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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SANDRO FLORIN, CHRISTOPHE SCHNEIDER,
and FRANK KRAUCHI

Appeal 2017-006850
Application 13/391,165
Technology Center 3700

Before MICHAEL L. HOELTER, PATRICK R. SCANLON, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134 of the Examiner’s decision, as set forth in the Final Office Action, dated July 15, 2016 (“Final Act.”), rejecting claims 1–20. An oral hearing was conducted on October 4, 2017, and a transcript of that hearing is included in the record (“Tr.”). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants identify Nestec S.A. as the real party in interest. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim on appeal, with claims 2–20 depending directly or indirectly therefrom. Claim 1 is illustrative of the claimed subject matter and is reproduced below.

1. An electric beverage preparation machine comprising:
 - a brewing unit configured to receive a capsule containing one or more beverage ingredients and guide an incoming flow of liquid through the one or more beverage ingredients to a beverage outlet;
 - a pump configured to drive the liquid from a fluid connector to the brewing unit;
 - a heating member upstream of the brewing unit and configured to heat the liquid;
 - a control unit configured to control the heating member and the pump;
 - a first beverage user-selector for requesting a first beverage, the first beverage user-selector connected to the control unit in an arrangement in which the control unit receives instructions from a user via the first beverage user-selector;
 - the electric beverage preparation machine operates in an operative mode in which the electric beverage preparation machine is ready to use the pump and the heating member to process the one or more beverage ingredients and dispense a resulting beverage;
 - the electric beverage preparation machine operates in a start-up mode in which the electric beverage preparation machine is not ready to process the one or more beverage ingredients and is brought into the operative mode from (i) a standby mode having lower electric consumption than the operative mode or (ii) an electrically switched off state; and
 - the control unit is arranged to store in the start-up mode a first beverage request made via the first beverage user-selector while the electric beverage preparation machine is in the start-up mode, the first beverage request identifying the first

beverage as a requested beverage, and the control unit is configured to automatically prepare the requested beverage at entry of the electric beverage preparation machine into the operative mode after leaving the start-up mode.

Appeal Br. 19, Claims App.

REFERENCES

The Examiner relies upon the following prior art references:

Gutwein	US 6,759,072 B1	July 6, 2004
Beavis	US 2009/0159612 A1	June 25, 2009
Deuber	US 2010/0282088 A1	Nov. 11, 2010

REJECTIONS

The following rejections are before us on appeal:

I. Claims 1–3 and 5–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Deuber and Beavis.

II. Claim 4 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Deuber, Beavis, and Gutwein.

ANALYSIS

Rejection I

The Examiner finds that Deuber discloses an electric beverage preparation machine having many of the limitations of claim 1, including the control unit (which the Examiner determines is met by Deuber’s control circuit 13). Final Act. 3. The Examiner also finds that Deuber’s beverage preparation machine operates in an operative mode (i.e., the “ready mode” described in ¶¶ 5, 9, and 52 of Deuber) and a start-up mode (i.e., the “standby mode” described in the Abstract of Deuber). *Id.* at 3–4.

The Examiner, however, concedes that Deuber's control circuit 13 is not "arranged to store in the start-up mode a first beverage request made via the first beverage user-selector while the electric beverage preparation machine is in the start-up mode" and is not "configured to automatically prepare the requested beverage at entry of the electric beverage preparation machine into the operative mode after leaving the start-up mode," as required by claim 1. *Id.* at 4.

The Examiner turns to Beavis to address this deficiency of Deuber. In particular, the Examiner finds Beavis discloses user interface subsystem 22 that includes touch screen interface 500 connected to control logic subsystem 14. *Id.* at 4–5 (citing Beavis, ¶ 84, Figs. 1, 17). The Examiner also finds Beavis discloses that user interface subsystem 22 allows a user to select various options, such as drink size and drink type, for a beverage, and that this disclosure reads on "selection during start-up mode because the interface 500 being active means that the device is electrically powered up." *Id.* at 5 (citing Beavis, ¶¶ 167, 168). Next, the Examiner finds that Beavis' disclosure in paragraph 172 reads on "automatic preparation in the operative mode because the control logic retrieves appropriate data and provides control signals to prepare beverage 28." *Id.*

The Examiner then concludes that

[i]t would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to utilize in the disclosure of Deuber for a device for brewing a beverage, the user interface subsystem and the control logic subsystem of Beavis to provide an interactive control over the drink type and drink size (FIG. 17 of Beavis).

Id. at 14.

Appellants argue that Beavis does not disclose making and storing a beverage selection while the machine is *in the start-up mode*, which claim 1 defines as a mode in which “the machine is **not** ready to process the one or more beverage ingredients and is brought into the operative mode from (i) a standby mode having lower electric consumption than the operative mode or (ii) an electrically switched off state.” Appeal Br. 8. We find Appellants’ arguments persuasive.

Beavis discloses a processing system that includes storage subsystem 12, control logic subsystem 14, and user interface sub-system 22. Beavis, ¶ 84, Fig. 1. User interface sub-system 22 includes touch screen interface 500 that allows user 26 to select various beverage options, such as drink size and drink type. *Id.* at ¶¶ 167, 168, Fig. 17. The Examiner errs, however, in finding that this selection in Beavis is made *during a start-up mode* “because the interface 500 being active means that the device is electrically powered up.” *See* Final Act. 5. The start-up mode of claim 1 requires more than merely being electrically powered up. Namely, claim 1 requires that the electric beverage preparation machine, when in the start-up mode, “is not ready to process the one or more beverage ingredients and is brought into the operative mode from (i) a standby mode having lower electric consumption than the operative mode or (ii) an electrically switched off state.” The Examiner does not explain adequately how Beavis discloses that its device is *not* ready to process beverage ingredients at any time while it is electrically powered up. The Examiner also does not explain adequately where Beavis discloses that the beverage selection is made while the device is transitioning into an operative mode from a standby mode or an off state.

Furthermore, the Examiner does not establish that Beavis *stores* the selection, as required by claim 1. As noted above, the Examiner finds that the control logic of Beavis “retrieves appropriate data” to prepare the beverage. *Id.* at 5 (citing Beavis, ¶ 172). We disagree, however, that the “appropriate data” retrieved by the control logic is the selection made by the user. Rather, Beavis discloses that, after making a beverage selection, the user selects “GO!” button 510, which causes user interface subsystem 22 to provide appropriate data signals to control logic subsystem 14. Beavis, ¶ 172. Once these data signals are received, “control logic subsystem 14 may retrieve the appropriate data from storage subsystem 12 and may provide the appropriate control signals . . . , which may be processed . . . to prepare beverage 28.” *Id.* The received data signals, which represent the user’s selection, are not the same as the appropriate data retrieved from storage subsystem 12. Instead, the retrieved appropriate data are recipes for creating the requested beverage. *Id.* at ¶ 86 (“Control logic subsystem 14 may process these data signals and may retrieve (via data bus 34) one or more recipes chosen from a plurality of recipes 36 maintained on storage subsystem 12. The term ‘recipe’ refer[s] to instructions for processing/creating the requested product.”). Thus, Beavis does not disclose that the user’s selection, or the data signals that represent the user’s selection, are stored at any time, let alone during a start-up mode.

In addition, the Examiner’s finding that Beavis’ device is configured to automatically prepare the requested beverage in the operative mode “because the control logic retrieves appropriate data and provides control signals to prepare beverage 28” (*see* Final Act. 5) is insufficient with respect to claim 1. Claim 1 requires the control unit be configured to automatically

prepare the requested beverage *at entry* of the electric beverage preparation machine *into the operative mode* after leaving the start-up mode. The Examiner finds that Beavis teaches automatically preparing the beverage *in the operative mode* only, and does not establish that Beavis discloses automatically preparing the beverage *at entry* of the device into the operative mode.

In the Examiner's Answer, the Examiner responds to certain arguments made by Appellants by noting that features relied on by Appellants are not recited in the rejected claims. Ans. 15–16. Although some of Appellants' arguments paraphrase the claim language, instead of quoting it verbatim (*see e.g.*, Appeal Br. 8), we disagree that these arguments rely on limitations that are not found in the claims.

For the above reasons, we determine the Examiner's obviousness analysis is not supported by a preponderance of the evidence. Accordingly, we do not sustain the rejection of claim 1, and claims 2, 3, and 5–20 depending therefrom, as obvious over Deuber and Beavis.

Rejection II

The Examiner's rejection of claim 4 as obvious over Deuber, Beavis, and Gutwein relies on the same erroneous findings and conclusions, noted above, regarding independent claim 1. Gutwein, which the Examiner relies on as disclosing receiving multiple inputs from a user (Final Act. 14), does not cure these deficiencies. Accordingly, we do not sustain the rejection of claim 4 for the same reasons stated above with respect to claim 1.

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DECISION

We reverse the decision of the Examiner rejecting claims 1–20 under
35 U.S.C. § 103(a).

REVERSED