

Decision on Opposition

Opposition No. 2015-700019

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The case of the Opposition to the patents according to Claims 1 to 9 of Patent No. 5694588 titled "PROCESSED FOOD AND DRINK AND PACKED DRINK" has resulted in the following decision.

Conclusion

The specification and the scope of claims of Patent No. 5694588 shall be corrected with respect to Claims 1 to 9 after the correction as per the corrected specification and the corrected scope of claims attached to the written correction request.

The patents according to Claims 1 to 9 of Japanese Patent No. 5694588 should be revoked.

Reason

No. 1 History of the procedures

The application with respect to the patents according to Claims 1 to 9 of Patent No. 5694588 (hereinafter referred to as "the Patent") was granted a patent on February 13, 2015, which was followed by the Opposition to the grant of the patent by the Opponent Kawada Mai, and a reason of revocation was notified on December 8, 2015. On February 9, 2016, within a designated time limit, a written opinion and a demand for correction were submitted by Patentee. Thereafter, the Opponent submitted a written opinion on March 15, 2016, and a reason for revocation was notified (preliminary notice of decision) on May 6, 2016, and a written opinion was submitted by Patentee on June 14, 2016, within the designated time limit.

No. 2 Request for correction

1 Contents of correction

The request for correction by the written correction request on February 9, 2016 seeks "to correct the specification and the scope of claims of Patent No. 5694588 with respect to Claims 1 to 9 after the correction as per the corrected specification and the corrected scope of claims attached to the written correction request". The content of the correction (hereinafter referred to as "the Correction") corrects as per the specification and the scope of claims attached to the application according to the Patent (underlined by the corrected portion).

(1) Correction A (the correction for a unit of claims consisting of Claims 1 to 9)

"The proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 25 weight% or less" of Claim 1 of the scope of claims is corrected to "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 5 weight% or more to 25 weight% or less".

(The same can apply to Claims 2 to 9 that depend from Claim 1.)

(2) Correction B (the correction for a unit of claims consisting of Claims 1 to 9)

"The proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 25 weight% or less" of paragraph [0008] of the specification attached to the application is corrected to "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 5 weight% or more to 25 weight% or less".

2 Suitability of correction

(1) Correction A

The above Correction A corrects "The proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 25 weight% or less" before the correction without specifying a lower limit of the numerical range to "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 5 weight% or more to 25 weight% or less", which specifies the lower limit as 5 weight%, and restricts the scope of claims. Thus Correction A is intended to restrict the scope of the claims as specified in item (i) of the proviso to Article 120-5(2) of the Patent Act.

Further, Correction A neither expands nor changes the scope of the claims, and thus conforms to the provision of Article 126(6) of the Patent Act as applied *mutatis mutandis* to Article 120-5(9) of the Patent Act.

Further, the matters described in the above Correction A are based on the description of "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter (hereinafter referred to as the 'second insoluble solid content') is preferably 50 weight% or less, more preferably 30 weight% or less, further preferably 25 weight% or less." of paragraph [0042] of the patent specification and based on the fact that the upper limit of the proportion of the second insoluble solid content of Examples A1 to A3, B1 to B5, C1 to C2 is 25 weight%, whereas the lower limit is 5 weight% for Example C2 in the examples described in [Fig. 1], supposing that "sensory test comprehensive evaluation" is "Excellent (Extremely superior in suitability as a product; specifically, roughly filtered texture and vegetable and fruit flavors rank 4 or more, and easy to drink ranks 5)" or "Good (superior in suitability as a product; specifically, roughly filtered texture and vegetable and fruit flavors rank 5 and easy to drink ranks 3 or more, or roughly filtered texture and vegetable and fruit flavors rank 3 or more, and easy to drink ranks 4 or more.)" Thus Correction A has been made within the scope of matters described in the specification, the claims, or drawings attached to the application, and thus it conforms to the provision of Article 126(5) of the Patent Act as applied *mutatis mutandis* pursuant to Article 120-5(9) of the Patent Act.

(2) Correction B

Correction B corrects "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 25 weight% or less" of paragraph [0008] of the specification attached to the application to "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes

through a 16 mesh sifter is 5 weight% or more to 25 weight% or less" in accordance with Correction A for the purpose of harmonizing the recitation of the scope of the claims and the description of the Detailed Description of the Invention. Thus it is intended for the clarification of ambiguous statement as provided in the item (iii) of the proviso to Article 120-5(2) of the Patent Act.

