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BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
Falls Church, VA 22042-1248

EXAMINER	
KIRKWOOD, SPENCER HAMMETT	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEISUKE HARA

Appeal 2018-005642
Application 14/378,815
Technology Center 3700

Before EDWARD A. BROWN, MICHAEL J. FITZPATRICK, and JAMES A. WORTH, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–9. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Sharp Kabushiki Kaisha. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim, and reads:

> 1. A heating cooker comprising:
> an inner pot for accommodating therein a heating object to be heated;
> a heating cooker body for accommodating the inner pot therein;
> a heating part attached to the heating cooker body and serving for heating the heating object;
> a lid which is openably/closably attached on top of the heating cooker body and which can be closed so as to cover the inner pot;
> a rotator rotatably placed between the heating cooker body and the lid;
> stirrers which are pivotably attached to the rotator and which can be pivoted without opening the lid between a) a stirring position in which the stirrers are in contact with the heating object set in the inner pot, and b) a non-stirring position in which the stirrers are apart from the heating object set in the inner pot; and
> a notification part notifying by pictures as to whether the stirrers are in the stirring state or in the non-stirring state with the lid closed.

Appeal Br. (Claims App.).

REJECTIONS

Claims 1–3, 5, 7, and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kubota[2], Tsutomu[3], and Pederson[4].

[2] Kobota et al., US 5,937,740, issued Aug. 17, 1999.
[3] Tsutomu, JP 07-289424 A, published Nov. 7, 1995.
[4] Pederson et al., US 2009/0164933 A1, published June 25, 2009.

Claims 4, 6, and 8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kubota, Tsutomu, Pederson[5], and Meyer[6].

ANALYSIS

Claims 1–3, 5, 7, and 9 as unpatentable over Kubota, Tsutomu, and Pederson

In rejecting claim 1, the Examiner finds Kubota discloses an inner pot (bread vessel 9), a heating cooker body (bread maker body 1), a lid (lid 5), a rotator (rotation shaft 10) placed between the heating cooker body and lid, and a notification part (display portion 33) notifying whether the stirrers are in the stirring state or the non-stirring state with the lid closed. Final Act. 3 (citing Kubota, Figs. 1, 2 ("KNEAD"), col. 3, ll. 62–63, col. 4, ll. 16–18, 46–60). The Examiner concedes Kubota does not disclose "stirrers which are pivotably attached to the rotator and which can be pivoted without opening the lid between" "a stirring position" and "a non-stirring position," as claimed. *Id.* at 3–4.

The Examiner relies on Tsutomu as disclosing a rice cooker comprising stirrers (blade 4-n) pivotably attached to a rotator and which can be pivoted without opening a lid (lid 11) between a stirring position in which the stirrers are in contact with a heating object set in an inner pot, and a non-stirring position in which the stirrers are apart from the heating object set in

[5] Pederson is not listed in the heading of this ground of rejection. Final Act. 6. However, because claims 4, 6, and 8 each depend from a claim against which Pederson is applied as a reference, we treat the omission of Pederson as inadvertent.
[6] Meyer et al., US 2002/0005401 A1, published Jan. 17, 2002.

the inner pot ("full automatic rice cooker with foldaway blades that go up and down with lid closed"). Final Act. 4 (citing Tsutomu, Fig. 2, ¶ 4). The Examiner concludes it would have been obvious to one of ordinary skill in the art to "replac[e] the base mounted non-folding rotator of Kubota with the lid mounted folding rotator of Tsutomu, to prepare rice." *Id.* (citing Kubota ¶ 3).

The Examiner also concedes Kubota does not disclose "notifying by pictures," as claimed. Final Act. 5. The Examiner relies on Pederson as teaching this feature. *Id.* (citing Pederson ¶ 49). The Examiner concludes it would have been obvious to one of ordinary skill in the art to further modify Kubota by adding Pederson's picture notification system to the worded notification system of Kubota, "to facilitate a user's intuitive recognition of a particular process stage." *Id.*

Stirrers

Appellant contends neither Kubota nor Tsutomu discloses stirrers that have all the limitations of the stirrers recited in claim 1. Appeal Br. 17. Appellant contends Kubota does not disclose the use of stirrers in contact with a "heating object" in its inner pot, but rather, Kubota's kneading blade contacts the contents in the inner pot only during the kneading phase, during which no heat is applied in a bread machine. *Id.*

