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 RONALD HAGE, JAN KLUGKIST,
and TON SWARTHOFF

Appeal 2007-1396
Application 10/375,235
Technology Center 1700

Decided: September 27, 2007

Before BRADLEY R. GARRIS, CHARLES F. WARREN, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 2, 4, 5, 7, 8, 11 through 18, and 20 in the Office Action mailed June 5, 2005 (Office Action). 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2005).

We affirm the decision of the Primary Examiner.

Claim 20 illustrates Appellants' invention of a bleaching composition, and is representative of the claims on appeal:

20. An aqueous bleaching medium comprising:

(a) an aqueous medium;

(b) an organic ligand which forms a complex with a transition metal capable of bleaching a substrate via atmospheric oxygen, the aqueous bleaching medium being substantially devoid of peroxygen bleach or a peroxy-based or peroxyl-generating bleach system;

(c) an oxidizable precursor selected from the group consisting of:

(i) a linoleic acid or metal thereof; and

(ii) a generating system for producing a linoleic acid or salt thereof in situ in the aqueous medium;

(d) an enzyme for oxidizing the oxidizable precursor to form a hydroperoxide in situ; and

(E) an oily stain containing substrate.

The Examiner relies on the evidence in these references:

Baeck	WO 95/26393 A1	Oct. 5, 1995
Hermant	WO 97/48787 A1	Dec. 24, 1997
Perkins	WO 00/60045 A1	Oct. 12, 2000

"Lipoxygenases," PROMISE mirror: http://metallo.scripps.edu/PROMISE/ (Nov. 11, 1998) (Promise Mirror).

Appellants request review of the following grounds of rejection under 35 U.S.C. § 103(a) advanced on appeal (Br. 8):

claims 2, 4, 5, 7, 8, 11 through 18, and 20 as unpatentable over Baeck in view of Hermant and Promise Mirror (Answer 3; Office Action 4[1]); and

claims 2, 4, 5, 7, 8, 11 through 18, and 20 as unpatentable over Perkins in view of Baeck (Answer 3; Office Action 6).

The Examiner also advanced on appeal this ground of rejection, and observes Appellants have not requested review of this ground or presented argument with respect thereto (Answer 3):

[1] The Answer does not set forth the grounds of rejection (Answer 3). We find the grounds stated in the Office Action.

claims 2, 4, 5, 7, 8, 11 through 18, and 20 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 5, and 9 through 20[2] of co-pending Application 10/375,235 (Answer 3; Office action 8).

With respect to the grounds of rejection under § 103(a), Appellants argue the claims in each ground of rejection as a group. Br. in entirety. Thus, we decide this appeal based on claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2005).

The issues in this appeal with respect to the grounds of rejection under § 103(a) are whether the Examiner has carried the burden of establishing a prima facie case in each of the grounds.

The plain language of claim 20 specifies an aqueous bleaching medium, the composition comprising at least any amount of any organic ligand which can form a complex with any transition metal and can bleach a substrate via atmospheric oxygen; any amount of an oxidizable precursor selected from the group consisting of a linoleic acid or its metal salt, and a generating system for producing linoleic acid or its salt in an aqueous medium; any enzyme for oxidizing the oxidizable precursor to form a hydroperoxide in situ; and any oily stain containing substrate; and wherein the aqueous bleaching medium is substantially devoid of peroxygen bleach or a peroxy-based or peroxyl-generating bleach system. The transitional term "comprising" opens the claim to encompass compositions which contain any manner and amount of additional ingredients. *See, e.g.*, *Exxon Chem. Pats., Inc. v. Lubrizol Corp.*, 64 F.3d 1553, 1555, 35 USPQ2d 1801,

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[2] The Examiner states the claims in Application 10/375,238 as "claims 1-21." Answer 3. Claims 1, 4, 5, and 9 through 20 are presently of record in Application 10/375,328.

