

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

MAILED

DEC 20 1995

Ex parte ROBERT GUARNERI

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Appeal No. 94-1897  
Application 07/553,308<sup>1</sup>

ON BRIEF

Before KIMLIN, JOHN D. SMITH and TURNER, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-5, all the claims in the present application. Claim 1 is illustrative:

<sup>1</sup> Application for patent filed July 17, 1990.

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1. Method of making sheet dough for use in the production of long-life fresh pasta products, comprising the sequential steps of:

providing a dough stock from ingredients which include durum wheat flour and eggs, and incorporating salt therein in an amount between 2.5% and 4% by weight and providing said dough stock with a water content in the 30% to 32% range;

forming from said dough stock a web of sheet dough whose fibers are mainly oriented in the longitudinal direction thereof;

lapping said sheet dough into plural overlaid layers; and

rolling and calibrating said overlaid layers in a cross direction to the main orientation of the fibers in said sheet dough such that said cross rolled sheet dough is free of tears and cracks.

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

Gaehring et al. (Gaehring)      4,529,609      July 16, 1985

Samuel A. Matz, PH.D. (Matz), "Equipment For Bakers," Pan-Tech International, Inc., 1988, pages 154-157.

Appellant's claimed invention is directed to a method of making sheet dough that is used to produce pasta products. The method entails forming a sheet from pasta dough which fibers are oriented in the longitudinal direction, lapping the sheet into plural overlaid layers, and rolling and calibrating the overlaid layers in a cross direction. According to appellant, the sheet processed in this way is free of tears and cracks.

Appealed claims 1-5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gaehring in view of Matz.

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Upon careful consideration of the opposing arguments presented on appeal, we concur with appellant that the applied prior art fails to evidence the prima facie obviousness of the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

Gaehring discloses a process of forming sheets of pasta dough but, as acknowledged by the examiner, the reference does not disclose the claimed lapping, rolling and calibrating steps. For these deficiencies the examiner relies upon Matz. There is no dispute that Matz teaches laminating machines which perform the claimed steps of lapping, rolling and calibrating sheets of dough. However, we concur with appellant that Matz provides no teaching or suggestion that the processing disclosed by Matz is applicable to pasta dough. The examiner states at page 4 of the Answer that "Matz is generic to dough and is not limited to the specific doughs." However, the examiner fails to point to any specific disclosure of Matz which could be reasonably interpreted as pertaining to doughs, in general. Matz discloses that laminating machines are used on every saltine production line and "can be used for several other types of bakery items, such as croissants, puff pastry, and Danish pastry." (page 154). Matz also discloses "[C]ombination machines for sheeting bulk dough and then lapping and cross-rolling it to form the structure which is characteristic of soda crackers are widely used." (page 154).

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Manifestly, saltine crackers, croissants, puff pastry and Danish pastry, as well as cookies, are made from doughs which are quite different than the doughs used to make pasta. At page 4 of the brief, appellant explains "[D]ough for bread, crackers and pastry is leavened and is subjected to fermentation whereas the dough for pasta products is unleavened and fermentation is completely avoided. The dough for pasta products has a very compact structure so that the pasta products can withstand cooking in boiling water whereas the dough for bread, crackers and pastry is considerably lighter and is handled in an entirely different manner from pasta dough." The examiner has not responded to this argument by appellant and has not established on this record that machinery that is conventionally used to process crackers, pastry and the like is also used to process pasta. As a result, we find no factual basis for concluding that one of ordinary skill in the art of processing pasta dough would have found it obvious to rely on the disclosure of Matz to modify the process described in Gaehring.



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