Appellant acknowledges Tsutomu discloses stirrers (i.e., foldable blade 4-n) that can move up and down while washing rice. *Id.* at 13 (citing Tsutomu ¶ 10)[7]. Appellant explains blade 4-n is stored folded up on the lower surface of lid 11, and when rice cleaning starts, blade 4-n descends so

[7] *See* English-language translation of Tsutomu of record in this appeal.

it is open and hanging from lid 11. *Id.* at 5 (citing Tsutomu Fig. 2, ¶ 10). After stirring to wash the rice, blade 4-n moves up and is folded up and stored in lid 11. *Id.* Appellant contends Tsutomu teaches the use of the stirrers for washing rice only, and does not disclose using the stirrers "while the rice is cooking." *Id.* at 17–18 (emphasis added).

In response, the Examiner points out claim 1 does not recite that the "heating object" is heated at the time of stirring. Ans. 6. The Examiner submits that Tsutomu stirs rice prior to it being heated, and thus, the rice can reasonably be considered a "heating object," as claimed.

Appellant's contentions are not persuasive. Appellant seems to be contending claim 1 requires the "heating object" to be subjected to heating while the stirrers are operating. However, claim 1 is an apparatus claim, not a method claim. It recites "a heating object to be heated" and "the heating object set in the inner pot" for the stirring and non-stirring positions, but does not recite any limitation requiring heating of the heating object when the stirrers are in either the stirring state or the non-stirring state.

Appellant acknowledges Tsutomu's foldable blade 4-n stirs rice set in the automatic rice cooker. Appellant also appears to acknowledge that the same rice subjected to stirring is also cooked by being heated in the automatic rice cooker. However, in the Reply Brief, Appellant contends:

> Tsutomu teaches stirring while rinsing the rice with water prior to heating the rice, and the water used to rinse the rice is not heated or part of the heating object, which includes rice and additional water added for cooking. *See* Tsutomu at [0008]-[0011]. *The combination of the rice and the water for rinsing is the actual object that is stirred. Id. The water for rinsing is drained prior to heating; therefore, there is a*

> *difference between the contents during the stirring/rinsing and the heating object*.

Reply Br. 6 (emphasis added).

This contention is unpersuasive. First, claim 1 recites no limitation specifying what the "heating object" is. Nor does Appellant appear to argue this term has any specific meaning in the context of Appellant's disclosure that distinguishes the claimed "heating object" from the "object" heated in Tsutomu's rice cooker. Second, even if water is drained from the rice/water combination prior to heating the as-rinsed rice in Tsutomu, the same object (i.e., the same rice) is, nonetheless, subjected to both stirring *and* heating. For these reasons, we are unpersuaded that the Examiner erred in finding that the rice described in Tsutomu can be considered a "heating object" as recited in claim 1.

Notification Part

Appellant also contends neither Kubota, Tsutomu, nor Pederson discloses or suggests the limitation "a notification part notifying by pictures as to whether the stirrers are in the stirring state or in the non-stirring state with the lid closed." Appeal Br. 10–11. Appellant contends Pederson merely discloses a single icon for each process step or stage, and does not teach or suggest a plurality of pictures showing whether stirrers are in the stirring state or in the non-stirring state with a lid closed. *Id.* at 11.

Additionally, Appellant contends Pederson is not analogous art. *Id.* at 14. Accordingly, it is Appellant's position that Pederson cannot be applied in the Examiner's obviousness rejection. The test for determining whether a prior art reference is analogous art is: "(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the

reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *In re Clay*, 966 F.2d 656, 658–659 (Fed. Cir. 1992). A reference is "reasonably pertinent" to the problem faced by the inventor if it "logically would have commended itself to an inventor's attention in considering his problem." *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379–80 (Fed. Cir. 2007) (citation omitted).

As for the field of endeavor prong of the analogous art test, Appellant states, "[t]he present invention is a household heating cooker for use by a consumer," whereas "Pederson relates to large-scale commercial processes run by industrial operators or engineers to make highly technical products, such as paints and pharmaceuticals." Appeal Br. 15.

As for the problem prong of the analogous art test, Appellant states "[c]laim 1 solves the problem of the user not knowing whether or not the stirrer is pivoted into the stirring position." *Id.* at 2 (citing Spec. ¶¶ 4–10, 53). Appellant explains:

> For example, a user may wish to open the lid during operation of the heating cooker, but opening the lid of the heating cooker with the internal stirrers in the stirring position may cause a mess of the contents of the inner pot or the opening of the lid may be obstructed by the stirrers.

