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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD S. WALTERS

Appeal 2019-002787
Application 13/284,215
Technology Center 3600

Before ALLEN R. MacDONALD, DAVID J. CUTITTA II, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–8, 10–17, and 19–24, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies GPCP IP Holdings LLC as the real party in interest. Appeal Br. 2.

TECHNOLOGY

The application relates to a “dispenser for dispensing cutlery,” such as sporks. Spec. Abstract, ¶ 19.

ILLUSTRATIVE CLAIM

Claim 1 is illustrative and reproduced below with the limitations at issue emphasized:

1. A dispenser for dispensing cutlery, the dispenser comprising:

 a housing configured to contain a plurality of cutlery utensils for dispensing;

 a dispensing mechanism comprising:

 at least one separating member configured to separate a cutlery utensil from a stack of cutlery utensils, the at least one separating member comprising:

 a top end;

 a bottom end positioned opposite the top end;

 an unthreaded portion extending from the top end toward the bottom end and comprising a cylindrical body configured to extend along one or more first cutlery utensils of the stack of cutlery utensils and *a circumferential flange projecting from the cylindrical body, the cylindrical body having a first diameter, and the circumferential flange having a second diameter greater than the first diameter*; and

 a threaded portion extending from the unthreaded portion toward the bottom end and comprising at least one external helical thread configured to engage one or more second cutlery utensils of the stack of cutlery utensils, the threaded portion having a minor diameter equal to the first diameter and a major diameter greater than the first diameter; and

a drive mechanism associated with the at least one separating member and configured to drive the at least one separating member; and

a receptacle configured to receive the cutlery utensil separated from the stack of cutlery utensils.

REFERENCES

The Examiner relies on the following prior art references:

Davis	US 5,064,093	Nov. 12, 1991
Fosslien	US 4,120,662	Oct. 17, 1978
Phinney	US 2,149,099	Feb. 28, 1939
Spatafora	US 6,098,379	Aug. 8, 2000
Talmer	US 7,731,899 B2	June 8, 2010

REJECTIONS ON APPEAL

Claims 1–7, 10–17, 20–22, and 24 stand rejected under 35 U.S.C. § 103(a) as obvious over Phinney, Talmer, and Spatafora. *See* Final Act. 6, 15 (discussing claim 20); Appeal Br. 11.

Claims 19 and 23 stand rejected under 35 U.S.C. § 103(a) as obvious over Phinney, Talmer, Spatafora, and Davis. Final Act. 12.

Claims 8 and 10–17 stand rejected under 35 U.S.C. § 103(a) as obvious over Phinney, Talmer, Spatafora, and Fosslien. Final Act. 14–15.

The rejections under 35 U.S.C. § 112, first and second paragraphs were withdrawn. Ans. 3.²

ISSUE

Did the Examiner err in finding that a person of ordinary skill in the art would have had reason to combine Phinney and Spatafora for purposes of “a circumferential flange projecting from the cylindrical body, the

² “Ans.” refers to the Examiner’s Answer as amended on February 13, 2019.

cylindrical body having a first diameter, and the circumferential flange having a second diameter greater than the first diameter,” as recited in claim 1?

ANALYSIS

Independent claims 1, 10, and 24 recite a “cylindrical body” and “a circumferential flange projecting from the cylindrical body, the cylindrical body having a first diameter, and the circumferential flange having a second diameter greater than the first diameter.” This limitation was added after we previously affirmed an obviousness rejection based on many of the same prior art references in Appeal No. 2016-002014 (mailed June 12, 2017).

The Examiner finds that “Phinney in view of Talmer do not disclose[] a circumferential flange projecting from the cylindrical body.” Final Act. 8. Instead, the Examiner adds a new prior art reference: Spatafora. *Id.* at 8–9. Figure 4 of Spatafora is reproduced below.

