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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SACHIN BHATIA and MOHAMMED M. MORAD

Appeal 2018-002504
Application 11/724,377
Technology Center 1700

Before TERRY J. OWENS, N. WHITNEY WILSON, and
JANE E. INGLESE, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant (Rich Products Corporation) appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 21–61. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The claims are to a method for making frozen, sheeted dough.

Claim 21 is illustrative:

21. A method for making a frozen, sheeted dough comprising the steps of:

(a) mixing flour, a lipid source, chemical leavening agent, yeast, dairy ingredient, dough conditioner and water to form a dough;

(b) adding shortening chips to said dough, mixing said shortening chips in said dough for 30 seconds to 3 minutes such that said shortening chips are not fully disintegrated after said mixing, said shortening chips having a Mettler Dropping Point of between 130°F and 170°F;

(c) resting said dough for 5 to 50 minutes at 70°F to 80°F after said shortening chips have been mixed in said dough to allow said dough to rise;

(d) subjecting said rested dough to a high stress sheeting process comprising 2 to 5 compression steps such that a height of said rested dough is reduced by at least 80% after completion of said high stress sheeting process; and,

(e) without proofing, freezing said dough after said high stress sheeting process, said frozen dough formulated to increase in height by at least 100% when baked as compared to a height of said frozen dough.

The References

Callaghan	US 2,686,721	Aug. 17, 1954
Hayashi	US 4,957,426	Sept. 18, 1990
Moder	US 2001/0043978 A1	Nov. 22, 2001
Douaire	US 6,419,965 B1	July 16, 2002
Domingues (Domingues '936)	US 2004/0037936 A1	Feb. 26, 2004
Sadek	US 2004/0213883 A1	Oct. 28, 2004
Domingues (Domingues '283)	US 2004/0241283 A1	Dec. 2, 2004
Goedeken	US 2005/0129821 A1	June 16, 2005

Laura Brandt, *Emulsifiers in Baked Goods*, Food Product Design 1–4 (Feb. 1, 1996), <http://www.foodproductdesign.com/articles/1996/02/emulsifiers-in-baked-goods.aspx>.

The Rejections

The claims stand rejected as follows:

1) Claims 21–29, 33, 38, 40, and 42 under 35 U.S.C. § 103(a) over Goedeken in view of Callaghan, Domingues '283, and Douaire;

2) Claims 30–32, 34, 35, 37, 39, 41, 43–48, 50, and 51 under 35 U.S.C. § 103(a) over Goedeken in view of Callaghan, Domingues '283, Douaire, and Brandt;

3) Claim 36 under 35 U.S.C. § 103(a) over Goedeken in view of Callaghan, Domingues '283, Douaire, and Sadek;

4) Claims 37 and 49–51 under 35 U.S.C. § 103(a) over a) Goedeken in view of Callaghan, Domingues '283, Douaire, Brandt, and Sadek, and b) Goedeken in view of Callaghan, Domingues '283, Hayashi, Moder, and Sadek;

5) Claims 21–26, 33, 38, 40, and 42 under 35 U.S.C. § 103(a) over Goedeken in view of Callaghan, Domingues '283, and Hayashi;

6) Claims 27–29, 30–32, 34, 35, 37, 39, 41, 43–48, 50, and 51 under 35 U.S.C. § 103(a) over Goedeken in view of Callaghan, Domingues '283, Hayashi, and Moder;

7) Claims 52–61 over a) Goedeken in view of Callaghan, Domingues '283, Douaire, Domingues '936, and Brandt, and b) Goedeken in view of Callaghan, Domingues '283, Hayashi, Moder, and Domingues '936; and

8) Claim 57 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

OPINION

We reverse the rejections under 35 U.S.C. § 103(a) and affirm the rejection under 35 U.S.C. § 112, first paragraph, written description requirement.

Rejections under 35 U.S.C. § 103(a)

We need address only the independent claims (21, 44, and 52).

Goedeken makes a leavened dough product by 1) mixing dough ingredients comprising flour, a liquid component such as oil or water, yeast,

chemical leavening agents, and optional ingredients including shortening, dairy products, and dough conditioners, 2) resting the dough to form or enlarge bubbles and achieve the desired raw specific volume, 3) further processing the dough by a method which can be sheeting, and 4) freezing the dough (§§ 6, 7, 9, 13, 17, 56). “Examples of suitable shortenings include animal fats and hydrogenated vegetable oils” (§ 43). “Fat can typically be used in amounts less than about 20 percent by weight, often less than 10 percent by weight of a total weight of a dough composition” (§ 44). “The frozen dough composition can be cooked (e.g., baked) without thawing or proofing” (§ 7). The frozen dough’s raw specific volume is 1.0 to 1.3 cm³/g, and the baked dough’s specific volume, without thawing or proofing, is at least about 2.8 cm³/g (§ 13).

Callaghan discloses a pie crust dough comprising 30–45% total shortening, about 25–35% of which is soft shortening thoroughly and uniformly greased onto flour, and 3–15% harder shortening discrete particles or flakes which are uniformly distributed by gentle mixing into the greased flour, usually have a melting point of 125–145 °F, and remain intact throughout the preparation and rolling out of the dough (col. 1, ll. 1–2; col. 2, ll. 4–25, 35–37; col. 3, ll. 17–20). The harder shortening particles or flakes “are found in the pie crust before baking and result in a definite flakiness [and tenderness] in the pie crust itself” (col. 2, ll. 25–27; col. 3, ll. 68–70). Callaghan teaches that “[w]hen flour is mixed with water the gluten develops to a tough elastic dough. This is the type of structure desired in the preparation of raised baked products such as bread” (col. 2, ll. 58–61). Callaghan’s soft shortening thoroughly greased onto flour “reduces the absorption of the flour which is the tendency of the flour to take

up water when the dough is prepared from the mix” (col. 2, ll. 54–58), thereby limiting gluten development such that “the tendency for the development of toughness is reduced” (col. 3, ll. 3–6) and “the most tender [pie crust] products are obtained” (col. 3, ll. 1–3).

Domingues ’283 discloses a dough which “may be yeast-leavenable or chemically-leavenable, and may be pre-proofed or unproofed” (§ 11), “can be prepared from ingredients generally known in the dough and bread-making arts” (§ 24), “can be particularly useful for refrigerated dough compositions useful for preparing baked dough compositions including biscuits, bread sticks, crescent rolls, sweet rolls, etc.” (§ 62), and “can optionally include fat ingredients such as oils and shortenings” (§ 28). “Examples of suitable shortenings include animal fats and hydrogenated vegetable oils” (*id.*). “If included, fat is typically used in an amount less than about 20 percent by weight, often less than 15 percent by weight of the dough composition” (*id.*). In Example 1, shortening used to make biscuit dough is in the form of chips (§ 70). In that example the dough is made by mixing all dry ingredients except the shortening chips, mixing liquid ingredients and ice with the dry ingredients, and adding the shortening chips to the mixture followed by mixing for 30 seconds at slow mixer speed then 120 seconds at high mixer speed (§§ 71–77).

The Examiner finds that Callaghan is “relevant [for modifying Goedeken] because flakiness is often a desirable characteristic in baked products like rolls and pastries” (Ans. 60), and “Domingues [’283] also includes shortening chips as relevant to making biscuits, bread sticks, crescent rolls, sweet rolls, etc.... [Domingues 0062]” (*id.*). The Examiner concludes that it would have been *prima facie* obvious to one of ordinary

skill in the art “to modify Goedeken to include the fully hydrogenated vegetable shortening chips of Callaghan in the dough composition disclosed in Goedeken because the shortening chips with a melting point of between 125°F and 145°F would have provided a level of flakiness and tenderness to the finished product [col. 3, lines 55-75]” (Ans. 5–6), and “it would have been obvious to further modify Goedeken to add the shortening chips at the end of the mixing step as in Domingues [’283] and Callaghan in order to maintain the integrity of the flakes, since the flakes are intended to produce a desirable cell structure in the dough and the shortening is not meant to melt or blend into the dough until the dough product is baked [Callaghan col. 2, lines 15-27]” (Ans. 6).