Further, Correction B neither expands nor changes the scope of the claims, and thus conforms to the provision of Article 126(6) of the Patent Act as applied mutatis mutandis to Article 120-5(9) of the Patent Act.

Further, as shown in the above (1), the above Correction B has been made within the scope of matters described in the specification, the claims, or drawings attached to the application, and thus it conforms to the provision of Article 126(5) of the Patent Act as applied mutatis mutandis pursuant to Article 120-5(9) of the Patent Act.

3 Summary

Therefore, the Correction is aiming at the matters listed in items (i) and (iii) of the proviso to Article 120-5(2) of the Patent Act, and conforms to the provision of Articles 126(5) or (6) of the Patent Act as applied mutatis mutandis pursuant to Article 120-5(9) of the Patent Act. Therefore, the correction should be accepted for a unit of claims consisting of Claims 1 to 9 after the Correction.

No. 3 The Patent Invention

As aforementioned, the correction was accepted. Thus the inventions according to Claims 1 to 9 of the Patent should be specified by the matters recited in Claims 1 to 9 of the corrected scope of claims as set forth below:

"[Claim 1]

Processed food and drink comprising insoluble solid content obtained by grinding vegetables or fruits, wherein the proportion of said insoluble solid content that does not pass through a 16 mesh sifter but passes through a 6.5 mesh sifter is 10 weight% or more, wherein the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 5 weight% or more to 25 weight% or less.

[Claim 2]

The processed food and drink of Claim 1, wherein the proportion of said insoluble solid content that does not pass through a 10 mesh sifter but passes through a 6.5 mesh sifter is 10 weight% or more.

[Claim 3]

The processed food and drink of Claim 1 or Claim 2, wherein the content of beta-carotene is 100 microgram or more to 20000 micrograms or less per 100 grams.

[Claim 4]

The processed food and drink of any one of Claim 1 to Claim 3, wherein the content of food fibers is 0.5 gram or more per 100 grams.

[Claim 5]

The processed food and drink of any one of Claim 1 to Claim 4, wherein the content of lycopene is 15 milligrams or less per 100 grams.

[Claim 6]

The processed food and drink of any one of Claim 1 to Claim 5, wherein the content of potassium is 100 milligrams or more to 1000 milligrams or less per 100 grams.

[Claim 7]

The processed food and drink of any one of Claim 1 to Claim 6, wherein the content of glutamic acid is 0.280 weight% or less.

[Claim 8]

The processed food and drink of any one of Claim 1 to Claim 7, comprising vegetable juice and/or fruit juice.

[Claim 9]

A packaged beverage in which the processed food and drink of any one of Claim 1 to Claim 8 is filled into a container."

No. 4 Summary of reasons for revocation

The outline of reasons for refusal notified by the body on December 8, 2015 is set forth below.

[Reason 1]

It is not recognized that, regarding "the proportion of insoluble solid content" of the inventions according to Claims 1 to 9 of the Patent, in the Detailed Description of the Invention of the Patent, the measurement method of "the proportion of insoluble solid content" is not definitely and sufficiently described to such an extent that allows a person skilled in the art to implement the inventions according to Claims 1 to 9.

Therefore, the Detailed Description of the Invention of the Patent does not satisfy the requirement of Article 36(4)(i) of the Patent Act.

[Reason 2]

The inventions according to Claims 1 to 9 of the Patent fail to specify the nature of "proportion of insoluble solid content", and thus are indefinite.

Therefore, the recitation of the scope of claims of the Patent does not satisfy the requirement of Article 36(6)(ii) of the Patent Act.

[Reason 3]

The inventions according to Claims 1 and 9 of the Patent are identical to inventions described in publications which had been distributed (the following Cited Documents) in Japan or any other foreign countries before the filing, and thus correspond to Article 29(1)(iii) of the Patent Act and are not patentable.

[Reason 4]

The inventions according to Claims 1 to 9 of the Patent are easily conceivable by a person skilled in the art on the basis of an invention described in the publication that had been distributed in Japan or foreign country before the filing (the following cited document). Thus these inventions are not patentable under the provision of Article 29(2) of the Patent Act.

Cited Documents: Patent No. 5411996 (Evidence A No. 2)

No. 5 Determination about reasons for revocation

1 Reason 1

(1) Regarding the measurement method of "proportion of insoluble solid content", the patent specification has the following descriptions (underlined by the body.).

