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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YOSHIAKI NAGAYAMA

Appeal 2019-005650
Application 13/990,699
Technology Center 1700

Before LINDA M. GAUDETTE, JAMES C. HOUSEL, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

HOUSEL, *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, 2, 4, 5, and 10–13. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.²

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 Sanyo Foods Company, Ltd. Appeal Brief (“Appeal Br.”) filed February 19, 2019, at 2.

² This Decision also cites to the Specification (“Spec.”) filed May 30, 2013, the Final Office Action (“Final Act.”) dated September 27, 2018, the Examiner’s Answer (“Ans.”) dated May 16, 2019, and the Reply Brief (“Reply Br.”) filed July 15, 2019.

CLAIMED SUBJECT MATTER

The invention relates to a process for producing generally straight-shaped instant noodles having a suppressed “longitudinal wave” and exhibiting a satisfactory “unfastening [property]” at the time of eating. Spec.

¶ 1. Appellant discloses that the process includes an air-flow supply arranged between respective upper and lower bundles slit from a dough sheet fed to upper and lower cutting blade rolls with scraping members, wherein an air flow is supplied to and imparts random directionality to the noodle strip bundles. *Id.* ¶¶ 16, 18.

Claim 1, reproduced below from the Claims Appendix to the Appeal Brief, is illustrative of the claimed subject matter:

1. A process for producing noodle strips in which a dough sheet is slit into noodle strips using a rotary slitting device comprising at least a pair of cutting blade rolls, scraping members and air flow supply, the process comprising the steps of:

passing the dough sheet through the cutting blade roll, thereby slitting the dough sheet into noodle strips;

peeling the noodle strips off from the cutting blade rolls using the scraping members, thereby separating peeled noodle strips into upper peeled noodle strips and lower peeled noodle strips; and

supplying air flow from the air flow supply to the upper peeled noodle strips and the lower peeled noodle strips while the upper and lower peeled noodle strips are in an air space, thereby changing an orbit of each noodle strip in an air space and forming noodle strip bundles on a wave conveyer, wherein each noodle strip that forms the noodle strip bundles has an annular, transverse wave-shaped and/or zigzag-shaped orbit;

wherein the air flow supply is arranged at a portion between the upper peeled noodle strips and the lower peeled noodle strips;

wherein the air flow is supplied between, and directly to each of, the upper peeled noodle strips and the lower peeled noodle strips; and

wherein the air flow supply is provided with a plurality of air flow discharge ports, and the air flow discharge ports have a polygonal slit, circular or oval shape.

Independent claim 10 recites a similar process to claim 1, and further includes steps of gelatinizing the generally flat noodle strip bundle followed by drying.

REFERENCES

The Examiner relies on the following prior art:

Name	Reference	Date
Paxhia et al.	US 3,695,388	Oct. 03, 1972
Sugisawa et al. ("Sugisawa1")	US 4,483,879	Nov. 20, 1984
Atwood et al.	US 5,417,989	May 23, 1995
Mihalos et al.	US 7,789,644 B2	Sept. 07, 2010
Schultz et al.	US 2005/0244560 A1	Nov. 03, 2005
Sugisawa et al. (Sugisawa2")	JP 59059162 A	Apr. 04, 1984
Fujiwara et al.	JP 10084896 A	Apr. 07, 1998
Ikeda et al.	JP 10210924 A	Aug. 11, 1998
Kurachi et al.	JP 2005341897 A	Dec. 15, 2005
Ishii et al.	EP 2 308 311 A1	Apr. 13, 2011

REJECTIONS

The Examiner maintains, and Appellant requests our review of, the following rejections under 35 U.S.C. § 103(a):

1. Claims 1, 2, 4, 5, and 10–13 as unpatentable over Ikeda in view of Schultz, Sugisawa1, Sugisawa2, Fujiwara, Atwood, Mihalos, Paxhia, and Kurachi; and
2. Claims 1, 2, 4, 5, and 10–13 as unpatentable over Ishii in view of Schultz, Sugisawa1, Sugisawa2, Fujiwara, Atwood, Mihalos, Kurachi, and Paxhia.

OPINION

We review the appealed rejections for error based upon the issues Appellant identifies, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential), *cited with approval in In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”). After considering the record before us, we are persuaded of reversible error in the pending rejections.

The Examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in the factual basis. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“To facilitate review, [the obviousness] analysis should be made explicit.”); *see also, In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”), *quoted with approval in KSR*, 550 U.S. at 418. To establish a prima facie case of obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the prior art or

would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

The Examiner acknowledges that both primary references to Ikeda and Ishii fail to disclose supplying air flow, the characteristics and configuration of the air flow, the configuration of the bundles, and the changing of the orbit of the noodle strips. Ans. 4, 7. The Examiner relies on Schultz, Sugisawa¹, Sugisawa², Fujiwara, Atwood, Mihalos, Paxhia, and Kurachi to suggest modification of Ikeda and Ishii to meet these claimed features.