1802 (Fed. Cir. 1995) ("The claimed composition is defined as comprising - meaning containing at least - five specific ingredients.").

We find no limiting definition for any of the claimed terms specifying kinds of compounds and complexes in the Specification which requires a meaning other than art recognized broad meaning of the terms. Appellants disclose the mechanism pathway or "bleach cascade" from the triglycerides in oily stains to activation of a hydroperoxide with a transition metal complex catalyst. Appellants further disclose that in "air mode," bleaching is affected by atmospheric oxygen and peroxides enzymatically generated in the wash medium. Specification, e.g.; 2:6 to 3:8, 4:4-15, and 4:26-5:19. We observe that, in this respect, Appellants disclose that certain of these claim terms should be considered as limited in chemical activity in certain respects as Appellants intend, regardless of the bleaching or reaction mechanism(s) which the compounds and complexes provide. Specification, e.g., 7:7-10. Appellants' mere intent as to the scope of the claim terms does not so limit the scope of claim 1 which is otherwise definite when construed in light of the Specification as it would be interpreted by one of ordinary skill in the art. *See In re Cormany*, 476 F.2d 998, 1000-02, 177 USPQ 450, 451-53 (CCPA 1973).

In this respect, Appellants disclose "[s]uitable organic molecules (ligands) and complexes for use with the present invention are found, for example in," among other things, Hermant and Perkins, which are incorporated by reference. Specification 6:28-7:7. As we further find below, these references disclose the ligands and complexes thereof with, for example, iron, as oxidation catalysts for bleaching compositions, which contain either a peroxygen bleach or a source thereof or use molecular

oxygen, wherein the transition metal catalysts facilitate bleach activation of peroxy compounds and molecular oxygen. Hermant, e.g., 1:4-17; Perkins, e.g., 3:12-25. The ligands and complexes in these reference are encompassed by the claim terms "organic ligand" and "complex with a transition metal" in claim 20 and the claim term "transition metal catalyst" in claim 18.

We find Baeck would have disclosed to one of ordinary skill in this art detergent compositions which include lipoxidase enzymes that oxidize carotenoid chromophores and inhibit the transfer of bleachable dyes from the aqueous wash solution to a substrate. Baeck, e.g., 1:13 to 2:3, 2:6-8 and 12-20, 3:1-27, and 4:28 to 5:19. Baeck defines "lipoxidase enzyme" as "an enzyme which acts to oxidise polyunsaturated fatty acids to their corresponding hydroperoxide form," and include the enzyme "carotenase." *Id.* 4:8-12. The compositions contain at least a lipoxidase enzyme, a surfactant and/or builder, and other ingredients used in aqueous solutions *Id*., e.g., 3:29-33, 4:2-7, 5:21-29, 46:22-27. The formulations can include bleaching agents and additional enzymes. *Id*., e.g., 6:4-10. The bleaching agents can be, among other things, inorganic perhydrate salts, peroxyacid bleach precursors and organic peroxyacids, including sodium perborate and sodium percarbonate. *Id*., e.g., 28:29 to 32:10. The additional enzymes can be, among other things, lipases and peroxidases, the latter used with oxygen sources in solution bleaching to prevent dye transfer. *Id*., e.g., 32:12-18, 33:7-26, 34:18-29. In Example 1, dishwashing compositions A, C, D, and E contain, among other things, less than 0.1 part by weight of a lipoxidase and of a lipase, and 10.4 parts by weight sodium perborate. *Id*. 54; *see also* 52. In Example 6, two colored fabric cleaning compositions contain, among

other things, less than 0.1 part by weight of a lipoxidase, of a lipase, and of a peroxidase, and less than 1.0 part by weight of sodium perborate. *Id*. 58. In Examples 8 and 9, two fabric cleaning compositions contain among other things, less than 0.1 part by weight of a lipoxidase and of a lipase, and 15 parts by weight sodium perborate. *Id*. 60. In Example 10, fabric cleaning composition III contains, among other things, less than 0.1 part by weight of a lipoxidase and of a lipase.

We find Hermant would have disclosed to one of ordinary skill in this art a transition metal complex catalyst which can activate bleach compounds including hydrogen peroxide and peroxy acids or molecular oxygen to remove stains and inhibit dye transfer when used in bleach and detergent compositions. Hermant, e.g., abstract, 1:4-17, 3:10 to 7:24. The compositions contain, among other things, peroxy bleach compounds, a surfactant, and a builder as well as other conventional ingredients such as enzymes, such as lipases and oxidases, and hydrogenperoxide sources, such as sodium perborate and sodium percarbonate. *Id.*, e.g., 7:26 to 16:13.

We find Perkins would have disclosed to one of ordinary skill in this art a transitional metal complex catalyst which can bleach stains, such as carotenoid stains, in compositions which do not contain a peroxygen bleach or source of hydrogen peroxide, that is, in the presence of molecular oxygen, or which contain a peroxygen bleaching system that includes, among other things, hydrogen peroxide and sources therefor, among other things, hydrogen peroxide, percarbonates and perborates. Perkins, e.g., 1:5 to 9:18, and 37:15-25. The bleaching and detergent compositions can include additional materials, such as surfactants and builders, as well as an

enzyme such as lipase, which can remove, among other things, triglyceride-based stains from textiles, and peroxidases. *Id.*, e.g., 9:20 to 10:13, 24:22 to 25:10, and 26:25 to 27:2. In Example 3, a bleaching system composition contains less than 1 part by weight of the lipase Lipolase and less than 1 part by weight of catalyst. *Id.* 38-39 and Table I.

There is no dispute the claim term "lipoxygenase" includes enzymes known in the art as lipoxidases as shown in Promise Mirror as the Examiner finds. Office Action 5; Promise Mirror 3, second table. This reference also evinces "lipoxygenase" is also known as "carotene oxidase." Promise Mirror 3, second table. A further discussion of this reference is not necessary to our decision.

With respect to the first ground of rejection, the Examiner finds Baeck discloses compositions differing from the claimed compositions in the absence of a transition metal catalyst, wherein the lipoxidase ingredient of the compositions removes bleachable stains, including carotenoid soils, and the compositions can further include lipases and perhydrate salts. Office Action 5. The Examiner finds Hermant discloses a transition metal catalyst which activates hydrogen peroxide, peroxy aids and molecular oxygen, and removes stains and inhibits dye transfer. *Id.* 5-6. The Examiner concludes one of ordinary skill in this art would have used Hermant's transition metal catalyst in Baeck's compositions with a reasonable expectation of success because Hermant's catalyst can activate bleach ingredients in Baeck's compositions as well as molecular oxygen and provide stain removal and dye transfer inhibition properties, wherein the proportions of the ingredients are as claimed. *Id.* 5-6. With respect to the second ground of rejection, the Examiner finds Perkins discloses compositions containing a transition metal

catalyst that can bleach stains in a bleaching system that has a low amount of peroxygen bleach, which differs from the claimed compositions in the absence of a lipoxidase enzyme, the latter disclosed by Baeck. *Id.* 6-7. The Examiner concludes one of ordinary skill in this art would have used Baeck's lipoxidase enzyme in Perkins' compositions with a reasonable expectation of success because the lipoxidase enzyme is taught to remove stains, including carotenoid soils, wherein the proportions of the ingredients are as claimed. *Id.* 7-8.