A "[0035]

The insoluble solid content of the present invention is as per the component other than soluble solid content of vegetables or fruits such as carrots and pineapples. The particle distribution is set forth as below.

[0036]

In the whole processed food and drink of the present invention, the proportion of said insoluble solid content that does not pass through a 16 mesh sifter but passes through a 6.5 mesh sifter (hereinafter referred to as the first insoluble solid content) is 10 weight% or more. Mesh is a number showing the number of meshes at an interval of one inch (2.54 cm). A wire diameter and an opening width are prescribed by JIS standard. Insoluble solid content may be measured in compliance with the measurement method of a solid content of an enoki mushroom can or enoki mushroom bottle of JAS.

Specifically, a 100 gram sample for measurement is diluted with 200 grams of water, and uniformly spread on a sifter with each mesh size such as a 16 mesh sifter, and a residue weight on each sifter after leaving to stand for 10 minutes is represented by a weight percent, which value is defined as insoluble solid content having a roughly filtered texture of the present invention. At this time, a 10 mesh sifter may be used solely or in combination with a 16 mesh sifter, etc. Since a residue on a 10 mesh sifter has a larger insoluble solid content compared to a residue on a 16 mesh sifter, one can definitely recognize its roughly filtered texture, vegetable feeling, and fruity feeling. In this regard, the roughly filtered texture that can be felt may be affected to some extent by hardness and water content of vegetables or fruits themselves to be used as well as heat treatment resistance such as sterilization. However, insoluble solid content that passes through a sifter with a mesh size of 20 mesh or less has insufficient roughly filtered texture, rather makes us experience viscosity, thick, or a gooey feeling, which is not encompassed into the roughly filtered texture of the present invention.

[0037]

The sifter used may install a mesh prescribed in JIS standard. For example, a cylindrical sifter, etc. with a diameter of 10 centimeters and a depth of 4.5 centimeters, may be used, and a diameter and a depth of sifter may be increased or decreased as necessary so long as insoluble solid content can be measured. However, insoluble solid content needs to have a mesh area to the extent that it is uniformly spread over a mesh. Unless it deposits on the mesh to 5 millimeter thickness or less, it cannot be measured with good reproducibility.

[0038]

A residue on the sifter basically consists of insoluble solid content. In a case where 3-times dilution of a sample with water as aforementioned has a viscosity, in some cases even an insoluble solid content finer than a mesh opening may remain on a sifter. In such a case, it is necessary to perform water washing as necessary and accurately measure the insoluble solid content having a size corresponding to a mesh opening."

B "[0088]

[Test example 1]

Regarding each of examples and comparative examples, the proportion of insoluble solid content was measured. Specifically, sifters of 6.5 mesh, 10 mesh, 16 mesh, 20 mesh, and 35 mesh were disposed in series in this order from the top. Each 100 g of examples and comparative examples was mixed with 200 g water and screened by these sifters. After leaving to stand for 10 minutes, (1) the residue that does not pass

through the 10 mesh sifter but passes through the 6.5 mesh sifter, (2) the residue that does not pass through the 16 mesh sifter but passes through the 10 mesh sifter, (3) the residue that does not pass through the 20 mesh sifter but passes through the 16 mesh sifter, and (4) the residue that does not pass through the 35 mesh sifter but passes through the 20 mesh sifter were measured, respectively. Further, a proportion of each of (1) to (4) to the total amount of examples and comparative examples used in the test (100 g in this case) was regarded as a proportion of insoluble solid content. For example, in Example A1, (1) had the proportion of insoluble solid content of 75 weight%, (2) had 8 weight%, (3) had 4 weight%, and (4) had 8 weight%."

(2) Judgment

According to the description of "In a case where 3-times dilution of sample with water as aforementioned has a viscosity, in some cases even an insoluble solid content finer than a mesh opening may remain on a sifter. In such a case, it is necessary to perform water washing as necessary and accurately measure the insoluble solid content having a size corresponding to a mesh opening" of the above paragraph [0038], the criteria for the determination of whether or not "has a viscosity" is required in measuring insoluble solid content. Further, with regard to the degree of "water washing properly", the identification of some sort of procedures, etc. becomes necessary.

However, the patent specification fails to disclose the criteria for having a viscosity or the criteria for the necessity of water washing.

