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K&L Gates LLP-Chicago P.O. Box 1135 Chicago, IL 60690			STAPLETON, ERIC S	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEAN-LUC DENISART, ALAIN MEIER,
ENZO BONACCI, HANSPETER PLEISCH, and
CHRISTIAN TALON

Appeal 2019-002983
Application 12/530,057
Technology Center 3700

Before ANTON W. FETTING, PHILIP J. HOFFMANN, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's rejection of claims 58, 59, and 61–74. 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. Appellant identifies the real party in interest as Nestec S.A. Appeal Br. 2.

According to Appellant, the “invention relates to a device for preparing a liquid beverage from a cartridge.” Spec. 1, ll. 3–4. Below, we reproduce independent claim 58, which is the sole independent claim under appeal, as representative of the appealed claims.

58. A method for reducing the resurgence of a liquid or gas-liquid mixture through at least one injection point in an injection surface of a cartridge as a result of the raised pressure created when a pressurized fluid is injected into the cartridge when a liquid beverage is being prepared, the method comprising:

 piercing the injection surface of the cartridge by moving an injection spike relative to the cartridge to form the at least one injection point in the injection surface, the injection spike comprising a duct passing therethrough;

 keeping the cartridge in an inclined position with respect to a horizontal plane by positioning the at least one injection point of the cartridge higher up than a center of the injection surface for a time period from the piercing by the injection spike until the injection spike is withdrawn from the cartridge, and in the inclined position, the cartridge does not have an injection point lower than the center of the injection surface; and

 reducing an empty internal volume of the cartridge using an engagement surface which deforms a flexible wall of the cartridge, the injection spike and the engagement surface provided by a beverage preparation machine, the horizontal plane defined by a retaining surface of an insertion member of a base part of the beverage preparation machine, and the base part configured to receive a cartridge holder supporting the cartridge therein,

 the cartridge comprises a body having a circumferential edge to which the injection surface is attached, the circumferential edge comprises a first portion adjacent the at least one injection point and comprises a second portion on an opposite side of the cartridge from the first portion, and the cartridge in the inclined position has the first portion of the

circumferential edge higher up relative to the horizontal plane than the second portion.

REJECTION AND PRIOR ART

The Examiner rejects claims 58, 59, and 61–74 under 35 U.S.C. § 102(b) as anticipated by Beaulieu et al. (US 6,182,554 B1, iss. Feb. 6, 2001) (“Beaulieu”).

ANALYSIS

As set forth above, independent claim 58 recites, in relevant part,

keeping the cartridge in an inclined position with respect to a horizontal plane by positioning the at least one injection point of the cartridge higher up than a center of the injection surface for a time period from the piercing by the injection spike until the injection spike is withdrawn from the cartridge, and in the inclined position, the cartridge does not have an injection point lower than the center of the injection surface.

Appeal Br., Claims App. (emphases added). Appellant argues that the Examiner’s rejection is in error because Beaulieu does not disclose this recitation. *See, e.g., id.* at 7–8. Based on our review of the record, the Examiner does not support adequately that Beaulieu discloses at least this recitation.

In the Final Office Action and the Answer, the Examiner relies on Beaulieu’s Figures 2A–2D to disclose the claimed injection point. Final Action 3; Answer 4–5. Specifically, the Examiner relies on “the 90 degree point of rotation, which is reached between [Beaulieu’s] Fig[ures] 2B and 2C, [to disclose the claimed] position in which the cartridge does not have an injection point lower than the center of the injection surface.” As claim 58 expressly recites, however, the cartridge does not have an injection

point lower than the center of the injection surface *in the inclined position that is a position in which an injection spike is inserted into the cartridge's injection surface*. Therefore, to disclose what is claimed, the Examiner must find, for example, that in Beaulieu's Figure 2B, in which probe 126 is inserted into cartridge 50, cartridge 50 does not have an injection point lower than the center of the injection surface. The Examiner does not make any such finding. In contrast, based on our review of Beaulieu's Figures 2B and 2C, cartridge 50 will be disengaged from probe 126 well before the cartridge reaches "the 90 degree point of rotation," and, thus, such a position of Beaulieu's cartridge 50 may not disclose the claimed inclined position. Therefore, the Examiner's reliance on this portion of Beaulieu is wholly inadequate to support the rejection.

Based on the foregoing, we do not sustain the Examiner's anticipation rejection of claim 58. We also do not sustain the anticipation rejection of claims 59 and 61–74 that depend from claim 58.

CONCLUSION

We REVERSE the Examiner's anticipation rejection of claims 58, 59, and 61–74.

Appeal 2019-002983
Application 12/530,057

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
58, 59, 61-74	102(b)	Beaulieu		58, 59, 61-74
Overall Outcome				58, 59, 61-74

REVERSED