

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARNET L. LIBERMAN

Appeal 2008-3938
Application 10/232,644
Technology Center 1700

Decided: August 14, 2008

Before EDWARD C. KIMLIN, CHUNG K. PAK, and
CHARLES F. WARREN, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicant appeals to the Board from the decision of the Primary Examiner finally rejecting claims 1, 4 through 13, 16 through 24, and 27 through 30 in the Office Action mailed March 15, 2007. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2007).

We reverse the decision of the Primary Examiner.

Claim 1 illustrates Appellant's invention of a method for freezing meat in a marinade, and is representative of the claims on appeal:

1. A method for freezing meat in a marinade, said method comprising

placing said meat and said marinade in a bag which can be vacuum sealed, wherein said marinade is acidic,

vacuum sealing said meat and said marinade in said bag,

preparing a brine solution containing between 0.05 % and 1.0% by weight of cruciferous oil, and

freezing said meat and said marinade by immersing the vacuum sealed bag in said brine solution at a temperature between about -22 and -43.6°F within two minutes after said placing step is completed to limit cell damage to said meat by said marinade,

wherein said frozen meat is properly marinated upon thawing in the same amount of time as fresh meat placed in said marinade.

The Examiner relies upon the evidence in these references (Ans. 3):

Liberman (Liberman '034)	4,840,034	Jun. 20, 1989
Liberman (Liberman '352)	5,857, 352	Jan. 12, 1999
Bodenas	5,989,601	Nov. 23, 1999

Appellant requests review of the ground of rejection of the appealed claims under 35 U.S.C. § 103(a) over Bodenas in view of Liberman '352 and Liberman '034 advanced on appeal. App. Br. 4; Ans. 4.

The issues in this appeal are whether the Examiner has carried the burden of establishing a *prima facie* case by showing that one of ordinary skill in this art would have found in Bodenas a method of freezing meat in an acidic marinade which includes the steps of placing the meat and the marinade in bag, vacuum sealing the bag, and beginning a freezing step within two minutes of placing the meat and marinade in the bag, which steps are part of the method steps specified in independent claim 1. The same issue applies to independent claim 13 which similarly requires immersing the bag containing the meat and acidic marinade in a freezing solution within two minutes of placing the meat and marinade in the bag. In this respect, there is no dispute that the Liberman references would have taught preparing

a brine solution containing between 0.05 % and 1.0% by weight of cruciferous oil, and freezing meat products at a temperature between about -22 and -43.6°F as further specified in claim 1 and between about 22 and -43.6°F as specified in claim 13.¹ Ans. 4 and 6-7; App. Br. 4-7; Reply Br. 2-4.

We find Bodenas would have disclosed to one of ordinary skill in this art a process of incorporating a fermented mixture of meat trimmings and fat in a meat piece wherein a ground mixture of fat and meat trimmings can be combined with, among other things, an acidic marinade either before, during, or after a fermentation starter culture is added to the mixture.

Bodenas, e.g., col. 2, ll. 1-60. The mixture of starter culture, meat trimmings, fat, and any added marinade can be packed in a plastic bag, which can be vacuum sealed, and fermented at a temperature of between 0-55° C for a period of from about 12 hours to about 7 days. Bodenas, e.g., col. 3, ll. 6-19, and col. 4, ll. 32-34. After fermentation, the meat trimmings and fat mixture, with or without added marinade, is frozen, either in the same or different bag. Bodenas, e.g., col. 3, ll. 20-22, and col. 4, ll. 37-38. In the bag, the frozen mixture is flaked and mixed with, among other things, a frozen marinade in a manner, e.g., by emulsification, to form a frozen suspension which is injected into a meat piece, after which the meat product

¹ We note that claim 13 as originally filed included the temperature limitation “between about -22 and -43.6°F” (emphasis added) which was changed to “between about 22 and -43.6°F” (emphasis added) in the Amendment filed April 25, 2006, without identifying the change as required by 37 C.F.R. §1.121(c)(2).

is then processed conventionally. Bodenas, e.g., col. 3, ll. 20-25, and col. 4, ll. 37-38 and 38-52.

The Examiner contends Bodenas discloses “meat trimmings are fermented and frozen and mixed with frozen brine, pickle or marinade from vinegar or acid liquor” and “the meat is fermented, packed in a vacuum pack and frozen.” Ans. 4 (citing Bodenas col. 2, ll. 54-64, col. 3, ll. 6-28, and col. 4, ll. 38-42). The Examiner further contends Bodenas discloses in “column 3, lines 6-20, . . . meat trimmings and ground fat are mixed with marinade, fermented and then frozen.” Ans. 6-7. Appellant contends, among other things, that the Examiner disregards the claim limitation that the meat and marinade are subjected to freezing within two minutes of being placed in a bag, pointing out that the fermentation period disclosed by Bodenas is longer than 2 minutes. Reply Br. 3-4. Appellant further contends, among other things, that combining a frozen meat trimmings and fat mixture and a frozen marinade does not satisfy the claim limitations of “freezing said meat and said marinade” after being placed in a bag. App. Br. 7.

We agree with Appellant. The positions advanced by the Examiner do not account for either the fermentation step requiring much more than 2 minutes after a meat trimmings and fat mixture, a starter culture, and marinade are placed in a bag, or that the meat trimmings and fat mixture as well as the marinade are each pre-frozen if otherwise combined in Bodenas’ process. Thus, the Examiner has not explained how Bodenas would have placed one of ordinary skill in the art in possession of a process meeting the claimed steps within the time limitation specified in claims 1 and 13. We point out here that the teachings of the Liberman references do not provide

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the claimed process limitations that we fail to find in the teachings of Boden as. *See, e.g., KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007) ("it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does").

Accordingly, in the absence of a *prima facie* case of obviousness, we reverse the rejection of the appealed claims.

The Primary Examiner's decision is reversed.

REVERSED

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