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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN M. LANDAU

Appeal 2019-004671
Application 14/308,687
Technology Center 1700

Before LINDA M. GAUDETTE, JULIA HEANEY, and
BRIAN D. RANGE, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL¹

The Appellant² appeals under 35 U.S.C. § 134(a) from the Examiner’s decision finally rejecting claims 1–10 and 12 under 35 U.S.C. § 103 over Landau (US 6,045,833, iss. Apr. 4, 2000) in view of Gaonkar (US

¹ This Decision includes citations to the following documents: Specification filed June 18, 2014 (“Spec.”); Final Office Action dated Jan. 19, 2018 (“Final”); Appeal Brief filed Aug. 17, 2018 (“Appeal Br.”); Claims Appendix filed Oct. 19, 2018 (“Claims App’x”); and Examiner’s Answer dated Mar. 8, 2019 (“Ans.”).

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as the inventor, Steven M. Landau. Appeal Br. 2.

2011/0143005 A1, pub. June 16, 2011) and Robinson (US 2014/0090655 A1, pub. Apr. 3, 2014).^{3,4}

We AFFIRM.

CLAIMED SUBJECT MATTER

The invention relates to “plastic objects that alter the perceived taste and/or aroma of the material being drunk, eaten, or smoked.” Spec. 1:9–12. The inventive method uses a molded plastic, a first segment of which is infused with a gustatory perception modifier to trigger a person’s sense of taste. *Id.* at 4:9–12. A second segment of the molded plastic contains a scent. *Id.* at 6:20–22. For example, if the molded plastic is a closure (e.g., a threaded cap that attaches to the neck of a bottle designed to hold a consumable fluid), the segment inserted into the mouth (e.g., a pop-up or flip-up straw) is infused with the gustatory perception modifier. *Id.* at 15:1–15. The segment positioned proximate the nose when the product is consumed (e.g., the base of the cap) is infused with a scent. *Id.* at 15:15–17. When a person experiences the gustatory perception modifier in combination with the scent, “both the sense of taste and the olfactory sense trick the brain into believing that the consumable being eaten, drunk or smoked has a certain flavor that it does not possess in reality.” *Id.* at 4:18–23.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

³ See Advisory Action dated Nov. 30, 2018 (entering the Appellant’s October 19, 2018 after-final amendment cancelling claims 17–20 and amending claim 9).

⁴ We have jurisdiction under 35 U.S.C. § 6(b).

1. A method of inducing modified sensory enhancement to a person consuming a product, said method comprising the steps of:

providing a molded object, said molded object being molded to include a first segment and a second segment, wherein said molded object enables said product to be consumed by placing said first segment of said closure molded object in a person's mouth while said second segment of said molded object remains external of the mouth,

wherein said first segment is, at least in part molded from a first plastic mixture that includes a gustatory perception modifier added into said first plastic mixture prior to molding, said gustatory perception modifier being perceived by taste in the person's mouth; and

wherein said second segment is, at least in part, molded from a second plastic mixture that includes a selected scent added into said second plastic mixture prior to molding; and

wherein said first segment stimulates a sense of taste while said second segment stimulates a sense of smell, therein creating said modified sensory enhancement while said product is being consumed.

Appeal Br. 16 (Claims Appendix).

OPINION

The Appellant argues in support of patentability of independent claims 1 and 9. However, the Appellant's arguments are substantially the same. *Compare* Appeal Br. 7–12, *with id.* at 12–13. Accordingly, we focus our discussion on claim 1.

The Appellant does not dispute the Examiner's finding (Final 3) that Landau discloses a method that includes providing a molded object (e.g., a threaded bottle cap) comprising a first segment (e.g., an integral straw element in the threaded bottle cap) and a second segment (e.g., a base of the

bottle cap), each segment being molded from a plastic mixture containing a scent that stimulates a sense of smell. Appeal Br. 13 (“The Examiner’s primary prior art reference (the Landau Patent) is made with only one plastic that alters the sense of smell.”); *see* Landau 3:66–4:3 (“Since the base segment and nipple head of the cap element 14 are both molded from a fragrance impregnated plastic, it will be understood that the air contained within the receptacle and the air surrounding the exterior of the cap element contain the aroma of the fragrance impregnated material.”). The Appellant argues, however, that the Examiner reversibly erred in determining that the combined teachings of Gaonkar and Robinson would have suggested including a gustatory perception modifier in Landau’s first segment. *See, e.g.,* Appeal Br. 14 (“The Examiner takes small pieces from each of the cited references and joins them together without a proper showing of motivation.”); *see generally id.* at 6–15. We address the Appellant’s specific arguments in detail below.

