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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 14/785,478 | 10/19/2015 | Olivier Delrue | 7751-159992 | 3241 |

530 7590 09/18/2020

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| EXAMINER | |
|---|---|
| SMITH, PRESTON | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1792 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 09/18/2020 | ELECTRONIC |

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* OLIVIER DELRUE
and FRANÇOIS LETAIN

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Appeal 2019-006128
Application 14/785,478
Technology Center 1700

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Before MICHAEL P. COLAIANNI, GEORGE C. BEST, and DEBRA L. DENNETT, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134 the final rejection of claims 1–8 and 10–12. Claim 9 is withdrawn. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We REVERSE.

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[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 SEB S.A. (Appeal Br. 3).

STATEMENT OF THE CASE

Appellant's invention pertains to cooking methods for electric cooking appliances, which include a stirring means arranged inside a food reception means (Spec. ¶ 1). The Specification describes a cooking method for electric appliances designed for mixing and cooking food in pieces, such as fries or pieces of chicken (*id.* ¶ 2). The described electric appliances comprise a stirring means positioned inside a chamber, which is arranged inside a casing that encloses a hot air heating mechanism (*id.*). According to the Specification, the stirring means and the chamber are designed to be set into motion with respect to one another, so as to mix and stir the food and fat inside the chamber (*id.*; Figs. 1–4).

Claim 1 is illustrative (emphasis added):

> 1. Cooking method for a food cooking appliance comprising a reception means designed to receive the food, a stirring means positioned inside the reception means, a side obstacle positioned inside the reception means and which extends over at least one portion of a side wall of the reception means and which stems from a support attached to the reception means and is connected to a handle means, and at least one main heating means, the reception means and the stirring means designed to move in relative rotation, the reception means having a top opening, the appliance comprising a means of controlling at least the relative rotation and at least one main heating means, wherein the cooking method comprises:
>
> *[a] first cooking step during which the relative rotation of the reception means and the stirring means is neutralized and the at least one main heating means is controlled to regulate the temperature to a first set-point value*; and
>
> *[a] second cooking step during which the relative rotation of the reception means and the stirring means is active and the at least one main heating means is controlled to*

*regulate the temperature to a second set-point value that is greater than the first set-point value*.

Appellant appeals the following rejections:

1. Claims 1, 5–8, and 10–12 are rejected under 35 U.S.C. § 103 as unpatentable over Wolfe (US 2008/0257168 A1; published Oct. 23, 2008), in view of Breunig (US 2010/0183780 A1; published July 22, 2010), and further in view of Payen et al. (US 2008/0213447 A1; published Sept. 4, 2008, "Payen") (Final Act. 3–4).

2. Claims 2–4 are rejected under 35 U.S.C. § 103 as unpatentable over Wolfe, in view of Breunig, Kearns et al. (US 4,963,708; issued Oct. 16, 1990, "Kearns"), Xu et al. (US 2005/0011370 A1; published Jan. 20, 2005, "Xu"), and further in view of Payen (Final Act. 4).

Appellant's arguments focus on independent claims 1 and 10 (*see generally* Appeal Br. 11–20; Reply Br. 2–11). We select claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, claims 2–8, 11, and 12 will stand or fall with each of their respective independent claims.

## FINDINGS OF FACT & ANALYSIS

### *A. Rejection of claims 1, 5–8, and 10–12 as unpatentable over Wolfe, Breunig, and Payen*

The Examiner's findings and conclusions regarding Wolfe, Breunig, and Payen are located on pages 3–4 of the Final Office Action. To resolve the present appeal, we need only discuss these findings and conclusions with respect to Wolfe and Breunig.

The Examiner finds that Wolfe teaches the features of the cooking method of claim 1, but fails to teach, *inter alia*, "a first step wherein the

stirring means is neutralized" (Final Act. 3). The Examiner finds Wolfe also does not teach "a second step wherein" the stirring means "is activated [and] . . . the second temperature is higher than the first" step's temperature (*id.*).

The Examiner finds that Breunig teaches the limitations missing from Wolfe (*id.*). In particular, the Examiner finds that Breunig "teaches a computer implemented system for reducing the duration of a first process step comprising a preheating step and cooking steps wherein the preheating step is at a lower temperature than the cooking steps" (*id.*). The Examiner concludes that it would have been obvious at the time of the invention to have: (i) preheated Wolfe's apparatus prior to food addition to improve the efficiency of the cooking process, and (ii) programmed Wolfe's apparatus to keep the stirring mechanism inactive prior to food addition as this is unnecessary during a preheating step (*id.*).

