

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARY CARMEN GASCO, SHANE EDWIN MEEKER, RONALD PETER
DEVLAM, MARK WILLIAM RAKENTINE, PATRICK LEE O'BRIEN, JEAN-MARC
HENRI KIROUAC and JANET ADELE VEITH

Appeal No. 2005-2412
Application No. 10/010,818

ON BRIEF

Before GARRIS, FRANKFORT and NASE, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1 and 3-20.

The subject matter on appeal relates to a shaped container bottom for containing a plurality of curved snack pieces (e.g., Pringles® potato chips). The container bottom comprises a bottom panel having a concave-curvature which substantially conforms to the curvature of the snack pieces and wherein a peripheral edge of a lowest snack piece of the plurality of snack pieces rests

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upon the bottom panel. Further details regarding this subject matter are set forth in claims 1 and 11 which are the only independent claims on appeal and which read as follows:

1. A shaped container bottom integral to a container for containing a plurality of curved snack pieces, each snack piece having a center radius, a center height, a saddle height, a peripheral edge and a lower surface, within a container, the container bottom comprising a bottom panel having a center radius, a center height, and a concave-curvature about a first axis of the bottom panel, wherein the concave-curvature of the bottom panel substantially conforms to the curvature of the snack pieces and at least a portion of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the bottom panel.

11. A shaped container bottom for containing a plurality of curved snack pieces, each snack piece having a saddle height, a peripheral edge and a lower surface, within a container, the container bottom comprising a bottom panel comprising at least two base portions and a bottom panel center disposed between the base portions, the bottom panel center having a center height and a concave curvature about a first axis of the container, wherein the concave-curvature of the bottom panel substantially conforms to the curvature of the snack pieces and a peripheral edge of a lowest snack piece of the plurality rests upon the base portions.

The references set forth below are relied upon by the examiner in the Section 102 and Section 103 rejections before us:

Baur et al. (Baur)	3,498,798	Mar. 3, 1970
Beall (Beall '485)	3,852,485	Dec. 3, 1974
Beall (Beall '510)	3,956,510	May 11, 1976
Griffith	4,011,347	Mar. 8, 1977
Ruiz	4,873,099	Oct. 10, 1989

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Claims 1, 3-5 and 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by either Beall '510 or Beall '485.

Claims 1 and 3-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Baur.

Claims 1, 3 and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ruiz.

Claims 6-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Beall '510 or Beall '485.

Finally, claims 6-9 also are rejected under 35 U.S.C. § 103(a) as being unpatentable over Baur in view of Griffith.

We refer to the brief and to the answer for a complete exposition of the opposing viewpoints expressed by the appellants and by the examiner concerning the above noted rejections.

OPINION

We cannot sustain any of the rejections advanced on this appeal for the reasons set forth below.

In making a patentability determination, analysis must begin with the question, "*what is the invention claimed?*" since "[c]laim interpretation . . . will normally control the remainder of the decisional process." Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987).

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In resolving this question, we interpret the independent claims on appeal as being directed to a particular shaped container bottom in combination with a plurality of snack pieces having certain shapes. This interpretation is consistent with the claim language itself as well as the subject specification. Moreover, both the appellants and the examiner have likewise interpreted the independent claims. For analogous reasons, we share the appellants viewpoint that it is appropriate to interpret these claims as also requiring that the snack pieces be vertically stacked one on another (e.g., see page 5 of the brief). Such an interpretation is supported, for example, by the independent claims 1 and 11 recitation that a peripheral edge of "a lowest snack piece" of the plurality of snack pieces rests upon the bottom panel. The examiner's argument that these claims are not so limited is not persuasive for the reasons explained hereinafter.

With respect to this last mentioned point, it is the examiner's position that independent claim 1 is anticipated by the combination of a container bottom with snack pieces horizontally arranged thereon as disclosed in each of Beall '510 and Beall '485. According to the examiner, the above discussed claim 1 feature concerning "a lowest snack piece" is satisfied by

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the Beall disposition wherein all of the snack pieces are horizontally disposed on the same level because "any and every snack piece is considered the lowest" (answer, page 5). This is not a reasonable interpretation of claim 1. The claim phrase "lowest snack piece" must be reasonably interpreted consistent with the phrase language and the subject specification as referring to a snack piece which is at the lowest disposition relative to the other snack pieces in the here claimed plurality of snack pieces.

Thus, we agree with the appellants that claim 1, when properly interpreted consistent with their specification, requires a shaped container bottom in combination with a plurality of curved snack pieces which are vertically stacked one on another. Correspondingly, we agree with the appellants that this claim is not anticipated by the combination of a container bottom having a plurality of snack pieces horizontally disposed thereon as in Beall '510 or Beall '485. For this reason alone, we cannot sustain the examiner's Section 102 rejection of independent claim 1 and of claims 3-5 and 10 which ultimately depend therefrom as being anticipated by the Beall references.

Analogously, we also cannot sustain the examiner's Section 103 rejection of claims 6-9, which ultimately depend from claim

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1, as being unpatentable over the Beall references. This is due to the fact that the modification proposed by the examiner in this Section 103 rejection, even if made, would not cure the previously discussed deficiency of Beall '510 and Beall '485.

Concerning the Section 102 rejection based on the Ruiz patent, the examiner argues that patentee's disclosure of vertically stacked edible bowls (e.g., see 37 in figure 6) anticipatorily satisfies the claim 1 limitations concerning both the snack pieces and the shaped container bottom. As explained on page 6 of the answer, "[t]he examiner relies on the bottommost edible bowl (snack piece) [of Ruiz] as being the . . . shaped container bottom." Again, the examiner's interpretation of claim 1 is neither reasonable nor consistent with the appellants' specification. A review of this specification clearly establishes that the here claimed shaped container bottom cannot be interpreted to be the bottom one of patentee's edible stack (just as it cannot be interpreted to be the bottom one of a Pringles® potato chip stack which the appellants describe as prior art on page 1 of their specification).

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For this reason, we also cannot sustain the examiner's Section 102 rejection of claims 1, 3 and 4 as being anticipated by Ruiz.

The Section 102 rejection of claims 1 and 3-20 as being anticipated by Baur likewise cannot be sustained. As correctly explained by the appellants, Bauer does not disclose a shaped container bottom as defined by the independent claims on appeal. To the contrary, patentee's container bottom is flat. In responding to the appellants' arguments, the examiner refers to "the edge regions of the bottom member 12 of Baur has [sic, as] providing the concave-curvature limitations [of the independent claims]" (answer, page 6). The examiner's position is not well taken.

We do not perceive and the examiner does not explain why it would be reasonable and consistent with the appellants' specification to interpret the claim 1 requirement for a panel bottom having a concave-curvature which substantially conforms to the curvature of the snack pieces as being satisfied by the circular shape along the edge of patentee's bottom member 12. Even if the circular edge region of Baur's bottom member were somehow considered to satisfy the claim 1 requirement for a bottom panel having a concave-curvature, the rejection of claim

1 still would be improper. This is because the circular edge region of patentee's bottom member 12 does not satisfy the claim 1 requirement that the bottom panel concave-curvature substantially conforms to the curvature of the snack pieces. As clearly shown in figure 2 of Baur, the circular shape defined by the edge region of bottom member 12 does not substantially conform to the oval shape defined by patentee's snack pieces.

These deficiencies of Baur are even more pronounced with respect to independent claim 11 since this claim additionally requires a bottom panel having certain features involving two base portions with a bottom panel center disposed therebetween. We see nothing and the examiner points to nothing in the Baur patent which would satisfy this requirement of claim 11.

The examiner's position concerning the Section 103 rejection of claims 6-9 over Baur in view of Griffith is expressed on page 6 of the Office action mailed May 5, 2004 in the following manner:

Baur discloses the invention except for the bottom panel substantially conforming to the curvature of the snack pieces.^[1] Griffith teaches a shaped container bottom formed

¹This acknowledged deficiency of Baur is contradictory to the examiner's previously discussed position that the Baur patent anticipatorily satisfies the bottom panel limitations of independent claims 1 and 11.

by cushioning member 18 that conforms to the curvature of the snack pieces (see column 2, lines 61-66). It would have been obvious to modify the bottom of Baur to conform to the shape of the snack pieces in order to support the piece such that movement is restricted and the stack of chips remains in a stable position centered within the container as motivated by less damage to the chips because the chips are moving less and the impact if any exist [sic] is minimized.

As reflected by the above quotation, the examiner believes that Griffith's teaching at lines 61-66 in column 2 would have suggested modifying "the bottom of Baur to conform to the shape of the snack pieces" (id.). However, this column 2 disclosure of Griffith relates to a cushioning member 18 (e.g., see figures 2, 3, and 3A) which is adapted to be inserted into a snack container for placement on the container bottom (e.g., see figure 1). This disclosure certainly would have motivated an artisan to provide the container of Baur with Griffith's cushioning member 18 for placement on Baur's container bottom in order to thereby obtain the snack cushioning advantages taught by Griffith (e.g., see lines 28-53 in column 1).² However, this is not the modification proposed by the examiner. Instead, the examiner proposes that it would have been obvious to modify Bauer's container bottom so as

²Indeed, Griffith expressly teaches the need to provide a container of the type taught by Baur with additional cushioning means (see lines 6-25 in column 1), and figure 1 of Griffith plainly illustrates the result of providing Baur's container with Griffith's cushioning member.

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to conform with the snack piece shape. We do not perceive and the examiner does not explain why Griffith's column 2 disclosure of an insertable cushioning member 18 would have suggested such a modification. With respect to this rejection, it is only the appellants' own disclosure which contains any teaching of modifying a container bottom in the manner proposed by the examiner. These circumstances reflect that the examiner's proposed combination of Baur and Griffith is the result of impermissible hindsight derived from the appellants' own disclosure rather than any teaching or suggestion derived from these applied references. See W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

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For the above stated reasons, the Section 103 rejection of claims 6-9 over Baur in view of Griffith cannot be sustained.

The decision of the examiner is reversed.

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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Administrative Patent Judge)	

BRG:hh

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