Gaonkar discloses “[m]ethods of coating the interior surface of . . . a drinking straw[] with an edible composition to impart a desirable modification to a beverage that is drunk through the straw.” Gaonkar Abstract. More specifically, Gaonkar discloses coating the straw’s interior surface with a lipid layer and incorporating a powdered ingredient, such as a sweetener or flavoring, into the lipid layer. *Id.* ¶ 17. Gaonkar discloses that “[d]uring contact, the beverage either dissolves or dislodges the powdered ingredient into the beverage stream thus imparting the desired effect or effects to the beverage.” *Id.* ¶ 19. The Examiner found that, based on Gaonkar’s teaching, the ordinary artisan would have included a flavoring component in Landau’s first segment (e.g., the integral straw) to provide

additional flavoring to the intended beverage and to further enhance the taste experience along with the added scent. Final 4.

Robinson discloses a method of manufacturing a flavored mouthguard comprising preparing a thermoplastic material in molten form, adding a flavoring agent, such as artificial sweeteners and sugars, to the molten thermoplastic material, and molding the flavorant-infused, thermoplastic material. Robinson ¶¶ 27–28. The flavorant is perceptible to the wearer and reduces the mouthguard’s smell and bad taste. *Id.* at Abstract. The Examiner determined that the ordinary artisan would have added Gaonkar’s flavoring agents directly to Landau’s plastic mixture during molding of the first segment instead of applying the agents as a coating. Final 4. This determination is based on Robinson’s disclosure that it was known to flavor infuse a thermoplastic material. *Id.*

The Appellant argues that neither Landau, Gaonkar, nor Robinson discloses “a plastic object with two sections, where the first section contains a first plastic mixture and the second section contains a second plastic mixture.” Appeal Br. 9.

Claim 1 recites that the “first segment is, at least in part molded from a first plastic mixture that includes a gustatory perception modifier” and the “second segment is, at least in part, molded from a second plastic mixture that includes a selected scent.” Claim 1, however, does not preclude the presence of a gustatory perception modifier and a scent in both the first and second segments; nor does claim 1 require that the first and second plastic mixtures differ. Rather, the broadest reasonable interpretation of claim 1 encompasses first and second segments molded from plastic mixtures containing both a gustatory perception modifier and a scent. *See Spec.* 18:5–

8 (“The spoon 54 is molded from scented plastic. The tip 56 or entire spoon 54 is fabricated from a flavor modified plastic that is made from a mix of plastic and gustatory perception modifiers.”); *see also id.* at 16:10–14, 17:12–17. The Appellant’s argument, therefore, is unpersuasive because it fails to identify error in the Examiner’s finding (Ans. 11) that Robinson discloses a molded plastic mixture comprising both a flavor and a scent (Robinson ¶ 25).

The Appellant argues that the ordinary artisan attempting to alter the perceived flavor of a consumable product would not have looked to Robinson, because Robinson’s mouthpiece is not designed to have an effect on a consumed product. Appeal Br. 9.

“Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor’s endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (quoting *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004)). The Federal Circuit counsels us to construe the scope of analogous art broadly. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1238 (Fed. Cir. 2010) (“[F]amiliar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle.” (quoting *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 402 (2007))). The Appellant has not explained persuasively why Robinson would not have been reasonably pertinent to the problem with which the inventor was concerned: improving the flavor and scent of a molded plastic object that is designed to contact an individual’s

mouth and is proximate the nose when in use. *See, e.g.*, Appeal Br. 14 (arguing, without further explanation, that “[n]o person attempting to alter the perceived flavor of a consumable product would turn to the teachings of protective sports mouthpieces”).

The Appellant argues that modifying Landau to apply the flavorant to the product’s molded exterior as taught by Gaonkar would result in the user consuming the flavorant, thereby changing Landau’s principle of operation. Appeal Br. 10. This argument is not persuasive because it fails to address the Examiner’s rejection which proposes further modification of Landau to include the flavorant in the molded product as taught by Robinson.

In sum, the Appellant has not persuaded us of reversible error in the Examiner’s obviousness conclusion for the reasons stated above. Any arguments made by the Appellant but not discussed in this Decision have been addressed by the Examiner and are unpersuasive for the reasons stated in the Final Office Action and the Answer.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–10, 12	103	Landau, Gaonkar, Robinson	1–10, 12	

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).

Appeal 2019-004671
Application 14/308,687

AFFIRMED