

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* OLIVIER FOND,  
JEAN-PIERRE PLEISCH,  
ROLAND ROSSIER,  
JACQUES SCHAFFER and  
ALFRED YOAKIM

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Appeal 2008-3600  
Application 10/305,023  
Technology Center 1700

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Decided: December 9, 2008

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Before BRADLEY R. GARRIS, ROMULO H. DELMENDO, and  
JEFFREY T. SMITH, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-6 and 8-24. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM the Examiner's decision.

*Statement of the Case*

Appellants claim a sachet 1 for preparing a beverage comprising:  
a compact roast and ground coffee cake 5 having opposed surfaces and a peripheral edge 4 generally normal to the opposed surfaces, wherein one of the opposed surfaces is substantially convex and configured for ensuring leaktightness in an extraction chamber that is configured for injecting water into the sachet and extracting the coffee; and

an outer sheet 2, 3 of a flexible sheet material that is impermeable to oxygen and water vapor (Figs. 1-2; claim 1), wherein the sheet material comprises a multilayer structure that includes an outer layer of plastic, an inner layer of plastic, and a central layer of aluminum (claim 18).

Representative independent claims 1 and 18 read as follows:

1. A sachet for preparation of a beverage, comprising

a compact roast and ground coffee cake having first and second cake opposed surfaces extending within a peripheral cake edge, the first opposed surface being substantially convex and configured for ensuring leaktightness in an extraction chamber that is configured for injecting water into the sachet and extracting the coffee, the peripheral edge having a peripheral surface that is generally normal to the opposed surfaces; and

an outer sheet of a flexible sheet material that is impermeable to oxygen and water vapour, the outer sheet containing and impermeably sealing the cake therein, the outer sheet comprising first and second sheet members disposed adjacent the first and second opposed surfaces, respectively, and sealed at a sealing zone adjacent the peripheral edge.

18. A sachet for preparation of a beverage, comprising:

a compact roast and ground coffee cake having first and second cake opposed surface extending to a peripheral case edge; and

an outer sheet of a flexible material that is impermeable to oxygen and water vapour, the outer sheet containing and impermeably sealing the cake therein, wherein the outer sheet material comprises a multilayer structure that includes:

an outer layer made of plastic,

an inner layer made of plastic, and

a central layer made of an aluminum material and disposed between the outer and inner layers.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

Yates	US 2,186,087	Jan. 9, 1940
Petrozzo	US 3,373,677	Mar. 19, 1968
Gidge	US 3,445,237	May 20, 1969
Hudson	US 3,511,666	May 12, 1970
Fasano	US 3,607,297	Sep. 21, 1971
Schmidt	US 3,812,273	May 21, 1974
Molenaar	US 3,937,134	Feb. 10, 1976
Illy ('694)	US 4,254,694	Mar. 10, 1981
Illy ('894)	US 4,555,894	Dec. 3, 1985
Rossi	US 4,747,250	May 31, 1988
Dinos	US 4,983,410	Jan. 8, 1991
Rehman	US 5,012,629	May 7, 1991
Gruenbacher	US 5,298,267	Mar. 29, 1994
Hesser	GB 939 934	Oct. 16, 1963
Bognar	CH 495 138 (Swiss)	Oct. 15, 1970
(as translated)		
Jacobs Café	CH 636 311 A5 (Swiss)	May 31, 1983
(as translated)		
Shah	GB 2 183 459 A	Jun. 10, 1987
Belville	EPA 0 229 920 A1	Jul. 29, 1987
Illy ('432)	EPA 0 272 432 A1	Jun. 29, 1988

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Blanc (as translated)	EPA 0 457 708 A1	Nov. 21, 1991
Favre (as translated)	WO 92/07775	May 14, 1992

The Wiley Encyclopedia Packaging Technology, pp. 317-325, 338-341, 346-351, 453-464, and 668-675 (1986).

