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SEED INTELLECTUAL PROPERTY LAW GROUP LLP		GRANT, MICHAEL CHRISTOPHER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER CHARLES YOUNG, DOUGLAS BALDWIN,
MICHAEL NATKIN, and NELSON TIMOTHY SALAZAR

Appeal 2020-000354
Application 14/789,414
Technology Center 3700

Before JOHN C. KERINS, KEVIN F. TURNER, and BRETT C. MARTIN,
Administrative Patent Judges.

MARTIN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–5, 9 –16, 18–33, and 35–40. Claims
6–8, 17, and 34 were canceled during prosecution. App. Br. 38, 40, and 46.
We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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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 ChefSteps, Inc..
Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed "to food preparation, and in particular relates to providing food preparation instruction via computing devices." Spec. 1, ll. 5–6. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1.   A method of operation in a processor-based food preparation guidance system, the method comprising:
        receiving, via a communications device, a request for preparation guidance for a food product;
        in response to the received request, causing at least one of a first set of at least two graphical prompts to be displayed by the communications device,
                wherein each of the graphical prompts in the first set of at least two graphical prompts includes an image or video of the food product after cooking the food product,
                wherein each image or video depicts a different gradation of at least one first characteristic of the food product;
        receiving, via the communications device, a selection of one of the gradations of the at least one first characteristic of the food product;
        in response to receiving the selection of one of the gradations of the at least one first characteristic of the food product, causing at least one of a second set of at least two graphical prompts to be displayed by the communications device based at least in part on the received selection of one of the gradations of the at least one first characteristic of the food product,
                wherein each of the graphical prompts in the second set of at least two graphical prompts depicts a different gradation of at least one second characteristic of the food product;
        receiving, via the communications device, a selection of one of the gradations of the at least one second characteristic of the food product;
        determining at least one food preparation parameter for the food product based at least in part on the received selections

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of one of the gradations of the at least one first characteristic
and one of the gradations of the at least one second
characteristic of the food product; and

sending the at least one food preparation parameter to a
cooking device,

wherein the cooking device is configured to
automatically cook the food product based at least
in part on the at least one food preparation
parameter.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Anderson	US 2010/0147823 A1	June 17, 2010
Koether	US 2010/0313768 A1	Dec. 16, 2010
Kuempel	US 2014/0314921 A1	Oct. 23, 2014
Hoare	US 2015/0257574 A1	Sept. 17, 2015

L. R. Kasper, "There's more than one way to cook an egg. Dave Arnold has 11," *The Splendid Table*, April 16, 2013.

REJECTIONS

Claims 1–5, 9–11, 13–16, 18–33, and 35–40 stand rejected under 35 U.S.C. § 103 as unpatentable over Hoare, Kuempel, Anderson, and Koether. Final Act. 3.

Claim 12 is rejected under 35 U.S.C. § 103 as unpatentable over Hoare, Kuempel, Koether, and Kasper. Final Act. 10.

OPINION

Obviousness

Although Appellant provides separate headings for various claims, Appellant generally relies on its argument with respect to claim 18 and does not separately argue the other claims. Claim 18 is generally similar to claim

1 except that instead of requiring still images or video in the alternative, it specifically requires video. As such, all the claims not argued separately stand or fall with our disposition of claim 18. Appellant argues only claim 12 separately, which we address separately below.

In general, Appellant's arguments regarding claim 18 are directed toward combinations not set forth by the Examiner. Appellant essentially takes the references and the features being used by the Examiner and then combines them in ways not proposed by the Examiner and then argues that those combinations are improper or omit certain claim limitations. When the Examiner's combination is properly assessed as actually made by the Examiner, the features being combined amount to a coherent combination that meets all of the claim limitations.

For example, in the Reply, Appellant argues that "the Examiner's rationale for rejecting the claims is compatible with [certain] claim features." Reply Br. 5. Appellant argues that "because the cooking device [of Hoare] already determines the 'food preparation parameter,' it cannot additionally 'send the at least one food preparation parameter' to itself." *Id.* Appellant's argument misstates the actual combination made by the Examiner. Hoare teaches a unitary device with a screen that allows a user to select certain parameters in order for the device to cook the food. The Examiner's combination is to utilize a mobile device of the type disclosed in Kuempel instead of Hoare's built-in screen to select the parameter, thereby necessitating communication of the user's selection(s) from the mobile device to the cooking device. Thus, in the Examiner's combination, the claimed limitation is met. Because Appellant's arguments are not consistent with the rejection actually set forth by the Examiner, we do not find this argument persuasive.

Similarly, Appellant criticizes the Examiner's combination because Hoare's display "is an 'alpha numeric display' – *not a display capable of or configured for displaying images or videos*." App. Br. 21 (emphasis in original). Again, appellant mischaracterizes the rejection. The Examiner is not simply importing features of Kuempel into the display of Hoare, but is essentially replacing Hoare's display with the mobile device disclosed in Kuempel. As such, it does not matter for the combination what capabilities Hoare's display does or does not have because the Examiner is using Kuempel for the claimed display.