Setting forth a prima facie case of obviousness requires establishing that the applied prior art would have provided one of ordinary skill in the art with an apparent reason to modify the prior art to arrive at the claimed invention. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Callaghan discloses that pie crust made from Callaghan’s dough is flaky and tender because, unlike raised product dough which has desired toughness and elasticity due to gluten development resulting from water absorption by the dough’s flour, Callaghan’s flour, before it is mixed with water, has soft shortening thoroughly greased onto it to reduce water absorption and the resulting gluten development and dough toughness; then, harder shortening particles or flakes are gently mixed into the greased flour (col. 2, l. 53 – col. 3, l. 6; col. 3, ll. 17–20). The Examiner does not establish that in view of Callaghan’s disclosure of imparting flakiness and tenderness to pie crust dough, which is not a raised product dough, one of ordinary skill in the art would have had an apparent reason to grease soft shortening onto

Goedeken's flour used to make raised product dough (§ 9), thereby reducing the dough's desired toughness and elasticity, and then mix harder shortening particles or flakes into the greased flour. The Examiner finds that Domingues '283 is relevant to raised product dough (Ans. 60), but the Examiner does not establish that Callaghan and Domingues '283 would have provided to one of ordinary skill in the art with an apparent reason to use shortening chips as Goedeken's shortening. Callaghan's disclosure that raised product dough has desired toughness and elasticity due to gluten development resulting from water absorption by the dough's flour (col. 2, ll. 58–61) indicates that Domingues '283's dough made by mixing flour with water before shortening is added to the dough is tough and elastic due to gluten development resulting from water absorption by the flour (§§ 102–109) and, therefore, lacks Callaghan's dough's limited gluten development which contributes to the pie crust's flakiness and tenderness (col. 2, ll. 53–58; col. 3, ll. 1–6).

Thus, the Examiner has not set forth a factual basis that is sufficient to support a conclusion of obviousness of the Appellant's claimed method. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art.”). Accordingly, we reverse the rejections under 35 U.S.C. § 103(a).

*Rejection under 35 U.S.C. § 112, first paragraph,
written description requirement*

For an applicant to comply with the 35 U.S.C. § 112, first paragraph, written description requirement the applicant's specification must “convey with reasonable clarity to those skilled in the art that, as of the filing date

sought, he or she was in possession of the invention.” *Carnegie Mellon Univ. v. Hoffmann-La Roche Inc.*, 541 F.3d 1115, 1122 (Fed. Cir. 2008) (quoting *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563–64 (Fed. Cir. 1991)).

Claim 57 requires an ingredient mixing time for dough formation of “at least 4 minutes.”

The Appellant asserts that possession of a mixing time of at least 4 minutes is indicated by the Appellant’s disclosure that “the ingredients can be mixed for about 2 to 4 minutes on a first speed (low) and then for about 5 to 20 minutes on a second speed (high)” (Spec. 9:24–25) (App. Br. 17).

The Appellant’s claim 57’s “at least 4 minutes” includes times longer than the disclosed maximum of 24 minutes. The Appellant does not establish that the Specification shows possession of mixing for those longer times. Hence, we affirm the rejection under 35 U.S.C. § 112, first paragraph, written description requirement.

DECISION

The rejections under 35 U.S.C. § 103(a) are reversed. The rejection under 35 U.S.C. § 112, first paragraph, written description requirement, is affirmed.

The Examiner’s decision is affirmed-in-part.

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-IN-PART