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16/220,492	12/14/2018	Sandeep Bhatnagar	16278-US-NP	8312
69099	7590	08/18/2022	EXAMINER	
Nestle Purina Petcare Global Resources, Inc Checkerboard Square Intellectual Property Patents ST. LOUIS, MO 63164			MOORE, WALTER A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SANDEEP BHATNAGAR

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Appeal 2022-001506  
Application 16/220,492  
Technology Center 3600

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Before JENNIFER D. BAHR, PHILLIP J. KAUFFMAN, and  
SEAN P. O’HANLON, *Administrative Patent Judges*.

O’HANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner’s decision to reject claims 1–5 and 7–13.<sup>2</sup> We have jurisdiction over this appeal under 35 U.S.C. § 6(b). We REVERSE.

In explaining our Decision, we refer to the Specification filed December 14, 2018 (“Spec.”), the Final Office Action mailed May 12, 2021

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<sup>1</sup> We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Société des Produits Nestlé S.A. Appeal Br. 3.

<sup>2</sup> Claim 6 is canceled. Appeal Br. 24 (Claims App.).

(“Final Act.”), the Appeal Brief filed October 11, 2021 (“Appeal Br.”), and the Examiner’s Answer mailed November 18, 2021 (“Ans.”).

### SUMMARY OF THE INVENTION

Appellant’s claimed invention relates to systems for preserving lean body mass and maintaining high energy expenditure during weight loss.

Spec. ¶ 1.<sup>3</sup> Claim 1, the sole independent claim, is reproduced below from page 23 (Claims Appendix) of the Appeal Brief:

1. A system for providing a health benefit to a companion animal comprising:
  - a maintenance pet food comprising fat, protein, and carbohydrates, wherein the maintenance pet food is complete and balanced and has a density ranging from 400 g/l to 600 g/l; and
  - a reduced caloric pet food comprising fat, protein, and carbohydrates, wherein the reduced caloric pet food is complete and balanced and has a density ranging from 300 g/l to 450 g/l; wherein the reduced caloric pet food has a caloric content of 50% to 90% of the maintenance pet food in about the same volume and wherein the reduced caloric pet food has a density of 70% to 85% of the maintenance pet food.

### REFERENCES

The Examiner relies on the following prior art references in rejecting the claims on appeal:

Pan	US 2014/0056851 A1	Feb. 27, 2014
Jewell	US 2015/0313261 A1	Nov. 5, 2015
Gumudavelli	US 2015/0374014 A1	Dec. 31, 2015
Mao	US 2016/0235094 A1	Aug. 18, 2016
Flanagan	US 2018/0078214 A1	Mar. 22, 2018

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<sup>3</sup> We refer to the second instance of paragraph 1.

Samuel Serisier et al., *Increasing Volume of Food by Incorporating Air Reduces Energy Intake*, Journal of Nutritional Science, Vol. 3, pages 1–5 (2014) (“Serisier”).

## REJECTIONS

- I. Claims 1–5, 7, 10, 11, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pan, Jewell, Mao, Serisier, and Gumudavelli.
- II. Claims 8, 9, and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pan, Jewell, Mao, Serisier, Gumudavelli, and Flanagan.

## ANALYSIS

### *Rejection I – Obviousness Based on Pan, Jewell, Mao, Serisier, and Gumudavelli*

In rejecting independent claim 1, the Examiner finds that Pan discloses a system that provides a health benefit to a companion animal comprising, in relevant part, a maintenance pet food and a reduced caloric pet food. Final Act. 3 (citing Pan ¶ 35). The Examiner finds that Pan does not disclose that the maintenance pet food has a density of 400–600 g/l and the reduced caloric pet food has a density of 300–450 g/l. *Id.* at 4. The Examiner finds that Mao teaches a pet food having density of 200–600 g/l. *Id.* (citing Mao ¶ 111). The Examiner determines that it would have been obvious to modify Pan’s system to have pet food with a “density in the range of 200–600 g/l because the pet food has significantly improved palatability.” *Id.* at 5 (citing Mao ¶ 21); *see also* Ans. 19 (“Mao discloses the pet food has significantly improved palatability.” (citing Mao ¶ 21)).

Appellant argues that the Examiner’s reasoning for the proposed combination of Pan and Mao is insufficient because the reasoning articulated

by the Examiner is not supported by Mao. Appeal Br. 14. For the reasons discussed below, we agree with Appellant.

Pan discloses a pet food kit comprising “a complete and balanced first food composition containing calories that meet an animal’s maintenance energy requirements” and “a complete and balanced second food composition containing calories that do meet the animal’s maintenance energy requirements.” Pan ¶ 35. Mao teaches that “[i]t is well-known in the art to incorporate palatability enhancing ingredients in dry pet food [products] to increase the palatability thereof and to make them more appealing to pets.” Mao ¶ 8. In particular, “palatability of certain dry pet food products can be improved significantly *by coating the food product with a covering layer that contains dry yeast extract, edible phosphate salt[,] and optionally other edible components.*” *Id.* ¶ 21 (emphasis added). Mao also teaches dry pet food having “a bulk density of 200–600 g/l, more preferably of 300–500 g/l and most preferably of 300–450 g/l.” *Id.* ¶ 111.

Here, the Examiner has not sufficiently articulated a rational evidentiary underpinning to explain why, given the teachings of Mao, one of ordinary skill in the art would have been prompted to modify the system of Pan so that the pet food has a density of 200–600 g/l. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”) (cited with approval in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). The Examiner relies on Mao’s disclosure in paragraph 21 to provide the rationale to modify the density of Pan’s pet food compositions. Final Act. 5 (citing Mao ¶ 21); Ans. 19 (citing same). As discussed above, however, Mao explicitly attributes the improvement in food product

palatability to a covering layer containing particular ingredients. Mao ¶ 21. Thus, based on Mao's disclosure, it appears that one of ordinary skill in the art seeking to improve palatability of pet foods would have been led to add Mao's palatability-enhancing covering layer to Pan's pet foods, but would not necessarily modify the density of the pet foods as proposed by the Examiner. The Examiner does not adequately explain *why*, based on the relied-upon disclosure of Mao, one of ordinary skill in the art would have been prompted to make the proposed modification to Pan's food composition density, and a reason for such modification is not otherwise evident from the record.

Accordingly, for the foregoing reasons, we do not sustain the rejection of claim 1, or its dependent claims 2–5, 7, 10, 11, and 13, as being unpatentable over Pan, Jewell, Mao, Serisier, and Gumudavelli.

*Rejection II – Obviousness Based on Pan, Jewell, Mao,  
Serisier, Gumudavelli, and Flanagan*

The Examiner's rejection of claims 8, 9, and 12, which depend from independent claim 1, relies on the same proposed combination of Pan, Jewell, Mao, Serisier, and Gumudavelli that we find deficient for the reasons discussed above in connection with Rejection I. *See* Final Act. 10–13. The Examiner relies on Flanagan to teach additional features, but does not articulate any findings or reasoning that would remedy the aforementioned deficiency in the combination of Pan, Jewell, Mao, Serisier, and Gumudavelli. *See id.* Accordingly, for the reasons discussed above, we do not sustain the rejection of claims 8, 9, and 12 as being unpatentable over Pan, Jewell, Mao, Serisier, Gumudavelli, and Flanagan.

CONCLUSION

In summary,

<b>Claim(s) Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-5, 7, 10, 11, 13	103	Pan, Jewell, Mao, Serisier, Gumudavelli		1-5, 7, 10, 11, 13
8, 9, 12	103	Pan, Jewell, Mao, Serisier, Gumudavelli, Flanagan		8, 9, 12
<b>Overall Outcome</b>				1-5, 7-13

REVERSED