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11/726,548	03/22/2007	Marie B. Kraft	MBK 06267	8793
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James Ray & Associates Intellectual Property, I.I.C. 4268 Northern Pike Rd Monroeville, PA 15146			SMITH, CHAIM A	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MARIE B. KRAFT

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Appeal 2011-010634  
Application 11/726,548  
Technology Center 1700

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Before HUBERT C. LORIN, CATHERINE Q. TIMM, and  
JAMES C. HOUSEL, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision to reject claims 10-15 under 35 U.S.C. § 103(a) as obvious over Murauchi<sup>1</sup> in view of Sato<sup>2</sup>. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> Murauchi, JP 2001-286258, pub. Oct. 16, 2001, as translated.

<sup>2</sup> Sato, JP 2003-93247, pub. Apr. 2, 2003, as translated.

The invention on appeal is directed to a method for removing excess moisture from blocks of tofu (Claim 10). The moisture is removed by placing the tofu into an apparatus and applying pressure with a substantially flat plate member (Spec. 9:25 to 10:6).

The apparatus within which the tofu is placed is shown in Figure 6, which is reproduced below:

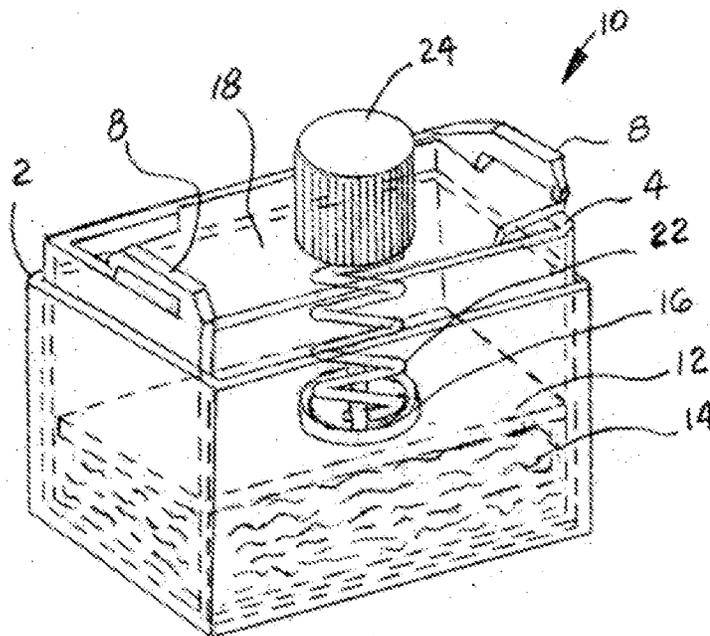


Fig. 6 is a perspective view

As shown in Figure 6, the apparatus 10 includes a second container member 4 disposed within a first container member 2 (Spec. 6:11-17). The tofu 14 is placed within the second container member 4 (Spec. 6:15-20; 9:7-10). Water is pressed out of the block of tofu 14 by pressure exerted on the tofu 14 by substantially flat plate member 12 (Spec. 9:25 to 10:6). A biasing means 22 between the plate member 12 and plate member 18 provides the necessary pressure on the tofu for pressing out the water (Spec. 9:15 to

10:3). The second plate member 18 is held in place by arm like projections 8 located on the upper surface of the second container 4 (Spec. 9:15-19).

The issue on appeal involves the limitation in independent claim 10 at step (e). Claim 10, with reference numerals from Figure 6 inserted and emphasis added, is reproduced below:

10. A method for removing excess moisture from blocks of tofu [14] as commonly sold in grocery and health food stores, said method comprising the steps of:

(a) providing a first container member [2], said first container member [2] having a first predetermined size and a first predetermined shape;

(b) disposing a second container member [4] within said first container member [2], said second container member [4] having a second predetermined size and a second predetermined shape, said second container (sic, second container member) [4] having a plurality of apertures formed through a bottom portion of said second container (sic, second container member) [4];

(c) placing a block of tofu [14] in said second container member [4];

(d) placing a first substantially flat plate member [12] inside said second container member [4] on top of said block of tofu [14], said first substantially flat plate member [12] having at least one raised portion [16] on an upper surface thereof;

(e) *engaging a second substantially flat plate member [18] having a biasing means [22] connected to a bottom surface thereof with a pair of arm like projections [8] pointing in opposite directions that are disposed on upper surfaces and on opposite sides of said second container member [4];*

(f) caging said biasing means [22] between said at least one raised portion [16] on an upper surface of said first substantially flat plate member [12] and a bottom surface of

said second substantially flat plate member [18] when said second substantially flat plate member [18] is engaged with said pair of arm like projections [8];

(g) applying pressure on said block of tofu [14] by said first substantially flat plate member [12], said first substantially flat plate member [12] being forced downward by said biasing means [22];

(h) removing water from said block of tofu [14];

(i) collecting said water removed from said tofu [14] in said first container [2]; and

(j) storing said tofu [14], with excess water removed, in a refrigerated area until ready for use.

