

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

Paper No. 48

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARRY BUSSEY JR. and BUDDY HARRY BUSSEY III

Appeal No. 2001-1140
Application No. 08/867,771

ON BRIEF

Before PAK, OWENS, and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

ON REQUEST FOR REHEARING

Appellants have filed a paper under 37 CFR § 1.197(b) requesting that we reconsider our decision of March 05, 2003, wherein we affirmed the rejection of claims 29, 30 and 34 under 35 U.S.C. § 103(a).

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37 CFR § 1.197(b) provides as follows:

Appellant may file a single request for rehearing within two months from the date of the original decision, unless the original decision is so modified by the decision on rehearing as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought. See § 1.136(b) for extensions of time for seeking rehearing in a patent application and § 1.550(c) for extensions of time for seeking rehearing in a reexamination proceeding.

We have reconsidered our decision of March 05, 2003 in light of Appellants' comments in the request for rehearing, and we find no error therein. We, therefore, decline to make any changes in our prior decision for the reasons which follow.

Appellants assert that we misinterpreted claim 34. Specifically, Appellants state:

claim 34 requires two features namely (1) that the heated mass is extruded on a continuous basis and (2) that the blowing agent is injected into this mass in a selectively controlled manner in dependence on the degree of forming [sic, foaming] of the extrudate to bring the extrudate to a desired foam state.

As noted by applicants in their brief at page 9, as set forth in the description at page 8, line 17 to page 9, line 2, one of the advantages of the claimed method is at [sic, that] the injection of the blowing agent and [sic, can] be accomplished “on the fly” in dependence on a visual detection of the product during extrusion. If the amount of foaming is not sufficient, the amount of blowing agent which is injected can be increased and if there is excessive foaming, the amount of blowing agent can be reduced.

While the Lacourse discloses that the amount of water may [be] added to bring the moisture level of the starch being extruded to 21% or less, there is no teaching that the water can be added “on the fly”. Further, there is

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particularly no teaching in the Lacourse of adding water in a selectively controlled manner in dependence on the degree of foaming of the extrudate. (Rehearing request, pp.1-2).

Appellants' request is clearly unpersuasive of patentability for the reasons detailed in our decision on pages 5 and 6. Lacourse discloses the expansion of the foam cell structure is dependent on the total moisture content. (Col. 5, ll. 29 to 33). Lacourse discloses that water may be added to the extruder so that the product has a total moisture content of preferably 13 to 19%. Thus, a person of ordinary skill in the art performing the process of Lacourse by adding water to the extruder to adjust the moisture content between 13 to 19% would have also been adjusting the foam cell structure. Claim 34 does not require water to be added "on the fly" as now argued by Appellants.

We have reconsidered our decision in light of all of the arguments made in the Appellant's request. However, we see no compelling reason justifying a different result. Accordingly, we decline to modify our original decision.

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Time for taking action

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING DENIED

CHUNG K. PAK
Administrative Patent Judge

TERRY J. OWENS
Administrative Patent Judge

JEFFREY T. SMITH
Administrative Patent Judge

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