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EXAMINER

GUPTA, YOGENDRA N

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HENDRICUS FRANCISCUS JACOBUS MARIA
VAN DER EERDEN, DIRK MESKENDAHL,
THOMAS WILLEM DEKKER, and
FRANCISCUS QUIRINUS FREDRIK VEROUDEN

Appeal 2015-006319
Application 13/382,845
Technology Center 1700

Before ADRIENE LEPIANE HANLON, JEFFREY W. ABRAHAM, and
AVELYN M. ROSS, *Administrative Patent Judges*.

ROSS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellants² appeal under 35 U.S.C. § 134(a) from the Examiner's
final rejection of claim 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ In our decision below, we refer to the Specification filed January 6, 2012 (Spec.), the Final Office Action appealed from, mailed May 16, 2014 (Final Act.); the Appeal Brief filed January 16, 2015 (Appeal Br.); the Examiner's Answer mailed April 13, 2015 (Ans.); and the Reply Brief filed June 10, 2015 (Reply Br.).

² Appellants identify the real party in interest as Marel Townsend Further Processing B.V., the assignee of the instant application. Appeal Br. 1.

STATEMENT OF CASE

The claims are directed to a moulding device for preparing a moulded three dimensional food product. Claims Appendix at Appeal Br. 12. Claim 1 is illustrative of the claimed subject matter and is reproduced below, with the disputed claim limitation emphasized:

1. A moulding device for moulding three dimensional products from a mass of foodstuff starting material suitable for consumption, comprising:

- a moulding drum having an outer circumferential moulding surface which is provided with a plurality of mould cavities, wherein at least one mould cavity is delimited by a bottom and a peripheral wall defining a cavity opening in the moulding surface, wherein the mould cavity has a cavity height which is defined between the bottom and the cavity opening, said moulding drum is rotatable so that the mould cavity passes along a movement path from a fill position for filling the mass into the mould cavity to a product release position for releasing at least one of the three dimensional products from the mould cavity and from the product release position to the fill position;

- a mass distribution device, which is arranged at the fill position along the moulding drum for filling the mass into the mould cavity via an outlet opening of said mass distribution device, wherein the mass distribution device is configured to contact the moulding drum in a sealing manner while the moulding drum is rotated and the outlet opening of the mass distribution device extends transversely to said movement path, said outlet opening having a length greater than a largest dimension of the mould cavity in a direction transverse to said movement path, said outlet opening having a width smaller than a largest dimension of the mould cavity in a direction parallel to said movement path; and

- a movement device for rotating the moulding drum so that a mould cavity passes along the movement path from the fill position to the release position, and from the product release position to the fill position,

wherein the *mould cavity is provided with upright dividing walls* connected to the bottom, dividing walls define a plurality of transverse rows of moulding cells, said transverse rows being arranged behind one another in the direction of the movement path, each transverse row comprising multiple moulding cells and extending fully across the mould cavity, and

wherein each dividing wall has a height which is at least 50% of the cavity height of the mould cavity and less than the cavity height, so that the mould cavity defines the three dimensional product as having a continuous foodstuff mass layer and a plurality of small foodstuff mass elements on a surface of said continuous layer, said mass elements being formed by foodstuff starting material introduced into the moulding cells and the mass elements being separated by voids formed by said dividing walls.

Id. (emphasis added).

REJECTIONS³

The Examiner rejects claim 1, under 35 U.S.C. §103(a), as being unpatentable over Zuger⁴ in view of Van der Eerden⁵ and further in view of Spiel.⁶ Final Act. 7. Appellants seek our review of the rejection of claim 1. Appeal Br. 5.

³ The Examiner also rejects claim 1 under 35 U.S.C. § 112(a) for failing to comply with the written description requirement (Final Act. 3) as well as under 35 U.S.C. § 112(b) as indefinite for failing to particularly point out and distinctly claim the subject matter the inventor regards as the invention (Final Act. 4–6). The Examiner later withdraws these rejections. *See* Advisory Action, mailed September 5, 2014, 2.

⁴ Bettina Zuger, US 2008/0008799 A1, published January 10, 2008 (hereinafter “Zuger”).

⁵ Van der Eerden et al., WO 2004/002229 A2, published January 8, 2004 (hereinafter “Van der Eerden”).

⁶ Spiel et al., US 4,881,889, issued November 21, 1989 (hereinafter “Spiel”).

OPINION

The Examiner rejects claim 1 as obvious over Zuger in view of Van der Eerden and Spiel. Final Act. 7. The Examiner finds that Zuger teaches a molding device for manufacturing molded food products having the structure claimed. *Id.* at 7–8. The Examiner acknowledges that Zuger fails to teach that the outlet opening has “a length greater than a largest width of the mould cavity in a direction transverse to said movement path, said outlet opening of the mass distribution device having a width smaller than a largest length of the mould cavity in a direction parallel to said movement path as set forth in the claims” (*id.* at 8) and “fails to teach or suggest the at least one cavity is provided with upright dividing walls connected to bottom as set forth in the claim” (*id.* at 9). The Examiner finds, however, that Van der Eerden—which “discloses an invention relates to mould three-dimensional products from a mass of foodstuff starting material”—also teaches an outlet opening configured as claimed. *Id.* at 8. And, the Examiner finds that Spiel teaches a “mold element for use in a rotary dough molder” where the “mould member is provided with walls or projections or upright dividing walls (18,20,34)” that are at least 50% of the height of the mold but do not extend to the top of the mold cavity. *Id.* at 9–10. The Examiner reasons that one of skill in the art would have reason to modify the teachings of Zuger to include the upright dividing walls of Spiel “to permit ease of removal of dough from the respective mold depression (See col.8 lines 5-13 of Spiel et al. (‘899)) as taught by Spiel et al. (‘899).” *Id.* at 10–11.

