



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.
14/378,757	08/14/2014	Takeshi Asahina	P46065	1076
7055	7590	09/26/2019	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			TRAN, LIEN THUY	
			ART UNIT	PAPER NUMBER
			1793	
			NOTIFICATION DATE	DELIVERY MODE
			09/26/2019	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):

gbpatent@gbpatent.com
greenblum.bernsteinplc@gmail.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAKESHI ASAHINA, TAKAAKI HIBI,
NORIYUKI MACHIDA, and MITSURU TANAKA

Appeal 2019-001934
Application 14/378,757
Technology Center 1700

Before MARK NAGUMO, CHRISTOPHER L. OGDEN, and
SHELDON M. MCGEE, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellant² appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 3–5, and 7–12. We reverse.

¹ The appeal record includes the following: Specification, Aug. 14, 2014 (“Spec.”); Final Office Action, Mar. 1, 2018 (“Final Action”); Appeal Brief, Aug. 29, 2018 (“Appeal Br.”); and Examiner’s Answer, Oct. 22, 2018 (“Answer”). Appellant did not submit a reply brief.

² Appellant is Nissin Foods Holdings Co., Ltd., which is the “applicant” as defined in 37 C.F.R. § 1.42. Appellant also identifies this entity as the real party in interest. Appeal Br. 3.

BACKGROUND

Appellant's claimed invention "relates to a method . . . for drying instant noodles." Spec. ¶ 1. According to the Specification, prior art noodle dryers used air jets to compress noodles downward in a retaining device during drying, to prevent the formation of a "mountain-like mass," but this can result in the noodles sticking to the retainer. Spec. ¶ 4. Alternatively, if the air jets are positioned below the retainer and the air passes upward through holes in the retainer, "the air blown from below first collides against the bottom surface of the retainer so that the force of the air is weakened, and accordingly the drying efficiency is reduced." *Id.* ¶ 7. Thus, Appellant's invention is directed to a method that uses a high-speed air jet from above, but "provide[s] non-fried noodles that are easily loosened without sticking of noodle strings." *Id.* ¶ 9.

Independent claim 1, which we reproduce below, is representative:

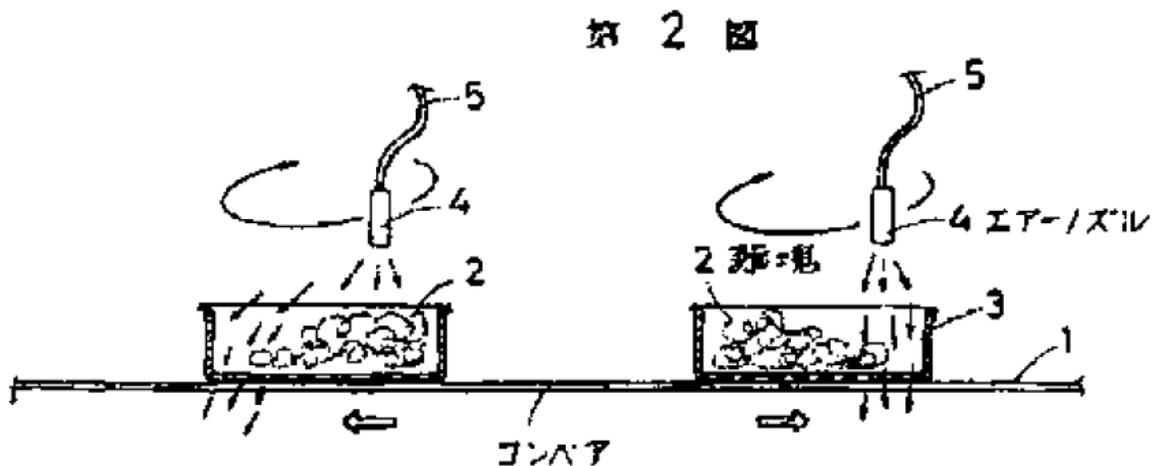
1. A method for drying instant noodles, comprising:
putting gelatinized noodle strings into a retainer for drying instant noodles, the retainer having one or more small holes in a bottom surface thereof so as to give a ratio of a total area of the small holes to an area of the bottom surface of the retainer of 30% or less, or having no small hole in the bottom surface,
blowing a high-speed air flow from above the retainer,
and
lifting the noodle strings from contact with the retainer by the high-speed air flow blown from above the retainer,
wherein the high-speed air flow has a wind speed of 50 m/s or higher in terms of the speed to which the noodle strings in the retainer are exposed, and the noodle strings are dried with the high-speed air flow until the water content of the noodle strings is reduced to 30% or less.

