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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KARL SHIQING WEI, BRYCE WILLIAM WILSON,
JOHN ERIC VANHOOK II, and ANDRES ERNESTO VELARDE

Appeal 2013-001316
Application 10/837,214¹
Technology Center 3700

Before HUBERT C. LORIN, MICHAEL C. ASTORINO, and
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134 from the Examiner’s decision rejecting claims 25, 26, 28, 29, and 31–46. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We reverse.

¹ According to the Appellants, “[t]he real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.” Appeal Br. 1.

Claimed Subject Matter

Claims 25, 29, and 38 are the independent claims on appeal. Claim 25, reproduced below, is illustrative of the subject matter on appeal.

25. A process for making patterned multi-phase liquid compositions wherein upon dispensing said multi-phase liquid compositions from a container, phases of said multiphase liquid compositions are dispensed evenly from said container, said process comprising:

placing a plurality of liquid phases in separate vessels equipped with supply lines for transferring said phases from said vessels;

transferring, via said supply lines, predetermined amounts of each of said liquid phases from each of said separate vessels into a combiner which aligns each of said liquid phases in at least one of the following: one of said liquid phases is aligned within another of said liquid phases, said liquid phases are aligned side by side along a common line, or said liquid phases are combined into one line;

transferring said liquid phases from said combiner to a blender;

blending said liquid phases together, via said blender, to produce a multiphase liquid composition having equal volume ratios of one phase to another; and

transferring said multi-phase liquid composition to an individual product container via a delivery nozzle, wherein said individual product container is received at a bottle holding device and secured to a rotating platform attached to said bottle holding device, and wherein said individual product container is rotated, via said rotating platform, when said multi-phase liquid composition is transferred to said individual product container via said delivery nozzle.

Rejections

Claims 25, 26, 28, 29, 31–43, 45, and 46 are rejected under 35 U.S.C. § 103(a) as unpatentable over Tanaka (US 4,966,205, iss. Oct. 30, 1990) and Yamazaki (JP 2000-229817 A, pub. Aug. 22, 2000).

Claim 44 is rejected under 35 U.S.C. § 103(a) as unpatentable over Tanaka, Yamazaki, and Hirata (US 4,818,575, iss. Apr. 4, 1989).

ANALYSIS

Independent claims 25 and 29 require the use of a blender, i.e., “blending said liquid phases together, via said blender, to produce a multiphase liquid composition having equal volume ratios of one phase to another.”

The Examiner finds that Tanaka’s element 1, i.e., a “charging nozzle,” constitutes a blender. Ans. 4–5. The Appellants disagree with the Examiner’s finding, and asserts “[t]he Office Action fails to provide any teaching in Tanaka, or otherwise, as to how a charging nozzle could be a blender.” Appeal Br. 3. The Appellants’ contention is persuasive. We fail to understand how charging nozzle 1 of Tanaka constitutes a “blender.”

Alternatively, the Examiner finds that “Yamazaki discloses a liquid phase dispensing method which makes use of a blender (5) to produce visually distinctive product phases.” Ans. 5. The Examiner concludes, “it would have been obvious to one of ordinary skill in the art to modify the Tanaka method by adding the blender from Yamazaki to the exit pipe (1), *in order to increase the number of different patterns* which the Tanaka apparatus can produce.” Ans. 5 (emphasis added).

The Appellants contend, “[t]he Office Action provided no support for why one of skill in the art would believe the addition of the Yamazaki blender for surface patterns would increase the number of three dimensional patterns of the Tanaka apparatus.” Appeal Br. 5; *see also* Reply Br. 5.

In response, the Examiner explains, “[t]he fact that the pattern is visible on the surface of the product is not an indication that the pattern does not extend into the body of the product, merely that the materials in question are opaque.” Ans. 7. However, the Examiner’s response does not fully address the Appellants’ contention because the Examiner does not offer an explanation as to how the proposed modification would increase the number of three-dimensional patterns of the Tanaka apparatus. More specifically, the Examiner does not identify how many patterns Tanaka discloses. However, it is clear that the Examiner finds Tanaka discloses at least one pattern because the Examiner finds Tanaka discloses discharging a spiral pattern (*see* Ans. 6 (citing Fig. 4)). Similarly, the Examiner does not identify how many patterns Yamazaki discloses, but it is clear that the Examiner finds Tanaka discloses at least one pattern because the Examiner finds that Yamazaki discloses “extrud[ing] material in a three dimensional pattern” (Ans. 7). Hence, the Examiner’s findings evidence that Tanaka discloses one pattern and Yamazaki discloses one pattern. Additionally, the Examiner does not identify how many patterns Tanaka’s device, as modified by Yamazaki’s teaching of blender (5), would produce. Accordingly, the Examiner’s conclusion lacks adequate support because the Examiner does explain through evidence or technical reasoning how Tanaka’s device, as modified, “would increase the number of three dimensional patterns of the Tanaka apparatus.”

Appeal 2013-001316
Application 10/837,214

Thus, the Examiner's rejection of claims 25, 26, 28, 29, 31–43, 45, and 46 as unpatentable over Tanaka and Yamazaki is sustained.

The remaining rejection based on Tanaka and Yamazaki in combination with Hirata relies on the same unsupported reasoning discussed above. Thus, we do not sustain the rejection of claim 44 rejected as unpatentable over Tanaka, Yamazaki, and Hirata.

DECISION

We reverse the rejections of claims 25, 26, 28, 29, and 31–46.

REVERSED

Klh