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Carstens & Cahoon, LLP PO Box 802334 Dallas, TX 75380			PETERSON, KENNETH E	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* GREG HILLIARD, FELIX STAN, DRAGOS ENACHE,  
PETR KOVALEV, and JOSE MATIAS HENRIQUES

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Appeal 2018-007849  
Application 14/783,652<sup>1</sup>  
Technology Center 3700

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Before MICHAEL C. ASTORINO, CYNTHIA L. MURPHY, and  
AMEE A. SHAH, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from the Examiner's decision rejecting claims 1–7 and 18–24 pursuant to 35 U.S.C. § 134(a).<sup>2</sup> We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> According to the Appellants, Frito-Lay Trading Company GmbH is the real party in interest. Appeal Br. 2.

<sup>2</sup> Claims 8–17 have been withdrawn. Appeal Br. 2.

STATEMENT OF THE CASE

*Claimed Subject Matter*

Claim 1, the sole independent claim, is representative of the subject matter on appeal and is reproduced below.

1. A method of using a lubricating liquid in cutting potatoes into a plurality of pieces, the method comprising the steps of:

(a) providing a potato to a cutting implement having a cutting edge for cutting a potato;

(b) supplying a lubricating liquid onto the cutting implement to form a liquid film over at least part of the cutting edge, the lubricating liquid comprising an aqueous dispersion of an antifoam additive; and

(c) cutting the potato using the lubricated cutting edge to cut a potato piece from the potato;

whereby a reduction in a yield loss associated with cutting the potato is reduced relative to a yield loss when cutting the potato without supplying a lubricating liquid that has the aqueous dispersion of the antifoam additive, over at least part of the cutting edge.

*Rejections*

I. Claims 1–4, 7, 18–21, and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over Applicant Admitted Prior Art (AAPA) in view of Wachala (US 3,990,905, issued Nov. 9, 1976). Final Act. 2–3; Ans. 2–4.

II. Claims 1–7 and 18–24 are rejected under 35 U.S.C. § 103 as being unpatentable over AAPA in view of Wachala, and in further view of Giraldo et al. (US 6,558,725 B2, issued May 6, 2003) (“Giraldo”). See Final Act. 3–4; Ans. 4–5.

III. Claims 1–4, 7, 18–21, and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over AAPA in view of Wachala, and in further

view of Themistocle (FR 2,842,821, pub. Jan. 30, 2004) and Wei et al. (CN 103013638 A, pub. April 3, 2013) (“Wei”). *See* Ans. 5.

## ANALYSIS

Each of the Examiner’s rejections of independent claim 1 rely on paragraph 4 of the Specification (i.e., AAPA), which describes:

During the slicing process, potatoes are fed to a slicing station where a high speed rotating slicer head, including a slicing blade, cuts the potatoes into slices. A water supply is typically used within the slicing operation to help clean the slicer head during operation and provide some form of lubrication for the cutting process.

*See* Final Act. 2–4; Ans. 2–5. The Examiner finds that AAPA “discloses a method of slicing potatoes having all of the recited limitations [of claim 1] except there is no antifoam additive in the aqueous lubricant.” Final Act. 2; *see* Ans. 2. Accordingly, the Examiner acknowledges that AAPA does not teach portions of steps “b” and “c” of claim 1; i.e., “(b) supplying a lubricating liquid onto the cutting implement to form a liquid film over at least part of the cutting edge, the lubricating liquid comprising an aqueous dispersion of an antifoam additive” and “(c) cutting the potato using the lubricated cutting edge to cut a potato piece from the potato.”

The Examiner turns to Wachala to remedy the deficiency of AAPA with regard to the subject matter of claim 1. The Examiner finds “Wachala has a washer, a cutter and a diffuser (all three mentioned in paragraph extending from line 46 to 59 in column 1)” and “suggests adding an antifoaming additive ‘at or prior to any point in the food processing operation to which foaming problems might arise’ (lines 50-52, column 2).” Ans. 2–3 (emphasis omitted); *see* Final Act. 2.

The Examiner determines:

It would have been obvious to one of ordinary skill in the art to have provided the [A]APA with an antifoaming additive at all steps, as taught by Wachala and many others, *in order to avoid foaming of the water*. This would include adding the antifoam additive to the aqueous blade lubricating step, *as the motion of the lubricant and potatoes through the blades would create foam at the slicing location*, and Wachala explicitly states that his composition should be added anywhere where foaming arises. The motivation for this modification has already been set forth above, namely to prevent wastage and reduced processing rates.

Ans. 3 (emphasis added) (citing Wachala, col. 1, ll. 7–11); *see id.* at 6 (“[A]APA applies an aqueous lubricant to the blades, which would cause foaming.”).

The Appellants argue persuasively that the Examiner’s reasoning “appears to lean on the notion that foaming ‘might’ arise at the cutting edge,” which is speculative. Reply Br. 3, 5; *see also* Appeal Br. 7–8. Also, the Appellants argue persuasively that the “[A]APA does *not* indicate that its ‘aqueous lubrication’ causes foaming.” Reply Br. 5. We agree. In this case, the Examiner’s reasoning is based on an unsupported finding that cutting a potato while using water as a lubricant may cause foaming problems.

Thus, we do not sustain the Examiner’s rejection of claims 1–4, 7, 18–21, and 24 under 35 U.S.C. § 103 as being unpatentable over AAPA in view of Wachala.

The remaining rejections are based on AAPA and Wachala in combination with Giraldo or Themistocle and Wei. These rejections rely on the same unsupported finding as discussed above, which are not cured by the additional findings and/or reasoning of the remaining rejections. Thus, we do not sustain the rejections under 35 U.S.C. § 103 of: claims 1–7 and 18–

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24 as being unpatentable over AAPA in view of Wachala, and in further view of Giraldo; and claims 1–4, 7, 18–21, and 24 as being unpatentable over AAPA in view of Wachala and in further view of Themistocle and Wei.

DECISION

We REVERSE the Examiner’s decision rejecting claims 1–7 and 18–24.

REVERSED