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YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			MCCLAIN-COLEMAN, TYNESHA L.	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRENDA K. CREMER, HENRY K. LEUNG, BRIDGET MANIS,
KELLY S. MILLER, JASON T. NIERMANN, TIMOTHY F. ROOT,
MARK W. SHEPPARD, JIM STALDER and JO ELLEN WAYNE

Appeal 2011-012909
Application 12/023,125
Technology Center 1700

Before JEFFREY T. SMITH, JAMES C. HOUSEL, and
DONNA M. PRAISS, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from a final rejection of claims 17 through 23 and 25 through 32. We have jurisdiction under 35 U.S.C. § 6.

Appellants' invention is directed to a process of manufacturing a free flowing vegetable powder. App. Br. 2. Claim 17 is illustrative of the subject matter on appeal and is reproduced below (bullet points omitted)¹:

17. A process of manufacturing a free flowing vegetable powder, said process comprising the steps of:

combining onion, intensely colored vegetable matter and/or moderately colored vegetable matter and optionally other ingredients to prepare an aqueous blend having a solids content of 10-40 wt.%;

intimately mixing the resulting blend to produce a homogeneous mixture; and

drying the homogeneous mixture to obtain a free flowing vegetable powder, wherein,

said free flowing vegetable powder has a mass weighted average particle size within the range of 10-500 microns; and

said free flowing vegetable powder comprises:

a moisture content of less than 10 wt.% and

¹ The Claims Appendix listing the claims on appeal does not include appealed claim 32 and, thus, is erroneous because it does not include an accurate reproduction of all the claims on appeal. App. Br. 16-20. Accordingly, we rely on the claims in the amendment concurrently filed with the Appeal Brief on February 7, 2011 and noted as entered by the Examiner in the Answer as the correct version of the claims on appeal. Ans. 3.

an intimate mixture of at least three different dehydrated vegetables, said intimate mixture represents at least 60 wt.% of the vegetable dry matter contained in the powder; and

said at least three vegetables include:

5-60% of onion by weight of vegetable dry matter;

0-90% by weight of vegetable dry matter of moderately colored vegetable selected from the group consisting of vegetables belonging to the genus Cucurbita, vegetables belonging to the genus Oleracea, sweet corn, sweet potato, green bean, edamame, celery and combinations thereof; and

5-95% by weight of vegetable dry matter of intensely colored vegetable selected from the group consisting of tomato, red bell pepper, red beet, radicchio, swiss chard, rhubarb, peppers, yam, Adzuki beans, carrot, green pea, green bell pepper, asparagus, spinach, Brussels sprouts, kale, egg plant and combinations thereof.

The Examiner relied on the following references in rejecting the appealed subject matter:

Taga	US 5,264,238	Nov. 23, 1993
Ree	US 2004/0052916 A1	Mar. 18, 2004
Dimitrov	WO 2005/000028 A1	Jan. 6, 2005

Appellants, App. Br. 4, request review of the following rejections from the Examiner's final office action:²

1. Claims 17-23 and 25-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ree and Dimitrov.

² The Examiner withdrew the rejection of claims 26 and 33 under 35 U.S.C. § 112, second paragraph in view of Appellants' cancellation of these claims in the amendment concurrently filed with the Appeal Brief on February 7, 2011, and noted as entered by the Examiner in the Answer. Ans. 3.

2. Claims 17-23 and 25-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ree, Taga and Dimitrov.

OPINION³

The dispositive issue on appeal is: Did the Examiner err in determining that the combination of Ree and Dimitrov would have led one of ordinary skill in the art to a method of manufacturing a free flowing vegetable powder including a step of combining the vegetables in an aqueous blend to form a homogeneous mixture to be dried as required by the subject matter of independent claim 17?⁴

After review of the respective positions provided by the Appellants and the Examiner, we agree with Appellants.

The Examiner found that Ree discloses preparing a vegetable powder product using a method comprising the basic steps of drying vegetables, mixing vegetables, and forming the vegetables into a powder. Ans. 5. The Examiner found that Ree does not disclose combining the vegetables in an aqueous blend having a solids content of 10-40 weight percent, mixing the vegetable blend in a homogeneous mixture, and drying the homogeneous mixture to obtain a vegetable powder. *Id.* However, the Examiner reasoned that the solids content of the aqueous blend of the vegetables is contingent upon the water content of the vegetables chosen as well as the desired texture and size of the final powdered product. *Id.* at 6. Thus, the Examiner found that it would have been obvious to mix and mash the vegetables

³ We will limit our discussion to independent claim 17.

⁴ A discussion of the Dimitrov reference will be unnecessary for disposition of the present appeal. The Examiner relied upon this reference for describing features not related to the dispositive issue.

disclosed by Ree to form a homogenous paste or slurry (a homogenous mixture of an aqueous blend of vegetables) having a solids content of 10-40 wt. % and dehydrate the vegetables to make the vegetable powder. *Id.* at 6-7.

Appellants argue that there is no suggestion in Ree of forming of an aqueous blend of onion, intensely colored vegetable matter and/or moderately colored vegetable matter, with 10-40% solids as required by the claimed invention. App. Br. 7. We agree with Appellants. As acknowledged by the Examiner (Ans. 5), Ree does not disclose combining the vegetables in an aqueous blend as claimed by Appellants. While the Examiner contends that the aqueous blend of the vegetables is contingent upon the water content of the vegetables chosen (*id.* at 6), the Examiner direct us to no section of Ree (or Dimitrov) or proffers any other evidence to support this contention. The Examiner has not adequately explained why the water content within the vegetables chosen to make the vegetable powder would have been sufficient to form an aqueous blend as required by the subject matter of independent claim 17.

Accordingly, we reverse the Examiner's rejection of claims 17-23 and 25-32 as unpatentable under 35 U.S.C. § 103(a) over Ree and Dimitrov for the reasons given above and presented by Appellants.

Claims 17-23 and 25-32 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Ree, Taga and Dimitrov.

The Examiner relied on the teachings of Ree in this rejection for essentially the same reasons as presented in the prior rejection. *Id.* at 14. The Examiner further relied on the additional reference to Taga to teach making a paste of two or more vegetable powders. *Id.* at 13-14. Appellants

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argue, and we agree, that Taga does not disclose forming vegetable powders but instead form a paste to be shaped into a snack food. App. Br. 11-12.

Accordingly, we also reverse this rejection for the reasons given above and presented by Appellants.

ORDER

The rejection of claims 17-23 and 25-32 under 35 USC § 103(a) as unpatentable over Ree and Dimitrov is reversed.

The rejection of claims 17-23 and 25-32 under 35 USC § 103(a) as unpatentable over Ree, Taga and Dimitrov is reversed.

REVERSED

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