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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte QING LI, BIN YIN, DECLAN PATRICK KELLY, KORAY KARAKAYA and WEI LI

Appeal 2019-002488
Application 15/122,962
Technology Center 1700

Before JEFFREY T. SMITH, CHRISTOPHER C. KENNEDY, and MICHAEL G. McMANUS, *Administrative Patent Judges*.

SMITH *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 1–15. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

[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 Koninklijke Philips N.V. Appeal Br. 3.

STATEMENT OF THE CASE

Appellant's invention relates generally to a method, apparatus, and computer program product for a cooking process control based on detection of the initial status of food. (Spec. 1.)

Claim 1 illustrates the subject matter on appeal and is reproduced below:

> 1. A method of controlling a cooking process of a food, the method comprising steps of:
>
> detecting (S101) a weight change of a first vaporizable component in the food over a first period of time, wherein the step of detecting (S101) the weight change of the first vaporizable component in the food includes at least one step of:
>
> detecting a weight change of the food during the first period of time; and
>
> detecting an amount of the first vaporizable component that evaporates from the food during the first period of time;
>
> determining (S102) an initial status of the food at least partially based on the detected weight change of the first vaporizable component in the food; and
>
> controlling (S103) the cooking process at least partially based on the determined initial status of the food.

Appeal Br. 23, Claims Appendix.

The following rejection is presented for our review:[2]

Claims 1–15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Tiesinga (US 2006/0257536 A1, published Nov. 16, 2006) in view of Kasai (US 4,874,928, issued Oct. 17, 1989).

[2] The complete statement of the rejection on appeal appears in the Final Office Action. (Final Act. 2–3.)

OPINION

Upon consideration of the evidence of record and each of Appellant's contentions as set forth in the Appeal Brief, as well as the Reply Brief, we determine that Appellant has not demonstrated reversible error in the Examiner's rejections of claims 1–15. *In re Jung*, 637 F.3d 1356, 1365–66 (Fed. Cir. 2011) (explaining the Board's long-held practice of requiring Appellant(s) to identify the alleged error in the Examiner's rejection). We sustain the rejections of these claims generally for the reasons expressed by the Examiner in the Final Office Action and the Answer. (Ans. 5–6; Final Act. 2–3.) We have reviewed each of Appellant's arguments for patentability. We add the following primarily for emphasis.

We limit our discussion to the independent claim 1 as argued by Appellant. 37 C.F.R. § 41.37(c)(1)(iv). Appellant has presented groupings of the claims under separate headings identified as paragraphs 7. B–H (Appeal Br. 18–21.) Addressing each of these groups Appellant asserts the claims are patentable for the reasons set forth in Section 7.A. We do not consider these conclusory remarks to be a substantive argument as Appellant has failed to present substantive arguments and supporting evidence persuasive of Examiner error regarding the separately identified groups of claims. *See In re Lovin,* 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("we hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art."); *see also Hyatt v. Dudas,* 551 F.3d 1307, 1314 (Fed. Cir 2008) (Arguments not made are considered waived). Accordingly, claims 2–15 stand or fall with independent claim 1.

The Examiner rejected claims 1–15 as obvious over the combination of Tiesinga and Kasai. The Examiner finds Tiesinga discloses a method and apparatus for cooking food comprising sampling/detecting weight change of a food due to water evaporation during first and second periods of time during cooking, determining an initial status of the food, and controlling the cooking process as required by the independent claims. (Final Act. 2; Tiesinga ¶¶ 74–76, 79.) The Examiner determines Tiesinga does not recite determining an initial status of the food based upon the weight change as required by the independent claims 1 and 8. (Final Act. 3.) The Examiner finds Kasai teaches a method and apparatus for cooking food comprising detecting a change of humidity in a cooking environment for determining an initial status of the food based on the sensed humidity and controlling the cooking process (initiating and ending) based upon the sensed humidity, and a microcomputer which stores the programmed steps. (Final Act. 3.) The Examiner determines it would have been obvious to incorporate humidity monitoring and determining the initial status based upon weight change into the methods of cooking food as disclosed by Tiesinga. The Examiner specifically states:

> It would have been obvious to one of ordinary skill in the art to incorporate the claimed humidity monitoring and determining the initial status based upon weight change into the invention of Tiesinga, in view of Kasai, since both are directed to methods of cooking food, since Tiesinga already included sampling/detecting weight change of a food due water evaporation during first and second periods of time during cooking (paragraph 0074, 0079) and determining an initial status of the food (paragraph 0075), since cooking methods commonly used humidity detection/monitoring to determine a food initial status as shown by Kasai (Figure 11, #13, 8; Figure 10a; column 5, lines 25-36), since also monitoring the humidity would assure the user that the change in weight was indeed due to moisture evaporating from the food rather than some other cause, and since humidity detection

> would also verify the initial status of the food as frozen or cool and thus ensure proper cooking conditions of the food of Tiesinga.

(Final Act. 3.)

Appellant argues Tiesinga is directed to controlling a cooking process based on a ready state of food determined from performing measurements during the preparation process including (1) the initial water content, (2) the final water content of the food, (3) the quantity of the food, and (4) the quantity of released water. (Appeal Br. 16.) Appellant argues "*Kasai* directed to a directed to controlling a cooking process based a kind and condition of the food" utilizing "a gas sensor for detecting gas or steam generated from the food and a weight sensor for detecting the weight of the food." (Appeal Br. 17.) Appellant argues the incorporation of the teachings of Kasai into the cooking process of Tiesinga would change the principle of operation of Tiesinga. Appellant specifically states:

> [T]he operating principle of *Tiesinga* may be property characterized as a final status based cooking process and the operating principle of *Kasia* [sic] may be properly characterized as an initial status based cooking process. Thus, the Appellant respectfully asserts that *Kasai* fails to teach a modification of *Tiesinga* to incorporate the aforementioned limitations of independent claims 1-15, because such a modification would improperly change the operating principle of *Tiesinga*. For this reason, the Appellant respectfully asserts that *Tiesinga* in view of *Kasai* fails to render obvious the aforementioned limitations of independent claims 1-15.

(Appeal Br. 17.)

It has been established that the predictable use of known prior art elements performing the same functions they have been known to perform is normally obvious, and the combination of familiar elements is likely to be obvious when it does no more than yield predictable results. *KSR Int'l Co.*

v. Teleflex Inc., 550 U.S. 398, 418 (2007); *see also KSR*, 550 U.S. at 418 ("the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."); *see also In re Fritch*, 972 F.2d 1260, 1264–65 Fed. Cir. 1992) (a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in the art would have reasonably been expected to draw therefrom).

Appellant's argument that the incorporation of the teachings of Kasai into the cooking process of Tiesinga would change the principle of operation of Tiesinga is without persuasive merit. "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Appellant does not dispute that controlling a cooking process based on the initial status of the food was known to persons of ordinary skill in the art. (Kasai.) Appellant does not dispute that controlling a cooking process of a food comprising monitoring the weight change of the product based upon a vaporizable component was known to persons of ordinary skill in the art. (Tiesinga and Kasai.) The determination of the status and weight of a product to be cooked based upon the combination of weight change and degree of evaporation during an initial period was known to persons of ordinary skill in the art as established by Tiesinga and Kasai. A person of ordinary skill in the art would have reasonably expected that the known methods for determining the initial status of a food product could have been combined for accuracy purposes. "Obviousness does not require absolute

predictability of success . . . *all that is required is a reasonable expectation of success*." *In re Kubin*, 561 F.3d 1351, 1359–60 (Fed. Cir. 2009) (citing *In re O'Farrell*, 853 F.2d 894, 903–04 (Fed. Cir. 1988)). Appellant has not adequately explained why the teachings of Tiesinga and Kasai would have been expected to have been incompatible. Thus, Appellant has not shown reversible error in the Examiner's obviousness determination of claims 1–15.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–15	103	Tiesinga, Kasai	1–15	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED