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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROSEMARY S. BAKER,
BRENDA K. CREMER, THOMAS G. CROSBY,
HENRY KIN-HANG, BRIDGET MANIS,
CARLA MEJIA, KELLY S. MILLER,
NANCY J. MORIARITY, JASON T. NIERMANN,
TIMOTHY F. ROOT, MARK W. SHEPPARD,
JIM STALDER, BEVERLY L. WATERS, and JO ELLEN WAYNE

Appeal 2011-013064
Application 11/669,751
Technology Center 1700

Before BRADLEY R. GARRIS, MICHAEL P. COLAIANNI, and
JAMES C. HOUSEL, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellants appeal from the Examiner's rejection of claims 1-3 and 10-43 under 35 U.S.C. § 103(a) as unpatentable over Karwowski (U.S. Patent Publication 2006/0246202 A1, pub. Nov. 2,

2006) in view of Villagran (U.S. Patent Publication 2006/028271 A1, pub. Dec. 21, 2006)[1]. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a vegetable chip dough comprising at least 11% vegetable powder (claim 1) and a vegetable chip comprising at least 14% vegetable solids (claim 10) as well as a fruit chip dough comprising at least 12% fruit powder (claim 20) and a fruit chip comprising at least 20% fruit solids (claim 32).

Claims 1, 10, 20, and 32, the only independent claims on appeal, read as follows:

1. A vegetable chip dough comprising by weight:
   about 5% to about 15% modified starch;
   about 10% to about 30% rice flour;
   about 3% to about 12% whole oat flour;
   about 10% to about 30% potato flakes;
   at least 11% vegetable powder;
   less than about 3% corn oil;
   less than about 1% glycerides; and
   about 30% to about 40% water.

10. A vegetable chip comprising by weight:
   about 10% to about 16% modified starch dry matter;
   about 20% to about 30% rice flour dry matter;
   about 5% to about 15% whole oat flour dry matter;
   about 20% to about 30% potato flakes dry matter;
   at least 14% vegetable solids;
   less than about 3% corn oil; and

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[1] As noted by Appellants (App. Br. 2), this appeal is related to the appeal (i.e., Appeal 2011-009791) for US Application Serial No. 11/669,736. The related appeal resulted in a Decision (mailed November 29, 2012) affirming a § 103 rejection of similar claim subject matter as unpatentable over the same prior art (i.e., Karwowski and Villagran).

less than about 4% water.

20. A fruit chip dough comprising by weight:
about 5% to about 15% modified starch;
about 8% to about 20% rice flour;
about 3% to about 15% whole oat flour;
about 8% to about 20% potato flakes;
at least 12% fruit powder;
less than about 3% corn oil; and
about 27% to about 37% water.

32. A fruit chip comprising by weight:
about 10% to about 16% modified starch dry matter;
about 15% to about 25% rice flour dry matter;
about 5% to about 15% whole oat flour dry matter;
about 15% to about 25% potato flakes dry matter;
at least 20% fruit solids;
less than about 3% corn oil; and
less than about 4% water.

Initially, we observe that Appellants do not present separate arguments specifically directed to the dependent claims under rejection. As a consequence, these dependent claims will stand or fall with their parent independent claims 1, 10, 20, and 32.

We will sustain the above rejection for the reasons expressed below and in the Decision for related Appeal 2011-009791 (*see* note 1 *supra*).

The Examiner finds that Karwowski discloses chips and chip dough having a weight ratio of whole grain to fruit or vegetable of about 20:80 to about 95:5 which yields a fruit/vegetable range of 5 to 80% by weight, thereby suggesting the fruit and vegetable range is defined by the independent claims (*see, e.g.,* Ans. 3-6, Karwowski para. [0033]).

Appellants present the following argument in response:

> One skilled in the art would read Karwowski as indicating that a relatively dry fruit/vegetable component having a high solids content (such as a fruit or vegetable powder) would be included at something closer to the 5% fruit/vegetable to 95% whole grain ratio because more added water would be needed to gelatinize the whole grains, whereas a relatively moist fruit/vegetable component with low solids content (such as a juice) would be included at something closer to the 80% fruit/vegetable to 20% whole grain ratio because the vegetable component would provide most or all of the moisture needed to gelatinize the whole grains.

(App. Br. para. bridging 8-9; *see also id.* at 12).

Appellants' argument is not persuasive for the reasons fully explained in the related-appeal Decision (Dec. 6). In summary, Karwowski contains no express disclosure that the amount of dried fruit or vegetable should be closer to 5% as urged by Appellants, and Appellants offer no direct evidence that one skilled in this art would so interpret Karwowski. Further, Appellants fail to explain why Karwowski, even if so interpreted, would not have suggested the fruit and vegetable concentrations defined by the independent claims since these concentrations are at the lower end of Karwowski's 5 to 80% range.

With respect to independent dough claims 1 and 20 specifically, Appellants argue that "Karwowski also fails to teach a dough with high amounts of fruit or vegetable powder, as the term dough would be understood by one skilled in the art" (App. Br. para. bridging 10-11).

This argument is contradicted by Appellants' concession regarding "Karwowski's reference to composite doughs in paragraph [0054]" (*id.*). Moreover, Appellants have not provided this record with any evidence that one skilled in this art would understand the term "dough" to mean something

other than the dough disclosed by Karwowski. For these reasons, we find no convincing merit in the argument under review.

We sustain the above § 103 rejection of claims 1-3 and 10-43 as unpatentable over Karwowski in view of Villagran.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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