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FAY SHARPE LLP
1228 Euclid Avenue, 5th Floor
The Halle Building
Cleveland, OH 44115

EXAMINER
O'HERN, BRENT T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE
THE PATENT TRIAL AND APPEAL BOARD

Ex parte NOEL F. GALLUCH

Appeal 2011-005369
Application 11/557,678
Technology Center 1700

Before TERRY J. OWENS, MARK NAGUMO, and
CHRISTOPHER L. CRUMBLEY, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Introduction[1]

Noel F. Galluch ("Galluch") timely appeals under 35 U.S.C. § 134(a) from the final rejection[2] of claims 1 and 2.[3] We have jurisdiction. 35 U.S.C. § 6. We REVERSE.

The subject matter on appeal relates to a bakeable tray in which baking containers with flanges adjacent the open top of each container fit into openings in the tray and are affixed to the tray by a hot melt adhesive applied to the underside of the flange. The hot melt adhesive is selected to melt at a temperature in the range of 250°F - 275°F (121°C - 135°C). The flanges and sides of the containers, and the openings in the tray, are arranged so the adhesive will melt and the tray will drop away from the flanges under the influence of gravity when the tray is exposed during baking to a temperature at or above the melting temperature of the hot melt adhesive.

The trays are said to be especially useful for packaging frozen dough- or batter-based products that are shipped to a bakery or restaurant, then cooked, displayed, and sold in the same packaging. (Spec. 1 [0001].)

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[1] Application 11/557,678, *Method and Packaging for Baked, Thaw And Serve, or Microwavable Goods*, 8 November 2006, claiming the benefit of provisional applications filed 16 November 2005 and 5 May 2006. The specification is referred to as the "678 Specification," and is cited as "Spec." The real party in interest is listed as Rich Products Corp. (Appeal Brief, filed 12 October 2010 ("Br."), 2.)

[2] Office action mailed 8 June 2010 ("Final Rejection"; cited as "FR").

[3] The Examiner has indicated that remaining copending claims 6 and 7 are allowable. (FR 1.)

Representative Claim 1 reads:

A bakeable tray for baking food products comprising

a plurality of serving containers and

a support matrix attached to the plurality of serving containers, wherein the support matrix is

detachable from the plurality of serving containers and the support matrix includes

a plurality of openings for receiving the containers,

wherein each of the plurality of serving containers includes an open top and a flange adjacent the open top,

and the support matrix is attached by hot melt adhesive to an underside of each serving container flange,

wherein the hot melt adhesive melts at a temperature within a range of 250°F - 275°F (121°C - 135°C),

whereby the support matrix detaches from the plurality of serving containers during baking at a temperature at or above the melting temperature of the hot melt adhesive because the hot melt adhesive melts and gravity causes the support matrix to drop down.

(Claims App., Br. 11; emphasis added.)

The Examiner maintains the following grounds of rejection:[4, 5]

A. Claims 1 and 2 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Anghileri,[6] Young,[7] and Furumoto.[8]

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[4] Examiner's Answer mailed 8 December 2010 ("Ans.").

[5] A rejection for indefiniteness of claim 2 has been withdrawn. (Ans. 3.)

[6] Gianmario Anghileri, *Baking-Tin*, U.S. Patent 4,986,432 (1991).

[7] Robert C. Young and Johan Kools, *Microwave Oven Cooking Process*, U.S. Patent Application Publication 2004/0262301 A1 (2004).

B. Discussion

Findings of fact throughout this Opinion are supported by a preponderance of the evidence of record.

The Examiner finds, and Galluch does not dispute, that Anghileri describes a baking tin meeting all the limitations recited in claim 1 but for the hot-melt adhesive temperature and the attendant properties. (Ans. 3-5.) The Examiner finds that Young and Furumoto describe hot melt adhesives usable in objects such as food containers that are to be placed in [hot] ovens. (*Id.* at para. bridging 5-6.) The Examiner argues that it would have been obvious to select an adhesive as taught by Young or Furumoto "with the claimed melting temperatures for Anghileri's ('432) product that will melt during baking at the above temperatures and cause Anghileri's ('432) support members to detach during baking so as to make the cups easily separable for packing or eating and not generate an off-flavor peculiar to adhesives." (Ans. 7.)

Galluch argues that the rejection should be reversed because Anghileri is concerned with a bakeable tray that advances three main principles of automated baking that are not compatible with the modifications necessary to obtain the claimed bakeable tray. First, a number of cakes must be baked in batches, and "it is generally necessary to use baking tins adapted to contain a certain amount of said cakes in order to allow the simultaneous introduction thereof into an oven *and the simultaneous withdrawal*

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[8] Susumu Furumoto and Hiroshi Okude, *Food Container*, JP P2002-239328A (2002).

therefrom." (Br. 6, *quoting* Anghileri col. 1, ll. 17-21; emphasis by Galluch.) Individual baked items that are no longer held by a tray cannot readily be withdrawn from an oven at the same time that another tray is being introduced to the oven. Second, the trays are designed to be carried by automated transport means "interlocked to ovens and to packing devices of modern conception." (Br. 6, *quoting* Anghileri col. 2, ll. 9-10.) The intent appears to be to provide bakeable trays that retain the baked goods through the baking and packaging operations. Finally, the trays may be provided well-placed fracture lines **5** so they may be divided into smaller trays can still be handled with automated handling equipment due to the presence of well-placed shaped holes **7** that serve as engagement seats. (Br. 7-8, *quoting* Anghileri col. 3, ll. 16-42.) Thus, Galluch argues, Anghileri provides no reason or motivation to provide baking containers that detach from the supporting tray or matrix upon reaching some temperature in the oven. The modifications proposed in the rejection would, in Galluch's view, defeat the aims of Anghileri. (*Id.* at 8, last para., and 9, 1st para.)

The weight of the evidence supports Galluch. As reasonable and simple as the claimed invention may sound, the issue is not enablement, but obviousness. Here, the Examiner has not come forward with any credible evidence that the prior art relied on would have suggested the use of a hot melt adhesive on a food-containing product that was intended to fail—i.e., to stop adhering two structural members together—while the food-containing product was being heated in the oven. As Galluch points out, such an occurrence would render the embodiments disclosed by Anghileri inoperative for their intended purpose. In this regard, we observe further

that the Examiner has not directed our attention to any disclosure in Young or in Furumoto of the desirability of a hot-melt adhesive that melts at the relatively low temperature of 250-275°F (121-135°C) while food is being heated or cooked in the container. In short, the only source on the present record for the problem to be solved and the method of solving that problem is to be found in Galluch's disclosure.

D. Order

We REVERSE the rejection of claims 1 and 2 under 35 U.S.C. § 103(a) in view of the combined teachings of Anghileri, Young, and Furumoto.

REVERSED

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