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Paper 24
Entered: August 17, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTIF FOODWORKS, INC.,
Petitioner,

v.

IMPOSSIBLE FOODS, INC.,
Patent Owner.

IPR2023-00207
Patent 11,224,241 B2

Before DONNA M. PRAISS, CHRISTOPHER M. KAISER, and JEFFREY W. ABRAHAM, *Administrative Patent Judges.*

KAISER, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Motif FoodWorks, Inc. ("Petitioner") filed a corrected petition for an *inter partes* review (Paper 6 ("Pet.")) challenging claims 1–23 of U.S. Patent No. 11,224,241 B2 (Ex. 1001 ("the '241 patent")). Impossible Foods, Inc. ("Patent Owner") filed a Preliminary Response. Paper 7 ("Prelim. Resp."). At the Board's request, the parties also filed briefs regarding Patent Owner's request to file a petition for a certificate of correction for the '241 patent. Paper 8, 10. We determined that the information presented in the Petition did not establish a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims, and, accordingly, we did not institute an *inter partes* review. Paper 22 ("Dec."). Following our denial of institution, Petitioner filed a Request for Rehearing. Paper 23 ("Req. Reh'g"). We have considered Petitioner's Request for Rehearing and, for the reasons set forth below, we deny the requested relief.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that a decision should be modified. 37 C.F.R. § 42.71(d). The party must identify all matters it believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* When rehearing a decision on petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a "decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted).

III. DISCUSSION

Petitioner requests rehearing of our denial of institution, arguing that we abused our discretion in one respect. Req. Reh'g 1–12. We consider Petitioner's argument below.

A. The Decision on Institution

Petitioner challenged claims 1–23 of the '241 patent on eleven grounds. Dec. 4–5. Three of those grounds relied on a combination of two references, Brown and Giacino. *Id.* at 9–17. Upon considering these three grounds, we determined that Petitioner had not "shown sufficiently that a person of ordinary skill in the art would have been motivated to modify Brown by adding to it Giacino's composition." *Id.* at 12–17. In addition, we determined that Petitioner had not shown sufficiently that Brown alone taught or suggested the claim limitations reciting "[a] meat-like-food product produced by a method comprising . . . combining, with . . . one or more plant proteins . . . a compound selected from cysteine, cystine, thiamine, methionine, and mixtures of two or more thereof in a concentration of at least 1.5 mM" and "[a] meat-like-food product produced by a method comprising . . . combining, with . . . one or more plant proteins . . . one or more of cysteine, cystine, thiamine, and methionine." *Id.* at 10–12. This was based on our determination that Petitioner relied on the same element, Brown's pea flour, to teach or suggest both these limitations and the limitation requiring that "one or more plant proteins" be provided as a step in the claimed method. *Id.*

B. Petitioner's Argument on Rehearing

In its Request for Rehearing, Petitioner argues that we abused our discretion by overlooking an argument made in the Petition. Req. Reh'g 5–11. Specifically, Petitioner argues that we incorrectly determined that

Petitioner relied on Brown's pea flour to teach or suggest the limitation requiring that one or more plant proteins be provided as a step in the claimed method, because Petitioner in fact presented separate, alternative arguments for Brown teaching or suggesting the "one or more plant protein" limitation. *Id.*

With respect to Brown teaching or suggesting that one or more plant proteins be provided as a step in the claimed method, the Petition made the following argument:

> Brown's muscle replica comprises "pea flour," which contains pea protein, *i.e.* a plant protein. EX1012, [00364]; EX1067(Meng), 235-236; EX1003(Tarte), ¶¶140-41. Brown also discloses that "any of the…muscle tissue replica[s]" comprise a "protein component" such as "the 8S globulin from Moong bean seeds, or the albumin or globulin fraction of pea seeds," *i.e.*, plant proteins. EX1012, [00299], [00307]; EX1003(Tarte), ¶142.

Pet. 28. Petitioner argues on rehearing that this paragraph represents two separate, alternative arguments: one argument that Brown teaches pea flour as a way of providing plant proteins and a separate argument that Brown teaches the use of "one or more isolated, purified proteins" as a way of providing plant proteins. Req. Reh'g 7. According to Petitioner, if a person of ordinary skill in the art had relied on Brown's isolated, purified proteins to teach or suggest providing plant proteins, then the reliance on Brown's pea flour to teach or suggest combining cysteine, cystine, or methionine with the plant proteins would not rely on the same element of Brown to teach or suggest both limitations. *Id.* at 9. Thus, argues Petitioner, had we not overlooked this alternative argument, we would not have determined that Petitioner had failed to show a reasonable likelihood of prevailing on its

argument that some claims would have been obvious over Brown. *Id.* at 9–12.

C. Analysis

We are not persuaded that we overlooked an alternative argument in the Petition that Brown taught or suggested using only isolated protein components from Moong bean or pea seeds to provide plant proteins, leaving pea flour to be added later as a means of providing additional amino acids.

First, the Petition does not make clear that Brown's pea flour and Brown's isolated protein components are alternative ways of providing plant proteins, as opposed to two parts of a single method of providing the proteins. The Petition merely states that "Brown's muscle replica comprises 'pea flour'" and that "Brown also discloses that 'any of the…muscle tissue replica[s]' comprise a 'protein component.'" Pet. 28 (quoting Ex. 1012 ¶¶ 299, 307, 364). There is no explanation of why these should be considered alternative protein-supply methods. *Id.*

Second, even if Petitioner had argued that Brown's dual protein sources should be considered alternatives rather than supplementary, the present record would not support such an argument. The cited portions of Brown make clear that much of the "protein component" of Brown's "meat substitute products" or "muscle replica[s]" may be composed of "isolated, purified proteins," but Brown does not teach that all of the "protein component" may be composed of "isolated, purified proteins." Ex. 1012 ¶¶ 299, 307 ("about 0.1%, 0.2%, 0.5%, 1%, 2%, 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 55%, 60%, 65%, 70%, 75%, 80%, 85%, 90%, 95%, 99% or more of the protein component is comprised of one or more isolated, purified proteins"). Similarly, relying on

the isolated, purified protein components of paragraphs 299 and 307 of Brown, Rodrigo Tarté, Ph.D., Petitioner's declarant, testifies that a person of ordinary skill in the art "would [have understood] that Brown teaches the muscle replica from [Brown's paragraph 364 could] further include a bean seed or pea seed protein component." Ex. 1003 ¶ 142. This is consistent with Brown teaching or suggesting a muscle replica that contains both pea flour (taught in paragraph 364) and isolated proteins (taught in paragraphs 299 and 307), but it is not consistent with Brown teaching or suggesting that the isolated proteins can be used by themselves as the entire protein component of the muscle replica.

Thus, the Petition did not contain an argument that Brown taught two alternative methods for supplying plant proteins to a muscle replica, and the record did not support any such argument. We could not have overlooked an argument that was neither made by Petitioner nor supported by the record. Accordingly, we are not persuaded that we abused our discretion by overlooking the argument that Petitioner argues we overlooked.

IV. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated that the Board abused its discretion in any respect in declining to institute an *inter partes* review of claims 1–23 of the '241 patent.

V. ORDER

It is hereby

ORDERED that the Request for Rehearing is *denied*.

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