

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* GUY LEVI and  
MARTINA ADRIANA MOSTERT

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Appeal 2007-1183  
Application 10/281,706  
Technology Center 1700

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Decided: March 20, 2007

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Before EDWARD C. KIMLIN, THOMAS A. WALTZ, and LINDA M. GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 8-14 and 16-23.

We have jurisdiction pursuant to 35 U.S.C. §§ 6 and 134. Claims 8 and 17 are illustrative:

8. A stable puree composition comprising:
  - a. from about 20.0% to about 97.5% by weight water;

- b. from about 0.01 to about 10.0% by weight thickening base; and
- c. from about 1.0 to about 75.0% by weight stabilized fruit pulp composition

wherein the puree composition has a viscosity from about 5,000 to about 90,000 centipoise, and a shelf life at about ambient temperature of at least about 65 days and further wherein the stabilized fruit pulp composition is the product of fruit comprising water, pulp and oil that has been heated to a temperature from about 30°C to about 90°C for less than about three minutes and that has a hardness factor of at least 300 dynes prior to heating.

17. A method for making a stabilized fruit pulp composition comprising the steps of:
- a. harvesting fruit about 1 to 4 weeks prior to being ripe;
  - b. storing the harvested fruit in a dark room at a temperature from about 10°C to about 35°C for less than about 1.5 weeks;
  - c. in no particular order, peeling, depitting or coring, if necessary, the fruit and mashing the fruit to produce fruit flesh;
  - d. mixing the fruit flesh with about 0.01 to about 5.0% by weight acidulant to produce an acidulant and fruit flesh mixture;
  - e. heating the acidulant and fruit flesh mixture to a temperature not over about 90°C for less than about 3 minutes

wherein the fruit has a hardness factor of at least 300 dynes prior to heating.

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

Guadagni	US 2,780,551	Feb. 5, 1957
Rumberger	US 3,630,759	Dec. 28, 1971
Huchette	US 4,160,849	July 10, 1979
Ban	JP 401141561 A	June 2, 1989

Jen, "Quality Factors of Fruits and Vegetables," Am. Chem. Soc., Wash. D.C., 176, 209,211, 218 (1989).

Sims, "Challenges To Processing Tropical Fruit Juices: Banana As An Example," Proc. Fla. State Hor. Soc., 107, 315-19 (1994).

Gordon, Avocado Recipes, etc., 19, 107 (1987).

Chen US 6,083,582 July 4, 2000

Appellants' claimed invention is directed to a method for making a stabilized fruit pulp composition and a stable puree composition comprising the stabilized fruit pulp composition. The method for making the stabilized fruit pulp composition comprises storing unripened fruit in a dark room for less than 1.5 weeks, mashing the fruit, mixing the mashed fruit in an acidulant solution, and heating the mixture for less than about three minutes. According to Appellants' Specification, fruit often deteriorates by, for example, browning or darkening, due to enzymatic reactions. Appellants' Specification relates that the claimed invention is directed to developing a stabilized fruit pulp composition and stable puree composition that does not easily brown, darken, etc. (*see* page 2, last para.).

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 17 and 18 over Guadagni in view of Gordon,
- (b) claim 19 over the stated combination of references further in view of Composition of Foods,
- (c) claims 8, 10-13, 16, 20, 22 and 23 over Huchette in view of Guadagni, Chen, Sims and Composition of Foods, and
- (d) claim 9 over the references cited in (c) above further in view of Jen,
- (e) claim 14 over the combination of references stated in (c) above further in view of Rumberger
- (f) claim 21 over the references cited in © above further in view of Chen and Ban.

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 § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

We consider first the Examiner's rejection of the method recited in claims 17-19. We concur with the Examiner that Gordon establishes the obviousness of harvesting fruits and vegetables, such as avocados, before ripening and storing them in a dark room at cool temperatures. As pointed out by the Examiner, Gordon expressly teaches storing unripened avocados at home in a dark, brown paper bag at around 15°C, which temperature falls within the claimed range for storing. Guadagni, on the other hand,

specifically discloses heating fresh fruit at mild temperatures for around three minutes in order to inactivate enzymes in the surface layers of the fruit and, thereby, prevent the undesirable loss of natural color via browning (*see para.* bridging cols. 1 and 2). As noted by the Examiner, Gaudagni exemplifies heating fresh peaches in an aqueous solution of 0.1% ascorbic acid. Consequently, we find that one of ordinary skill in the art would have found it obvious, based on the collective teachings of Guadagni and Gordon, to store unripened fruits and vegetables, such as avocados, in darkness at cool temperatures and then treat the fruits and vegetables with an acidic solution at mild temperatures for about three minutes to inactivate the enzymes in the surface layers. Hence, we agree with the Examiner that methods within the scope of claims 17-19 on appeal would have been *prima facie* obvious to one of ordinary skill in the art.

Concerning the puree composition of claim 8 which comprises the fruit pulp composition of the claimed method, we agree with the Examiner that Huchette evidences the obviousness of making puree compositions comprising fruit pulp. Huchette discloses compositions comprising potato pulp as a thickening base and various fruits, such as apples and apricots. While Appellants contend that the combination of references “does not, even in the slightest way, disclose the specific stable puree composition claimed in this invention” (page 13 of Br., second paragraph), we think that Appellants used the term “specific” rather loosely. The breadth of claim 8 is quite extensive with respect to the specific fruit, the amount of water (about 20.0% to about 97.5%) the amount of thickening base (0.01 to about 10.0%) and the amount of fruit pulp composition (about 1.0 to about 75.0%). Since

the claim language “comprising” encompasses the three recited ingredients as well as all of the non-specified ingredients, it cannot be gainsaid that claim 8 embraces an untold plethora of puree compositions. Moreover, as explained by the Examiner, it would have been a matter of obviousness for one of ordinary skill in the art to formulate puree compositions having a wide variety of relative amounts of water, thickener and fruits and/or vegetables.

As a final point, we note that Appellants base no argument upon objective evidence of nonobviousness, such as unexpected results. While Appellants state in the Summary at page 5 of the Brief that Examples 1-4 of the Specification show that “the composition unexpectedly displays excellent stability characteristics and no flavor loss when kept sealed and at ambient temperature,” Appellants have not discussed the particulars of the examples in any manner, let alone with the requisite degree of specificity for establishing unexpected results relative to the closest prior art. It is not within the province of this Board to ferret out Specification data that supports Appellants’ argument for nonobviousness.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, 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 C.F.R. § 1.136(a)(iv)(effective Sept. 13, 2004).

AFFIRMED

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