It is obvious from the composition of processed foods and drinks that the processed food and drink of the inventions according to Claims 1 to 9 of the Patent have some degree of viscosity. Unless the criteria for "having a viscosity" is disclosed, a person skilled in the art could not determine the necessity of subsequent water washing.

Further, even in a case where it is determined that water washing is necessary, a person skilled in the art could easily imagine that the measurement result would greatly vary depending on the procedures of water washing. However, it is not at all disclosed the procedures in which water washing is implemented (e.g. with what amount of water or with what degree of water flow, etc. water washing is implemented).

Therefore, the Detailed Description of the Invention of the patent specification is in such a condition that could not allow a person skilled in the art to properly reproduce the measurement method of "the proportion of insoluble solid content" of the inventions according to Claims 1 to 9 of the Patent.

Therefore, it is not recognized that the Detailed Description of the Invention of the patent specification is definitely and sufficiently described to such an extent that

allows a person skilled in the art to implement the inventions according to Claims 1 to 9 of the Patent, nor does it satisfy the requirement of Article 36(4)(i) of the Patent Act.

(3) Patentee's allegation

A Regarding the above (2), Patentee alleges as follows:

"The specification describes 'as necessary, after washing with water, the proportion of insoluble solid content is measured'" (paragraph 0038). The criteria for the determination of the necessity of water washing is unclear, and thus infeasible.

However, paragraph 0037 describes "unless insoluble solid content deposits on the mesh to 5 millimeter thickness or less, it cannot be measured with good reproducibility.". In other words, it is sufficient if insoluble solid content on the mesh is 5 millimeter thickness or less.

Therefore, a person skilled in the art can presume from the description that a thickness of 5 millimeters or more has some degree of viscosity even if the degree of viscosity is unknown, and can determine that water washing becomes necessary. Further, regarding the degree of water washing, it can be seen from the above description that it is sufficient that the thickness of insoluble solid content becomes 5 millimeter or less.

As seen above, the Detailed Description of the Invention of the present application definitely describes the criteria for the determination of the necessity of water washing. Therefore, the Detailed Description of the Invention discloses definitely and sufficiently to the extent that allows a person skilled in the art to implement the invention." (Written Opinion on February 9, 2016, page 7, lines 1 to 15)

As pointed out in the above "(1)A", however, the description of "unless insoluble solid content on the mesh becomes 5 millimeter thickness or less, it cannot be measured with good reproducibility." of [0037] is followed by a description of a sifter to be used: "Sifter used may install a mesh prescribed in JIS standard. For example, a cylindrical sifter etc. with a diameter of 10 centimeters and a depth of 4.5 centimeters may be used and, a diameter and a depth of sifter may be increased or decreased as necessary so long as insoluble solid content can be measured." of the same paragraph. As contemplated from the description, the same paragraph explains that for the measurements of insoluble solid content with good reproducibility, a mesh area is required to the extent that allows an insoluble solid content to uniformly spread on a mesh, and the insoluble solid content on the mesh is required to have a thickness of 5 millimeter or less, and thus a sifter with a diameter and a depth is selected as necessary. It is

obviously irrelevant to the fact that water washing is required depending on the viscosity of residues on a sifter.

Further, the remaining descriptions of the patent specification fail to disclose the criteria for "having a viscosity" or the criteria for the necessity of water washing with respect to the residues on a sifter.

Therefore, the Patentee's allegation is not reasonable, and thus not acceptable.

B Further, regarding the above (2), Patentee alleges as follows:

"First, the finding that 'according to the description of the above paragraph 0038, the judgment criteria for whether or not an insoluble solid content has a viscosity is required' is erroneous. The description of paragraph 0038 mentions that 'Insofar as insoluble solid content has a viscosity, even an insoluble solid content finer than a mesh opening may remain on a sifter'. Specifically, the description specifies 'the case where an insoluble solid content having a size that should originally pass through remains on a sifter'. Thus it is unnecessary to determine viscosity.

Specifically, it is obvious that a person skilled in the art should recognize that that 'the judgment criteria for whether or not to implement water washing is 'the case where an insoluble solid content having a size that should originally pass through remains on a sifter'"

Further, it is obvious to a person skilled in the art that the description that 'in such a case, it is necessary to subject to water washing as necessary and accurately measure the insoluble solid content having a size corresponding to a mesh opening.' means that 'a residue remaining on a sifter even if an insoluble solid content is finer than a mesh opening was washed off as necessary to accurately measure the insoluble solid content having a size corresponding to a mesh opening.' Therefore, a person skilled in the art can implement water washing with a proper amount of water and a proper water flow.