The Examiner has made the following rejections under 35 U.S.C. § 103(a):

Claims 1-6, 10-15, and 18-24 are rejected over the combination of Fasano, Belville, and Jacobs Café, wherein any one of these three references is applied as a primary reference in further combination with Bognar, Rossi, Illy '432, Illy '894, Illy '694, Blanc, Schmidt, Favre, and Wiley;

Claim 8 is rejected over the references applied against claim 1 and further in view of Hudson, Gidge, and Rehman;

Claim 9 is rejected over the references applied against claim 1 and further in view Dinos, Gruenbacher, Shah, Hesser, and Yates;

Claim 16 is rejected over the references applied against claim 1 and further in view of Petrozzo; and

Claim 17 is rejected over the references applied against claim 1 and further in view of Molenaar.

#### *Issues*

Have Appellants shown error in the Examiner's conclusion that it would have been prima facie obvious to combine the applied references in such a manner as to yield the claimed invention; and, if not, have

Appellants presented evidence of nonobviousness which outweighs the reference evidence of obviousness?

*Findings of Fact*

Fasano discloses a packet (i.e., sachet) for preparation of a beverage such as coffee comprising upper and lower foils of aluminum or plastic or other air-impervious material which are hermetically sealed together, thereby forming a pocket containing a solid substance for preparing the beverage such as powdered coffee (col. 1, ll. 34-54, col. 2, ll. 63-66). Fasano does not disclose the claim 1 limitation that the packet contains coffee in the form of "a compact roast and ground coffee cake having first and second cake opposed surfaces extending within a peripheral cake edge, the first opposed surface being substantially convex and configured for ensuring the leaktightness in an extraction chamber that is configured for injecting water into the sachet and extracting the coffee, the peripheral edge having a peripheral surface that is generally normal to the opposed surfaces." Fasano also does not disclose the claim 18 limitation "a compact roast and ground coffee cake" or "an outer sheet . . . [comprising] a multilayer structure" that includes inner and outer layers of plastic with a central layer of aluminum material disposed therebetween.

Belville discloses a package (i.e., sachet) containing a coffee tablet and comprising flexible walls formed from any conventional, gas-impermeable, sheet-like material such as a multi-layer film including a thin metallic layer on a polymeric substrate (Abstract, 9 last ¶). Belville does not disclose that the coffee tablet includes the claim 1 limitation "first opposed surface being substantially convex and configured for ensuring leaktightness

in an extraction chamber that is configured for injecting water into the sachet and extracting the coffee, the peripheral edge having a peripheral surface that is generally normal to the opposed surfaces." Belville also does not disclose that the multi-layer package film includes inner and outer layers of plastic having a central aluminum layer therebetween as required by claim 18.

Jacobs Café discloses a prior art package (i.e., sachet) containing densified ground coffee in tablet form (Translation 4, second ¶) and further discloses a package (i.e., sachet) specifically designed for use in pressure brewing systems comprising package material of plastic films or metal foils containing ground coffee densified into tablet form wherein the package material is perforated and the coffee tablet is disintegrated prior to the brewing operation (Translation Abstract and pages 6-7; Figs. 1-4). Jacobs Café does not disclose that the coffee tablet includes an opposed surface which is "substantially convex" as required by claim 1. As clarification, Figure 4 of Jacobs Café shows an opposed surface having a convex shape, but this shape is formed after the coffee tablet has been disintegrated. Jacobs Café also does not disclose the multi-layer structure required by claim 18.

Packaged ground coffee having an opposed surface that is substantially convex and a peripheral surface that is generally normal to the opposed surfaces is known in the prior art as evinced by Bognar (Figs. 2, 5, 6), Rossi (Figs. 1-2), Illy '432 (Figs. 1-3), Illy '894 (Figs. 9-10), Illy '694 (Fig. 1), and Blanc (Figs. 3, 4, 7).

