

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte KENNETH A. MORRIS

Appeal No. 2002-0995
Application No. 09/243,882

ON BRIEF

Before MCQUADE, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-6, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a pizza cutter. Claim 1, the sole independent claim on appeal, reads as follows:

1. A pizza cutter for cutting a pizza into uniform, equal-sized slices, said pizza cutter comprising:

a frame having a top surface opposite a bottom surface, said frame having a circular pizza receiving aperture bored therethrough, providing fluid connectivity between said top surface and said bottom surface;

a plurality of cutting blades having a cutting edge opposite a top edge and a frame end opposite a center end, said cutting blades attached to said frame at said frame end and equally spaced radially around said pizza receiving aperture, said cutting blades spanning said pizza receiving aperture, converging at the center thereof and positioned such that said cutting edge lies flush with said bottom surface; and

fastening means for adjoining and supporting said center ends.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Deutsch	2,003,253	May 28, 1935
Langville	2,971,549	Feb. 14, 1961

The following rejections are before us for review.

Claims 1, 2 and 4-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Langville.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Langville in view of Deutsch.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the rejection mailed November 29, 1999, the final rejection mailed May 23, 2001 and the answer

(Paper Nos. 3, 17 and 20)¹ for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 19) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. For the reasons set forth below, we cannot sustain either of the examiner's rejections.

As for the rejection of claims 1, 2 and 4-6 as being anticipated by Langville, we note that independent claim 1 calls for a plurality of cutting blades "**converging at the center** [of said pizza receiving aperture]." The cutting blades 12 of Langville's coring device, on the other hand, while converging toward the center of the aperture formed within the ring 16 thereof, do not converge at the center of the aperture. Rather, each pair of adjacent blades 12 is connected by a yoke section 13 and joined to a center ferrule 10, at a significant distance from the center, so as to form a coring ring which cuts out the core of a fruit.

¹ The Manual of Patent Examining Procedure (MPEP) § 1208 expressly provides that incorporation by reference in an examiner's answer may be made only to a **single** other action. The answer in this case, however, refers to the Office actions of Paper Nos. 12 and 17 and, thus, is not in compliance with the MPEP. Furthermore, the Office action of Paper No. 17 refers to Paper No. 12, which refers to the Office action of Paper No. 5, which refers to the Office action of Paper No. 3. Such a chain of incorporation by reference in an examiner's answer is clearly inappropriate.

In that Langville does not disclose each and every limitation of claim 1, the subject matter of claim 1 is not anticipated² by Langville. Accordingly, we cannot sustain the examiner's rejection of claim 1 or claims 2 and 4-6 which depend therefrom.

We turn now to the examiner's rejection of claim 3 as being unpatentable over Langville in view of Deutsch. Deutsch discloses a pie cutter comprising a plurality of blades 7 which substantially converge at the center of the cutter and are held together by a blade holder including an upper disk 1 and a lower disc 2 secured together by screws 4. In that Langville's coring device is provided with its center ferrule 10 so as to form a coring element to cut out the core of a fruit, it is not apparent to us how Deutsch provides any incentive for one of ordinary skill in the art to modify Langville's device so as to eliminate this center ferrule and provide cutting blades converging at the center thereof. To do so would appear to render Langville's device unsuitable for its intended purpose and, thus, would not have been obvious.³ Accordingly, we conclude that the additional teachings of Deutsch do not remedy the above-noted deficiency of Langville. We thus cannot sustain the rejection of claim 3, which depends from claim 1, as being unpatentable over Langville in view of Deutsch.

² Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

³ It is of course well established that, where the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, the proposed modification would not have been obvious. See Tec Air Inc. v. Denso Mfg. Michigan Inc., 192 F.3d 1353, 1360, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2 and 4-6 under 35 U.S.C. § 102(b) and claim 3 under 35 U.S.C. § 103(a) is reversed.

REVERSED

JOHN P. MCQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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