As aforementioned, the Detailed Descriptions of the Invention of the patent specification describes the judgment criteria for whether or not to implement water washing, and describes the degree of water washing, and thus it allows a person skilled in the art to properly reproduce the measurement method of the proportion of insoluble solid content." (Written Opinion on June 14, 2016, page 3, line 14 to page 4, line 4)

However, the description that "in a case where 3-times dilution of sample with water as aforementioned has a viscosity" of the paragraph [0038] can be recognized as per the description. Further, a person skilled in the art needs to determine whether or not a sample "has a viscosity" according to the description, whereas the patent

specification fails to disclose the judgment criteria of whether or not "has a viscosity" in measurement of insoluble solid content, as shown in the above (2).

Therefore, the description of the aforementioned "has a viscosity" may be recognized literally. Thus the patentee's allegation of the description being construed as "the case where an insoluble solid content having a size that should originally pass through remains on a sifter" is not reasonable, and not acceptable.

Further, if the description of the above "has a viscosity" should be construed as "the case where an insoluble solid content having a size that should originally pass through remains on a sifter" as Patentee alleges, it remains unchanged that judgment criteria not disclosed in the patent specification are required to determine whether or not a sample might be in such a condition.

Further, regarding the description that "In such a case, it is necessary to subject to water washing as necessary and accurately measure the insoluble solid content having a size corresponding to a mesh opening." of paragraph [0038], even if it means "a residue remaining on a sifter even if an insoluble solid content is finer than a mesh opening was washed off as necessary to accurately measure the insoluble solid content having a size corresponding to a mesh opening" as Patentee alleges, and water washing could be implemented with a proper amount of water and a proper water flow, the procedure is considerably different from the measurement procedure in compliance with the measurement method of solid content of an enoki mushroom can or enoki mushroom bottle of JAS of the paragraph [0036]; i.e. a 100 gram sample for measurement is diluted with 200 grams of water, and uniformly spread onto a sifter of each mesh size such as a 16 mesh sifter, and left for 10 minutes. A person skilled in the art could easily imagine that a measurement result might be greatly varied depending on whether or not the procedure is additionally implemented. Thus, unless the judgment criteria for whether or not to additionally implement the procedure are clarified, a person skilled in the art could not properly reproduce the measurement method of the proportion of insoluble solid content.

Therefore, the Patentee's allegation is not reasonable, and thus not acceptable.

2 Reason 2

As discussed in the above "Reason 1", "the proportion of insoluble solid content" of Claim 1 of the Patent does not allow a person skilled in the art to properly reproduce the measurement method, which as a result makes it difficult to determine what is specified as "the proportion of insoluble solid content", which makes the invention to be specified indefinite. The same can apply to Claims 2 to 9 that depend from Claim 1.

Therefore, the recitation of Claims 1 to 9 of the Patent does not conform to the requirement of Article 36(6)(ii) of the Patent Act.

3 Reasons 3 and Reasons 4

(1) Claim 1

A Cited Invention

The above Cited Document (Patent No. 5411996) discloses an invention of "a solid content-containing container-packaged beverage comprising 1 to 64 mass% of flesh, etc. grated from fruits such as apple flesh, pear flesh, peach flesh, kiwi flesh, grape flesh, citrus flesh, citrus pulp, and strawberry flesh as a solid content, wherein said solid content has such a particle size that passes through 6 mesh, but does not pass through 20 mesh."

(hereinafter referred to as "Cited Invention".) (See [0021], [0027], [0036], etc.).

B Comparison

Comparing the invention according to Claim 1 with Cited Invention, the two inventions have in common

"Processed food and drink comprising insoluble solid content obtained by grinding vegetables or fruits", but they are different from each other in the following feature:

[Different Feature]

Regarding insoluble solid content, the invention according to Claim 1 has the proportion of insoluble solid content that does not pass through a 16 mesh sifter but passes through a 6.5 mesh sifter is 10 weight% or more, and the proportion of insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 5 weight% or more to 25 weight% or less, whereas the cited invention comprises 1 to 64 mass% of the one having a particle size that passes through 6 mesh, but does not pass through 20 mesh.