The prior art further includes multi-layer material comprising aluminum and/or plastic for packaging coffee as evinced by Belville (discussed above), Favre (Figs. 12a-12b; paragraph bridging Translation 19-20), and Schmidt (Figs. 4-5; col. 2, ll. 39-52).

Wiley discloses packaging for foods generally which comprises a multi-layer structure having inner and outer layers of plastic with a central aluminum layer therebetween (e.g., para. bridging 349-50).

*Principles of Law*

"When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740 (2007). In determining whether there was an apparent reason to combine known prior art elements in the fashion claimed, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*, 127 S. Ct. at 1741.

"A nexus between the merits of the claimed invention and evidence of secondary considerations is required in order for the evidence to be given substantial weight in an obviousness decision." *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 668 (Fed. Cir. 2000) (*quoting Simmons Fastener Corp. v. Ill. Tools Works, Inc.*, 739 F.2d 1573, 1575 (Fed. Cir. 1984)). Put another way, commercial success or other secondary considerations may presumptively be attributed to the claimed invention only where "the marketed product embodies the claimed features, and is coextensive with them." *Ormco Corp. v. Align Tech. Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006) (*quoting Brown*

*& Williamson Tobacco Corp. v. Phillip Morris, Inc.*, 229 F.3d 1120, 1130 (Fed. Cir. 2000)).

*Analysis*

Initially, we observe that Appellants discuss many of the commonly-rejected dependent claims without presenting, under a separate subheading, a reasonably specific explanation of why the dependent claim feature is thought to be patentable over the applied prior art. See, for example, the discussion of dependent claim 2 on page 14 of the Appeal Brief. Such discussions are not considered to be an argument for separate patentability of the commonly rejected dependent claims in question pursuant to the requirements of 37 C.F.R. § 41.37(c)(1)(vii).

Appellants characterize the claimed sachet as being for use in a coffee brewing system which relies on pressurized extraction as opposed to some (though not all) of the applied references which brew coffee in a gravity-feed, filter brewing system. Appellants argue that, "[t]here would be no reason to look to the other references concerning filter brewing, for example, to improve the pressurized extraction of the present invention" (App. Br. 12). This argument is unpersuasive for a number of reasons.

First, Appellants have not established that the claimed sachet is in any way limited to use in a pressure extraction system. To the contrary, the language of independent claims 1 and 18 defines a sachet without regard to the type of system in which it is to be used. Specifically, claim 18 contains no recitation at all concerning system type. While claim 1 recites "in an extraction chamber that is configured for injecting water into the sachet and extracting the coffee," this recitation encompasses an extraction chamber in

which water is injected by a gravity-feed filter brewing system.

Second, even if the claimed sachet is limited for use in a pressurized extraction rather than a gravity-feed system, the argument under consideration still would be unpersuasive. This is because Appellants have merely alleged without establishing that no reason exists for looking to references concerning gravity-feed filter brewing systems when seeking to improve prior art sachets including those used in pressurized extraction systems. Moreover, this allegation is contrary to the established legal principle that design incentives and other market forces can prompt variations of a prior art device (e.g., a sachet) based on teachings either in the same field of endeavor or a different one.

For these reasons, Appellants have not shown error in the Examiner's conclusion that it would have been obvious for one with ordinary skill in this art to provide the coffee-containing package (i.e., sachet) of Fasano, Belville or Jacobs Café with a coffee cake having an opposed surface which is substantially convex and with a peripheral edge which is generally normal to the opposed surfaces in view of Bognar, Rossi, Illy '432, Illy '894, Illy '694, and Blanc which evince that coffee cakes having these features are known in the prior art. Likewise, Appellants have shown no error in the Examiner's conclusion that it would have been obvious to configure such a coffee cake "for ensuring leaktightness in an extraction chamber" as required by claim 1. On the other hand, this last mentioned obviousness conclusion is reasonable on its face since leaktightness in an extraction chamber would be necessary to maximize the effectiveness of the brewing operation. Finally, appellants have shown no error in the Examiner's conclusion that it would have been

obvious to provide the package of Fasano, Belville, or Jacobs Café with an outer sheet having a multi-layer structure of the type defined by claim 18 in view of the combined teachings of Belville, Schmidt, Favre, and Wiley which evince that such multi-layer structures are known in prior art packaging for foods generally and coffee specifically.