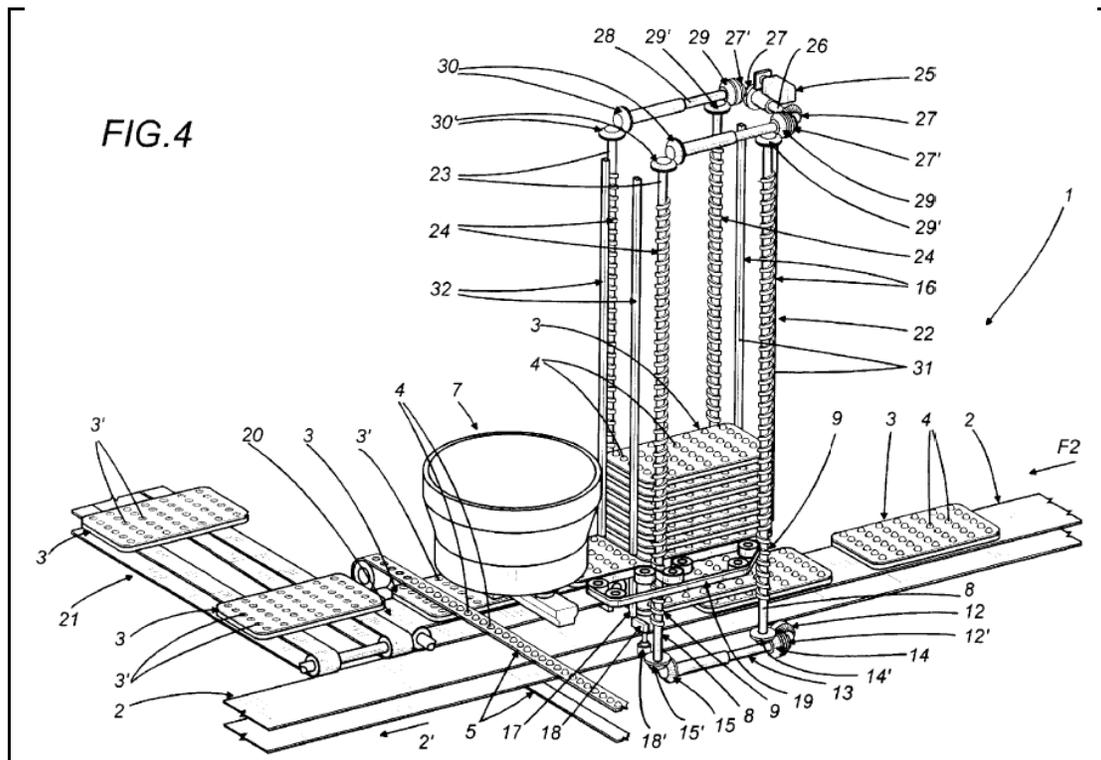


Figure 4 of Spatafora depicts a schematic of “a system for the packaging of food products 4” that includes a “conveyor 2 on which a plurality of trays 3 are fed.” Spatafora 2:3–16. In Figure 4, “a storage unit 22” can “accumulate a larger number of trays” using “a screw feed means designed to engage a part of an edge of each tray 3.” *Id.* at 3:16–38.

Relying on Figure 4, the Examiner finds Spatafora teaches “a cylindrical body (23) having a first diameter (diameter of 23) and a circumferential flange (30) projecting from the cylindrical body (23), the cylindrical body (23) having a first diameter (diameter of 23), and the circumferential flange (30) having a second diameter (diameter of 30) greater than the first diameter (diameter of 23).” Final Act. 8–9. The Examiner further determines:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Phinney in view of Talmer to have included a circumferential flange projecting from the cylindrical body comprising a second diameter greater than the first diameter of the cylindrical body as taught by Spatafora *because a circumferential flange projecting from the cylindrical body would provide for an enlarged terminal end on the separating member.*

Final Act. 9 (emphasis added). The Examiner also finds that “the enlarged terminal end would provide a visual indication as to the maximum size of the stack that can be inserted into the dispenser or provide an indicator to designate the terminal end of the separating member.” Ans. 7.

Appellant argues that the Examiner “fails to provide an adequate reason why one of ordinary skill in the art would have made the asserted modification.” Appeal Br. 17. In particular, Appellant argues that “the purpose of the bevel gears 29’, 30’ of *Spatafora* (identified by the Examiner as corresponding to the claimed ‘circumferential flange’) is to facilitate

rotation of the columns 23, not to ‘indicate’ ends of the columns 23, allow one to ‘easily determine’ a maximum stack size, or allow one to ‘readily distinguish’ end portions of the columns 23.” Reply Br. 4. Further, “the upper article supporting member 65 [in Phinney] is not intended to indicate a maximum stack size of the articles 15 that may be used with the dispenser” because “the stack of articles 15 extends well above the upper article supporting member 65.” *Id.* (citing Phinney Fig. 13). Moreover, “there does not appear to be any need to provide the upper article supporting member 65 with an additional feature in order to more ‘readily distinguish’ the end portion of the upper article supporting member 65.” *Id.*

We agree with Appellant that the Examiner has not sufficiently explained why a person of ordinary skill in the art would have had reason to modify Phinney with Spatafora’s bevel gears. In Spatafora, the system “rotates the columns about their longitudinal axes through corresponding bevel gear pairs 29, 29' and 30, 30'.” Spatafora 3:34–38. Given the record before us, the Examiner does not propose modifying Phinney to change its method of rotation, so the bevel gears would not be fulfilling their primary purpose of rotation, and Appellant correctly points out that the shape alone (i.e., an enlarged terminal end) does not appear particularly practical or beneficial to Phinney’s design, especially given that Phinney’s articles 15 extend above the beginning of member 65. *See* Phinney Fig. 13; Reply Br. 4.

Accordingly, on the record before us, we do not sustain the Examiner’s rejection of independent claims 1, 10, and 24, and their dependent claims 2–8, 11–17, and 19–23.

DECISION

The following table summarizes the outcome of each rejection:

Claims Rejected	Statute	References	Affirmed	Reversed
1-7, 10-17, 20-22, 24	§ 103	Phinney, Talmer, Spatafora		1-7, 10-17, 20-22, 24
19, 23	§ 103	Phinney, Talmer, Spatafora, Davis		19, 23
8, 10-17	§ 103	Phinney, Talmer, Spatafora, Fosslien		8, 10-17
OVERALL				1-8, 10-17, 19-24

REVERSED