Id. In contrast, Appellant contends, Pederson's Figure 4 and disclosure of a graphical icon are not reasonably pertinent to the problem the inventor faced. *Id.* at 15. Appellant states, "Pederson's single graphical icon does not communicate anything regarding internal stirrers or whether any stirrers are in a stirring state, such that a user should not open the lid." *Id.*

Appellant contends that Pederson's graphical icon is representative of the stage of the industrial process only. *Id.*

As to Appellant's non-analogous art contention, the Examiner states Kubota and Pederson "are related as the same technical field *(automated machine controls)* and *(user interface)*, therefore, it would have been obvious to combine them, in order to facilitate a user's awareness of automated process steps." Ans. 4.

We agree with Appellant that the Examiner's field of endeavor position is insufficiently supported. Reply Br. 5. First, the proper comparison for determining whether Pederson qualifies as analogous art under this prong of the analogous art test requires that Pederson be compared to Appellant's invention, not Kubota. *See In re Clay*, 966 F.2d at 658–659. As to Appellant's invention, we note the Specification describes that the invention "relates to a heating cooker having a stirring function." Spec. ¶ 1. The Specification also describes, for example, "an object of the present invention is to provide a heating cooker" (*id.* ¶ 6) and "the heating cooker of the present invention" (*id.* ¶ 21). Throughout the Specification, a rice cooker is described and illustrated as an example of heating cookers. *See, e.g., id.* ¶ 20, 22 ("Fig. 1 is a schematic perspective view of a rice 10 cooker according to one embodiment of the invention"). The Specification also describes cooking other food items ("potatoes boiled with meat, jam or the like") in the heater cooker. *See, e.g.*, id. ¶ 46. Accordingly, the Specification supports Appellant's position that the invention relates to the field of endeavor of heating cookers for consumer use.

In contrast, Pederson describes, "[t]he present disclosure relates generally to process control systems and, more particularly, to methods and

apparatus to present recipe progress status information." Peterson ¶ 1. Although Pederson uses the word "recipe," Appellant contends Pederson is directed to commercial or industrial processes that are unrelated to cooking food. Appeal Br. 11. As noted by Appellant, Pederson describes, "[a] *recipe* typically includes a combination of unit procedures, operations, and phases, all of which include instructions to control process equipment (e.g., tanks, vats, mixers, boilers, evaporators, pumps, valves, etc.) to transfer, mix, etc. ingredients in a process control system to generate a product." *Id.* at 10; *see* Pederson ¶ 3 (emphasis added). Even assuming Pederson relates to the technical field of "automated machine controls" and "user interfaces," as found by the Examiner, this technical field still differs from Appellant's. Accordingly, we agree with Appellant that the Examiner has not established by a preponderance of the evidence that Pederson relates to the same field of endeavor as Appellant's invention.

Second, the Examiner does not appear to respond to Appellant's contention that Pederson is also not reasonably pertinent to the problem faced by Appellant. Accordingly, the Examiner also does not establish by a preponderance of the evidence that Pederson is "reasonably pertinent" to the problem faced by the inventor.

For these reasons, we are persuaded by Appellant that the Examiner has not established by a preponderance of the evidence that Pederson qualifies as analogous art with respect to the claimed heating cooker. As such, the Examiner has not articulated an adequate reason why one of ordinary skill in the art would have combined the teachings of Kubota, Tsutomu, and Pederson as proposed to result in the claimed heater cooker.

Thus, we do not sustain the rejection of claim 1, or dependent claims 2, 3, 5, 7, and 9, as unpatentable over Kubota, Tsutomu, and Pederson.

Claims 4, 6, and 8 as unpatentable over Kubota, Tsutomu, Pederson, and Meyer

The Examiner relies on Meyer as teaching "a lock mechanism for locking the lid, wherein the display part displays whether or not the lock mechanism is locking the lid," as recited in claims 4 and 6. Final Act. 7–8. Claim 8 depends from claim 4. Accordingly, because the Examiner does not rely on Meyer in a manner that cures the deficiency of the rejection of claim 1, we do not sustain the rejection of claims 4, 6, and 8 as unpatentable over Kubota, Tsutomu, Pederson, and Meyer.

DECISION SUMMARY

Claim(s) Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1–3, 5, 7, 9	§ 103(a)	Kubota, Tsutomu, and Pederson		1–3, 5, 7, 9
4, 6, 8	§ 103(a)	Kubota, Tsutomu, Pederson, and Meyer		4, 6, 8
Overall Outcome				**1–9**

REVERSED