Specifically, the Examiner finds that Mihalos discloses cooling the dough pieces passing through a forming roller using a curtain or sheet of air provided by a linear air nozzle or knife. Ans. 4, 8. The Examiner finds that Kurachi discloses a cutting apparatus for preparing noodles having an air nozzle directing air to the blade surface of the cutting part. *Id.* at 4, 7. The Examiner finds Paxhia discloses an improved air jet nozzle having multiple orifices. *Id.* The Examiner finds that Schultz teaches a method of forming the flattened dough pieces, wherein the flattened dough pieces pass over a roller during unloading of the dough pieces and are engaged by an unloading system including an air jet device to direct a curtain or series of jets of air to the underside of the flattened dough pieces. *Id.* at 4–5, 8. The Examiner finds Atwood discloses a method for making a dough product, wherein a proofed dough piece is engaged by a die having an air passage to direct air into engagement with the dough to separate the dough from the die. *Id.* at 5, 8. The Examiner finds that Sugisawa¹ discloses a method of preparing dried noodles, wherein air is blown against raw noodles before dehydration to harden on the surface of the raw noodle strips to prevent condensation of

steam on the surface of raw noodles. *Id.* at 5, 8–9. The Examiner finds that Fujiwara discloses a method for loosening noodle lines by spraying compressed air directly to the noodle lines from a rotating or swinging nozzle. *Id.* at 5, 9. The Examiner finds that Sugisawa2 discloses improving the unfastening effect of noodles by blowing air directly to a noodle line. *Id.* The Examiner finds that Schultz and Atwood teach that dough pieces have the tendency to be sticky and the use of air flow facilitates the separation of the dough pieces from working surfaces. *Id.* The Examiner finds that Sugisawa1, Fujiwara, and Sugisawa2 teach that it was known to blow air directly onto the noodle bundles to help in obtaining uniform dehydration or to help with the loosening and unfastening effect. *Id.* at 5–6, 9.

The Examiner concludes that it would have been obvious to facilitate the separation of the noodle strips in Ikeda and Ishii using an air flow as taught by Schultz and to place the air nozzle between the upper and lower noodle strips as they are scraped off the cutting rollers to effectively direct the air flow directly to the noodle strips as taught in Sugisawa1 and Fujiwara. Ans. 6, 9. The Examiner further concludes that it would have been obvious to determine the type of movement that would optimize the process of moving the noodle strips away from the cutting rollers and separate the strips from each other. *Id.* In other words, the Examiner determines that it would have been readily apparent to skilled artisans that directing air flow in the direction of movement of the noodle strips would effectively separate them and directing air flow directly at the noodle bundles would separate the strips from the cutting rollers. *Id.*

Appellant argues, *inter alia*, that if the prior art teaches use of air flow to separate noodles strips from each other and from the roller blades, the air

nozzle should be placed between the noodle strips and the roller blades.

Reply Br. 3. In this regard, Appellant contends that such placement is consistent with the teachings of Schultz, Atwood, and Kurachi, all of which provide air between a dough handling structure and formed dough pieces. *Id.* at 3–4. Appellant further contends that Sugisawa¹ fails to teach any position for air flow, whereas Sugisawa² and Fujiwara direct air onto the noodles downstream of the cutting rollers. *Id.* at 4. Also, Appellant notes that Paxhia is silent with respect to forming a dough product and, therefore, fails to teach any relationship between such product and cutting rollers. *Id.*

Appellant’s argument is persuasive of reversible error. As Appellant argues, when faced with the problem of separating noodle strips from each other and the cutting rollers, the prior art consistently suggests placing the air flow between the noodle strips and the rollers, or against the strips downstream of the cutting rollers. The Examiner fails to direct our attention to any teaching or suggestion in the record for arranging an air flow supply and supplying air flow between the upper and lower peeled noodle strips or bundles in either Ikeda or Ishii as required by both claims 1 and 10, nor do we find any. Under these circumstances, we cannot conclude that the Examiner has met the minimum threshold of establishing obviousness under 35 U.S.C. § 103(a). *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Accordingly, we do not sustain the Examiner’s obviousness rejections of claims 1, 2, 4, 5, and 10–13.

CONCLUSION

Upon consideration of the record and for the reasons set forth above and in the Appeal and Reply Briefs, the Examiner’s decision to reject claims under 35 U.S.C. § 103(a) is *reversed*.

More specifically,

the rejection of claims 1, 2, 4, 5, and 10–13 under 35 U.S.C. § 103(a) as unpatentable over Ikeda in view of Schultz, Sugisawa1, Sugisawa2, Fujiwara, Atwood, Mihalos, Paxhia, and Kurachi is *reversed*; and

the rejection of claims 1, 2, 4, 5, and 10–13 under 35 U.S.C. § 103(a) as unpatentable over Ishii in view of Schultz, Sugisawa1, Sugisawa2, Fujiwara, Atwood, Mihalos, Kurachi, and Paxhia is *reversed*.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4, 5, 10–13	103(a)	Ikeda, Schultz, Sugisawa1, Sugisawa2, Fujiwara, Atwood, Mihalos, Paxhia, Kurachi		1, 2, 4, 5, 10–13
1, 2, 4, 5, 10–13	103(a)	Ishii, Schultz, Sugisawa1, Sugisawa2, Fujiwara, Atwood, Mihalos, Kurachi, Paxhia		1, 2, 4, 5, 10–13
Overall Outcome				1, 2, 4, 5, 10–13

REVERSED