In summary, the applied references establish that the features recited in claims 1 and 18 are known in the prior art and that it would have been prima facie obvious to combine these features and predictably use them according to their established functions.

In support of their nonobviousness position, Appellants proffer two declarations under 37 C.F.R. § 1.132 by Alfred Yoakim signed February 14, 2002 (first Yoakim Declaration) and February 25, 2005 (second Yoakim Declaration).

According to Appellants (App. Br. 13), the first Yoakim Declaration indicates that the claim 1 convex shape facilitates leaktightness and that such an advantage would have been surprising based on the teachings of Jacobs Café. However, this Declaration is silent as to why a leaktightness advantage would have been surprising over the other applied references and is silent as to why leaktightness would not have been a desirable and expected feature of a coffee package or sachet designed to maximize brewing effectiveness as discussed above. Additionally, the first Yoakim Declaration statements are based on a coffee cake wherein both opposed surfaces have a convex shape (Decl. 2), and none of the argued claims is so limited.

Appellants also rely on the first Yoakim Declaration as evidence of commercial success (App. Br. 22-23). The commercial success statements in the first Yoakim Declaration (Decl. 5-6) are not supported by objective evidence and, perhaps more importantly, do not establish a nexus between the merits of the claimed invention and the alleged commercial success. In this latter regard, we point out that any commercial success enjoyed by the claimed sachet may be due solely to commercial success of the specific pressure extraction system for which the claimed sachet has been designed.

Appellants rely on the second Yoakim Declaration as showing unexpected results for the multi-layer structure required by claim 18 (as well as other claims so limited) (App. Br. 19-22). According to Declarant, these unexpected results relate to more desirable openings formed in a multi-layered structure having an inner layer of OPP, an aluminum central layer, and an outer layer of PET as compared to single layer sheets of aluminum and plastic respectively (Decl. 2-3). This second Yoakim Declaration, like the first, does not provide objective evidence in support of the nonobviousness indicia statements and does not establish a nexus between these statements and the claimed sachet. Concerning this last mentioned deficiency, we observe that the Declaration does not specify details of the multi-layer structure (e.g., layer thicknesses) and that Appellants have identified no claim which possesses all such details (e.g., the materials and thicknesses of the multi-layer structure discussed in the Declaration).

Appellants also present separate arguments for each of separately rejected claims 8, 9, 16, and 17 (App. Br. 23-28). However, these arguments are unpersuasive for reasons analogous to those discussed above.

Specifically, the arguments regarding claims 8 and 9 broadly allege that the applied references contain no teaching or suggestion of the features required by these claims but do not specifically identify error in the Examiner's obviousness rationale (*cf.*, App. Br. 24-25 with Ans. 10-11). Moreover, the arguments regarding claims 16 and 17 are defectively based on the incorrect proposition that prior art teachings relating to gravity-feed filter brewing systems may not be properly combined with those relating to pressure extraction systems.

*Conclusions of Law*

For the above stated reasons, Appellants have failed to show error in the Examiner's conclusion that it would have been prima facie obviousness to combine the applied references in such a manner as to yield the claimed sachet and have failed to present evidence of nonobviousness which outweighs the Examiner's reference evidence of obviousness.

Therefore, we sustain each of the § 103 rejections advanced by the Examiner in this appeal.

*Order*

We affirm the decision of the Examiner.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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WINSTON & STRAWN LLP  
PATENT DEPT.  
1700 K STREET, N.W.  
WASHINGTON DC 20006