With respect to the first ground of rejection, Appellants contend Baeck does not disclose, among other things, "ligands/transition metal catalysts capable of bleaching by air mode," and "an oxidizable precursor, especially no disclosure of any linoleates." Appellants contend Hermant does disclose "air mode bleaching of stains" with transition metal catalysts, but does not disclose, among other things, "an oxidizable precursor present, such as a linoleic acid or salt thereof," and "an oxidizing enzyme such as lipoxygenase." Br. 10-11. Appellants contend one of ordinary skill in the art would be led away from the combination of lipoxygenases with air mode bleaching catalysts because there would be no incentive to combine ingredients that do the same thing. *Id.* 11; see also 12. Appellants further contend the "air mode type transition metal catalysts can synergistically interact with lipoxygenases to provide an improved result . . . in the presence specifically of linoleic acid or salts thereof." *Id.* 12. Appellants rely on "[c]omparative experiments . . . reported at [Specification] pages 22-23," wherein "[o]f particular effectiveness are Experiments 1 and 1A," and "good results were also achieved in Experiments 4 and 4A which are combinations of lipoxygenase and a transition metal catalyst." *Id.*

With respect to the second ground of rejection, Appellants contend Perkins does disclose air mode transition metal catalysts, but does not disclose an enzyme for oxidizing an oxidizable precursor and does not disclose linoleic acid or salts thereof. Appellants contend there is no advantage to use Baeck's lipoxygenase with Perkins' transition metal catalyst. Br. 13. Appellants rely on the "comparative experiments" at Specification pages 23-24 and particularly Examples 1 and 1a which "reflect activity of a combination of lipase, lipoxygenase and bleaching catalyst," in which "[s]tain removing results are quite exceptional relative to other experiments operating with only one or even two of the aforementioned materials of the claimed bleaching system." *Id.* 14.

With respect to the first ground of rejection, the Examiner responds that motivation to use a catalyst in Baeck's compositions is found in Hermant's teaching that a catalyst can be used in similar compositions and provides stain removal and dye transfer inhibition. Answer 3-4. The Examiner contends the lipases taught by Baeck "would form linoleic acid or a metal salt thereof when placed in an aqueous solution for cleaning textiles stained with various fatty stains as suggested by" Baeck. *Id.* 4. The Examiner contends the combination of references does not have to disclose the advantage or results discovered by Appellants, and Baeck and Hermant teach lipoxidases and transition metal catalysts are used in similar compositions which would lead to the combination of the two compositions into a third composition, citing *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). Answer 4-5.

With respect to the second ground of rejection, the Examiner responds the motivation to add Baeck's lipoxidase to Perkins' catalyst containing

composition is to combine the stain removing properties on carotenoid stains of each, even though not for Appellants' reasons. Answer 5. The Examiner contends the references disclose similar compositions and the combinations would lead to a third composition, citing *Kerkhoven*, 626 F.2d at 850, 205 USPQ at 1072. Answer 5-6. The Examiner further contends lipases form linoleic acid or salt thereof in an aqueous solution with textiles stained with various fatty acids. *Id.* 6.

The Examiner finds that the data in the Specification with respect to Experiments 1 and 1a "merely shows what one or ordinary skill in the art would expect and does not show any unexpected or superior results." Answer 7. The Examiner finds the "data shows that when lipoxygenase, transition metal catalyst, and an enzyme are used in a composition, greater bleaching occurs in comparison to those compositions containing less bleaching agent or containing no enzyme which is what one skilled in the art would expect from the teachings of the prior art." *Id.* The Examiner further finds the showing is not commensurate in scope with the claimed invention because the results are based on one transition metal catalyst and the claims are open to any transition metal catalyst for bleaching, and thus, it is not unreasonable for Appellants to show results with respect to other bleach catalysts. *Id.* 6-7.

We find Specification Examples 1 and 1a are based on the same combination of Lipolase, Lipoxygenase, and transition metal catalyst, and Examples 4 and 4a are based on the combination of the same Lipoxygenase, and transition metal catalyst as in Examples 1 and 1a. Specification 22-23. We find no statement evaluating the results in the Specification.

We determine the combined teachings of Baeck and Hermant and of Perkins and Baeck, the scope of which we determined above, provide convincing evidence supporting the Examiner's case that the claimed invention encompassed by claim 20, as we interpreted this claim above, would have been prima facie obviousness to one of ordinary skill in the bleaching arts familiar with bleaching compositions containing transition metal catalysts and enzymes. We agree with the Examiner that one of ordinary skill in the art routinely following the combined teachings of either and both sets of applied references would have reasonably arrived at compositions encompassing a transition metal catalyst which can function in "air mode," a lipoxidase, and a lipase, in the reasonable expectation of combining the catalyst and lipoxidase which remove stains from carotenoid chromophores and inhibit dye transfer, as taught by the references, in which lipases would perform their known function of metabolizing triglycerides in oily stains to the component polyunsaturated fatty acids as the Examiner finds. Indeed, Baeck discloses compositions in the Examples which would provide aqueous bleaching mediums that are substantially devoid of peroxygen bleach or a peroxy-based or peroxyl-generating bleach system. Accordingly, this person would arrive at the claimed compositions encompassed by claim 20, including all of the limitations thereof, without resort to Appellants' Specification. *See, e.g.*, *In re Kahn*, 441 F.3d 977, 985-88, 78 USPQ2d 1329, 1334-37 (Fed. Cir. 2006); *In re Corkill*, 771 F.2d 1496, 1497-1500, 226 USPQ 1005, 1006-08 (Fed. Cir. 1985); *Kerkhoven*, 626 F.2d at 850, 205 USPQ at 1072, and case cited therein; *In re Skoll*, 523 F.2d 1392, 1397-98, 187 USPQ 481, 484-85 (CCPA 1975); *In re Castner*, 518 F.2d 1234, 1238-39, 186 USPQ 213, 217 (CCPA 1975); *In re*

Lintner, 458 F.2d 1013, 1015-16, 173 USPQ 560, 562-63 (CCPA 1972); *see also In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1680-81 (Fed. Cir. 1988) ("For obviousness under § 103, all that is required is a reasonable expectation of success." (citations omitted)).

We are not persuaded Appellants' contentions successfully rebut the prima facie case in each ground of rejection. We agree with the Examiner that one of ordinary skill in the art would have combined the references directed to compositions containing the same and similar ingredients for the same purpose of bleaching fabrics to take advantage of the properties taught therein for the "air mode" catalysts of Hermant and Perkins, and Baeck's lipoxidase enzymes in treating the same stains from the same sources, even if that is not Appellants' purpose in combining the ingredients in such a composition. *See In re Kronig,* 539 F.2d 1300, 1304, 190 USPQ 425, 428, (CCPA 1976) (the reference provides "ample motivation to add water to increase product yields, and we do not view the rejection as deficient merely because appellants allege a different advantage resulting from the addition of water. Obviousness under 35 USC 103 does not require absolute predictability, . . . and it is sufficient here that [the reference] clearly [suggests] doing what appellants have done" (citations omitted))*; see also In re Kemps*, 97 F.3d 1427, 1429-30, 40 USPQ2d 1309, 1311 (Fed. Cir, 1996), citing *In re Dillon*, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (*en banc*). Indeed, such disclosure in the references would not have discouraged one of ordinary skill in this art from combining the same thereby obtaining the claimed compositions. *See, e.g.*, *Kahn*, 441 F.3d at 985-89, 78 USPQ2d at 1334-38 ("A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be

discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." (quoting *In re Gurley*, 27 F.3d 551, 553 [31 USPQ2d 1130, 1131], (Fed. Cir. 1994)); *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1145-46 (Fed. Cir. 2004) (prior art "disclosure does not criticize, discredit, or otherwise discourage the solution claimed").

