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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 THERMAPURE, INC., a California
corporation,

13 Plaintiff,

14 vs.
15

16 SCR-SUN COUNTRY
RESTORATION, INC., an Arizona
corporation,

17 Defendants.
18

Case No. **'11CV1387 BEN WMC**

**COMPLAINT FOR
INFRINGEMENT OF U.S.
PATENT NO. 6,327,812**

[Demand for Jury Trial]

19
20 For its complaint against SCR-SUN COUNTRY RESTORATION, INC.
21 (“Sun Country”), Plaintiff THERMAPURE, INC. (“ThermaPure”) alleges as
22 follows:
23

24 **JURISDICTION AND VENUE**

25 1. This is a civil action arising in part under laws of the United States
26 relating to patents (35 U.S.C. §§ 271, 281, 283, 284, and 285). This Court has
27 federal jurisdiction of such federal question claims pursuant to 28 U.S.C. §§ 1331
28 and 1338(a).

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1 by the United States Patent and Trademark Office on December 11, 2001 (“the ‘812
2 Patent”). A true and correct copy of the ‘812 Patent is attached as Exhibit 1.

3 8. Defendant Sun Country has infringed and continues to infringe the ‘812
4 Patent by making, using, selling, or offering to sell in the United States products,
5 devices or methods that embody or otherwise practice one or more of the claims of
6 the ‘812 Patent, or by otherwise contributing to infringement or inducing others to
7 infringe the ‘812 Patent. Plaintiff is informed and believes that the acts of
8 infringement occurred in the State of California, County of Imperial.

9 9. On information and belief, Plaintiff alleges that Sun Country’s
10 infringement of ‘812 Patent is and has been willful and deliberate.

11 10. As a direct and proximate result of Sun Country’s infringement,
12 contributory infringement and/or inducement to infringe the ‘812 Patent, Plaintiff
13 has been and continues to be damaged in an amount to be proven at trial.

14 11. Sun Country’s infringement is ongoing and has caused, and, unless
15 enjoined and restrained by this Court, will continue to cause Plaintiff great and
16 irreparable injury to, among other things, Plaintiff’s good will, business reputation,
17 and market share. Plaintiff is therefore entitled to injunctive relief enjoining and
18 restraining Sun Country, and its respective officers, agents, servants, and employees,
19 and all persons acting in concert with them, and each of them, from further
20 infringement of the ‘812 Patent.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment against Sun Country as follows:

- 23 (1) For a judicial determination and declaration that Sun Country has
24 infringed the ‘812 Patent;
- 25 (2) For a judicial determination and decree that Sun Country’s
26 infringement of the ‘812 Patent has been willful;

EXHIBIT 1



US006327812B1

(12) **United States Patent**
Hedman et al.

(10) **Patent No.:** **US 6,327,812 B1**
(45) **Date of Patent:** **Dec. 11, 2001**

(54) **METHOD OF KILLING ORGANISMS AND REMOVAL OF TOXINS IN ENCLOSURES**

(76) Inventors: **David Hedman**, 7750 Sulphur Mountain Rd., Ojai, CA (US) 93023;
Troy Sears, 4582 Da Vinci St., San Diego, CA (US) 92130

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **09/321,915**

(22) Filed: **May 28, 1999**

(51) **Int. Cl.**⁷ **A01M 1/20**

(52) **U.S. Cl.** **43/124; 43/132.1**

(58) **Field of Search** **43/124, 132.1**

(56) **References Cited**

U.S. PATENT DOCUMENTS

4,817,329	*	4/1989	Forbes	43/124
4,953,320	*	9/1990	Nelson	43/132.1
4,958,456	*	9/1990	Chaudoin	43/124
4,989,363	*	2/1991	Doernemann	43/124
5,058,313	*	10/1991	Tallon	43/124
5,349,778	*	9/1994	Chu	43/132.1
5,442,876	*	8/1995	Pedersen	43/124
5,768,907	*	6/1998	Lee	43/132.1
6,141,901	*	11/2000	Johnson	43/124

