UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/265,774	10/21/2011	Gerrit Jan Stokkers	AFC10919-US-P1/364.0714US	6004

152163 7590 02/28/2020

Nouryon Chemicals LLC
131 South Dearborn
Suite 1000
Chicago, IL 60603

EXAMINER	
LEBLANC, KATHERINE DEGUIRE	

ART UNIT	PAPER NUMBER
1791	

NOTIFICATION DATE	DELIVERY MODE
02/28/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nouryon@lkglobal.com
sc-ipani@nouryon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GERRIT JAN STOKKERS and EVERT ALTENA

Appeal 2019-001492
Application 13/265,774
Technology Center 1700

Before MICHAEL P. COLAIANNI, MICHAEL G. McMANUS, and SHELDON M. McGEE, *Administrative Patent Judges*.

COLAIANNI, *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 14, 18, 21, 22, and 24.[2] We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were waived in this appeal on February 6, 2020.

---

[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 Akzo Nobel Chemicals International B.V. Appeal Br. 2.

[2] The Examiner states in the Advisory Action dated April 3, 2018, that the After-Final Rejection Amendment filed December 1, 2017 will be entered. In the December 2017 amendment, Appellant cancelled claim 36.

We AFFIRM.

Appellant's invention is directed to a process to prepare a low sodium salt product (Spec. 1:4–5; Claim 14).

Claim 14 is representative of the subject matter on appeal:

14. A process for preparing a low sodium salt product, the process comprising:

(a) mixing sodium chloride and potassium chloride to produce a sodium chloride containing material;

(b) mixing the sodium chloride-containing material with a taste enhancer that is succinic acid, yeast, yeast extracts, or a combination thereof, to form a particle mixture, wherein the taste enhancer has a particle size that is between 0.5 and 2.0 times the particle size of the sodium chloride-containing material;

(c) compacting the particle mixture at a pressure between 40 megapascals (MPa) and 400 MPa to form a compacted salt product;

(d) crushing the compacted salt product to form a low sodium salt product;

wherein the compacting and crushing takes place under substantially dry conditions,

wherein the sodium chloride-containing material has a particle size that is between 1,000 times smaller and 3 times smaller than the size of the low sodium salt product; and

wherein the low sodium salt product has a particle size of between 50 micrometers (μm) and 10 millimeters (mm).

Appeal Br. 9.

Appellant appeals the following rejection:

Claims 14, 18, 21, 22, and 24 are rejected under 35 U.S.C. § 103 as unpatentable over Zasypkin (US 2009/0104330 A1, pub. Apr. 23, 2009) in view of GB (GB 1058826 published Feb. 15, 1967).

Appellant argues independent claim 14 only (Appeal Br. 3–8). Therefore, any claim not argued separately will stand or fall with our analysis of the rejection of claim 14.

FINDINGS OF FACT & ANALYSIS

The Examiner's findings and conclusions regarding the rejection of claim 14 over Zasypkin in view of GB are located on pages 2 to 4 of the Final Action.

Appellant argues that one of ordinary skill in the art would not have combined Zasypkin and GB because each is intended for different uses, with different challenges and requirements (Appeal Br. 3). Appellant contends that Zasypkin and GB do not suggest or teach one of ordinary skill in the art to employ GB's meat curing composition parameters in Zasypkin's reduced sodium salty taste compositions (Appeal Br. 3–4). Appellant argues that GB addresses a problem in alkali-containing meat curing compositions that is not present in Zasypkin's reduced sodium composition (Appeal Br. 4). Appellant contends that GB's problem of incorporating alkali metal hydroxide in meat curing compositions is not present in Zasypkin's salt substitutes (Appeal Br. 4). Appellant contends that GB's teachings were known for 40 years prior to Zasypkin's disclosure (Appeal Br. 4). Appellant contends that even though GB's teachings were available, Zasypkin did not employ them (Appeal Br. 4–5). Appellant contends that there is no

reasonable expectation that applying GB's teachings regarding alkali metal hydroxide containing meat curing compositions to Zasypkin's salt substitute that does not include an alkali metal hydroxide would have been successful (Appeal Br. 5–6). Appellant argues that there is no basis in the art for predicting how other compositions, like Zasypkin's, would behave when subject to GB's conditions (Appeal Br. 5).

