



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.
13/993,688	06/17/2013	Wolfgang Steiner	000034-013	1065
44012	7590	07/01/2020	EXAMINER	
WRB-IP LLP 801 N. Pitt Sreet , Suite 123 ALEXANDRIA, VA 22314			MICHALSKI, SEAN M	
			ART UNIT	PAPER NUMBER
			3724	
			NOTIFICATION DATE	DELIVERY MODE
			07/01/2020	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):

HARRY@WRB-IP.COM
USPTO@dockettrak.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WOLFGANG STEINER

Appeal 2019-002505
Application 13/993,688
Technology Center 3700

Before DANIEL S. SONG, BENJAMIN D. M. WOOD, and
BRETT C. MARTIN, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1 and 5–7. Oral arguments were heard in this case on June 4, 2020. A transcript of the hearing will be entered into the record in due course. 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 Novis AG. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed “to an apparatus for extracting juice and pulp from fruit or vegetables.” Spec. 1, ll. 4–5. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An apparatus for extracting juice and pulp from fruit or vegetables in order to obtain a flowable mass, comprising:
 - a receptacle;
 - a cylindrical strainer located within the receptacle and rotatable about an axis of symmetry of the strainer, the strainer having a bottom and a perforated side wall;
 - a motor unit configured to rotate the strainer about its axis of symmetry;
 - an inlet unit configured to permit introduction of fruit or vegetables into the strainer;
 - an outlet unit configured to permit collection of flowable mass from the receptacle, and
 - a flexible element having an elongated surface that extends in a direction of the axis of symmetry, the flexible element being located within the strainer and being urged against an inside surface of the perforated side wall to contact the inside surface of the perforated side wall along a line of contact when the strainer is rotated about the axis of symmetry of the strainer, the flexible element forming a wedge-shaped space with the inside surface which narrows towards the line of contact when the strainer is rotated about the axis of symmetry of the strainer.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Spino	US 2,246,641	June 24, 1941
Ramirez	US 4,506,601	Mar. 26, 1985
Le Rouzic	US 5,289,763	Mar. 1, 1994
Le Rouzic et al.	US 7,044,051	May 16, 2006
Sugino	US 7,217,439 B2	May 15, 2007

Appeal 2019-002505
Application 13/993,688

“Lemon-Apricot Sandwiches,” *Martha Stewart Living*, June 2006 (“Martha Stewart”).

REJECTIONS

Claims 6 and 7 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Ans. 3.

Claims 1 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over LeRouzic, LeRouzic et al., Ramirez, Spino, and Martha Stewart. Ans. 6.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over LeRouzic, LeRouzic et al., Ramirez, Spino, Martha Stewart, and Sugino. Final Act. 11.

OPINION

Written Description

The Examiner asserts that “[t]he disclosure, taken as a whole at the time of filing does not demonstrate enough detail for a person of ordinary skill to conclude that the appellant had demonstrated possession of the invention as set forth in claims 6 and 7.” Ans. 4. As Appellant points out, however, “[t]he grounds for this rejection are unclear in view of the fact that the subject matter is expressly disclosed in the original application.” Appeal Br. 4. Written description deals with whether Appellant had possession of the invention and the fact that the claims at issue are original claims suggests possession of the invention. Appellant is correct regarding the subject matter of claims 6 and 7 that “persons skilled in the art certainly understand how to mount a roller and the Examiner cannot reasonably assert that mountings for rollers are unconventional or not known in the art.” Reply Br. 3. We agree that “[t]he Examiner has failed to overcome the presumption

Appeal 2019-002505
Application 13/993,688

that an adequate written description of the claimed invention is present when the application is filed.” *Id.* Accordingly, we do not sustain this rejection.

Obviousness

Appellant argues the claims at issue as a group, and does not separately address the Examiner’s rejection of claims 6 and 7 under 35 U.S.C. § 103. Appeal Br. 6–9. We select claim 1 as representative of the rejected claims. 37 C.F.R. § 41.37(c)(1)(iv). Appellant does not generally argue that the Examiner’s combination lacks any particular claimed element. Appellant mainly argues that the Examiner’s combination is improper. Specifically, Appellant argues that the Examiner’s combination “would have destroyed the alleged invention of *LeRouzig* for its intended manner of operation.” Appeal Br. 9. This is allegedly so because *LeRouzig* achieves juicing of soft-flesh fruits and vegetables by disclosing “that there is a spacing between the wall of the strainer and the blade” and that “[t]his spacing is necessary . . . to let a layer of crushed fruit accumulate on the wall of the strainer until the thickness of the layer exceeds the width of the spacing between blade and strainer.” *Id.* 8.

Although it is true that *LeRouzig* teaches a specialized juicing device that includes a gap, *LeRouzig* also recognizes that such a juicing device is only necessary with soft-flesh fruits and that prior art devices “function well with hard products such as carrots and apples.” *LeRouzig* col. 1, ll. 25–26. The only specialized aspect of *LeRouzig* is the gap. Nothing else in *LeRouzig* deviates from juicing devices already known in the art and *LeRouzig* recognizes that a juicing device without such a gap would still be an effective juicer in certain applications.

The Examiner finds “that the objective of *LeRouzig* was to provide a good amount of juice, and the art as a whole recognized (specifically

Appeal 2019-002505

Application 13/993,688

Ramirez and Spino) that pressing blades against a strainer was an effective means of adding pressure to the pulp and therefor obtain juice or pulp.”

Ans. 18. In that sense, the Examiner’s combination still provides for a juicing device, it simply eliminates the gap, which may be less effective with soft-flesh fruit. The Examiner’s combination is still adequate for juicing hard products as recognized in LeRouzic.

Furthermore, the Examiner also finds that “the objective of LeRouzic in allowing (and desiring) the accumulation of fruit on the blade was because this accumulation creates a force vector of fruit against the strainer resulting in juice.” Ans. 20. According to the Examiner “[t]his creation of a force vector of pulp is what the contacting blades of Spino and Ramirez achieve as well” and that “it is the choice of the amount of pressure to be applied, or the exact mechanism to apply the pressure, from within a subset of known mechanisms (flexible/inflexible, contacting/non-contacting) all of which were present in the prior art.” *Id.* In other words, the Examiner’s rejection assumes that one of skill in the art could have determined the force vector achieved via the gap and stiff blade and designed a blade of sufficient flexibility to also apply the same force vector achieved via the gap. As the Examiner states, the gap is one way to achieve this, but the important teaching in LeRouzic is not necessarily the gap, but the magnitude of the force vector to achieve the desired result. In this manner, the rejection does not go against LeRouzic’s intended purpose at all, it merely achieves the lower force vector via a flexible blade rather than a gap. Either way, the Examiner is correct that the proposed modification of LeRouzic is proper. Accordingly, we sustain the Examiner’s rejection.

CONCLUSION

The Examiner's written-description rejection is REVERSED, and the Examiner's rejections under 35 U.S.C. § 103 are AFFIRMED.

More specifically,

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
6, 7	112, 1 st paragraph	Written description		6, 7
1, 5	103	LeRouzic, LeRouzic et al., Ramirez, Spino, Martha Stewart	1, 5	
6, 7		LeRouzic, LeRouzic et al., Ramirez, Spino, Martha Stewart, Sugino	6, 7	
Overall Outcome:			1, 5-7	

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