* cited by examiner

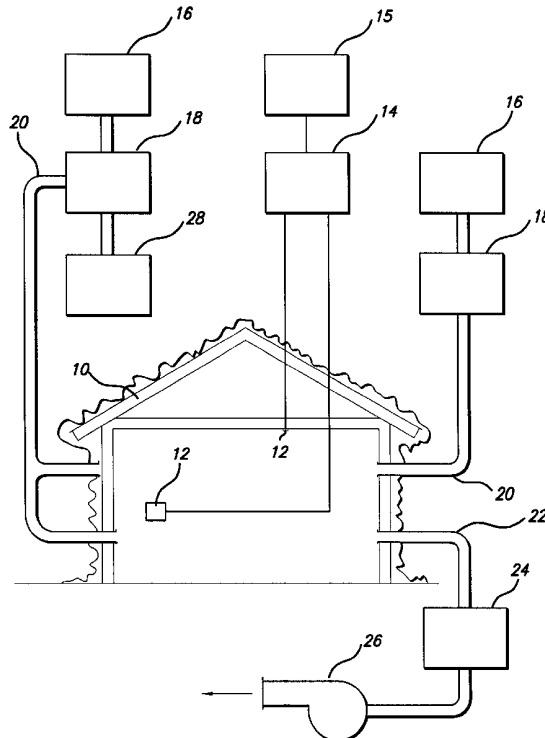
Primary Examiner—Kurt Rowan

(74) Attorney, Agent, or Firm—O'Melveny & Myers LLP

(57) **ABSTRACT**

A method and kit of components for destroying organisms and toxins in from an enclosure such as a building. Temperature sensing probes are installed in the enclosure to indicate structure temperature and a recorder is used to record the temperature of said sensing probes in real time. Hot air is introduced into the enclosure through one or more ducts to raise the structure temperature to at least about 120° F., as monitored by the temperature sensing probes. This is sufficient to kill essentially all insects, bacteria, virus, dust mites, spiders, silver fish, fungi and toxic molds such as *aspergillus oryzae*, *aspergillus terreus*, *aspergills versicolor*, *cladosporium hergbarum*, *stachybotrys chartarum*, *penicillium aurantiogriseum*, *pencillium chrsogenum*, *pencillium glabrum* and *fusarium oxysporum*, and the like. The air can exit through open doors and windows or through ducts to a filter assembly that captures the remains of the organisms. Ozone may be added to the heated air to improve efficiency. Preferably, air when extracted from an egress duct downstream of the filters improves air flow through the enclosure and filters. A typical building can be treated in six to eight hours.

8 Claims, 2 Drawing Sheets



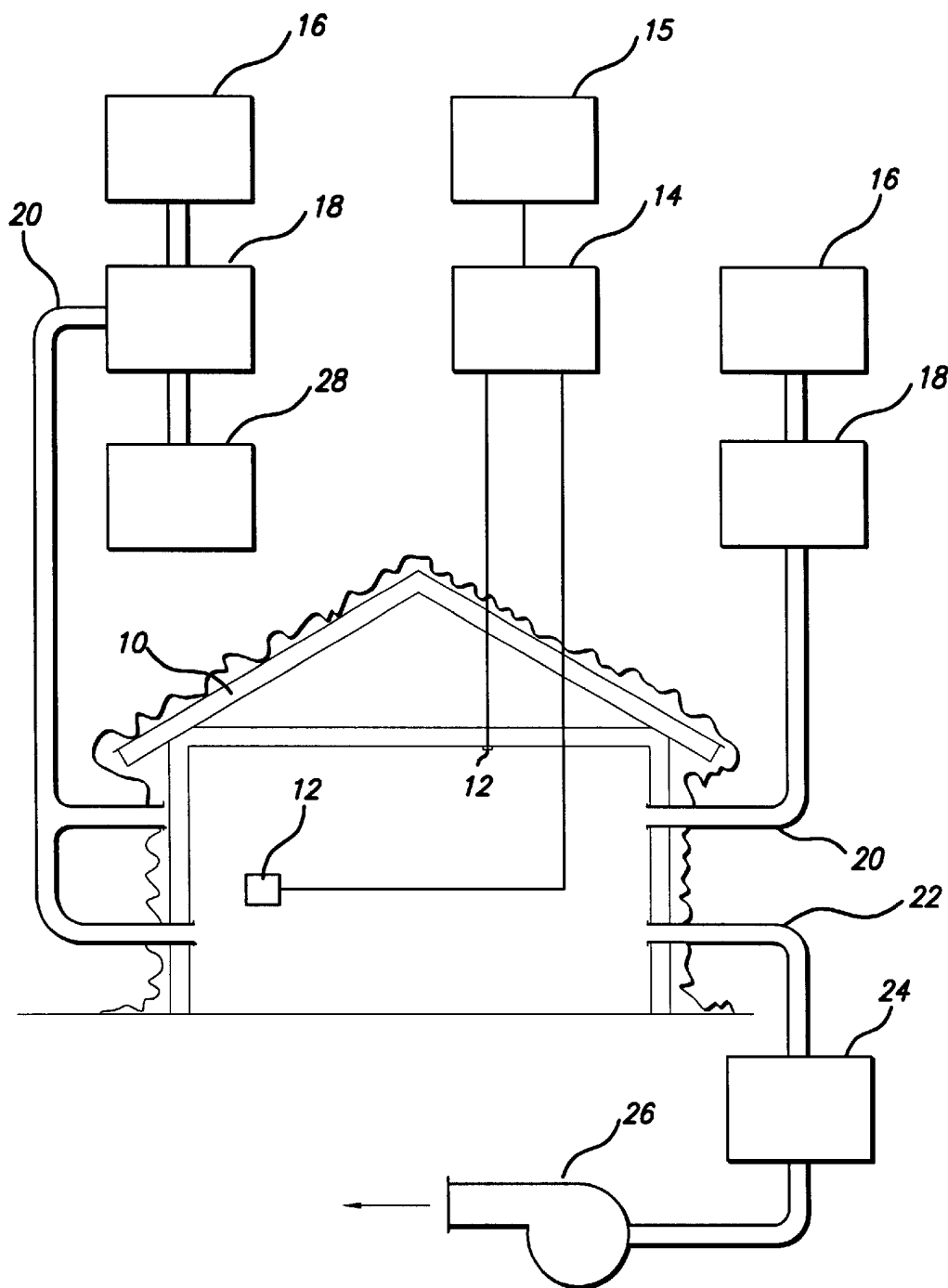


FIG. 1

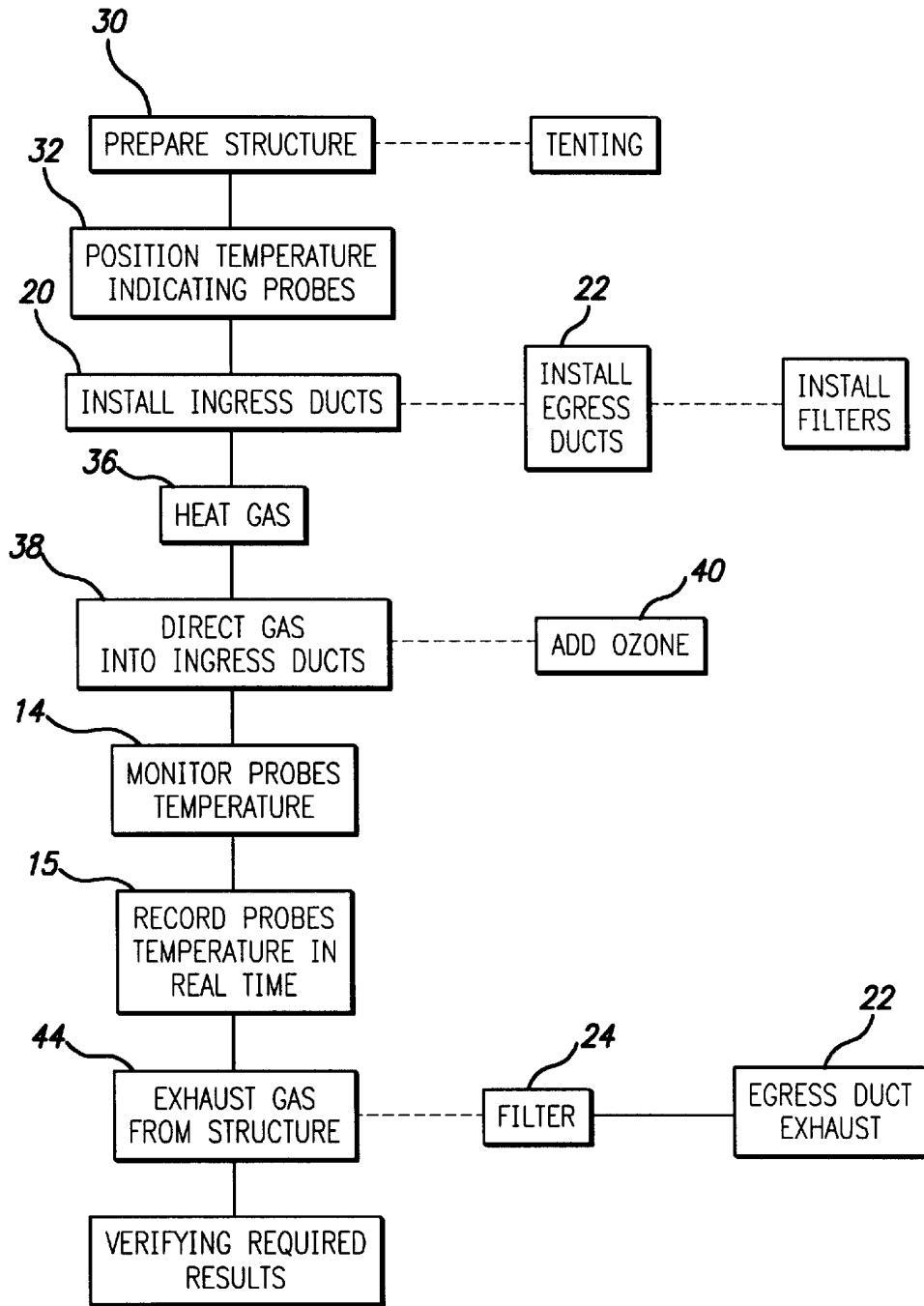


FIG. 2

US 6,327,812 B1

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METHOD OF KILLING ORGANISMS AND REMOVAL OF TOXINS IN ENCLOSURES

FIELD OF THE INVENTION

This invention relates to methods of sanitizing buildings and other enclosed spaces by killing and removing organisms such as insects, bacteria, virus, dust mites, spiders, silver fish, fungi and toxic molds such as but not limited to *aspergillus oryzae*, *aspergillus terreus*, *aspergillus versicolor*, *cladosporium hergbarum*, *stachybotrys chartarum*, *penicillium aurantiogriseum*, *penicillium chrsogenum*, *penicillium glabrum* and *fusarium oxysporum*.

BACKGROUND OF THE INVENTION

A large number of methods have been developed for killing insects, such as termites, in buildings. The most widely used method is tenting the building, then filling the building with a toxic gas for a period of time sufficient to kill termites or other selected insects. This method is effective for killing termites and other insects. However, this method generally requires 12 hours to be effective, requiring building occupants to move out businesses to be closed for approximately a three day period to insure proper venting of toxic material and/or gas. Tenting the building with heavy tarpaulins requires workers to walk and arrange the tarpaulins on the roof, often damaging shingles or other roofing materials. Food and medications must be placed in sealed containers or removed. Generally the entire building must be treated, even if the infestation is localized.

Because of the disadvantages of the toxic gas method, various other techniques of varying effectiveness have been developed, using heated air or very cold air to kill termites, electrical "shock" treatments, irradiation, non-ionizing, etc.

Typical of these is the method disclosed by Charles Forbes in U.S. Pat. No. 4,817,329, in which wood destroying insects, e.g., termites, are killed by applying a heated gas, such as heated air, to wooden surfaces until the building surfaces are heated to a temperature, typically about 120 to 135° F. Temperatures for killing other insects are said to be surprisingly close to this range. This method has been found to be very effective for killing termites. However, this method, using the described temperatures, is not effective for other organisms, such as fungi, and toxic molds such as, but not limited to, *aspergillus oryzae*, *aspergillus terreus*, *aspergillus versicolor*, *cladosporium hergbarum*, *stachybotrys chartarum*, *penicillium aurantiogriseum*, *penicillium chrsogenum*, *penicillium glabrum* and *fusarium oxysporum*. Further, many insects such as mites, fungi, molds and the like are a serious health hazard even when dead. Many people are allergic to the dust-like remains of these organisms that can also cause serious health problems. This is a particular problem to persons suffering from asthma, bronchitis, pneumoconiosis and other respiratory ailments.

Therefore, there is a continuing need for improved methods of killing organisms in enclosures such as buildings that are fully effective in killing and eliminating substantially all such organisms, is non-toxic, can be performed in a relatively short time, is clean, dry and odorless, and removes a large proportion of the dead organisms.

SUMMARY OF THE INVENTION

The above-noted problems, and others, are overcome in accordance with this invention by a method which basically comprises the steps of preparing the enclosure to be treated, such as a building by, removing all heat sensitive items, positioning heat shields, etc., positioning temperature indicating probes at appropriate locations, inserted into building structure, open spaces, etc., installing ingress ducts through

2

which an environmentally acceptable gas, such as air, can be directed into the enclosure, allowing the gas to leave the enclosure by opening windows, doors, etc. or by installing an egress duct or ducts for this purpose, heating the gas and directing it into the ingress duct(s) when installed and filtering gas exhausting through open doors and windows and/or the egress ducts to collect organism remains and prevent them from entering the environment.

To increase system effectiveness, under some conditions, it is preferred that a suitable quantity of ozone be fed into the heated air passing through the ingress ducts. Ozone aids in killing many organisms and will eliminate any chemical fumes, odors, etc. that may result from the treatment.

To increase gas flow through the enclosure when egress ducts are employed, it is preferred that a vacuum extraction system be provided downstream of the filters receiving gas from the egress ducts. This will assure that almost all gas leaving the enclosure will pass through the filters and increase the capture of organism remains.

It is, therefore, an object of this invention to provide a non-toxic method for destroying a wide variety of organisms including fungi, toxic molds such as, but not limited to, *aspergillus oryzae*, *aspergillus terreus*, *aspergillus versicolor*, *cladosporium hergbarum*, *stachybotrys chartarum*, *penicillium aurantiogriseum*, *penicillium chrsogenum*, *penicillium glabrum* and *fusarium oxysporum* and insects in enclosures such as buildings and the like.

Another object of the invention is to remove substantially all of the remains of the killed organisms from open areas in the enclosure.

Yet another object is to filter gases leaving from the enclosure to prevent the allergenic organism remains from entering the environment.

A further object is to accomplish the destruction of the organisms in a relatively short period.

Still another object is to monitor the temperature level throughout the enclosure to assure that all areas reach the predetermined effective temperature.

BRIEF DESCRIPTION OF THE INVENTION

Details of preferred embodiments of the invention are provided in the drawings, wherein:

FIG. 1 is a schematic diagram showing components of the system of this invention; and

FIG. 2 is a flow diagram of the method of this invention.

DETAILED DESCRIPTION OF PREFERRED EMBODIMENTS

Referring to FIG. 1, there is seen a schematic diagram showing the components of the kit of this invention in use treating an enclosure 10. Typically, enclosure 10 may be a house, barn, shed, a business building or some portion of such a building. An enclosure 11, such as, but not limited to conventional tenting may be required to treat the exterior surface of enclosure 10.

A plurality of temperature sensors 12 are positioned at predetermined locations to monitor temperature of the structure. Typically, these sensors have thin, elongated, tips that can be adhered to or pushed into wood or other materials or into suitable sized holes drilled into such material so as to measure the surface and/or internal temperature. Sensors 12 may be wired to a console 14 which displays and records the temperature at each sensor in real time for future reference. Alternatively, the sensors may be wireless or infrared, transmitting a signal to console 14. Typical sensors, as for way of example and not by way of limiting, include thermal couples, thermistors, or the like connected to a computer and/or a strip chart recorder. Thermocouples can be pur-

US 6,327,812 B1

3

chased from Togam under the model number 875F or any other commercial vendor having an equivalent sensor.

One or more heaters **16** heat a gas to the predetermined temperature. Preferably, the gas is air, although any other environmentally acceptable gas, such as nitrogen, may be used if desired. The gas is heated to at least a temperature lethal to the organisms to be destroyed. For a more complete disinfection, the gas temperature is preferably at least about 155° F., with optimum results generally be achieved with temperatures in the range of about 120 to 300° F.

Any suitable heater may be used. A gas burning heater, such as a conventional propane heater is preferred as being particularly efficient in heating air. Any other heating arrangement, such as electrical heaters, may be used if desired.

Heated gas from one or more heaters **16** is directed to a blower **18** (which may, if desired, be a component of the heater) which directs the hot gas into enclosure **10** through at least one ingress duct **20**. Generally, a plurality of ducts **20** will be used to achieve the optimum distribution of hot gas throughout enclosure **10**. Ingress ducts **20** preferably include variable flow dampers and may be moved while the system is in operation to achieve uniform temperatures in all areas being treated of the structure, as sensed by sensors **12** and observed at console **14**.

When utilized, at least one egress duct **22** is provided to allow the gas to leave the structure. While it is preferred that enclosure **10** be maintained at a pressure slightly above atmospheric pressure as the hot gas brings the building elements up to the desired surface and penetration temperatures, the positive pressure differential allows the hot gas to vent through open windows, doors, etc. to and carries away the remains of the destroyed organisms upon venting. When the structure is sealed the duct or ducts **22**, like the open windows and doors, carries away the remains of destroyed organisms. A filter assembly **24** receives gas from an egress duct **22** and removes the remains of the organisms preventing them from reaching the environment. Typical filters are available from Therma-Stor Products, Madison, Wis., under the Guardian HEPA system designation as for example and not by way of limitation, a UV filter is desired, however other filters suitable for the purpose intended can be utilized.

For optimum effectiveness, it is often desirable to increase gas flow rates by adding a blower **26** or other gas extraction means downstream of filter **24** to aid in extracting the gas from enclosure **10**. This forced extraction increases the efficiency of filtering of the gas by filter **24**.

In some applications, the introduction of ozone gas from ozone generator **28** into blower **18** or ingress duct **20** is highly desirable. This results in oxidation of organic contamination, such as molds where layering has occurred. Ozone generators suitable for use here are available from RGF O³ Systems, Inc., under the TURBOZONE® trademark. Equivalent ozone generators suitable for the purpose intended can be used for the purpose.

In the operation of the system of this invention, the first step is to prepare the building, as indicated in block **30** of FIG. **2**. This basically involves removing all heat sensitive items from the enclosure or, in some cases, covering heat sensitive items with thermal insulation material. All material that has a flash point below the maximum temperature to be used must be removed.

Next, a plurality of temperature indicating probes are placed in predetermined locations within the enclosure as indicated in block **32** to assure that the required temperature levels are achieved. In some cases the probes can be read directly, although preferably they are connected by wires or wireless means to a console, so that all probes can be monitored conveniently and the data recorded in real time.

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At least one ingress duct and when the enclosure is sealed at least one egress duct are then installed as indicated in block **34**. Generally, a plurality of ingress ducts is preferred. Although each duct may enter the enclosure separately, the use of one ingress entry duct connected to a manifold from which plural ducts extend to predetermined locations within the enclosure is preferred. When filtering the exiting gas, ducts may enter through any suitable opening, such as an open window or door with the remainder of the window or door blocked by a panel.

When everything is positioned, the gas (preferably air) is heated as indicated in block **36** and directed into the ingress duct(s), as indicated in block **38**. If desired, ozone can be optionally added to the gas stream at this point, as indicated in block **40**.

Air leaving through egress ducts may be filtered to remove the remains of the destroyed organisms, as indicated in block **42**. The filter system will inherently impose some back pressure on the egress ducts and enclosure. Back pressure is desirable to assure surface exposure and penetration of the heated gas to all parts of the enclosure, but excessive back pressure should be avoided. Therefore, it is generally desirable that an air extraction system, as indicated in block **44**, be included to increase air flow through the filter system and limit back pressure.

At any time during system operation, the ingress and egress ducts may be moved to assure uniform temperatures throughout the structure, as indicated by the temperature probes and temperature monitoring console.

Flow of the heated air through the enclosure will generally be continued for about 1 to 6 hours to provide optimum results. Usually the entire operation from preparation of the building to removal of the equipment will take six to eight hours.

While certain specific relationships, materials and other parameters have been detailed in the above description of preferred embodiments, those can be varied, where suitable, with similar results. Other applications, variations and ramifications of the present invention will occur to those skilled in the art upon reading the present disclosure. Those are intended to be included within the scope of this invention as defined in the appended claims.

What is claimed is:

1. A method for killing organisms and removing of toxic substances from an enclosure, which comprises the steps of:
 - preparing an enclosure having an interior and an exterior for exposure to a high temperature gas by removing or protecting all heat sensitive items;
 - positioning a plurality of temperature indicating probes at predetermined locations in said enclosure;
 - providing at least one ingress duct communicating with said interior of said enclosure and at least one egress duct communicating between said interior and said exterior of said enclosure;
 - directing said heated gas into said enclosure through said at least one ingress duct for a time sufficient to raise the temperature of said enclosure to said lethal temperature;
 - heating an environmentally acceptable gas to a temperature lethal to predetermined organisms;
 - monitoring the temperature from said probes;
 - recording said temperatures from said probes in real time;
 - establishing at least a slight positive pressure within said enclosure;
 - venting said heated gas from said enclosure; and
 - filtering air passing through said egress duct through a filter to remove remains of said organisms carried by said air.

US 6,327,812 B1

5

2. The method according to claim 1 further including the step of applying a vacuum to an outlet of said egress duct to aid in extracting gas from said enclosure through said filter.

3. A method for killing organisms and removing of toxic substances from an enclosure, which comprises the steps of:

preparing an enclosure having an interior and an exterior for exposure to a high temperature gas by removing or protecting all heat sensitive items;

positioning a plurality of temperature indicating probes at predetermined locations in said enclosure;

providing at least one ingress duct communicating with said interior of said enclosure;

heating an environmentally acceptable gas to a temperature lethal to predetermined organisms;

directing said heated gas into said enclosure through said at least one ingress duct for a time sufficient to raise the temperature of said enclosure to said lethal temperature;

monitoring the temperature from said probes;

recording said temperatures from said probes in real time;

establishing at least a slight positive pressure within said enclosure;

venting said heated gas from said enclosure; and

generating a predetermined quantity of ozone and adding said ozone to said heated gas in said ingress duct.

4. A kit for use in killing organisms and removing toxic substances from an enclosure, which comprises:

at least one ingress duct for directing gas into an enclosure and at least one egress duct for directing gas out of said enclosure;

a plurality of temperature indicating probes for installation at predetermined locations in said enclosure;

means for heating an environmentally acceptable gas to a predetermined temperature that is lethal to predetermined organisms;

means for directing said gas through said ingress duct;

means for viewing the temperatures of said indicating probes;

means for recording the temperatures of said indicating probes in real time;

means for removing remains of said organisms from said enclosure; and

filter means in said egress duct for removing remains of said organisms from gas from said enclosure passing through said egress duct.

5. A kit for use in killing organisms and removing toxic substances from an enclosure, which comprises:

at least one ingress duct for directing gas into an enclosure and at least one egress duct for directing gas out of said enclosure;

a plurality of temperature indicating probes for installation at predetermined locations in said enclosure;

means for heating an environmentally acceptable gas to a predetermined temperature that is lethal to predetermined organisms;

means for directing said gas through said ingress duct;

means for viewing the temperatures of said indicating probes;

means for recording the temperatures of said indicating probes in real time;

6

means for removing remains of said organisms from said enclosure; and

means for generating ozone and adding said ozone to said gas passing through said ingress duct.

6. A method for sanitizing an enclosed structure having an exterior and an interior, comprising the steps of:

preparing said enclosed structure for exposure to a high temperature gas by removing or protecting all heat sensitive items;

disposing a plurality of temperature indicating probes at predetermined locations within said enclosed structure;

heating a gas to a predetermined temperature;

directing said heated gas into said enclosed structure in order to raise the temperature within said enclosed structure to said predetermined temperature;

monitoring the temperature detected from said probes in real time to ensure that all portions of said enclosed structure reach said predetermined temperature;

venting said heated gas from said enclosed structure; and filtering said heated gas vented from said enclosed structure.

7. A method for sanitizing an enclosed structure having an exterior and an interior, comprising the steps of:

preparing said enclosed structure for exposure to a high temperature gas by removing or protecting all heat sensitive items;

disposing a plurality of temperature indicating probes at predetermined locations within said enclosed structure;

heating a gas to a predetermined temperature;

generating a predetermined quantity of ozone and adding said ozone to said heated gas;

directing said heated gas into said enclosed structure in order to raise the temperature within said enclosed structure to said predetermined temperature;

monitoring the temperature detected from said probes in real time to ensure that all portions of said enclosed structure reach said predetermined temperature; and

venting said heated gas from said enclosed structure.

8. A system for sanitizing an enclosed structure having an exterior and an interior, comprising:

a source of an environmentally acceptable gas;

a heater coupled to said gas source to heat said gas to a predetermined temperature, and means for introducing a flow of said heated gas into said interior of said enclosed structure;

a filter arranged to allow said flow of heated gas to pass therethrough after passing through said interior of said enclosed structure;

a plurality of temperature indicating probes adapted to be disposed at predetermined locations within said enclosed structure; and

a control unit electrically connected to said plurality of temperature indicating probes to thereby provide an indication of temperature at said predetermined locations within said enclosed structure;

wherein, said heated gas serves to kill organisms and remove toxic substances from within said enclosed structure.

* * * * *

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

THERMAPURE, INC., a California corporation

(b) County of Residence of First Listed Plaintiff Ventura (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Kneafsey & Friend LLP, 800 Wilshire Blvd. Ste. 710 Los Angeles, CA 90017

DEFENDANTS

SCR-SUN COUNTRY RESTORATION, INC., an Arizona corporation

County of Residence of First Listed Defendant Yuma, AZ (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '11CV1387 BEN WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 USC Sections 271, et seq.

Brief description of cause: Defendant's infringement of U.S. Patent 6,327,812

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

06/22/2011 /s Shaun Swiger

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE