

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-2087
Application No. 10/960,252

ON BRIEF

Before KIMLIN, JEFFREY T. SMITH and GAUDETTE, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-3.

Claim 1 is illustrative:

1. A rawhide-based product comprising:
rawhide that is ground into a powder and consists of 40.5% by weight based upon the weight;
water of 20.5% by weight;
modified corn starch of 10% by weight;

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dextrine of 10% by weight;
casein of 5.0% by weight;
dried fermentation solubles of 2% by weight;
calcium carbonate at 2.0% by weight;
glycerine at 3.0% by weight;
colors and flavorings of the balance of the weight;

wherein said rawhide-based product forms moldable dough that can be cooked.

The examiner relies upon the following references as

evidence of obviousness:

Balaz et al. (Balaz)	4,055,681	Oct. 25, 1977
Greene et al. (Greene)	4,419,372	Dec. 6, 1983
Lehn et al. (Lehn)	4,702,929	Oct. 27, 1987
Spanier et al. (Spanier)	5,532,010	Jul. 2, 1996
Denesuk et al. (Denesuk)	6,178,922	Jan. 30, 2001
Perlberg et al. (Perlberg)	6,223,693	May 1, 2001
Wang et al. (Wang)	6,379,725	Apr. 30, 2002

Nutrient Requirements of Domestic Animals, p. 44 (1985).

Appellant's claimed invention is directed to a rawhide-based product comprising ground rawhide, water, modified cornstarch, dextrine, casein, calcium carbonate, glycerine and other ingredients, such as colorings and flavorings. The claimed product finds utility as a chew toy for animals.

Appealed claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lehn and Denesuk in view of Perlberg,

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Greene, Spanier, Balaz and Wang further in view of "Nutrient Requirements of Domestic Animals."

Appellant has not presented separate arguments with respect to any particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner's reasoned analysis and application of the prior art, as well as the examiner's cogent and thorough disposition of the arguments raised by appellant. Accordingly, we will adopt the examiner's reasoning as our own in sustaining the rejection of record, and we add the following for emphasis only.

Lehn and Denesuk, as set forth by the examiner, disclose rawhide-based products comprising starch, colors and flavorings that are formed by injection molding. While the references fail to teach all the claimed ingredients in the rawhide product, we concur with the examiner that the additionally cited references establish the obviousness of incorporating the recited components in rawhide-based products. For instance, Perlberg teaches the inclusion of glycerine as a humectant as well as gelatin or any other binder in a chopped rawhide product, whereas Greene teaches a rawhide-like product containing casein and plasticizers such as

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modified food starches or dextrans. Spanier also evidences that it was known to use dextrans as an adhesive or binding agent to control the viscosity of a food product. In addition, Wang teaches the inclusion of calcium carbonate in chewable pet toys comprising animal and vegetable protein, gelatin, glycerol and casein.

Accordingly, based on the collective teachings of the applied prior art, we are in full agreement with the examiner that it would have been obvious for one of ordinary skill in the art to formulate a rawhide-based product containing the recited components for their art-recognized properties. As stated by the examiner, "[e]ach of the ingredients of the instant claims is shown by prior art to be useful in pet foods, and the majority is shown by more than one reference, to the extent that these ingredients are routinely added to pet food products of the type claimed" (page 7 of answer, second paragraph).

Appellant argues that the examiner has cited seven references in the rejection and that there is no motivation or suggestion to combine the teachings of the references. However, the examiner properly points out that "all the references are to pet foods/chew/toy/snacks/treats and all use similar ingredients found useful for the same purpose" (page eight of answer, second

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paragraph). Manifestly, the number of references cited in a rejection may be mandated by the number of conventional ingredients recited in a rejected claim. It is well settled that it is a matter of obviousness for one of ordinary skill in the art to combine conventional ingredients in a food product, and to determine their optimum amounts, in the absence of evidence that the ingredients coact or cooperate in a manner to produce an unexpected result. In re Levin, 178 F.2d 945, 948, 84 USPQ 232, 234 (CCPA 1949). In the present case, appellant bases on argument on any evidence that the claimed ingredients combined to form a product having unexpected properties. Nor has appellant argued that the claimed ingredients in the recited amounts achieve an unexpected result with respect to the method of preparation. Accordingly, the prima facie case of obviousness established by the examiner stands unrebutted.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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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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JEFFREY T. SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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LINDA M. GAUDETTE)	
Administrative Patent Judge)	

ECK:hh

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Law Offices of John D. Gugliotta, PE, Esq.
202 Delaware Building
137 South Main Street
Akron, OH 44308