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FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			MISKA, VIT W	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RICHARD MARCELLINO

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Appeal 2015-004710  
Application 13/438,995  
Technology Center 2800

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Before MARK NAGUMO, WESLEY B. DERRICK, and JULIA HEANEY,  
*Administrative Patent Judges.*

DERRICK, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's final rejection under 35 U.S.C. § 103 of claims 1–9, 11, 13, and 14 over Zoltan<sup>1</sup> in view of Zettek,<sup>2</sup> and of claims 10 and 12 in further view of Maestre<sup>3</sup> and Hildebrandt,<sup>4</sup> respectively. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

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<sup>1</sup> US 4,419,016, issued December 6, 1983.

<sup>2</sup> US 4,630,935, issued December 23, 1986.

<sup>3</sup> US 5,495,961, issued March 5, 1996.

<sup>4</sup> US 7,382,692 B1, issued June 3, 2008.

CLAIMED SUBJECT MATTER

Appellant's claimed invention is generally directed to containers with a cap or lid that include a tracking device for recording date, time, and elapsed time information related to when the container was last opened and a digital display for displaying the information. Spec. Abstract. Independent claim 1 is directed to a container. Independent claim 7 is directed to a method for using containers according to the invention.

Independent claim 1 is representative.

1. A container having a tracking device for recording date and time information, the container comprising:
  - a container for holding an item and having a closed bottom end and an open distal end,
  - a tracking cap able to be engaged with the container at the open distal end thereof in order to close the same,
  - a sensor disposed within the portion of the tracking cap in operative communication with a clocking device also disposed in or on the tracking cap, and
  - first and second time displays in operative communication with the clocking device, where the first time display illustrates date/time when the cap was last opened, and the second time display illustrates elapsed time information since the cap was last opened.

Appeal Br. (Claims Appendix) 12.

Appellant argues claims rejected over Zoltan in view Zettek as a group and essentially relies on those arguments as to claims 10 and 12 rejected in further view of Maestre and Hildebrandt, respectively.

## DISCUSSION<sup>5</sup>

Upon consideration of the evidence on this record and each of Appellant's contentions, we find that a preponderance of the evidence supports the Examiner's determination that one of ordinary skill in the art, armed with the knowledge provided in the applied prior art would have been led to the subject matter recited in claims 1–14.

The Examiner relies on Zoltan for its disclosure of a container having a tracking device provided in a cap that can be engaged to close the container where closure engages a sensor that is in operative communication with a clocking device in or on the tracking cap and a time display in operative communication with the clocking device, where the time display can be used to display the date or time that the tracking cap and container were engaged and the amount of time elapsed since the tracking cap and container were engaged. Final Act. 2–3 (citing Zoltan Figs. 1, 3; col. 4, ll. 17–18, 58; col. 5, l. 66; col. 6, ll. 1–2). The Examiner finds Zoltan's claims 1 and 4 disclose an elapsed time is determined and indicated in addition to the time of last opening. Final Act. 4.

The Examiner relies on Zettek for its disclosure of a timekeeping instrument for tracking and displaying several time periods, including the time of last reset and elapsed time since the last reset by means of separate displays. Final Act. 4 (citing Zettek col. 3, ll. 13–16).

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<sup>5</sup> We refer to the Final Office Action mailed April 23, 2014, the Appeal Brief filed October 8, 2014, and the Examiner's Answer mailed January 22, 2015.

The Examiner concludes that one of ordinary skill in the art would have found it obvious at the time of the invention to provide a separate or second display to allow simultaneous display of both the time of last reset and the elapsed time since the last reset to minimize the number of required switch actuations. Final Act. 4.

Appellant argues that Zoltan contemplates the alternative use of displays to indicate the last time that the cap was off and the elapsed time since the cap was last off, not use of both, and so “does not provide a separate display for the elapsed time indication in addition to the time of last opening.” Appeal Br. 7 (citing Zoltan col. 4, ll. 57–67, Figs. 1–7).

Appellant also argues that because Zoltan’s claims 1 and 4 are written in means plus function claim language, there is no basis for Zoltan to teach or suggest “providing a separate display for the elapsed time indication in addition to the time of last opening.” Appeal Br. 8.

Appellant then further argues that contrary to the language of claim 4 that the time keeping means further comprises means for determining and displaying the elapsed time, claim 4 only discloses doing so as an alternative to the other “times” that are recited as part of a closed Markush group of times set forth in claim 1, from which claim 4 depends. Appeal Br. 8–9.

Finally, Appellant argues that Zettek does not make up the deficiencies of Zoltan because it fails to describe reasons for providing the simultaneous displays of date/time and elapsed time and does not overcome Zoltan’s express teaching of alternative use of such displays. Appeal Br. 9. Appellant further contends “Zettek is not related to when a cap was last situated on a bottle.” Appeal Br. 9.

Appellant's arguments are unpersuasive of reversible error because, as well-expressed by the Examiner, Zoltan teaches time keeping and display means for both the time of last opening and for the elapsed time indication and, accordingly, having taught that it is desirable to provide both of these time values, fairly suggests determining and displaying the two time quantities. Ans. 2–4. An obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for [an Examiner] can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); *see also In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]t is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”). Furthermore, Zettek’s disclosure of a timekeeping instrument for tracking and displaying several time periods makes manifest that it would have been well within the ambit of one of ordinary skill in the art to provide for simultaneous display of the specified time periods by means of separate displays. Final Act. 4.

Further, because Zoltan’s claim 4 includes all limitations of claim 1, from which it depends, the recitation that claim 4 further comprises means for determining and displaying the elapsed time quantity fairly teaches a device that measures and displays the time of last opening (Zoltan claim 1) and the elapsed time since the container was last opened (Zoltan claim 4) even if it does not expressly disclose that they are displayed simultaneously.

As to Appellant’s argument addressing Zettek, it is wholly unpersuasive as it fails to address the relied on combination as set forth by the Examiner. Likewise, Appellant fails to squarely address the Examiner’s

rationale grounded on the desirability of providing both desired values at the same time.

For these reasons, on this record, we are not persuaded that the Examiner erred in concluding that one of ordinary skill in the art at the time of the invention, armed with the knowledge of the cited prior art, would not have been led to the claimed subject matter of claims 1–9, 11, 13, and 14.

As to the obviousness rejections of claims 10 and 12 in further view of Maestre and Hildebrandt, respectively (Final Act. 6), Appellant essentially relies on their arguments as to Zoltan and Zettek (Appeal Br. 10). All that is proffered in addition is that Appellant asserts, without elaboration or specific criticism of the Examiner’s detailed findings, that “Maestre [is] not related to when a cap was last situated on a bottle” and that “Hildebrandt teaches an add-on device which may not fit a particular bottle or jar top or lid properly and may become dislodged from the regular cap or lid, thus interrupting the timing or not giving the proper information.” Appeal Br. 10. There is, accordingly, no cogent argument sufficient to address the Examiner’s detailed position as to these claims. *Cf. In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art. Because Lovin did not provide such arguments, the Board did not err in refusing to separately address claims 2–15, 17–24, and 31–34.”). Thus, on this record, we are not persuaded of error in the Examiner’s findings and conclusions as to these claims.

Accordingly, we sustain the Examiner’s obviousness rejections.

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### CONCLUSION

We affirm the Examiner's obviousness rejections of claims 1–14.

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