

The opinion in support of the decision being entered today is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL DEAN MCCUTCHAN

Appeal No. 2006-0930
Application No. 09/905,540

ON BRIEF

Before HANLON, DELMENDO, and GAUDETTE, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL UNDER
35 U.S.C. § 134

This is a decision on an appeal under 35 U.S.C. § 134 (2004) from the examiner's rejection of claims 1, 3, 5, 6, and 17 through 20 (Office action mailed January 7, 2005), which are all of the claims pending in the above-identified application. Because the examiner has made out a prima facie case of obviousness with respect to the appealed claims and since the appellant has failed to direct us to persuasive

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argument or evidence in rebuttal, we affirm.

The Appealed Subject Matter

The subject matter on appeal relates to a kit for
5 containing both a plurality of snack pieces and a dip-condiment.
According to the appellant (specification at 1, lines 10-14),
"the kit has an improved space efficiency and snack piece size."

Evidence

10 The examiner relies on the following evidence in support of
a determination of unpatentability as to all the appealed
claims.

Zimmerman et al. US2002/0122852 A1 Sep. 5, 2002
(Zimmerman) (published
15 United States application)

Admitted prior art in the form of Snack-A-Dip® (Lightly Salted
Tortilla Chips & Salsa), ASB Group, France.

20

Issue Presented

For purposes of this appeal, the examiner has limited the
issues to a single rejection. (Examiner's answer mailed August
31, 2005 at 3.) Specifically, the only issue before us is a
25 rejection under 35 U.S.C. § 103(a) of appealed claims 1, 3, 5,
6, and 17 through 20 as unpatentable over the combination of

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Zimmerman and the appellant's admitted prior art in the form of Snack-A-Dip® (Lightly Salted Tortilla Chips & Salsa). (Answer at 4.)

For the reasons discussed below, we affirm.

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Findings of Fact¹

We make the following findings of fact.

1. On January 14, 2004, the examiner entered a final Office action rejecting claims 1, 3, 5, 6, and 17 through 20 on multiple grounds. (January 14, 2004 final Office action at 2-4.)
2. The appellant appealed the rejections set forth in the final Office action. (Appeal brief filed on October 19, 2004.)
3. In an Office action dated January 7, 2005, the examiner reopened prosecution and entered four new separate grounds of rejection. (January 7, 2005 Office action at 3-7.)

¹ In the "Discussion" section below, we number our findings of fact as "FF__."

4. The appellant again appealed all four rejections.
(Supplemental appeal brief filed on June 9, 2005 at
3.)

5. In the examiner's answer mailed August 31, 2005, the
5 examiner withdrew all but one ground of rejection.
(Answer at 3-4.)

6. Thus, the sole issue on appeal is whether, under 35
U.S.C. § 103(a), claims 1, 3, 5, 6, and 17 through 20
are unpatentable over the combination of Zimmerman and
10 the appellant's admitted prior art in the form of
Snack-A-Dip® (Lightly Salted Tortilla Chips & Salsa).

7. With respect to the sole rejection on appeal, the
appellant argues the appealed claims together as a
group. (Substitute appeal brief at 7-8.)

15 8. Appealed claim 1, which is representative of all the
appealed claims, reads (supplemental appeal brief,
Appendix I):

20 1. A kit for containing both a plurality of
snack pieces and a dip-condiment, said kit
comprising:

a canister;
a plurality of snack pieces contained within
said canister, wherein the snack pieces have an
average projected area ranging from about 1900 mm²
25 to about 10,000 mm²;
a tub attached to said canister; and

denotes a container, 21 denotes a cavity, 22 denotes a continuous side wall, 23 denotes a lip of the container 20, 25 denotes an opening, 26 denotes a removable lid, 27 denotes an overcap, 28 denotes a lip of the overcap 27, 29 denotes a peripheral edge of the overcap 27, 30 denotes snack pieces, 40 denotes a tub, 42 denotes a lid enclosing tub 40, 44 denotes a peel tab, 46 denotes a lip of the tub 40, and 50 denotes a dip condiment. (Specification at 8-19.)

5

10

11. The subject specification (page 17, lines 23-24) describes another embodiment of the invention as follows:

15

In an alternative embodiment, tub 40 could be a tub that inserts into the cavity 21 of container 20 either non-connected to container 20 or connected to container 20.

20

12. The term "average projected area" as recited in appealed claim 1 is defined in the specification (page 7, lines 2-12) as follows:

25

The projected area listed in Table 1 for these kits was an average calculated projected area and was calculated by randomly selecting three whole chips from the kits, measuring each chip's projected area and then calculating the average of these projected areas. Projected area, as used herein, is essentially the area within the two-dimensional outline of the shape

5 of the snack piece. This two-dimensional cross-sectional "footprint" of the snack piece forms a projected area that can be determined either by area calculations of a known geometry, a curve integrator, superimposing the actual drawn area on grid paper with predetermined area markings, or by comparing the weight of a piece of paper cut to the footprint outline to a weight of similar paper with a known area. To measure the projected area of the individual snack piece, the snack piece to be measured is placed in an orientation that will yield the largest possible projected area. [Emphasis added.]

10
15 13. The subject specification defines the expression "space efficiency" as the ratio of the total net weight (net wt.) of the product contained within the kit, to the total exterior kit or package volume (ext. vol.). (Specification at 1, lines 25-28.)

20 14. The subject specification states (specification at 2, lines 1-13):

25 Snack food pieces, such as potato chips (or "crisps") or tortilla chips, and dip-condiments (hereinafter "dips"), such as chip dips or salsa, have individually been available for years and consumers enjoy them together as a combination food item. However, the majority of snack chip packages and dips are sold separately. This individual retailing of the snack chips separate from the dip creates several problems. First, the majority of snack piece packaging, i.e., bags already have low space efficiency and package density. Second, due to the packaging of the snack pieces and the dip in separate packages, the space efficiency and bulk density of snack pieces and dip as a food combination is even

30
35

5 lower. Third, once purchased, the user must
carry, secure and store two separate items when
they transport the chips and dip to a remote
location for eventual consumption. And, Finally
[sic], generally these packages randomly pack the
snack chips within the package and thus permit
chip breakage, which is less conducive to
dipping. Therefore, this food combination is not
optimal as a portable food item.

10 15. Nevertheless, the specification acknowledges

(specification at 2, lines 27-28): "Various executions
of packages containing snack pieces with dips in a
unitary package or kit are known."

15 16. Regardless of whether the relied upon Snack-A-Dip[®]
(Lightly Salted Tortilla Chips & Salsa) sample (a
product of France) is available as prior art under 35
U.S.C. § 102, the examiner found that the commercial
products identified in Table 1, which includes Snack-
20 A-Dip[®] (Lightly Salted Tortilla Chips & Salsa), of the
specification (page 6) constitute admitted prior art
(January 7, 2005 Office action at 2).

25 17. The appellant did not dispute the examiner's
determination of the admitted prior art status of
Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa)
and, in fact, affirmatively stated that the commercial
products identified in Table 1 of the specification,

including Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa), are considered to be prior art to the appellant. (Supplemental appeal brief at 7.)

5 18. We find that the outer packaging label of the Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) sample is marked with an identification of French Patent No. 9912098, which was published as publication 2,798,911 on March 30, 2001 (copies of the document and its English language translation are attached).

10 19. We further find that the outer packaging label of the Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) sample touts the product as a "2-in-1 Combi Pack" (i.e., a convenient package product combining the snack chips and the dip-condiment tub).

15 20. We also find that Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) is a snack food kit including a cylindrical container filled with a plurality of tortilla chips, a plastic lid, and a dip-condiment tub attached to the upper lip of the container by means of
20 the container lid pressing against an upper rim of the dip-condiment tub.

21. The appellant did not dispute the examiner's factual finding that Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) includes a dip-condiment tub attached to the container.

5 22. According to the appellant (Table 1 of the specification at 6), Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) has a snack piece average projected area of 1060 mm² and a space efficiency of 0.134 g/cm³.

10 23. The subject specification refers to Zimmerman as describing "[a]n optimized design of a curved snack piece to accomplish high packed densities of a plurality of curved snack pieces..." in accordance with the claimed invention. (Specification at 14, 15 lines 14-25.)

24. Zimmerman describes a packaged container filled with overlapping snack pieces placed therein, wherein the packed volumetric bulk density is greater than about 10 x 10⁻⁵ g/mm³ to about 35 x 10⁻⁵ g/mm³ (i.e., about 20 0.1 g/cm³ to about 0.35 g/cm³). (¶0018 at 2; claim 14 at 10.)

25. Zimmerman expressly states that snack chips and fluid
condiments are "a very popular snack combination."
(¶0010 at 1.)

5 26. The examiner found that the packed volumetric bulk
density as described in Zimmerman is the same
characteristic as "space efficiency" as described in
the subject specification (page 1, lines 25-28).
(Answer at 7.)

10 27. The appellant did not rely on evidence to challenge
the examiner's finding with respect to the identity of
Zimmerman's packed volumetric bulk density and "space
efficiency" as described in the subject specification.

15 28. Zimmerman teaches that snack pieces having the
disclosed structural and geometric shapes in a nested
arrangement (relative to prior art products in which
the chips are randomly packed) provide increased bulk
density as well as allow efficient dipping of
condiment during use. (¶¶0002-0021 at 1-2.)

20 29. Zimmerman teaches that three-dimensional, triangular-
shaped snack pieces are most preferred as dipping
chips. (¶0047 at 5.)

30. Zimmerman further teaches that Figure 2 depicts a preferred embodiment of such triangular-shaped snack pieces, wherein the length is from about 40 mm to about 110 mm and the width is from about 30 mm to about 110 mm. (¶0048 at 5.)

31. The examiner found that the preferred triangular-shaped chips having a length of 110 mm and a width of 110 mm described in Zimmerman would have a calculated projected area of about 6000 mm². (Answer at 4.)

32. The appellant did not present any calculations or other evidence demonstrating that the examiner's calculated snack chip projected area is incorrect.

33. The examiner concluded (answer at 4) that a person having ordinary skill in the art would have found it obvious within the meaning of 35 U.S.C. § 103(a) to combine Zimmerman with Snack-A-Dip® (Lightly Salted Tortilla Chips & Salsa) as follows:

It would have been obvious to one of ordinary skill in the art to incorporate the tub of dip and the lid of Snack-a-Dip into the kit of Zimmerman et al since both are directed to chip containers, since the chips of Zimmerman et al were commonly eaten with dip, since it was commonly known and practiced to provide a tub of dip within the chip canister as shown by Snack-a-Dip (see Sample), since the removable lid of

5 Snack-a-Dip would have provided an effective
means for sealing the container of Zimmerman et
al, since the dip ratio of Snack-a-Dip would have
provided an appropriate amount of dip for the
chips, and since providing dip along with the
chips of Zimmerman et al would have provided
added convenience to the consumer by eliminating
the need to purchase and transport a separate tub
of dip.

10 34. Because a tub of condiment is necessarily denser than
snack chips, it would reasonably appear that the
packed volumetric bulk density would increase when a
tub of dip-condiment is incorporated within
15 Zimmerman's container of snack chips.

Discussion

By way of background, the examiner entered a final Office
action on January 14, 2004 in which claims 1, 3, 5, 6, and 17
20 through 20 were rejected on multiple grounds. (January 14, 2004
final Office action at 2-4; FF1.) In response, the appellant
appealed the rejections set forth in the final Office action.
(Appeal brief filed on October 19, 2004 FF2.) But in a non-
final Office action dated January 7, 2005, the examiner reopened
25 prosecution and entered four new separate grounds of rejection.
(January 7, 2005 Office action at 3-7; FF3.) The present appeal

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ensued. (Supplemental appeal brief filed on June 9, 2005 at 3;
FF4.)

In the examiner's answer mailed August 31, 2005, the
examiner withdrew all but one ground of rejection. (Answer at
5 3-4; FF5.) The sole rejection on appeal is whether, under 35
U.S.C. § 103(a), claims 1, 3, 5, 6, and 17 through 20 are
unpatentable over the combination of Zimmerman and the
appellant's admitted prior art in the form of Snack-A-Dip®
(Lightly Salted Tortilla Chips & Salsa).²

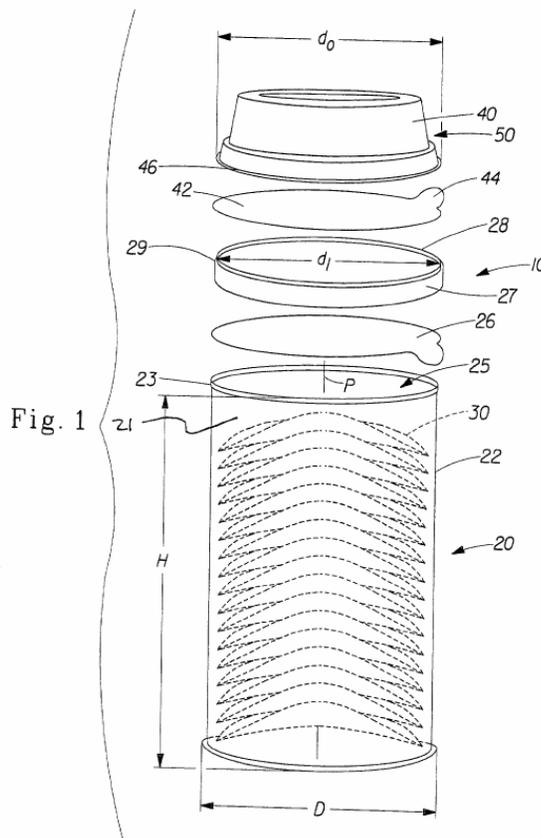
10 Before addressing the merits of the examiner's rejection,
we review the appellant's invention. Appealed claim 1, which is
representative of all the appealed claims, reads (supplemental
appeal brief, Appendix I; FF8):

15 1. A kit for containing both a plurality of
snack pieces and a dip-condiment, said kit comprising:
a canister;
a plurality of snack pieces contained within said
canister, wherein the snack pieces have an average
20 projected area ranging from about 1900 mm² to about
10,000 mm²;
a tub attached to said canister; and
a dip condiment held within said tub;
wherein said kit has a space efficiency greater

² The appellant has argued the appealed claims together as
a group. (Substitute appeal brief at 7-8; FF7.) We therefore
select claim 1 as representative of all the rejected claims and
confine our discussion of the examiner's rejection to this
representative claim. 37 CFR § 41.37(1)(vii) (2005) (effective
September 13, 2004).

than about 0.15 g/cm^3 .

Figure 1 of the subject application, which is said to depict a preferred (but by no means the only) embodiment, is reproduced below. (FF9-10.)



The appellant explains that 10 denotes a kit, 20 denotes a container, 21 denotes a cavity, 22 denotes a continuous side wall, 23 denotes a lip of the container 20, 25 denotes an opening, 26 denotes a removable lid, 27 denotes an overcap, 28

denotes a lip of the overcap 27, 29 denotes a peripheral edge of the overcap 27, 30 denotes snack pieces, 40 denotes a tub, 42 denotes a lid enclosing tub 40, 44 denotes a peel tab, 46 denotes a lip of the tub 40, and 50 denotes a dip condiment.

5 (Specification at 8-19; FF10.) We also observe that the subject specification (page 17, lines 23-24; FF11) describes another embodiment of the invention as follows:

10 In an alternative embodiment, tub 40 could be a tub that inserts into the cavity 21 of container 20 either non-connected to container 20 or connected to container 20.

Appealed claim 1 recites two terms ("average projected area" and "space efficiency"), which are expressly defined in 15 the specification. The term "average projected area" is defined as follows (specification at 7, lines 2-12; FF12):

20 The projected area listed in Table 1 for these kits was an average calculated projected area and was calculated by randomly selecting three whole chips from the kits, measuring each chip's projected area and then calculating the average of these projected areas. Projected area, as used herein, is essentially the area within the two-dimensional outline of the shape of the snack piece. This two-dimensional cross-sectional "footprint" of the snack piece forms a projected area that can be determined either by area calculations of a known geometry, a curve integrator, superimposing the actual drawn area on grid paper with predetermined area markings, or by comparing the 25 weight of a piece of paper cut to the footprint outline to a weight of similar paper with a known 30 area. To measure the projected area of the individual

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snack piece, the snack piece to be measured is placed in an orientation that will yield the largest possible projected area. [Emphasis added.]

5 The expression "space efficiency" is defined as the ratio of the total net weight (net wt.) of the product contained within the kit, to the total exterior kit or package volume (ext. vol.). (Specification at 1, lines 25-28; FF13.)

The subject specification describes problems with some
10 prior art products as follows (specification at 2, lines 1-13; FF14):

Snack food pieces, such as potato chips (or "crisps") or tortilla chips, and dip-condiments (hereinafter "dips"), such as chip dips or salsa, have
15 individually been available for years and consumers enjoy them together as a combination food item. However, the majority of snack chip packages and dip packages are sold separately. This individual retailing of the snack chips separate from the dip
20 creates several problems. First, the majority of snack piece packaging, i.e., bags already have low space efficiency and package density. Second, due to the packaging of the snack pieces and the dip in separate packages, the space efficiency and bulk
25 density of snack pieces and dip as a food combination is even lower. Third, once purchased, the user must carry, secure and store two separate items when they transport the chips and dip to a remote location for eventual consumption. And, Finally [sic], generally
30 these packages randomly pack the snack chips within the package and thus permit chip breakage, which is less conducive to dipping. Therefore, this food combination is not optimal as a portable food item.

Nevertheless, the specification acknowledges (specification at 2, lines 27-28; FF15): "Various executions of packages containing snack pieces with dips in a unitary package or kit are known."

5 With this understanding of the appellant's invention, we turn to the examiner's rejection. We first address the prior art status of the Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) sample. The relied upon Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) sample is a product of France. (FF16.)
10 Regardless of whether it is available as prior art under 35 U.S.C. § 102, the examiner found that the commercial products identified in Table 1, which includes Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa), of the specification (page 6) constitute admitted prior art (January 7, 2005 Office action at
15 2; FF16). The appellant did not dispute the examiner's determination of the admitted prior art status of Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) and, in fact, affirmatively stated that the commercial products identified in Table 1 of the specification, including Snack-A-Dip[®] (Lightly
20 Salted Tortilla Chips & Salsa), are considered to be prior art to the appellant. (Supplemental appeal brief at 7; FF17.) We therefore conclude that the examiner's reliance on this product

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sample as prior art is appropriate.³ Riverwood Int'l Corp. v. R.A. Jones & Co., 324 F3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed. Cir. 2003).

We find that the outer packaging label of the Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) sample touts the product as a "2-in-1 Combi Pack" (i.e., a convenient package product combining the snack chips and the dip-condiment tub). (FF19.) We also find that Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) is a snack food kit including a cylindrical container (canister) filled with a plurality of tortilla chips, a plastic lid, and a dip-condiment tub attached to the upper lip of the container by means of the container lid pressing against an upper rim of the dip-condiment tub. (FF20.) With regard to the claim limitation "a tub attached to said canister," the appellant does not dispute the examiner's factual finding that Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) includes a

³ We find that the outer packaging label of the Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) sample is marked with an identification of French Patent No. 9912098, which was published as publication 2,798,911 on March 30, 2001 (copies of the document and its English language translation are attached). (FF18.)

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dip-condiment tub attached to the container.⁴ (FF21.) According
to the appellant (Table 1 of the specification at 6; FF22),
Snack-A-Dip[®] (Lightly Salted Tortilla Chips & Salsa) has a snack
piece average projected area of 1060 mm² and a space efficiency
5 of 0.134 g/cm³.

Zimmerman, the other prior art evidence, is identified in
the appellant's specification as describing "[a]n optimized
design of a curved snack piece to accomplish high packed
densities of a plurality of curved snack pieces..." in
10 accordance with the claimed invention. (Specification at 14,
lines 14-25; FF23.) Specifically, Zimmerman describes a
packaged container filled with overlapping snack pieces placed
therein, wherein the packed volumetric bulk density is greater
than about 10×10^{-5} g/mm³ to about 35×10^{-5} g/mm³ (about 0.1
15 g/cm³ to about 0.35 g/cm³). (¶0018 at 2; claim 14 at 10; FF24.)
Zimmerman teaches that snack pieces having the disclosed
structural and geometric shapes in a nested arrangement
(relative to prior art products in which the chips are randomly
packed) provide increased bulk density as well as allow
20 efficient dipping of condiment during use. (¶¶0002-0021 at 1-2;

⁴ French Patent No. 9912098 expressly teaches that the cell
or tub 3 is attached or linked to the container 2 by means of

FF28.) Zimmerman expressly states that snack chips and fluid condiments are "a very popular snack combination." (¶0010 at 1; FF25.)

The examiner found that the packed volumetric bulk density as described in Zimmerman is the same characteristic as "space efficiency" as described in the subject specification (page 1, lines 25-28). (Answer at 7; FF26.) The appellant did not rely on any evidence to challenge the examiner's finding with respect to the identity of Zimmerman's packed volumetric bulk density and "space efficiency" as described in the subject specification. (FF27.)

Additionally, Zimmerman teaches that three-dimensional, triangular-shaped snack pieces are most preferred as dipping chips. (¶0047 at 5; FF29.) Zimmerman further teaches that Figure 2 depicts a preferred embodiment of such triangular-shaped snack pieces, wherein the length is from about 40 mm to about 110 mm and the width is from about 30 mm to about 110 mm. (¶0048 at 5; FF30.) The examiner found that Zimmerman's preferred triangular-shaped chips having a length of 110 mm and a width of 110 mm described would have a calculated projected area of about 6000 mm². (Answer at 4; FF31.) The appellant did

not present any calculations or other evidence demonstrating that the examiner's calculated snack chip projected area is incorrect. (FF32.)

After considering this evidence, the examiner concluded
5 (answer at 4; FF33) that a person having ordinary skill in the art would have found it obvious within the meaning of 35 U.S.C. § 103(a) to combine Zimmerman with Snack-A-Dip® (Lightly Salted Tortilla Chips & Salsa) as follows:

10 It would have been obvious to one of ordinary skill in the art to incorporate the tub of dip and the lid of Snack-a-Dip into the kit of Zimmerman et al since both are directed to chip containers, since the chips of Zimmerman et al were commonly eaten with dip, since it was commonly known and practiced to provide a tub of
15 dip within the chip canister as shown by Snack-a-Dip (see Sample), since the removable lid of Snack-a-Dip would have provided an effective means for sealing the container of Zimmerman et al, since the dip ratio of Snack-a-Dip would have provided an appropriate amount
20 of dip for the chips, and since providing dip along with the chips of Zimmerman et al would have provided added convenience to the consumer by eliminating the need to purchase and transport a separate tub of dip.

25 We are in complete agreement with the examiner. Zimmerman expressly teaches that snack chips and fluid condiments "are a very popular snack combination." (¶0010 at 1.) Even the appellant admits that unitary packages including such combinations are well known. (Specification at 2, lines 27-28;
30 FF15.) As evidenced by the Snack-A-Dip® (Lightly Salted Tortilla

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Chips & Salsa) sample, a unitary package including snack chips and a dip-condiment tub would provide a convenient "2-in-1" package of goods commonly used together. (FF19.) Under these circumstances, a person having ordinary skill in the art would have found it prima facie obvious to provide a tub of dip-
5 condiment within Zimmerman's package, thus arriving at a kit encompassed by appealed claim 1. With respect to the "space efficiency" limitation recited in appealed claim 1, the appellant has proffered no evidence establishing that when a
10 dip-condiment tub is included in Zimmerman's canister, the "space efficiency" would be outside the range recited in appealed claim 1. As noted above, Zimmerman teaches that the canister containing the chips has a packed volumetric bulk density (i.e., space efficiency) of about 0.1 g/cm³ to about 0.35
15 g/cm³, which substantially overlaps the appellant's claimed range of greater than about 0.15 g/cm³. Because a dip-condiment tub is necessarily denser than relatively light snack chips and the tub would replace the space occupied by less dense snack chips, it would reasonably appear that the packed volumetric bulk density
20 ("space efficiency") of the resulting combination would necessarily have a packed volumetric bulk density or space efficiency within the appellant's claimed range. (FF34.) In re

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Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977).

As a corollary, one of ordinary skill in the art would have found it prima facie obvious to modify the Snack-A-Dip® (Lightly Salted Tortilla Chips & Salsa) sample by replacing the canister
5 of randomly packed tortilla chips with an appropriately sized canister of snack chips in a nested arrangement as described in Zimmerman in order to obtain the advantages of increased bulk density and improved shapes for efficient condiment dipping. Either way, we reject the notion that the examiner has relied
10 "on his own experience to provide the necessary motivation to modify and combine the references." (Supplemental appeal brief at 7.) Here, the examiner has identified the motivation, suggestion, or teaching in the prior art for one of ordinary skill in the art to combine Zimmerman with Snack-A-Dip® (Lightly
15 Salted Tortilla Chips & Salsa), thus arriving at a product encompassed by appealed claim 1.

The appellant argues that "it would not be obvious to a skilled artisan to select the Zimmerman kit comprising a container and chips for combination with Snack-a-Dip over the
20 myriad of other chip choices, until one reads the present specification and finds out the importance of the chip's surface area and the space efficiency of the kit." (Supplemental appeal

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brief at 8.) We disagree. The prior art reference, namely
Zimmerman, provides motivation independent of the disclosure in
the appellant's specification. Zimmerman's disclosure is
replete with teachings highlighting the advantages of providing
5 the snack chips as described therein. (¶¶0002-0021 at 1-2.) It
is our judgment that these teachings constitute the motivation,
suggestion, or teaching required to support a rejection based on
a combination of references within the meaning of 35 U.S.C. §
103(a).

10

Order

In sum, it is ORDERED that:

the 35 U.S.C. § 103(a) rejection of claims 1, 3, 5, 6, and
17 through 20 as unpatentable over the combined teachings of
15 Zimmerman and the appellant's admitted prior art in the form of
Snack-A-Dip® (Salsa) is AFFIRMED.

The decision of the examiner to reject appealed claims 1,
3, 5, 6, and 17 through 20 is AFFIRMED.

20

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Time for Taking Action

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

5 AFFIRMED

10 Adriene Lepiane Hanlon)
Administrative Patent Judge)
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15) BOARD OF PATENT
Romulo H. Delmendo)
Administrative Patent Judge) APPEALS AND
)
) INTERFERENCES
20)
)
Linda M. Gaudette)
Administrative Patent Judge)

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Enclosure French Translation

5 THE PROCTER & GAMBLE COMPANY
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