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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL
AND APPEAL BOARD

Ex parte ATHULA EKANAYAKE,
JEFFREY JOHN KESTER, and JIANJUN JUSTIN LI

Appeal 2011-013681
Application 10/881,341
Technology Center 1700

Before BRADLEY R. GARRIS, CHUNG K. PAK, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 the final rejection of claims 1-20. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We REVERSE.

Appellants' invention is directed to methods for extracting juice from plant material containing terpene glycosides (Spec. 1:9-10).

Claim 1 is illustrative:

1. A process for extracting juice from a crushed plant material containing terpene glycosides, the process comprising the steps of:

a) Crushing a plant material comprising terpene glycosides, wherein the plant material comprises the inner meat, peel, seeds, and/or pulp and has not been peeled or seeded prior to crushing;

b) Blanching the crushed plant material of step a in acidified water for at least 25 minutes, immediately after crushing, to obtain a puree, the puree comprising a juice extract and a plant solids residue;

c) Separating the juice extract from the plant solids residue;

d) Mixing an enzyme with the juice extract; and

e) Separating the juice extract from step (d) to obtain a sweet juice.

Appellants appeal the following rejections:

1. Claims 1 and 14 are rejected under 35 U.S.C. § 112, second paragraph, as failing to point out and particularly claim the subject matter which applicant regards as the invention.
2. Claims 1-20 are rejected under 35 U.S.C. § 103(a), as being unpatentable over Downton (US 5,411,755 issued May2, 1995) in

view of *Guillamot* (FR 2 638 064 Apr. 27, 1990), *Brooks* (US 3,886,296 issued May 27, 1975), and *Bednar* (US 5,242,699 issued Sept. 7, 1993).

REJECTION (1): § 112, 2ND PARAGRAPH

ISSUE

Did the Examiner reversibly err in finding that the step of “separating the juice extract from step (d)” (claim 1) and the step of “separating the juice extract from step (f)” (claim 14) fail to comply with 35 U.S.C. § 112, second paragraph? We decide this issue in the affirmative.

FINDINGS OF FACT & ANALYSES

The Examiner finds that the step of “separating the juice extract from step (d) to obtain a sweet juice” in claim 1 and the step of “separating the juice extract from step (f) to obtain a sweet juice” in claim 14 are indefinite because it is not clear what exactly is separated from the extract mixed with enzyme to produce sweet juice (Ans. 5).

Appellants respond that the one of ordinary skill in the art reading the claims in light of the Specification, particularly page 9, lines 26-30 and page 12, lines 4-5 would have understood that the precipitated protein, pulp and any remaining solids are removed during the separating steps (e) and (g) of claims 1 and 14, respectively (App. Br. 4).

We agree with Appellants that one of ordinary skill in the art would understand what is being claimed when the claims are read in light of the Specification. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986).

We reverse the Examiner's § 112 rejection.

REJECTION (2)

ISSUE

Did the Examiner reversibly err in finding that it would have been obvious to combine the teachings of Bednar regarding blanching times for potatoes with the method of Downton as modified by Guillamot and Brooks that forms a sweet juice to arrive at the method of claims 1 and 14? We decide this issue in the affirmative.

FINDINGS OF FACT & ANALYSES

The Examiner's findings and conclusions regarding Downton, Guillamot, Brooks and Bednar may be found on pages 6-12 of the Answer. Specifically, the Examiner finds that Downton, Guillamot and Brooks fail to teach or suggest the claimed blanching time of "at least 25 minutes" (Ans. 10). The Examiner finds that Bednar teaches that a greater blanching time extracts more sugar from the tuber (e.g., potato) strips and gives the tuber a darker color when microwaved (*id.*). The Examiner concludes that one of ordinary skill in the art would have been motivated to increase the blanching time up to 40 minutes in order to increase the amount of sugar drawn from the blanched fruit material as Downton is producing a sweet juice (*id.*).

Appellants argue that one of ordinary skill in the art would not have had any reason to look to Bednar's teachings regarding blanching times for potatoes in making a microwave food product to determine the blanching times for crushed plant material in isolating the terpene glycosides from the

fruit (App. Br. 9). Appellants contend that Guillamot teaches shorter blanching times to control microbial growth. *Id.*

The preponderance of the evidence favors Appellants' argument of nonobviousness. The Examiner's findings reveal that Downton, Guillamot and Brooks do not teach the claimed blanching time of greater than 25 minutes. Rather, the Examiner solely relies on Bednar to teach the claimed blanching time (Ans. 6-10). While the Examiner is correct that Bednar teaches that blanching for a longer time controls the sugar in the potato strips by drawing more sugar out of the strip (*id.* at 10, 16-17), this finding alone fails to establish why one of ordinary skill would have looked to Bednar's longer blanching time for controlling the sugar content of potatoes that are to be microwaved for a blanching time to use in the method of Downton as modified by Guillamot and Brooks for extracting sweet juice from fruit. Indeed, the applied prior art that discloses processing fruit teaches shorter blanching times. Guillamot teaches blanching fruit for about 30 seconds to 5 minutes to control microbial populations (Guillamot 3). Brooks teaches using a short heat process to destroy acid-tolerant organisms in acidic food such as citrus fruit (Brooks, col. 1, ll. 31-39). We fail to see a reason to modify Downton's method that includes Guillamot's shorter blanching time for fruit to correspond to Bednar's 40 minute blanching time for potatoes absent impermissible hindsight.

On this record, the Examiner has failed to establish a prima facie case of obviousness. We are constrained to reverse the Examiner's § 103 rejection.

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DECISION

The Examiner's decision is reversed.

ORDER
REVERSED

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