

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** LARS ASKMAN and WERNER LEONHARDT

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Appeal No. 96-1548  
Application 08/288,127<sup>1</sup>

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HEARD: June 10, 1999

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Before PAK, WALTZ and KRATZ, **Administrative Patent Judges**.

WALTZ, **Administrative Patent Judge**.

#### DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's refusal to allow claims 11 through 24 as amended subsequent to the final rejection (see the amendment dated July 31, 1995, Paper No. 11, entered as per the Advisory Action dated Aug. 8, 1995, Paper No. 12). Claims 11 through 24 are the only claims remaining in this application.

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<sup>1</sup> Application for patent filed August 10, 1994.

According to appellants, the invention is directed to a process for blanching or cooking continuous strands of pasta dough by directing leading ends of the strands with water at a temperature sufficient to blanch or cook the strands into an inlet of a pipe which descends vertically from the inlet to an outlet end (Brief, page 3). Claim 11 is illustrative of the subject matter on appeal and is reproduced below:

11. A process for blanching or cooking pasta comprising:  
preparing a pasta dough;  
forming the dough into a plurality of continuous pasta dough strands;  
simultaneously directing leading ends of the continuous strands and water at a temperature sufficient to blanch or cook the strands into an inlet end of a pipe having a length which descends vertically from the inlet end to an outlet end, so that the water contacts the strands and draws and continuously conveys the strands through the length of the pipe, the continuous strands extending from the inlet to the outlet, for a time sufficient to blanch or cook the strands and so that the cooked or blanched strands and water exit from the pipe through the outlet end;  
conveying the cooked or blanched strands exiting the pipe away from the outlet end and draining and collecting water from the pipe and the strands as the strands are conveyed; and  
recirculating the drained and collected water to the pipe inlet end.



contacts the strands and draws and continuously conveys the strands through the length of the pipe".

Oki discloses a cooking process for pasta (noodles) where the raw materials along with warm water are poured into the inflow tank and heated while passing through the water conduit pipe by hot water around the pipes (Oki, page 6, "(Effect)"; page 8, last paragraph). Oki teaches that there is no direct heating of the warm water surrounding the noodles but the noodles are boiled and cooked in the boiling water conduit by the hot water in the water conduit tank (page 10). Oki does teach vertical flow (i.e., gravitational flow) from the inlet to the outlet end of the pipes (page 8, last paragraph, and Figure 1).

The examiner applies Ohki (cited by Oki as "Prior Art" at page 3) to show the cooking of pasta or noodles by conveying the hot water and noodles in cooking tubes (see the Final Rejection, page 2). However, Ohki does not disclose a vertical or gravitational flow of noodles and water but uses a vacuum pump to produce a partial vacuum to convey the noodles through the pipe structure (see Ohki, pages 2, 6 and 7). In fact, Ohki teaches away from the use of gravitational flow

Appeal No. 96-1548  
Application 08/288,127

because the flow speed of the water and noodles varies thus affecting the cooking time (Ohki, page 3).

"When relying on numerous references or a modification of prior art, it is incumbent upon the examiner to identify some suggestion to combine references or make the modification." *In re Mayne*, 104 F.3d 1339, 1342, 41 USPQ2d 1451, 1454 (Fed. Cir. 1997). See also *In re Dembiczak*, \_\_\_ F.3d \_\_\_, \_\_\_, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998). We determine that the examiner has not identified any reason, suggestion or motivation to combine the teachings of Oki and Ohki in the manner proposed (see the Brief, page 8, and the Answer, page 3). The examiner fails to present reasoning or explanation why one of ordinary skill in the art at the time of appellants' invention would have been motivated to use boiling water *inside* the pipes to cook the noodles, as taught by Ohki, with the boiling apparatus of Oki where only warm water is initially used with the noodles in the pipes (see the paragraph bridging pages 2-3 of the Final Rejection). There is also no reasoning or explanation by the examiner supporting the proposed combination of references in light of the

Appeal No. 96-1548  
Application 08/288,127

teaching by Ohki of the disadvantages of a gravitational flow apparatus similar to the apparatus disclosed by Oki. For the foregoing reasons, we determine that the examiner has failed to establish a *prima facie* case of obviousness in view of the applied prior art. Accordingly, the

rejection of claims 11-24 under 35 U.S.C. § 103 as unpatentable over Oki in view of Ohki is reversed.

The decision of the examiner is reversed.

**REVERSED**

CHUNG K. PAK )  
Administrative Patent Judge )  
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THOMAS A. WALTZ )  
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