

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RANDALL G. RIDHARDS, KEITH ANTHONY JONES,  
and COLIN BERIDO

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Appeal 2007-4027  
Application 10/987,322  
Technology Center 3700

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Decided: November 26, 2007

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Before EDWARD C. KIMLIN, THOMAS A. WALTZ, and  
CATHERINE Q. TIMM, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 20-30, 35 and 37-44.

Claim 20 is illustrative:

20. A compartmentalized storage system for temporarily storing and subsequently mixing at least two different edible substances comprising:

(a) a first storing compartment having a front and back, a plurality of sides, defining a first cavity portion, and a tearable seal, wherein a first edible substance is stored in the first storing compartment; and

(b) a second storing compartment having a front and a back and a plurality of sides, defining a second cavity portion, wherein a second edible substance is stored in the second storing compartment;

wherein the first and the second compartments are attached to each other by at least one common side, which common side comprises a frangible seal connecting the first and second compartments, whereby upon applying force to the frangible seal, the seal will break and thereby allow the second edible substance in the second storing compartment to be mixed with the first edible substance in the first storing compartment.

The Examiner relies upon the following references as evidence of obviousness:

Slangan	US 4,233,325	Nov. 11, 1980
Rowell	US 4,509,642	Apr. 9, 1985
Udea	US 4,634,003	Jan. 6, 1987
Lenahan	US 5,514,394	May 7, 1996
Kasianovitz	US 5,616,337	Apr. 1, 1997
Hawthorne	US 6,390,292B2	May 21, 2002

Appellants' claimed invention is directed to a compartmentalized storage system for temporarily storing and then mixing two different edible substances. Independent claim 20 is directed to the system itself, while independent claim 35 is directed to the method of using the compartmentalized storage system. The system comprises first and second storing compartments having a common side comprising a frangible seal which connects the two compartments. When force is applied to the frangible seal, the seal breaks and allows the edible substances in the two compartments to mix.

Appealed claims 20-30, 35 and 37-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kasianovitz in view of Lenahan, Ueda, Rowell, Hawthorne and Slangan.

Appellants have not set forth a substantive argument that is reasonably specific to any particular claim on appeal. Appellants' re-statement of independent claims 20 and 35 at pages 7-8 of the Brief does not constitute a substantive argument relating to the nonobviousness of the claimed subject matter. Accordingly, all the appealed claims stand or fall together with claim 20.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants make no argument that the claimed structure for Appellants' storage system is distinct from the storage system described by Kasianovitz. Indeed, we find no structural distinction between compartmentalized storage systems within the scope of the appealed claims and the compartmentalized storage system described by Kasianovitz. The claim 20 recitation "for temporarily storing and subsequently mixing at least two different edible substances" is a statement of intended use that does not further define the structure of the claimed storage system. Hence, in our view, Kasianovitz describes the claimed storage system within the meaning of § 102. Since anticipation is the epitome of obviousness, it logically

follows that we will sustain the Examiner's § 103 rejection of claims 20-30 which are drawn to the compartmentalized storage system, *per se*.

As for the rejection of method claims 35 and 37-44, we are convinced that the Examiner has drawn the proper legal conclusion that it would have been obvious for one of ordinary skill in the art to employ the storage system of Kasianovitz to store and subsequently mix edible substances. The Examiner has provided ample evidence that it was known in the art to use compartmentalized storage systems for keeping different food substances separated until the proper time for mixing and use. As acknowledged by Appellants, "*Lenahan* discloses a container having a side wall and a frangible membrane extending across the width of the container to define an upper and a lower compartment within the container" (Br. 11, last sentence). The frangible portion of *Lenahan*'s membrane ruptures under pressure to allow two edible substances, such as cereal and milk, to mix together before consumption. Accordingly, although the storage system of Kasianovitz is primarily used for separating non-edible substances before mixing and use, such as drugs and cosmetics, we have no doubt that one of ordinary skill in the art would have found it obvious to use the system of Kasianovitz to store and subsequently mix edible substances. Appellants have presented us with no line of reasoning why one of ordinary skill in the art would have been dissuaded from using the storage system of Kasianovitz for edible substances, and none is apparent to us. Consequently, we find no error in the Examiner's conclusion that "substituting the edible substances in the compartments of Kasianovitz et al would have been an obvious substitution since Kasianovitz provided the motivation of mixing two different substances in a container by a frangible seal before usage" (Ans. 5).

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As a final point, we note that appellants base no arguments upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the *prima facie* case of obviousness established by the Examiner.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

tc/lS

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