Appellants argue that the prior art fails to teach the claimed dividing walls. Appeal Br. 6. Specifically, Appellants argue that the walls, ridges, and spikes of Spiel are not dividing walls as claimed, but rather, Spiel

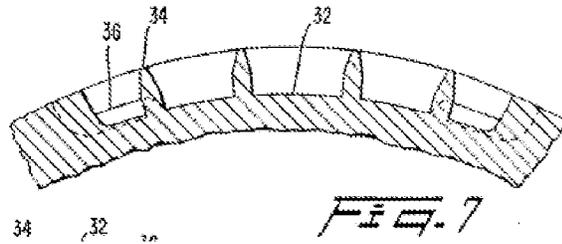
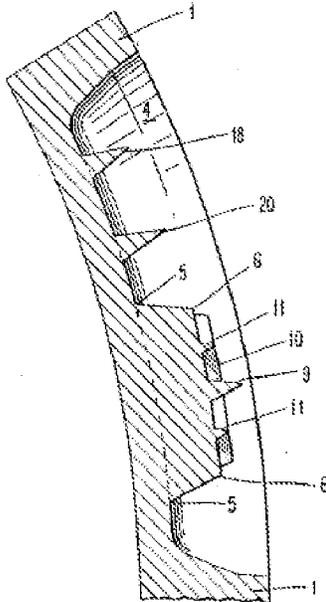
assigns “different meanings, structures and purposes” to these elements. *Id.* at 7. According to Appellants, the internal structures, i.e., the ridges and spikes, provide indentations in egg white dough and aid in the removal of the dough, respectively. *Id.*

Appellants’ argument does not convince us of reversible error by the Examiner. Appellants have not directed our attention to any definition of dividing walls, contained within the Specification or extrinsic evidence that would exclude the spikes identified by the Examiner.

Next Appellants contend that the ridges and spikes of Spiel are not “at least 50% of the cavity height of the mould cavity and less than the cavity height” as required by claim 1. Appeal Br. 7. Appellants argue, in reference to Figure 8 of Spiel, that the “ridges 32 and 36 and not at least 50% of the height of the cavity while spikes 34, which are not dividing walls, have the same height as that of the cavity.” *Id.*

Again, we are not persuaded by Appellants’ argument. The Examiner’s findings are based on Figures 3 and 7 of Spiel shown below. Final Act. 10.

FIG. 3



Figures 3 and 7 depict dividing walls, i.e., spikes 9, 18, 20, and 34 that extend at least 50% of the height of the cavity and are less than the height of the mold cavity as claimed. Spiel further explains that “[n]one of the projections extend above the level of the top of the surrounding body 1.” Spiel col. 7, ll. 54–55.

Lastly, Appellants urge that “one of ordinary skill in the art would not look to modify Zuger and [Van der] Eerden to include dividing walls as the presence of the dividing walls as claimed acts as a hindrance for the mass flowing into the mould cavity from the outlet opening of the mass distribution device” and as the prior art “provides [no] incentive to deliberately create the dividing walls.” Appeal Br. 7–8. And, according to Appellants, “in Spiel there is no tendency of the foodstuff mass to flow to the rear end of the mould cavity.” *Id.* Rather, in Spiel, dough is pressed into

a mold cavity that has spikes and ridges to aid in the removal of dough from the cavity.

Appellants again do not persuade us of reversible error by the Examiner. The Examiner determined that the skilled artisan would have reason to combine the molding device of Zuger to include the dividing walls, i.e., spikes, of Spiel, “to permit ease of removal of dough from the respective mold depression . . . as taught by Spiel et al. (‘889).” Final Act. 11. Appellants admit that the spikes of Spiel serve this purpose and do not dispute that the spikes would serve the same purpose in the molding device of Zuger. Appeal Br. 8; Reply Br. 4. Appellants’ argument that the prior art does not recognize “the effect that the [claimed] dividing walls act as a hindrance for the mass flowing into the mould cavity from the outlet opening of the mass distribution device” (Reply Br. 3) is of little consequence. It has been established that the reason for combining references does not have to be identical to that of the applicant in order to establish obviousness. *See In re Kemps*, 97 F.3d 1427, 1430 (Fed. Cir. 1996). “As long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor.” *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992). Thus, Appellants’ argument that “none of the cited art provides an incentive to deliberately create the dividing walls” (Reply Br. 4) is without merit.

CONCLUSION

The Examiner did not err in rejecting claim 1, under 35 U.S.C. § 103(a), as unpatentable over Zuger, Van der Eerden, and Spiel.

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DECISION

For the above reasons, the Examiner's rejection of claim 1 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)(1).

AFFIRMED