



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/694,126	09/01/2017	Roberta M. Langenfeld	8385US01	4005
106306	7590	08/08/2022	EXAMINER	
DIEDERIKS & WHITELOW, PLC 4196 Merchant Plaza, #815 Woodbridge, VA 22192			LEBLANC, KATHERINE DEGUIRE	
			ART UNIT	PAPER NUMBER
			1791	
			NOTIFICATION DATE	DELIVERY MODE
			08/08/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gmi.mail@dwpatentlaw.com
mail@dwpatentlaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERTA M. LANGENFELD, ANNA GALE,
BENJAMIN R. HEYDA, and CRAIG E. GUSTAFSON

Appeal 2021-004075
Application 15/694,126
Technology Center 1700

Before CATHERINE Q. TIMM, GEORGE C. BEST, and
N. WHITNEY WILSON, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–13, 21, and 22. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as General Mills, Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a method of producing rolled food products. Claim 1, reproduced below with the key limitation italicized, illustrates the method:

1. A method of producing rolled food products, the method comprising:

cutting a dough sheet to form a roll sheet having a continuous pattern, wherein the pattern is comprised of *an asymmetrical repeat unit*;

transporting the roll sheet in a first direction with a conveyor system;

rolling the roll sheet in a second direction to form a continuous roll, wherein the second direction is not parallel to the first direction; and

cutting the continuous roll to form a plurality of rolls, wherein each of the plurality of rolls is asymmetrical.

Appeal Br. 13 (Claims App.) (emphasis added).

REFERENCES

The Examiner relies on the following prior art:

Name	Reference	Date
Wolf	US 4,526,795	July 2, 1985
Thorson	US 6,227,087 B1	May 8, 2001
Mel	How to: Shape Crescent Rolls, Mel and Boys Kitchen.com/2013/02/04/to-shape-crescent-rolls/	Feb. 4, 2013

REJECTIONS

The Examiner maintains the following rejections:

1. The rejection of claims 1–8, 11–13, 21, and 22 under 35 U.S.C. § 103 as being unpatentable over Wolf in view of Mel.
2. The rejection of claims 9 and 10 under 35 U.S.C. § 103 as being unpatentable over Wolf in view of Mel further in view of Thorson.

OPINION

The dispositive question in this appeal is: Has Appellant identified a reversible error in the Examiner’s finding of a suggestion in Mel to cut Wolf’s dough into a continuous pattern of asymmetrical repeat units?

Appellant has identified such an error, leading to our reversal of the rejections.

Wolf teaches a method of producing rolled food products, particularly, croissants. Wolf col. 1, ll. 6–9. The method is depicted in Wolf’s Figures 1 and 2. The method involves continuously conveying dough sheet 16 past angularly disposed blades that cut the dough sheet 16 in a zigzag pattern as shown in Figure 2 to form dough ribbons 22. Wolf col. 2, ll. 32–47. After filling material 34 is deposited onto dough ribbons 22, curling plows 26 and 38 roll the dough ribbons 22 as shown in Figure 4. Wolf col. 2, l. 67–col. 3, l. 10.

As acknowledged by the Examiner, Wolf’s zigzag cutting pattern has a symmetrical repeat unit, not an asymmetrical repeat unit. Final Act. 3. Thus, the Examiner turns to Mel’s teaching of making homemade crescent rolls. *Id.*

Mel discloses a method of rolling dough into a circle, cutting the dough into triangles, as you would a pizza, and rolling the triangles to form the crescent rolls. After describing the cutting step, Mel states: “Now don’t worry if you [sic] triangles aren’t all perfect. That is something special about home cooking—it is not all perfect and rigid.” Mel Step 2. Based on this statement, the Examiner concludes “it would have been obvious to form the triangles and subsequently the rolls of Wolf as slightly asymmetrical in order to create a ‘homemade’ appearance that is special and pleasing to consumers.” Final Act. 4.

The Examiner’s rationale is insufficient. At best, Mel suggests random variations, not asymmetrical repeat units as required by claim 1. Thus, we agree with Appellant that “even if Wolf were to be modified by [Mel], the resulting arrangement would not meet the claim limitations” and given that Mel equates the homemade look to imperfection, Mel “is directly contrary to the Examiner’s conclusion that all the produced rolls would be the same and have the same asymmetry.” Appeal Br. 6–7 (underlining omitted).

The Examiner further determines that “it would have been obvious to adjust the shape and symmetry of the rolls depending on the appearance desired in the final product” because “[a]bsent a demonstration of criticality, changes in size or shape do not patentably distinguish the claimed invention from the prior art.” Final Act. 4 (citing MPEP § 2144.04(IV)(B)).

MPEP § 2144.04(IV)(B) cites *In re Dailey*, 357 F.2d 669 (CCPA 1966) as holding that “the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious *absent persuasive evidence that the*

particular configuration of the claimed container was significant.”

(Emphasis added).

In *Dailey*, a prior art reference to Matzen disclosed a collapsible container with a flexible portion that could be drawn into a rigid top portion as required by the claim, but the configuration was not “a portion of a sphere less than a hemisphere” as further required by the claim. *In re Dailey*, 357 F.2d 669, 670 (CCPA 1966). The court held that:

Appellants have presented no argument which convinces us that the particular configuration of their container is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the collapsed container of Matzen.

In re Dailey, 357 F.2d at 672–73.

In contrast to *Dailey*, Appellant has provided evidence that their asymmetrical repeating unit is significant to the invention and is more than one of the numerous configurations a person of ordinary skill in the art would find obvious for the purpose of forming rolled dough products. As stated by Appellant,

the goal of the current invention is to produce rolls that look symmetric despite the steps used to produce the rolls. As stated above, due to the shape of roll sheets 131-136 and the angled rolling performed by torpedo rollers 175-180, **each of crescent rolls 190 has a different amount of dough at each end while still retaining a symmetrical outer appearance.** Regardless, the claimed shape of the roll is important for the reasons set forth in the specification and one would not make a large number of rolls with the same asymmetry to obtain a homemade look. Simply put, the prior art does not address the invention as disclosed and, correspondingly, as claimed - when the claims are properly interpreted consistent with the written description.

Appeal Br. 7; *see also* Spec. ¶ 21.

The Examiner would require Appellant to show that the change is “unexpected.” Ans. 10. But *Dailey* does not stand for the proposition that Appellant must demonstrate the criticality of the change in shape for unexpected results. When, as here, there is no suggestion within the prior art for changing the shape to any asymmetrical repeating unit shape, Appellant need only provide evidence that the change in shape is significant to the invention. Appellant has provided evidence of this significance and the Examiner has not adequately rebutted that evidence.

Under these circumstances and given the foregoing deficiencies in the Examiner’s prior art evidence, the asymmetrical repeating unit shape required by claim 1 cannot be dismissed as an obvious matter of design choice.

CONCLUSION

The Examiner’s rejections are reversed.

DECISION SUMMARY

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1–8, 11–13, 21, 22	103	Wolf, Mel		1–8, 11–13, 21, 22
9, 10	103	Wolf, Mel, Thorson		9, 10
Overall Outcome				1–13, 21, 22

REVERSED