Appellant argues, *inter alia*, that the Examiner has failed to establish a prima facie case of obviousness because Breunig does not teach or suggest each limitation recited in the presently appealed claims (Appeal Br. 14). Specifically, Appellant asserts that because Breunig's preheating step "is conducted prior to adding food and before initiating any cooking process[,]" such a preheating step "is <u>not a first cooking stage</u> for heating food without mixing or stirring," as required by claim 1 (*id.*).

In response, the Examiner determines that the claim language does not require the presence of food in the claimed "first cooking step" (Ans. 3). According to the Examiner, Appellant's arguments are not persuasive because they are based on limitations that are not recited in claim 1 (*id.*).

Appellant argues that the plain meaning of the disputed limitation, when read in view of the Specification, requires that food is present in each of the claimed cooking steps (Reply Br. 2–4).

The present appeal thus requires our interpretation of the language of claim 1, particularly our construction of the term "cooking step."

During prosecution, the PTO gives the language of the proposed claims "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054–55 (Fed. Cir. 1997).

Appellant asserts that the claims should be read in a manner consistent with the Specification, which describes "the first and second cooking steps as steps for treating *food*." Reply Br. 4 (emphasis added).

On this record, Appellant persuasively argues that paragraphs 4, 5, 28, 30, and 36–40 from the Specification describe that the first and second cooking steps are food treatment steps (Reply Br. 3–4). As Appellant argues, the Specification describes that, "'[i]n the first step, the non-spinning of the stirring means[] ***preserves the breading covering the food***'" (*id.* at 3 (citing Spec. ¶ 28)). The Specification further describes a process of cooking in which the first cooking step only occurs "***after*** placing food into the reception means" (Reply Br. 4 (citing Spec. ¶ 37)). We note that the definition of the term "cook" is "to prepare food for eating[,] especially by means of heat" (*see Merriam-Webster's Dictionary* (Sept. 11, 2020),

https://www.merriam-webster.com/dictionary/cook). Therefore, we find that use of the term "cooking" in the context of claim 1's limitations

> *[a] first cooking step* during which . . . the stirring means is neutralized and the at least one main heating means is controlled to regulate the temperature to a first set-point value; and *[a] second cooking* step during which . . . the at least one main heating means is controlled to regulate the temperature to a second set-point value that is greater than the first set-point value

means that the recited steps require the presence of food.

In view of the instant written description, the Examiner's conclusion that claim 1 does not require food in the first cooking step impermissibly reads the disputed limitation out of the claim.[2] *See Trading Techs. Int'l, v. eSpeed, Inc.*, 595 F.3d 1340, 1352 (Fed. Cir. 2010) (holding that "the claims 'must be read in view of the [S]pecification, of which they are a part.'") (quoting *Markman v. Westview Instruments, Inc.,* 52 F.3d 967, 979 (en banc), *aff'd,* 517 U.S. 370 (1996)).

The Examiner does not rely on Payen to cure the deficiency of Breunig's teachings. Therefore, we find that Appellant's arguments have identified reversible error in the Examiner's combination of Wolfe and Breunig to render claim 1 obvious. We express no opinion regarding

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[2] Under the Examiner's incorrect construction, the claimed "second cooking step" does not require the presence of food either. This construction renders claim 1 meaningless. The Specification explicitly discloses that "[t]he second step is the main cooking and browning phase for the breaded *food*." *See* Spec. ¶ 30 (emphasis added). A claim construction that excludes the preferred embodiment is rarely, if ever, correct. *InterDigital Commc'ns, LLC v. U.S. Int'l Trade Comm'n*, 690 F.3d 1318, 1326 (Fed. Cir. 2012) (citing *Pfizer, Inc. v. Teva Pharm., USA, Inc.*, 429 F.3d 1364, 1374 (Fed. Cir. 2005); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996)).

Appellant's other arguments for reversal of the Examiner's rejection. Accordingly, we reverse the rejection of claims 1, 5–8, and 10–12 for the reasons set forth above.

*B. Rejection of claims 2–4 as unpatentable over Wolfe, Breunig, Kearns, Xu, and Payen*

The Examiner's findings and conclusions regarding Wolfe, Breunig, Kearns, and Payen are located on page 4 of the Final Office Action.[3]

The Examiner does not rely on Kearns or Xu to cure the deficiency of Breunig's teachings. Accordingly, we reverse the rejection of claims 2–4 for the reasons set forth above.

CONCLUSION

In summary:

| Claims Rejected | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|---|---|---|---|---|
| 1, 5–8, 10–12 | 103 | Wolfe, Breunig, Payen | | 1, 5–8, 10–12 |
| 2–4 | 103 | Wolfe, Breunig, Kearns, Xu, Payen | | 2–4 |
| **Overall Outcome** | | | | 1–8, 10–12 |

REVERSED

[3] Although the statement of the rejection includes Xu, the grounds for rejecting claims 2–4 do not substantively apply any of Xu's teachings to render these claims obvious (Final Act. 4).