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139867	7590	09/08/2020	EXAMINER	
CARGILL, INCORPORATED / SLW			MCCLAIN-COLEMAN, TYNESHA L.	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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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* BEN ALEXANDRE, CATHARINA HILLAGONDA HOMSMAN,  
LINSEN LIU, BRIAN SURRATT, and JOËL RENE PIERRE WALLECAN

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Appeal 2019-006349  
Application 15/161,653  
Technology Center 1700

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Before CATHERINE Q. TIMM, BEVERLY A. FRANKLIN, and  
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–4 and 9. *See* Non-Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> 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 Cargill, Incorporated. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a method for making a gel-based dessert product. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of forming a food product, comprising:

homogenizing a combination consisting of citrus pulp fiber, an edible lipid, and water to form a homogenized combination that includes 1–20 parts by weight of the lipid for each part by weight of citrus pulp fiber, wherein homogenization is carried out using high pressure valve homogenization and wherein the homogenized combination is a water-in-oil emulsion; and

drying the homogenized composition to form a dry blend system; and

mixing the dry blend system with a sweetener, a starch, and at least one of water or milk to form a finished gel-based dessert product that comprises at least about 20 wt% water and has a viscosity of at least about 20,000 mPa\*s at 20° C and 10 s<sup>-1</sup>.

Appeal Br. 18 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Aronson	US 2005/0271790 A1	Dec. 8, 2005
Sakurada	JP 2000-026884 A (as translated)	Jan. 25, 2000
Vanhemelrijck	WO 2007/003391 A1	Jan. 11, 2007

## REJECTION

The Examiner maintains the rejection of claims 1–4 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Aronson in view of Sakurada and Vanhemelrijck. Non-Final Act. 3.

## OPINION

The dispositive issue on appeal is: Has Appellant identified a reversible error in the Examiner’s finding of a suggestion within the prior art to homogenize the citrus pulp fiber, edible lipid, and water composition of Aronson and dry it before blending it with other ingredients to form a finished gel-based dessert product as required by claim 1?

Appellant has identified such an error.

Aronson teaches food additives that contain highly refined cellulose (HRC) fiber, an edible lipid (oil or fats), and water for use in flour-containing products such as baked or deep-fried foods. Aronson ¶¶ 3, 11. Reduced fat baked or deep-fried foods that maintain the taste and sensory qualities of the higher fat versions can be made with the food additive. Aronson ¶ 3.

Appellant’s claims are directed to a method that forms a finished gel-based dessert product, which the Specification indicates includes traditional milk-based puddings, other dairy-based gel products such as yogurt and custards, and non-dairy counterparts. Spec. ¶ 15. Although Aronson mentions yogurts and dairy products (Aronson ¶ 12), Aronson is not directed to making such products and does not disclose or suggest using the HRC, lipid, and water composition Aronson discloses to form such products. The products Aronson forms with the HRC, lipid, and water composition are

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flour-based baked and fried foods. Indeed, Example 6, which the Examiner relies on, is directed to forming a reduced fat cake. Aronson ¶¶ 58, 60–62.

The Examiner turns to Sakurada for a teaching of high pressure homogenizing edible lipid, water, and ingredients such as fiber and/or hemicellulose to form a water-in-oil emulsion and drying to form a dry blend system. Non-Final Act. 4. According to the Examiner, the suggestion for combining the teachings of Aronson and Sakurada comes from the similarities in the feedstocks and emulsion preparation. Non-Final Act. 4–5. But Sakurada’s method steps and goals are not similar enough to Aronson’s to support the Examiner’s finding of a suggestion to make the proposed modifications.

Sakurada’s method is different. Aronson mixes HRC microfibers (citrus fiber), water, shortening, and sugar in a mixing bowl using a paddle mixer, and then, without a drying step, Aronson adds cake flour, sugar, dried milk, baking powder, baking soda, salt, and pre-gelatinized wheat starch, then water and other ingredients to form a cake batter that is baked to form a cake. Aronson ¶¶ 59–67. Sakurada is not directed mixing ingredients and baking to form a cake. Sakurada homogenizes an aqueous active substance with oil (Sakurada ¶ 16) to form a water-in-oil emulsion (Sakurada ¶ 12) that is dried to form a powder of active substance encapsulated by oil. Sakurada encapsulates the active substance to mask its taste and slowly release the active substance.

Sakurada goals are different. Encapsulating the aqueous active substance in the oil reduces the bitter and astringent taste of the aqueous active substance and provides a sustained-release effect. *Id.* Sakurada dries the encapsulated aqueous active substance to obtain a powder that is more self-stable. Sakurada ¶¶ 3, 28. Sakurada does not use fiber as an additive

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meant to reduce fat in baked or fried goods. Although Sakurada lists dietary fiber or cellulose as one of the aqueous active substances that can be used, so can a myriad of other active substances (Sakurada ¶ 6), and it is not used to form an additive for forming baked or deep-fried foods, much less gel-based dessert products.

The Examiner's evidence fails to support a finding that the combination of prior art suggests homogenizing, drying, and mixing the ingredients recited in claim 1 to form a finished gel-based dessert with the moisture content and viscosity required by claim 1. Thus, we agree with Appellant that the Examiner's finding of a suggestion to combine the teachings of Aronson and Sakurada to arrive at the process of Appellant's claims does not have the required factual underpinning to establish obviousness.

#### CONCLUSION

The Examiner's decision to reject claims 1-4 and 9 is REVERSED.

#### DECISION SUMMARY

<b>Claim(s) Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-4, 9	103(a)	Aronson, Sakurada, Vanhemelrijck		1-4, 9

#### 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

REVERSED