

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EUGENE TIPPMANN

Appeal No. 2003-0127
Application No. 09/157,388

ON BRIEF

Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 18. These claims constitute all of the claims in the application.

Appellant's invention pertains to a method of preparing a pizza. A basic understanding of the invention can be derived from a reading of exemplary claims 1 and 10, respective copies of which appear in an appendix to the main brief (Paper No. 17).

Appeal No. 2003-0127
Application No. 09/157,388

As evidence of obviousness, the examiner has applied the documents listed below:

Bucci	2,668,117	Feb. 2, 1954
McDonald et al (McDonald)	5,256,432	Oct. 26, 1993

The following rejection is the sole rejection before us for review.

Claims 1 through 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bucci in view of McDonald.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 18), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 17 and 20).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered

Appeal No. 2003-0127
Application No. 09/157,388

appellant's specification and claims, the applied teachings,¹ and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We cannot sustain the obviousness rejection on appeal. Our reasoning appears below.

As explained in the specification (pages 5 and 6), with appellant's method of preparing a pizza, pizza or tomato sauce² is applied to a pizza shell to form a pizza base, and the pizza base is cooked for a first predetermined time period and then cooled to or near room temperature. After this cooking process, sauce that was applied remains in a moist state, a state similar

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

² The word sauce has been defined as a fluid dressing or topping. Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1979.

Appeal No. 2003-0127
Application No. 09/157,388

to that of a conventionally made pizza and not a coagulated,³ dried, or hardened state. Once cooled, pizza toppings are applied to the pizza base and the fully prepared pizza is either placed in a refrigerator for future use or further heated for a second predetermined time period and subsequently served to a consumer. According to appellant (specification, page 10), the advantage of the disclosed process is that cooking the pizza with only sauce thereon eliminates the possibility of cheese and moist tomato sauce bleeding together as the cheese melts.

Appellant's independent claims 1 and 10 set forth a method of preparing a pizza comprising the steps of, inter alia, forming a pizza shell, applying a predetermined quantity of sauce to the upper surface of the shell to form a pizza base, cooking the pizza base, and maintaining the sauce in an uncoagulated state during cooking of the pizza base.

³ The word coagulate has been defined as "to cause to become viscous or thickened into a coherent mass." Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1979.

Appeal No. 2003-0127
Application No. 09/157,388

At this point, we recognize from the content of claims 1 and 10, read in light of the underlying specification, the feature of the sauce being maintained in an uncoagulated state during cooking of the pizza base, i.e., the fluid sauce remains moist during cooking of the pizza base and does not become viscous or thickened.

Turning now to the evidence of obviousness, it is clear to this panel of the Board, from a review of the Bucci patent (column 3, lines 50 through 72), that the patentee expressly requires a sealing agent (tomato puree or peach nectar) to have moisture (water) driven off to effect a remaining coagulated substance that forms a moisture-impervious layer. Based upon the above very specific reference teaching of Bucci, we conclude that the Bucci document simply would not have been suggestive to one having ordinary skill in the art of appellant's step of maintaining sauce in an uncoagulated state during cooking. Turning now to the McDonald reference, we are aware that, as indicated by the examiner, it was not applied to show other than a topping disk. We would only add that the McDonald patent does not appear to overcome the above noted deficiency of the Bucci

Appeal No. 2003-0127
Application No. 09/157,388

patent. For these reasons, the obviousness rejection before us cannot be sustained.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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Appeal No. 2003-0127
Application No. 09/157,388

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