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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/581,110	12/23/2014	Eduard Edwards	2189-300050	1278
23644	7590	06/25/2020	EXAMINER	
Barnes & Thornburg LLP (CH)			TAWFIK, SAMEH	
P.O. Box 2786			ART UNIT	
Chicago, IL 60690-2786			PAPER NUMBER	
			3731	
			NOTIFICATION DATE	
			DELIVERY MODE	
			06/25/2020	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDUARD EDWARDS and CHAD ARTHUR HUEBNER

Appeal 2020-000020
Application 14/581,110
Technology Center 3700

BEFORE HUBERT C. LORIN, NINA L. MEDLOCK, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

LORIN, *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 14–30 and 32–44, which are all the pending claims in the application. 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(a). Appellant identifies the real party in interest as Frito-Lay North America, Inc. (Appeal Br. 2).

CLAIMED SUBJECT MATTER

The claimed “invention relates to an apparatus and method for settling products in a package.” (Spec. para. 1). Claim 14 is the sole independent claim and is reproduced below:

14. An apparatus comprising an improved product settler for settling product in a partially formed package; wherein the product settler comprises:
a paddle wheel;
wherein the paddle wheel comprises at least one paddle that is positioned and configured to cause an impact against the partially formed package above an unsettled height of the product in the partially formed package; and
wherein the impact agitates the partially formed package and thereby settles the product;
wherein the product settler is configured so that the impact against the partially formed package settles the product from the unsettled height to a settled height of the product in the partially formed package, wherein the settled height is lower than the unsettled height.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Zwight	US 3,070,931	Jan. 1, 1963
Bacon	US 6,119,438	Sept. 19, 2000
Nishitsuji	US 8,640,847 B2	Feb. 4, 2014

REJECTIONS

1. Claims 14, 21–30, 32–34, and 39–42 are rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Zwight.²

² The heading of the rejection lists claims 14, 21–34, and 39–42 (Final Act. 2). However, claim 31 is canceled and is not rejected.

2. Claims 15–19 are rejected under 35 U.S.C. § 103 as being unpatentable over Zwright and Bacon.
3. Claims 20, 35, 43, and 44 are rejected under 35 U.S.C. § 103 as being unpatentable over Zwright, Bacon, and Nishitsuji.
4. Claims 36–38 are rejected under 35 U.S.C. § 103 as being unpatentable over Zwright.

OPINION

The rejection of claims 14, 21–30, 32–34, and 39–42 under 35 U.S.C. § 102(a)(2) as being anticipated by Zwright.

Independent claim 14, and thus dependent claims 21–30, 32–34, and 39–42, include the limitation “a paddle wheel” that “comprises at least one paddle” (Appeal Br. 35).

The Examiner finds said claim limitation disclosed in Zwright, and makes two alternative findings (Final Act. 2–3). In particular, the Examiner finds that Zwright discloses a paddle wheel comprising at least one paddle in Figure 1, reference numeral 148 or, alternatively, reference numeral 172 (*id.*).

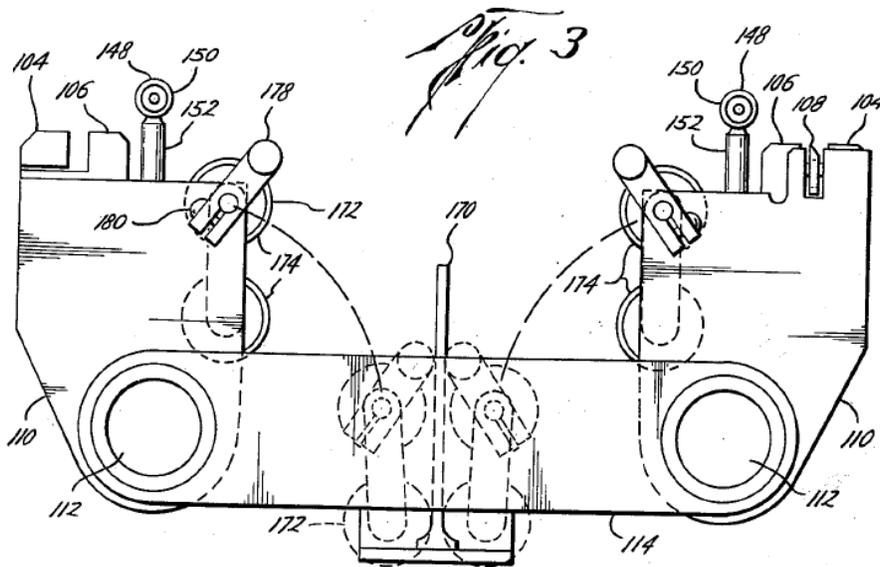
The Appellant disagrees with the Examiner’s finding that Zwright discloses a paddle wheel (Appeal Br. 10). According to the Appellant, “Zwright’s strippers 148 and deflators 172 are not a ‘paddle’ of a ‘paddle wheel’ that is ‘configured to cause an impact’ that ‘settles the product’” (*id.*).

