

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARC HENDRIX and MARC KELLENS

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Appeal 2007-0165  
Application 10/207,122  
Technology Center 1700

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Decided: January 4, 2007

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Before EDWARD C. KIMLIN, CHUNK K. PAK, and  
JEFFREY T. SMITH, *Administrative Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 13-17. Claim 13 is illustrative:

13. An installation for the dry fractionation of edible oils, fats and related products, comprising:

- a crystallizer,

- a crusher,
- means for transporting solid blocks of crystallized material formed in the crystallizer to the crusher,
- a filter press, and
- means for transporting a paste obtained in said crusher to said filter press, wherein said crystallizer comprises at least one cooling chamber provided with at least one wall permitting heat transfer to form at least one solid block of crystallized material.

The Examiner relies upon the following references in the rejection of the appealed claims:

Higuchi	US 4,795,569	Jan. 3, 1989
Yoneda	EP 1 028 159 A1	Aug. 16, 2000

Appellants' claimed invention is directed to an installation for the dry fractionation of edible oils and fats. The installation comprises a crystallizer, means for transporting blocks or crystallized material to a crusher, and means for transforming a paste obtained in the crusher to a filter press. Also, the crystallizer comprises at least one cooling chamber having a wall that permits heat transfer for forming the block crystallized material.

Appealed claims 13-17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Yoneda in view of Higuchi.

We have thoroughly reviewed the respective positions advanced by Appellants and the Examiner. In so doing, we find that the Examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejection.

Both the Yoneda and Higuchi, like Appellants, are directed to installations for fractionation of edible oils and fats which perform the

operations of crystallization, crushing, and filtering. However, we concur with Appellants that Yoneda and Higuchi “can only be viewed as alternative solutions” which combination does not arrive at the claimed installation.<sup>1</sup> As recognized by the Examiner, Yoneda “does not disclose the crystallizer comprises at least one cooling chamber provide [sic, provided] with at least one wall permitting heat transfer to form at least one solid block of crystallized material.<sup>[2]</sup>” To remedy this deficiency the Examiner relies on the cooling chamber of Higuchi that permits heat transfer to form at least one solid block of crystallized material. However, the cooling, crystallization chamber of Higuchi also comprises the filtering operation such that modifying the apparatus of Yoneda in accordance with Higuchi would result in crystallizing and filtering the oils and fats before transportation to a crusher which, of course, does not correspond Appellants’ installation. Also, while it is not necessary for a finding of obviousness that the features of one reference be physically incorporated with the features of another reference, the crystallization and filtering operations of Higuchi are too integrally related to suggest divorcing the cooling/crystallization operation from the filtering components.

In our view, the present case provides a classic example of where all the features of the claimed installation, namely, crystallizer, crusher, and filter press, were conventional components in the art of dry fractionation of edible oils and fats, and the Examiner explained what could have been done by one of ordinary skill in the art in terms of arranging the known components into a system. However, it is well settled that the mere fact that

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<sup>1</sup> Page 20 of principal Brief, ¶3.

<sup>2</sup> Page 3 of Answer, ¶3.

the prior art *could* be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In the present case, Yoneda, Higuchi, and Appellants all disclose three distinct installations for the dry fractionation of edible oils and fats, but neither Yoneda nor Higuchi, nor their combination, would have suggested Appellants' installation.

One final point remains. Upon return of this application to the Examiner, the Examiner should consider the patentability of the claimed subject matter over the patent of Kuwabara (U.S. Patent No. 5,045,243). It would appear that Kuwabara discloses an installation for the dry fractionation of edible oils and fats comprising a crystallizer, a crusher, and a filter press, the three major components of the claimed installation. The Examiner should determine whether the claimed crystallizer comprising at least one cooling chamber having at last one wall permitting heat transfer is patentably distinct from the crystallizer of Kuwabara under 35 U.S.C. 102 and 35 U.S.C. 103. We note that the reference discloses that in practice the fat is fractionated in a relatively shallow container such as a vat, tray, or the like, and is cooled slowly with cold air or water or a liquid refrigeration medium.

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In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejection.

REVERSED

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