(Claims App'x. at Br. 18-19.)

#### OPINION

The Examiner relies upon Murauchi as teaching a method for removing excess moisture from vegetables by applying pressure to the vegetables using a press plate within a two member container (Ans. 3-4). Figure 1 of Murauchi shows the apparatus and is reproduced below:

[Figure 1]

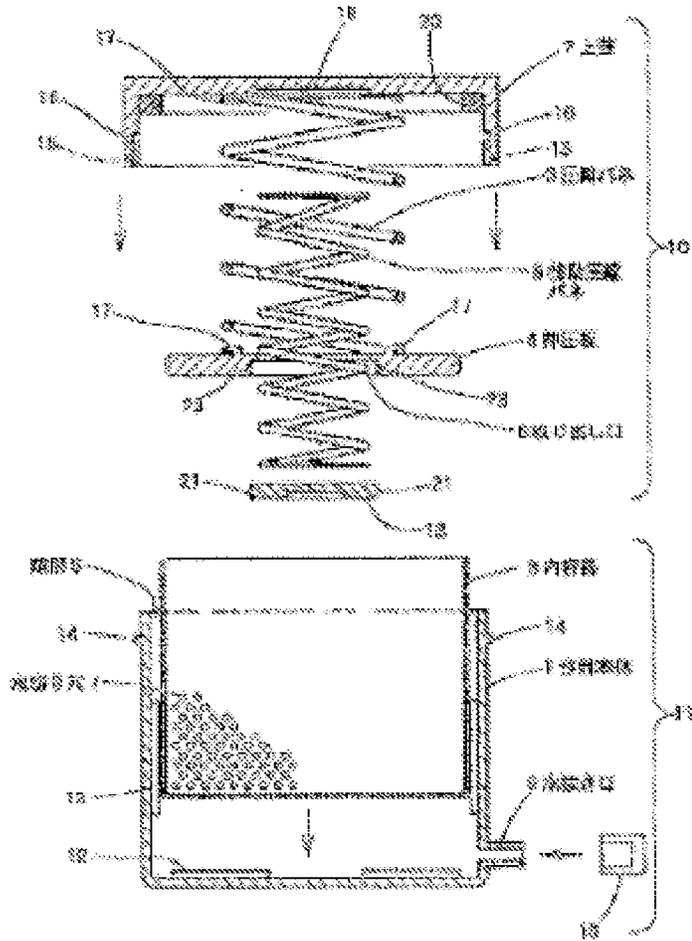


Fig. 1 is a vertical cross-sectional view of Murauchi's disassembled container

The Examiner finds that the thread lines 14 on Murauchi's outer container (main unit 1) are arm like projections (Ans. 5), and states that these projections 14 are "on an upper surface of the container as seen in figure 3." Figure 3 of Murauchi is reproduced below:

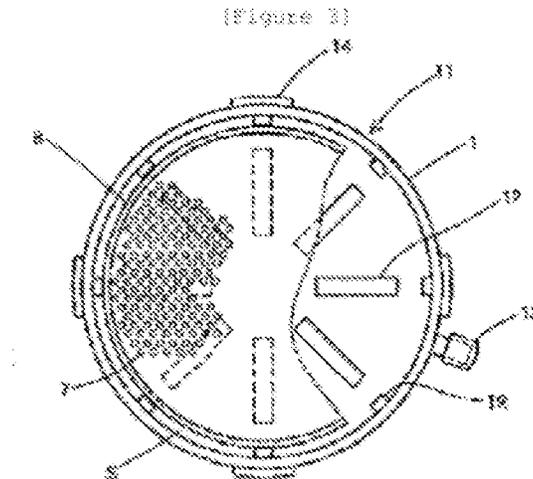


Fig. 3 is a plane view from above

As correctly pointed out by Appellant, Murauchi's threaded lines 14 are disposed *on the sides of the first container member* not on the upper surfaces of the second container member as required by Appellants' claims (Br. 7-8). This is clearly seen in Figure 1 of Murauchi.

The Examiner does not provide any analysis supporting an interpretation of "upper surface" as recited in the claim as encompassing the upper sides of a container. In fact, the Specification consistently uses "upper surface," "bottom surface," and "sides" to refer to different *faces* of the second member (*see, e.g.*, Spec. 6:21-23; Figs 2 and 6). The Examiner cites to no evidence indicating that a broader meaning encompassing the upper *side* surface is reasonable, nor has the Examiner advanced a reasonable

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rationale supporting the obviousness of placing projections on the upper surface of the second container.

CONCLUSION

We do not sustain the Examiner's rejection.

DECISION

The Examiner's decision is reversed.

REVERSED

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