Responding to the Appellant’s arguments in the Answer, the Examiner provides annotated versions of Figure 3B of the application (Ans. 7) and Figure 1 of Zwright (*id.* at 8). According to the Examiner, these annotated figures “show the similarity of the structures between them via

settler agitating packed products by impacting the film (expected results should be the same of settling the products form [sic] unsettled height to a lower settled height, especially the packed products are the same of potato chips or similar)” (*id.* at 6). The Examiner also states that “according to the dictionary.com the definition of a paddle wheel is as follow[s]: ‘a wheel for propelling a ship, having a number of paddles entering the water more or less perpendicularly’” (*id.* at 9). According to the Examiner, “Zwight [] indeed uses paddles elements 148 and/or 172 perpendicularly impacting the web film, therefore they are considered as paddle wheels” (*id.*).

We have reviewed the cited portions of Zwight and we agree with the Appellant that the Examiner has not shown by a preponderance of the evidence that Zwight discloses a paddle wheel comprising at least one paddle.

With regard to the Examiner’s first finding for the claimed paddle wheel and paddle in Zwight’s strippers 148, Zwight discloses that “strippers are provided to clear the product 12 out of the immediate area where the horizontal seals are to be effected” (Zwight, 11:53–55), and “strippers 148 comprise a grooved or recessed bar 150 which runs the entire length of the jaws 110 and is reciprocally mounted therein by the shaft 152 at each end of the bar 150” (*id.* at 11:62–65). Strippers 148 (including recessed bar 150) are more clearly shown in Figure 3 of Zwight, reproduced below.



Zwight Figure 3

Figure 3 is an “end view of the reciprocating jaws, stripper and deflators, showing in dotted lines the movement of the deflators” (Zwight, 5:59–61). We do not see how, and the Examiner has not adequately explained how, strippers 148, including grooved or recessed bar 150, are equivalent to a paddle wheel comprising at least one paddle as required by claim 14. We do not see that strippers 148 comprise a rotating paddle wheel similar to paddles 320a or 320b as shown in Figure 3B of the application.³ Nor does the Examiner attempt to explain how Zwight’s strippers 148, or grooved or recessed bars 150, are in any way similar to “a wheel for propelling a ship” as suggested in the Answer (Ans. 9). To the extent that the Examiner maintains that strippers 148 “are considered as paddle wheels” (Ans. 9) because they perform the same function as the claimed paddle wheel, the Examiner misapprehends the law of anticipation. “Invalidity on the ground

³ See Spec. para. 25 (“a rotating paddle wheel with a paddle . . .”); para. 57 (“a paddle (e.g., one of a plurality of paddles 320a,b) that rotates . . .”).

of ‘anticipation’ requires lack of novelty of the invention as claimed . . . [,] that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.” *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). Even if Zwight’s strippers 148 perform the claimed function of causing an impact or agitation of a partially formed package, that does not imply that strippers 148 are structurally equivalent to a paddle wheel comprising at least one paddle.

The Examiner’s alternative finding for the claimed paddle wheel and paddle in Zwight’s deflators 172 suffers from the same deficiency discussed above. Zwight discloses that “deflators 172 comprise elongate rollers 174 mounted in tandem together by the linkage 176, and are pivotally mounted to the jaws 110” (Zwight, 12:73–13:1). We do not see how, and the Examiner has not adequately explained how, deflators 172, including elongate rollers 174, are equivalent to a paddle wheel comprising at least one paddle as required by claim 14.

The rejection as to claims 14, 21–30, 32–34, and 39–42 is not sustained.

The rejection of claims 15–19 under 35 U.S.C. § 103 as being unpatentable over Zwight and Bacon.

Claims 15–19 depend, directly or indirectly, from claim 14 and thus include the subject matter of claim 14. Because Zwight does not describe the subject matter of claim 14, and no other prior art or reasoning has been relied upon, a prima facie case of obviousness for the subject matter covered by claims 15–19 has not been made out in the first instance by a preponderance of the evidence. Accordingly, the rejection is not sustained.

The rejection of claims 20, 35, 43, and 44 under 35 U.S.C. § 103 as being unpatentable over Zwright, Bacon, and Nishitsuji.

Claims 20, 35, 43, and 44 depend, directly or indirectly, from claim 14 and thus include the subject matter of claim 14. Because Zwright does not describe the subject matter of claim 14, and no other prior art or reasoning has been relied upon, a prima facie case of obviousness for the subject matter covered by claims 20, 35, 43, and 44 has not been made out in the first instance by a preponderance of the evidence. Accordingly, the rejection is not sustained.

The rejection of claims 36–38 under 35 U.S.C. § 103 as being unpatentable over Zwright.

Claims 36–38 depend, directly or indirectly, from claim 14 and thus include the subject matter of claim 14. Because Zwright does not describe the subject matter of claim 14, and no other prior art or reasoning has been relied upon, a prima facie case of obviousness for the subject matter covered by claims 36–38 has not been made out in the first instance by a preponderance of the evidence. Accordingly, the rejection is not sustained.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
14, 21–30, 32–34, 39–42	102(a)(2)	Zwright		14, 21–30, 32–34, 39–42
15–19	103	Zwright, Bacon		15–19
20, 35, 43, 44	103	Zwright, Bacon, Nishitsuji		20, 35, 43, 44
36–38	103	Zwright		36–38

Appeal 2020-000020
Application 14/581,110

Overall Outcome				14-30, 32-44
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REVERSED