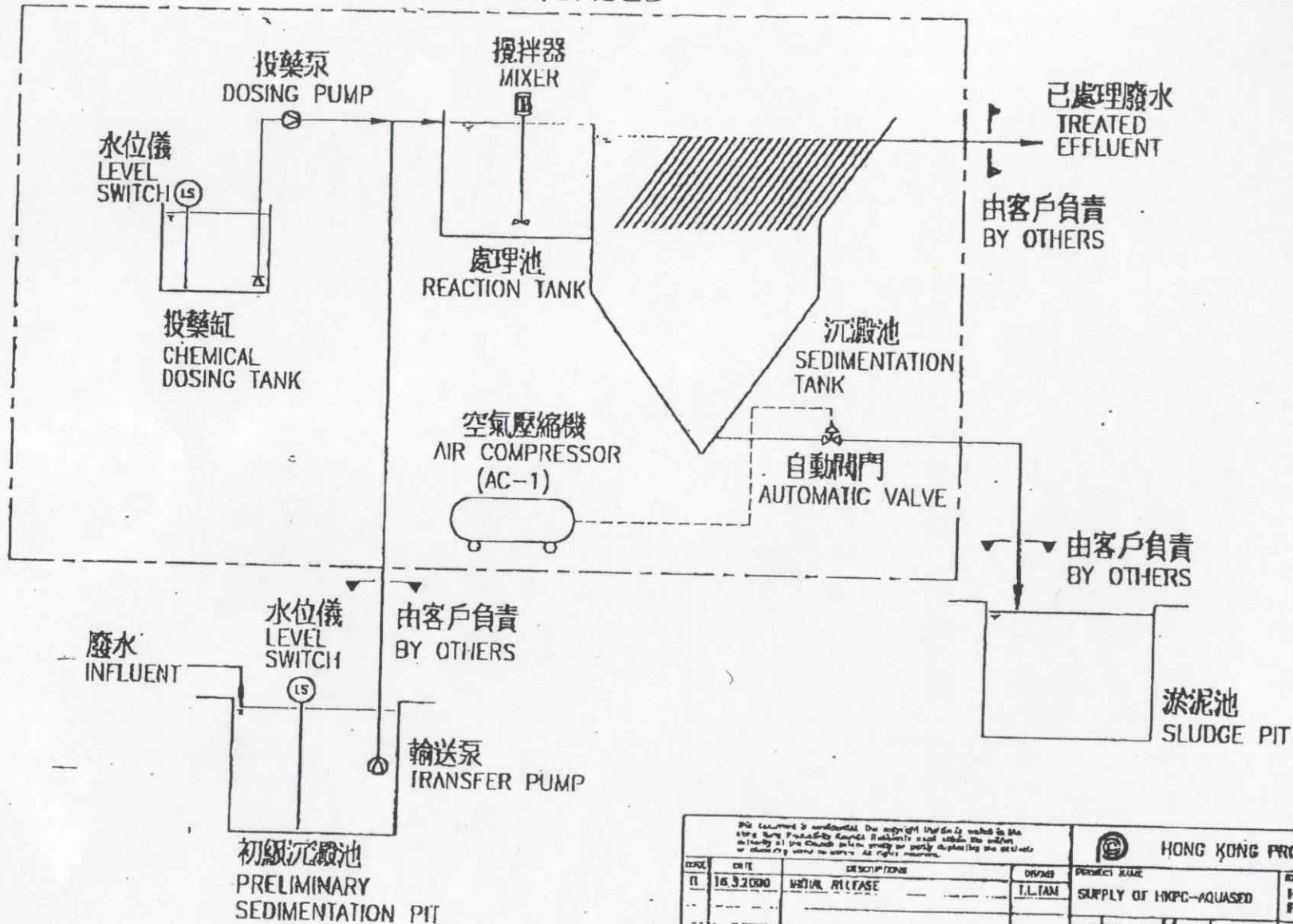
PLAN

NOTES:

- 1) THE TANK BODY IS 8mm THICK MILD STEEL PLATE, BEAMS, U-CHANNELS, PIPES AND ANGLE BARS ARE MILD STEEL, AND SIZE TO BE SPECIFIED UNLESS OTHERWISE STATED.
- 2) ALL THE DRAIN FLUID CONTACTED SURFACES SHALL BE CLEANED BY SAND SCRAPING, SANDING, CHIPPING OR WIRE-BRUSHING TO REMOVE ALL LOOSE RESIDUAL SCALE AND DECOMPOSED PAINT. TWO COATS OF RUST-RESISTANT HIGH BUILD COAT FOR EPOXY No. 9576 WITH DRY FILM THICKNESS NOT LESS THAN 300 MICRONS.
- 3) ALL NON FLUID CONTACTED SURFACES SHALL BE CLEANED BY SAND SCRAPING, SANDING, CHIPPING OR WIRE-BRUSHING TO REMOVE ALL LOOSE SCALE AND DECOMPOSED PAINT. TWO COATS OF RUST-RESISTANT HIGH PERFORMANCE EPOXY BOND SYSTEM (BLUE IN COLOUR) WITH TOTAL DRY FILM THICKNESS NOT LESS THAN 300 MICRONS.
- 4) THE POSITION OF EYE-BOLT TO BE DETERMINED ON SITE.
- 5) FORTH BRACKETS FOR DORSUM TANK AND DORSUM PLANT TO BE DETERMINED ON SITE.

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| PROJECT NO. | | DRAWING NO. | |
| DATE | | SCALE | |
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| PROJECT FILE | | DRAWING FILE | |
| SHEETS OF THIS DRAWING | | SHEETS REQUIRED | |
| NO. | DATE | NO. | DATE |
| 1 | | 1 | |
| PROJECT NO. 01012987-101 | | DRAWING NO. 01012987-101 | |
| 14. HONG KONG PRODUCTIVITY COUNCIL | | | |

HKPC-AQUASED



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| NO. | DATE | DESCRIPTION | DRWING | PROJECT NAME | REV. NO. |
| 01 | 16.3.2000 | INITIAL RELEASE | I.L.TAM | SUPPLY OF HKPC-AQUASED | HKPC-AQUASED FLOW SCHEMATIC DIAGRAM |
| | | | | DESIGNER: T.L. TAM | 16.3.2000 |
| | | | | CHECKED: W.F. CHAN | 16.3.2000 |
| | | | | APPROVED: M. BONG | 16.3.2000 |
| | | | | FILE: WPC/C/ENV/AQUASED/STANDARD/ASII-01.DWG | ASII-01 |