Appellant also asserts that "Kuempel teaches away from allowing user input (via a display or otherwise) regarding a coffee brewing process." App. Br. 22. This is allegedly so because Kuempel "functions to set and control brewing parameters for a coffee bean based on a predetermined coffee recipe to enable accurate and repeatable replication of a coffee experience, such as defined by a coffee roaster supplying the coffee bean." *Id.* (citing Kuempel, ¶13, emphasis added by Appellant). Yet again, this argument mischaracterizes the Examiner's rejection. The Examiner only uses Kuempel for teaching the use of a mobile device operable by a user to send instructions to the cooking device. The Examiner is not importing all of the features specific to Kuempel's attempt to limit brewing to those preferred by the roaster, just the general aspect of using a mobile device as the interface. Because this argument does not actually address the Examiner's combination, we find it unpersuasive.

Appellant next argues that the Examiner's motivation amounts to impermissible hindsight reconstruction. App. Br. 24. Appellant further argues that "Hoare and Anderson teach that static images and text are sufficient and provide no indication of a need for more" and that "nowhere

does Koether disclose or suggest selecting a desired doneness, let alone that the still photos or short videos depict different gradations of a characteristic of a food product after cooking the food product." *Id.* Here, Appellant attacks the references individually rather than addressing the Examiner's combination as a whole. As Appellant appears to admit, the combination of Hoare and Anderson teaches static images and text for showing a user a level of doneness. *Id.* The Examiner only uses Koether for the additional disclosure that videos are an acceptable alternative to still images and relies upon Anderson for teaching a visual representation of doneness provided to the user. Accordingly, Koether need not specifically teach how the video is being used as asserted by Appellant. Appellant's additional arguments regarding Koether likewise attack Koether for not teaching the specific content of the video when the Examiner utilizes Anderson for the teaching of the content. App. Br. 24 – 25. As such, we find these arguments unpersuasive.

Lastly, Appellant argues that there is no reasonable expectation of success for the Examiner's combination because there are 12,870 different combinations among Hoare and Kuempel alone. We do not find this argument persuasive because it does not address how the Examiner arrived at the proposed combination. Again, the Examiner utilizes Hoare for the majority of the claim elements and only replaces the built-in display with separate mobile display of Kuempel. The Examiner then uses Anderson for teaching that images rather than text can be used to show a desired level of doneness as claimed in, for example, claim 1. Lastly the Examiner uses Koether for teaching the interchangeability of still images and video while still relying on Anderson for the content of the image/video. Each of these alterations flows naturally from the prior art and each change is

encompassed in the teaching of the prior art without relying on Appellant's Specification. "Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." *In re McLaughlin*, 443 F.2d 1392 1313–1314. Here, the Examiner has only taken into account knowledge within the level of ordinary skill in the art and has not, as Appellant asserts, used Appellant's Specification as a road map. Accordingly, we sustain the Examiner's rejection of claim 18.

Regarding claim 12, Appellant argues that the Examiner's use of Kasper[2] is in error because Kasper "merely details characteristics of eggs cooked in a water bath at different temperatures for one hour." App. Br. 33. Although this is true, Kasper discloses various images of doneness of both the yolk and white of an egg cooked at different temperatures. Taking this information as a whole, Kasper teaches the relation between the various levels of doneness of both yolk and white and relates them to each other along the temperature scale. In this manner, one of skill in the art would understand that the doneness of the yolk is dependent on the doneness of the white (or vice versa), thus providing the claimed first and second characteristics of the doneness of an egg. We agree with the Examiner that Kasper teaches "that certain high and low temperatures necessarily result[] in certain textures of white and yolk for an egg cooked, e.g., in a sous vide machine" and that "it would have been obvious to have incorporated the

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[2] The Examiner, and thus, Appellant, refer to this as the Arnold reference, but the author is Kasper and as such, using normal convention, we refer to it as "Kasper."

teaching of [Kasper] into the system taught by the….cited prior art by e.g., limiting what texture of white selection that could be made based on the user's initial selection of the yolk texture, so as to provide the user with a cooked egg closest to his or her desired textures." Ans. 10, 11. The Examiner is also correct that Kasper teaches "that by choosing a certain temperature to which to cook the yolk of egg that necessarily restricts the textures of the white that can result." Ans. 12.

Appellant further argues that "the Examiner fails to articulate how the applied references disclose or suggest limiting a subsequent selection of a gradation of a second characteristic of a food product by providing that 'only a subset of the images or videos in [a] second set of images or videos are displayable.'" App. Br. 34. We agree with the Examiner, however, that "the limitation 'subset' does not necessarily require the exclusion of any of the video from being displayed[,] it only requires that the videos to potentially display[] are the ones chosen from a certain set of videos" and that "[i]n this case, meaning that the selection from the first set of videos could not be used to augment the second set of videos." Ans. 13. In other words, Appellant applies too narrow a restriction to the claimed subset that is not actually present in the claims. As such, we sustain the Examiner's rejection of claim 12.

CONCLUSION

The Examiner's rejections are affirmed.

More specifically,

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 9–11, 13–16, 18–33, 35–40	103	Hoare, Kuempel, Anderson, Koether	1–5, 9–11, 13–16, 18–33, 35–40	
12	103	Hoare, Kuempel, Anderson, Koether, Kasper	12	
1–5, 9–16, 18–33, 35–40			1–5, 9–16, 18–33, 35–40	

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).

AFFIRMED