

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANNAVARAPU S. MURTY and LISA M. STOIBER

Appeal No. 2006-0825
Application No. 10/253,333

ON BRIEF

Before KIMLIN, PAK and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-32.

Claim 1 is illustrative:

1. A method of preventing contacting surfaces of frozen dough from sticking together, the method comprising disposing an anti-stick material on one or more of the contacting surfaces, the anti-stick material comprising edible powder having an average particle diameter in the range from 5 microns to 160 microns.

The examiner relies upon the following references as evidence of obviousness:

Matz	3,397,064	Aug. 13, 1968
Reddy	5,626,893	May 6, 1997

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Appellants' claimed invention is directed to a method of preventing the surfaces of frozen dough which contact each other from sticking together. The method entails providing an edible powder, such as a flour or starch, as an anti-stick material on the contacting surfaces of the frozen dough. The anti-stick powder has an average particle diameter in the range of from 5 microns to 160 microns.

Appealed claims 1-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Matz in view of Reddy.

Appellants have not set forth an argument that is reasonably specific to any particular claim on appeal. Accordingly, all the appealed claims stand or fall together. In re McDaniel, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002).

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the answer.

The disclosures of Matz and Reddy establish that it was well known in the art to utilize edible powders of flour, starch,

etc., as an anti-stick material for foods such as dough and cheese. Matz exemplifies the use of flour as an anti-sticking agent for dough that is refrigerated. Matz is silent with respect to the particle size of the anti-sticking flour. Reddy, on the other hand, uses flour as an anti-caking (anti-sticking) agent for chunked, diced and shredded cheese, and teaches that flour having a particle size within the claimed range improves the functionality of the anti-caking agent.

In our view, based on the Matz disclosure alone, it would have been prima facie obvious for one of ordinary skill in the art to use an edible powder such as flour as an anti-stick material for frozen dough. While, as urged by appellants, there is a physical distinction between the surfaces of frozen and refrigerated dough, it is the presence of the flour particles on the surface of the dough, be it refrigerated or frozen, which interrupts contact between the dough surfaces. Accordingly, we are persuaded that one of ordinary skill in the art would have reasonably expected that the flour which serves as an anti-sticking agent for a refrigerated dough would also perform the same function for frozen dough. Furthermore, and not insignificantly, appellants' specification acknowledges that it

was known in the art to use rice flour as an anti-sticking agent for frozen dough (see page 1 of specification, last paragraph).

As for the claimed particle size, it is well settled that where patentability is predicated upon a change in a condition of a prior art composition, such as a change in concentration or particle size, the burden is on the applicant to establish with objective evidence that the change is critical, i.e., it leads to a new, unexpected result. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990); In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

In the present case, appellants have not established on this record that the use of edible powders having a particle size within the claimed range achieves a new, unexpected result as an anti-sticking agent for frozen dough. While appellants make reference to specification data at pages 14 and 15 of the specification, appellants have not provided the requisite analysis of the data which demonstrates that methods and products within the scope of the broadly drafted claims on appeal produce unexpected results. It is not within the purview of this Board to analyze specification data and ferret out results in a light that is most favorable to appellants. Manifestly, it is

appellants who must shoulder the burden of establishing results that would be considered truly unexpected by one of ordinary skill in the art. In re Merck & Co., 800 F.2d 1091, 1099, 231 USPQ 375, 381 (Fed. Cir. 1986); In re Klosak, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972).

Also, we agree with the examiner that Reddy, although directed to cheese products, provides further evidence that one of ordinary skill in the art would have reasonably expected that flour having a particle size within the claimed range would have superior anti-sticking properties relative to flour having a greater particle size. As explained above, the interrupting nature of the flour particles would have been reasonably expected to function similarly on dough and cheese surfaces.

Appellants emphasize an aspect of the Matz invention that is not directed to the use of anti-sticking powder, i.e., adding potassium polymetaphosphate to the dough, and insinuate that dusting with rice flour is only taught by Matz as a prior art technique (see page 4 of reply brief, first paragraph). However, as emphasized by the examiner, Matz exemplifies the use of anti-sticking powder for the disclosed invention (see Examples 1 and 2).

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In conclusion, based on the foregoing, it is our judgment that the examiner has established a prima facie case of obviousness for the claimed subject matter that has not been rebutted by appellants. Accordingly, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHUNG K. PAK)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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