Contrary to Appellant's argument, the Examiner finds that GB and Zasypkin are each directed to solving a similar problem as Appellant: to form a free-flowing and homogeneous compacted salt containing particulate product (Ans. 8). We agree. Zasypkin teaches that the salt containing composition has a particle size in the range from 20 to 60 mesh (850 microns to 250 microns) but may require significantly larger particles ranging from 0.5 to 3 mm (¶ 69). Zasypkin teaches forming agglomerations by compaction to form larger particles (¶ 70). GB teaches a process to form a compacted salt-containing meat curing composition that is then ground to a desired mesh size (pages 8 to 9). GB teaches that the final particle size is typically between 16 mesh and 100 mesh or (1180 microns (1.18 mm) to 150 microns (.15 mm)) (page 16). GB's and Zasypkin's final product particle sizes overlap with one another. The Examiner finds that GB teaches that the sodium chloride mesh size may include 76.2% of the mixture between a 100 mesh and 50 mesh particle size (i.e., 150 microns to 297 microns) (Final Act. 4). Appellant argues that Table D V on page 9 of GB shows that 53% of GB's final product composition has a 300 micron (i.e., 50 mesh) size which would yield a ratio of final product size to sodium chloride/potassium chloride particle size of 2 (300 microns/150 microns). GB also teaches that sodium chloride includes 2.5% of the particles on mesh

200 or 75 micron particle size. Based on that size, the ratio of final product to sodium chloride/potassium chloride particle size is 4 (300 microns/75 microns). Claim 14 does not require any specific amount of the sodium chloride/potassium chloride mixture have a particle size that is 1000 to 3 times smaller than the size of the low sodium salt product (i.e., the final product).

Moreover, we agree with the Examiner that GB teaches that the end product may include larger particles ranging in size from 16 mesh to 100 mesh (1180 microns to 150 microns) (Final Act. 4). In other words, GB teaches that it is not limited to the 300 micron size argued by Appellant in Table D V. Appellant provides no evidence that GB's disclosure is not enabled for making larger sized (i.e., 16 mesh to 100 mesh) end product particles. We agree with the Examiner that Zasypkin's teaching to compact and mill to form larger particles would have provided a reasonable expectation success in using GB's compaction process and milling to form Zasypkin's agglomerates (Ans. 8). For the above reasons, we find that the Examiner has established a prima facie case of obviousness.

Appellant argues that the Declaration of Evert Altena (i.e., "the Altena Declaration") dated January 30, 2015, shows the criticality in the sodium chloride/potassium chloride particle size being 1000 to 3 times smaller than the particle size of the final low sodium salt product and the taste enhancer particle size is 0.5 to 2.0 times the particle size of the sodium chloride-containing material (Appeal Br. 6). Appellant contends that the Altena Declaration shows that compositions with a particle size ratio within the range of 3 to 1000 would have superior properties compared to similar compositions with particle size ratios outside that range (Appeal Br. 7).

Appellant contends that the Examiner's analysis of GB as teaching that sodium chloride particle size in Table D II could be used to produce final products of any preferred size is faulty because it places no limitation on the particle size ratio (Appeal Br. 7).

The Examiner correctly finds, however, that the evidence in the Altena Declaration does not compare the evidence to the closest prior art, in this case Zasypkin and GB (Ans. 9). Rather, the Altena Declaration compares the evidence with Sair and Moritz, references that are no longer part of the rejection (Altena Dec. ¶ 8). To be probative of non-obviousness the declaration must compare the evidence to the closest prior art. *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984) ("Due to the absence of tests comparing appellant's heat shrinkable articles with those of the closest prior art, we conclude that appellant's assertions of unexpected results constitute mere argument.").

Appellant argues that the Examiner improperly ignores test results discussed in the Altena Declaration (Reply Br. 4). Contrary to this argument, the Examiner does not ignore the evidence, but, rather, finds that the results of the tests have not been shown to be unexpected as compared to the closest prior art (Ans. 9–10). The Examiner finds that each of the prior art references, Zasypkin and GB, produce a homogenous composition. The Examiner finds that GB teaches forming a free-flowing, non-caking, and uniform composition by compacting and milling of the compacted product (Ans. 9). The Examiner finds that Zasypkin teaches a compacted product containing sodium chloride, potassium chloride, and an additive such as a yeast that is homogenous (Ans. 9). The Examiner finds that Appellant relies on the Altena Declaration to show that the homogeneity of the resulting

compositing is unexpected (Ans. 10). The Examiner finds that Appellant has not shown that the process results in an unexpectedly homogenous composition. Rather, the Examiner finds that the similarity of the resulting prior art compositions to the claimed composition and process to form it would have led one of ordinary skill in the art to expect that the product of Zasypkin and GB would have the exact same properties alleged as critical/unexpected in the Altena Declaration (Ans. 9). In other words, Appellant has not shown that the evidence of a homogeneous, free-flowing reduced sodium salt composition is unexpected relative to what is contained in the closest prior art (i.e., Zasypkin and GB).

On this record, we affirm the Examiner's § 103 rejection.

CONCLUSION

In summary:

Claims Rejected	Reference(s)/Basis	Affirmed	Reversed
14, 18, 21, 22, 24	§ 103 Zasypkin and GB	14, 18, 21, 22, 24	

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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED