CONVERSATIONAL PATENT
20 PHRASES YOU NEED TO KNOW

Presented by:

Alan M, Koenck
Kinney & Lange, P.A.

Keiko L. Sugisaka
Maslon Edelman Borman & Brand, LLP

Midwest IP Institute
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WHAT CAN BE PATENTED, AND HOW DO YOU GET ONE?

Phrase 1
"Patents are available for processes, machines, articles of manufacture, and compositions of matter, and improvements thereof."

- Vocab term: "Patentable Subject Matter"
- 35 U.S.C. 101
- Generally, "everything under the sun made by man" is patentable
- Judicial exceptions – laws of nature, natural phenomenon, abstract ideas
- Computer software/business method is patentable unless it is simply an abstract idea
- Patent right gives the right to exclude others from practicing the invention

Phrase 2

"In order to be patentable, an invention must be useful, novel and nonobvious."

- Vocab terms: Utility, Novelty, Obviousness, Prior Art
- 35 U.S.C. 101 – Utility
  - Invention must be useful
- 35 U.S.C. 102 – Novelty/Anticipation
  - Invention must be new…different than what has been done before (different from "prior art")
- 35 U.S.C. 103 – Obviousness
  - Invention must not be obvious in view of prior art…differences from the prior art must be substantial

Phrase 3
"A patent application must be filed in the United States within one year of the first public disclosure or offer for sale of the invention."

- Vocab terms: Statutory Bar, Grace Period
- 35 U.S.C. 102(b)
  - If an invention has been publicly disclosed or on sale for more than one year, no U.S. patent application may be filed
- In most foreign countries, an application must be filed before any public disclosure of the invention

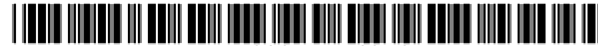
Phrase 4

"U.S. patents are obtained by filing an application in the U.S. Patent Office, which is examined to determine whether the invention is useful, novel and nonobvious."

- Vocab terms: Prosecution, File Wrapper
- After a U.S. patent application is filed, it typically takes 18-24 months before a Patent Examiner first acts on the application
- The applicant and the Examiner engage in a back-and-forth, written process to define the invention in a way that is novel and non-obvious – this is called "prosecution" of the patent application
- The written record is called the "file wrapper"

Phrase 5
"Patent applications are published 18 months after they are filed."

- Vocab term: Pre-grant publication
- Patent applications are published 18 months after they are filed
- This publication does not grant any patent rights…it simply informs the rest of the world of the content of the application that was filed


US007154103B2

(12) **United States Patent**
Koenck et al.

(10) **Patent No.: US 7,154,103 B2**
(45) **Date of Patent: *Dec. 26, 2006**

(54) **METHOD OF PROVIDING EXTENDED SHELF LIFE FRESH MEAT PRODUCTS**

(75) Inventors: **Steven E. Koenck**, Cedar Rapids, IA (US); **Brian T. Dalziel**, Marion, IA (US); **Von Kennedy**, Cedar Rapids, IA (US)

(73) Assignee: **Mitec Incorporated**, Cedar Rapids, IA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 659 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **10/624,319**

(22) Filed: **Jul. 22, 2003**

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Related U.S. Application Data

(63) Continuation-in-part of application No. 10/115,507, filed on Apr. 2, 2002, now Pat. No. 6,885,011.

(60) Provisional application No. 60/434,528, filed on Dec. 18, 2002, provisional application No. 60/359,813, filed on Feb. 26, 2002, provisional application No. 60/333,045, filed on Nov. 14, 2001, provisional application No. 60/280,790, filed on Apr. 2, 2001.

(51) **Int. Cl.**
G21K 5/10 (2006.01)

(52) **U.S. Cl.** **250/455.11**; 250/492.1; 426/232; 426/248

(58) **Field of Classification Search** 250/455.11
See application file for complete search history.

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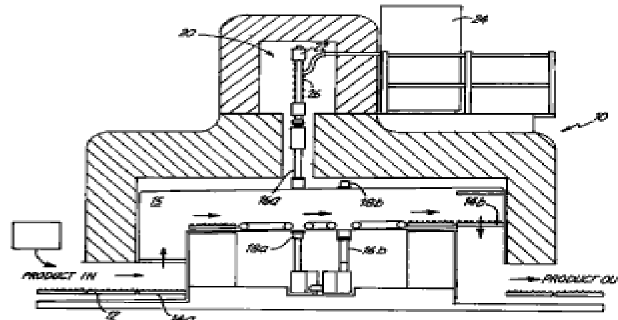
Primary Examiner—Nikita Wells
Assistant Examiner—Phillip A. Johnston
(74) *Attorney, Agent, or Firm*—Kinney & Lange, PA

(57) **ABSTRACT**

A method of providing extended shelf life fresh meat products involves irradiating the meat products in a first controlled atmosphere and packaging the irradiated meat products in a second controlled atmosphere. The packaged irradiated meat products are then distributed to a retail store. In an exemplary embodiment, the first controlled atmosphere excludes oxygen and the second controlled atmosphere is high in oxygen. In one particular embodiment of the present invention, an antioxidant is added to the meat products either prior to or following the step of irradiating the meat products in the first controlled atmosphere, to extend the color-life of the meat products.

17 Claims, 21 Drawing Sheets



Phrase 6
"Patent applications are examined by comparing the claimed invention to the prior art."

- Vocab terms: Search, Prior Art
- The patent examiner first performs a search of patent and literature databases to locate prior art that is relevant to the invention
- The invention is then compared to the prior art to determine whether the invention is novel and non-obvious

Phrase 7

“Patent applicants have a duty to disclose all known, material prior art to the U.S. Patent Office.”

- Vocab term: Duty of Candor
- In order to maintain the integrity of the patent examination process (which is only between the applicant and the patent examiner), applicants must disclose all known material prior art to the patent office
- Intentional withholding of prior art will cause a patent to be invalid

Phrase 8
"A U.S. Patent has a term of 20 years from its filing date"

- Vocab term: Patent Term
- An issued patent expires 20 years from its filing date – the time that the patent remains in force is the "term" of the patent

Phrase 9
“Foreign patent applications may be filed that claim priority from a U.S. patent application if filed within one year of the U.S. patent application filing date.”

- Vocab terms: Paris Convention, Priority Claim
- The Paris Convention establishes that in all member countries (nearly every country in the world), a patent application may be filed in that country that claims priority from a patent application filed up to one year earlier in another member country

NOW THAT YOU HAVE A PATENT, WHAT CAN YOU DO WITH IT?

Phrase 10

“Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing.”

- Vocab term: Assignment
- 35 U.S.C. 261
- Entire or partial ownership interest
- Record with the PTO

Phrase 11
"Patent licenses may be exclusive or non-exclusive."

- Vocab terms: Exclusive, Non-exclusive
- Exclusive = all substantial rights
  - Sublicense
  - Bring suit
- Non-exclusive = licensee free from suit

Phrase 12

"[W]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C 271(a)

- Direct infringement = make, use, sell, offer to sell, import
- Indirect infringement – 2 types: contributory and inducement
- Direct joint infringement
- Literal v. Doctrine of Equivalents (DOE)

Phrase 13

“Patent infringement is a two-step inquiry: first, the claims must be construed and second, properly construed claims are compared to the accused device or method.”

- Vocab terms: Claim Construction, Markman
- The claims control
- Claim construction
  - What is it?
  - Why do it?
  - Who decides?

Phrase 14
"Claims are given their ordinary and accustomed meaning to one of ordinary skill in the art at the time of the invention."

- Vocab terms: Intrinsic, Extrinsic, PHOSITA
- Intrinsic evidence is superior
  - Claim language
  - Specification or written description
  - Prosecution history
- Extrinsic evidence = everything else
- Claim construction rules
- Limitations in the specification, preferred embodiments, claim differentiation

Phrase 15

"Issued patents are presumed to be valid and can only be shown to be invalid by clear and convincing evidence."

- Vocab term: Presumption of Validity
- Anticipation = it was already done
- Obviousness = it should have been done
- Statutory Bars = on sale bar or public use
- Written description and enablement = cake or cookie?
- Best Mode (no longer effective)
- Indefiniteness = the claims are too vague

Phrase 16
“Common equitable defenses to patent infringement include equitable estoppel, laches and inequitable conduct.”

- Equitable estoppel = “you told me you weren’t going to sue”
- Laches = “why did it take you so long to sue?”
- Inequitable conduct = “you’re accusing me of doing what?”

Phrase 17
"A patent holder is entitled to no less than a reasonable royalty for patent infringement damages."

- Vocab terms: Reasonable Royalty, Hypothetical Negotiation, Lost Profits
- *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970) – 15 reasonable royalty factors
- Royalty base x royalty rate = reasonable royalty damages
- Entire market value rule
- Lost profits damages for competitors

Phrase 18

"Willful infringement can entitle the patent holder to an award of treble damages."

- Vocab terms: Willful, Treble Damages
- $ = $$$
- Infringer was "objectively reckless" – *In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007)
- Opinions of counsel
  - Beware of privilege waiver

Phrase 19
“Prevailing patent holders must demonstrate irreparable harm to obtain a permanent injunction.”

- *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006)
- Traditional 4 factors apply:
  - Likelihood of success on the merits
  - Irreparable harm to patentee absent injunction
  - Balance of harms
  - Public interest

Phrase 20
“Patent litigation is not for the faint of heart or light of wallet.”

- ↑ time and effort
  - Company/employee time, extensive discovery
- ↑ cost
  - experts and lengthy litigation
- ↓ certainty
  - Federal Circuit Court of Appeals
  - reexamination

2011 AIPLA Report of the Economic Survey

Median litigation costs based on potential damages:

- < $1 million = $350k discovery, $650k total
- $1-25 million = $1.5m discovery, $2.5m total
- > $25 million = $3m discovery, $5m total