

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JAMES P. LOGAN, JR.

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Appeal 2007-3394  
Application 11/088,512  
Technology Center 1700

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Decided: October 31, 2007

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Before PETER F. KRATZ, JEFFREY T. SMITH, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.  
KRATZ, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is a decision on an appeal from the Examiner's final rejection of claims 1-5, the only claims that remain pending in this application. We have jurisdiction pursuant to 35 U.S.C. §§ 6 and 134. Oral arguments were presented on October 23, 2007.

Appellants' invention is directed to a boneless sliced meat product having a continuous spiral cut about an axis thereof wherein the depth of the cut is such that a core of meat is not sliced. The ends of the spiral cut come within a distance of from one eighth inch to one inch of first and second ends of the meat. Claim 1 is illustrative and reproduced below:

1. A boneless sliced meat product having its meat arranged in the form of a continuous spiral cut having two ends about an axis of the meat, the axis being created by the temporary insertion of a support member in the meat, wherein the depth of said cut is limited to leave an uncut core of meat, said core being of sufficient cross-section to cause the boneless sliced meat to retain its shape when the support member is removed, wherein the point of entry of the support member into the meat product defines a first end and the point of exit of the support member from the meat product defines a second end and wherein the ends of the continuous spiral cut of the meat product reside within a range of 1/8 inch to 1 inch from said first and second ends, respectively.

The Examiner relies on the following prior art reference as evidence in rejecting the appealed claims:

Logan US 5,030,472 July 9, 1991

Claims 1-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative under 35 U.S.C. § 103(a) as being obvious over Logan. We agree with the Examiner’s conclusion that the claimed subject matter would have been obvious to one of ordinary skill in the art given the teachings of Logan. Accordingly, we affirm the Examiner’s decision to reject claims 1-5 on the asserted obviousness grounds of rejection over Logan. We reverse as to the anticipation alternative. Our reasoning follows.

We focus on independent claim 1 in deciding this appeal because Appellant presents the rejected claims together as a group in arguing for the patentability of the claimed subject matter in the Brief.

There is no dispute that Logan discloses a spirally cut meat product corresponding to the claimed meat product but for furnishing an explicit description of the claimed distance of the ends of the spiral cut from the ends of the meat product (Abstract, Fig. 5). The Examiner hinges the anticipation prong of the stated rejection on the assertion that the claimed distance of the ends of the spiral cut from the ends of the meat product is not entitled to any patentable weight. However, the Examiner acknowledges that Logan discloses thicker uncut meat ends than the claimed product (Ans. 3). As such, the Examiner's anticipation position is untenable. After all, it is well settled that anticipation requires a prior art description that meets all of the requirements of the claimed subject matter.

The propriety of the Examiner's obviousness conclusion is another matter. "Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In this regard, it would have been obvious to one of ordinary skill in the art to form the boneless meat product of Logan with spiral cuts extending as close to each end of the meat product as possible so as to maximize the availability of easily served spirally precut meat in the product. Thus, one of

ordinary skill in the art would have been led to produce meat products with thin uncut end portions corresponding to the claimed product.

Appellant basically contends that the steel prongs (30 and 44, Fig. 1) employed by Logan in cutting the meat would prevent spiral cutting of the meat product of Logan any closer than 2-3 inches from the meat product ends (Reply Br. 2). However, Appellant has not substantiated this argument with any persuasive evidence. *See In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974).

Moreover, one of ordinary skill in the art would have recognized that the length of the prongs of Logan could be optimized to produce a spiral cut close to the meat ends, as claimed. After all, skill and not the converse would be expected from an ordinarily skilled artisan. *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985). In this regard, the question of obviousness cannot be approached on the basis that an artisan having ordinary skill would have known only what was explicitly disclosed in the references, because such artisan is presumed to know something about the art apart from what the references disclose. *See In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962). In addition, the appealed claims are not drawn to a particular apparatus for producing a spiral cut in a meat product or a particular method of cutting meat. Rather the appealed claims (see representative claim 1), are drawn to a spirally cut meat product. Thus, one of ordinary skill in the art would have recognized that even where a spiral cut meat product with thicker ends than that called for in representative claim 1 may be initially obtained, it would have been obvious for one of ordinary skill in the art at the time of the invention to extend the spiral cut by hand carving so as to obtain the serving advantages associated with a resultant meat product having a spiral cut that

extends closer to the respective ends of the meat product. Alternatively, slicing through the previously uncut meat product ends and separating the sliced portions to form new ends for the meat product which are located closer to the ends of the spiral cut so as to obtain the serving advantages associated with a resultant meat product having a spiral cut that extends closer to the respective ends thereof would have been an obvious option to one of ordinary skill in the art. In this regard, the claimed product is attended by predictable and expected results.

On this record, it follows that we shall affirm the Examiner's obviousness rejection.

#### ORDER

The decision of the Examiner to reject claims 1-5 under 35 U.S.C. § 102(b) as being anticipated by Logan is reversed. The decision of the Examiner to reject claims 1-5 under 35 U.S.C. § 103(a) as being obvious over Logan 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)(1)(iv) (2006).

AFFIRMED

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