Appeal Br. 21 (emphasis added to highlight key limitation). Claim 8 is also independent, and includes similar limitations. *See id.* at 22. Claims 3–5 and 7 depend from claim 1, and claims 9–12 depend from claim 8. *Id.* at 21–23.

The Examiner rejects all claims under 35 U.S.C. § 103(a) as being unpatentable over Yokoo³ in view of Takizawa⁴ and Sakurazawa.⁵ Final Action 2–3.⁶

DISCUSSION

The dispositive issues relate solely to the teachings of Yokoo. Below, we reproduce Figure 2 of Yokoo:



Yokoo’s Figure 2 depicts a conveyer belt (1) holding two retainers (3) containing noodles (2), and above each retainer 3 is an air nozzle (4). Arrows indicate that air nozzle 4 rotates above retainer 3 while the noodles dry. *See* Yokoo 2. Small arrows emanate from nozzle 4 indicating downward and diagonal airflow onto noodles 2.

³ Yokoo et al., JP 01191633 A, published Aug. 1, 1989 (“Yokoo”).

⁴ Takizawa et al., EP 2356913 A1, published Aug. 17, 2011 (“Takizawa”).

⁵ Sakurazawa, JP 2005-160401 A, published June 23, 2005 (“Sakurazawa”).

⁶ The Examiner has withdrawn a provisional obviousness-type double patenting rejection. *See* Final Action 4–5; Answer 5.

The Examiner finds that Figure 2 shows that “the air flow is blown from above the cup and the noodles are lifted in the cup.” Final Action 2. In the Answer, the Examiner further explains that “[t]he claims do not recite how far or the length of the lifting,” and “in order for the noodle strings to be rearranged, the strings would need to be lifted up and then resettle.” Answer 5.

Appellant disagrees with the Examiner that Figure 2 depicts any lifting of the noodles because of the airflow, and argues that, interpreted most generously, Figure 2 would only depict lateral movement. Appeal Br. 12. Further, Appellant argues that Yokoo’s abstract indicates that the purpose of the design is “to provide for ‘arranging the noodles in the cup so as to be flat and homogenous.’” *Id.* at 13 (quoting Yokoo, Abstract).

We agree with Appellant that Figure 2 of Yokoo does not clearly disclose “lifting the noodle strings from contact with the retainer” as recited in independent claims 1 and 8. None of the small arrows in Figure 2, depicting airflow patterns, are directed upwards, and the figure does not directly depict motion of the noodles themselves.

We also find the Examiner’s inherency rationale unpersuasive. A reference may inherently disclose a process limitation if a prior art device “necessarily functions in accordance with the [claim] limitations” while the device is used in its “normal and usual operation.” *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing, inter alia, *In re Ackenbach*, 45 F.2d 437, 439 (CCPA 1930)). The Examiner has not provided a persuasive reason, based on Figure 2 or any associated descriptive text in Yokoo, to expect that Yokoo’s process would *necessarily* result in the lifting of noodle strings from contact with the retainer.

Because the Examiner has not shown that Yokoo explicitly or inherently teaches “lifting the noodle strings . . .” as recited in claims 1 and 8, we do not sustain the rejection. The Examiner’s citations to Takizawa and Sakurazawa do not cure the above deficiencies. Therefore, we reverse the Examiner’s decision as to all claims.

CONCLUSION

The following table summarizes the decision:

Claims Rejected	Basis	Affirmed	Reversed
1, 3–5, and 7–12	§ 103(a) Yokoo, Takizawa, Sakurazawa		1, 3–5, and 7–12

DECISION

The Examiner’s decision is reversed.

REVERSED