C Judgment

A consideration is given to the above Different Feature.

Cited Invention may contain up to 64 weight% of insoluble solid content having "a particle size that passes through 6 mesh, but does not pass through 20 mesh". In view of the fact that the when 6.5 mesh and 16 mesh sifters are applied to the solid content, the range of particle size that does not pass through the 16 mesh sifter but passes through the 6.5 mesh sifter falls within and covers the most part of a range of particle size that does

not pass through the 20 mesh sifter but passes through the 6 mesh sifter, it is likely that the proportion of insoluble solid content that does not pass through the 16 mesh sifter but passes through the 6.5 mesh sifter amounts to 10 weight% or more.

On the other hand, the invention according to Claim 1 in which "the proportion of said insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter is 5 weight% or more to 25 weight% or less" partially overlaps the range of a particle size that passes through 6 mesh, but does not pass through 20 mesh, and only covers a part of a range of particle size that does not pass through the 20 mesh sifter but passes through the 6 mesh sifter. In view of this, it is not always true that, when sifters of 16 mesh and 35 mesh are applied to an insoluble solid content having "a particle size that passes through 6 mesh, but does not pass through 20 mesh" of the Cited Invention, the proportion of said insoluble solid content that does not pass through the 35 mesh sifter but passes through the 16 mesh sifter amounts to 5 weight% or more to 25 weight% or less.

Therefore, it cannot be said that the invention according to Claim 1 is the Cited Invention.

Further, a technical concept was not conceivable on the basis of the Cited Invention: with respect to a particle size distribution of insoluble solid content, specifying two particle size distribution ranges of "the proportion of insoluble solid content that does not pass through a 16 mesh sifter but passes through a 6.5 mesh sifter" being "10 weight% or more" and "the proportion of insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter" being "5 weight% or more to 25 weight% or less", and further specifying the proportions.

Further, the invention according to Claim 1 causes the effect described in paragraph [0009] of the patent specification that "In such first embodiment, there is provided processed food and drink that exhibits vegetable feeling or fruity feeling as if vegetables and fruits were roughly filtered, or rich texture, and uniformly disperses a roughly filtered solid content in a proper amount. Specifically, gooey feeling through the throat and gooey texture unique to the second insoluble solid content (an insoluble solid content that does not pass through a 35 mesh sifter but passes through a 16 mesh sifter) are reduced, and solid feeling unique to the first insoluble solid content (an insoluble solid content that does not pass through a 16 mesh sifter but passes through a 6.5 mesh sifter) is emphasized. Thus the processed food and drink of the present invention further exhibits roughly filtered vegetable feeling fruity feeling or rich texture."

Therefore, it cannot be said that the invention according to Claim 1 was easily conceivable by a person skilled in the art on the basis of the Cited Invention.

D Summary

Therefore, the invention according to Claim 1 is not identical to the Cited Invention, nor does it correspond to Article 29(1)(iii) of the Patent Act, nor was it easily conceivable by a person skilled in the art on the basis of the Cited Invention, and thus it cannot be said that a patent cannot be granted to the invention under the provision of paragraph (2) of the same article.

(2) Claims 2 to 9

The inventions according to Claims 2 to 9 are inventions depending from the invention according to Claim 1. As per the above (1), the invention according to Claim 1 is not identical to the Cited Invention, nor was it easily conceivable by a person skilled in the art on the basis of the Cited Invention, and thus it cannot be said that the inventions according to Claims 2 to 9 also do not correspond to Article 29(1)(iii) of the Patent Act, nor can it be said that they cannot be granted under the provision of paragraph (2) of the same article.

No. 6 Closing

As described above,

(1) It is not recognized that the Detailed Description of the Invention of the patent specification is not definitely and sufficiently described to such an extent that allows a person skilled in the art to implement the inventions according to Claims 1 to 9 of the Patent, nor does the Detailed Description satisfy the requirement of Article 36(4)(i) of the Patent Act.

Further,

(2) The recitation of Claims 1 to 9 of the Patent does not conform to the requirement of Article 36(6)(ii) of the Patent Act.

Therefore, the Patent corresponds to the provision of Article 113(iv) of the Patent Act and thus should be revoked.

Therefore, the decision shall be made as described in the Conclusion.

August 3, 2016

Chief administrative judge: TORII, Minoru
Administrative judge: SENJU, Akio

Administrative judge: KIMOTO, Takashi