In this respect, Appellants' explanation of the mechanisms in the pathway leading from the triglycerides in oily stains to activation of the resulting hydroperoxide through the action of the lipase, lipoxidase, and transition metal catalyst does not establish non-obviousness. *Cf., e.g., In re Woodruff*, 919 F.2d 1575, 1577, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990); *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983) ("[I]t is . . . irrelevant that those using the invention may not have appreciated the results[,] . . . [otherwise] it would be possible to obtain a patent for an old and unchanged process. [Citations omitted.]"); *In re Skoner*, 517 F.2d 947, 950, 186 USPQ 80, 83 (CCPA 1975). Indeed, the action of lipases on the triglycerides in oily stains to form polyunsaturated fatty acids was well known to one of ordinary skill in this art; Baeck discloses lipoxidases oxidize polyunsaturated fatty acids to their corresponding hydroperoxide; and Hermant and Perkins disclose activating hydroperoxides with an "air mode" transition metal catalyst.

Appellants contend the evidence in Specification Examples 1 and 1a and Examples 4 and 4a establishes the combination of catalyst, lipoxygenase, and lipase exhibits a synergistic effect. On this record, we agree with the Examiner that Appellants have not established that the results reported are unexpected by one of ordinary skill in the art. Indeed,

Appellants have not explained how the evidence establishes the effect of the combined ingredients is greater than the sum of the effect of each ingredient separately, which is necessary to establish synergy. *See Merck & Co., Inc. v. Biocraft Labs., Inc.*, 874 F.2d 804, 808, 10 USPQ2d 1843, 1847 (Fed. Cir. 1989) ("But when an inventor tries to distinguish his claims from the prior art by introducing evidence of unexpected 'synergistic' properties, the evidence should at least demonstrate 'an effect greater than the sum of the several effects taken separately.' *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976)."); *In re Luvisi*, 342 F.2d 102, 109, 144 USPQ 646, 652 (CCPA 1965) ("'Synergism' is a very broad term and means 'the combined action of two or more agents * * * that is greater than the sum of the action of one of the agents used alone * * *.' Webster's Third New International Dictionary (1961).").

In this respect, Appellants have the burden to submit an explanation or evidence with respect to the practical significance of the asserted results vis-à-vis the teachings of the applied references and why the results would have been considered unexpected in view of the prior art by one of ordinary skill in this art. *See, e.g., In re Geisler*, 116 F.3d 1465, 1470, 43 USPQ2d 1362, 1365-66 (Fed. Cir. 1997); *In re Merck*, 800 F.2d 1091, 1099, 231 USPQ 375, 381 (Fed. Cir. 1986); *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985); *In re Lindner*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972); *In re Klosak*, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972); *In re D'Ancicco*, 439 F.2d 1244, 1248, 169 USPQ 303, 306 (1971). On this record, Appellants have not carried this burden.

We agree with the Examiner that unexpected results have not been established. Indeed, Appellants do not establish the evidence in Examples 1 and 1a and Examples 4 and 4a is unexpected in any respect, arguing only that the former set of examples provide results that are "particularly effective" and "quite exceptional relative to other experiments operating with only one or even two of the aforementioned materials of the claimed bleaching system," and that the latter set of examples provide "good results." *See above* p. 9. In this respect, it is well settled that unsupported arguments of counsel are entitled to little, if any, weight. *See, e.g., In re Payne*, 606 F.2d 303, 315, 203 USPQ 245, 256 (CCPA 1979); *Lindner*, 457 F.2d at 508, 173 USPQ at 358.

Moreover, we agree with the Examiner that even if it is held that the evidence in the Specification based on one set of ingredients establishes unexpected results with respect to synergy or otherwise, there is no evidence that the same result would be exhibited by the myriads of claimed compositions encompassed by claim 20, as we interpreted this claim above, vis-à-vis those of the combined teachings of the two sets of applied references. *See, e.g., In re Kulling*, 897 F.2d 1147, 1149-50, 14 USPQ2d 1056, 1058 (Fed. Cir. 1990); *In re Clemens*, 622 F.2d 1029, 1035-36, 206 USPQ 289, 295-96 (CCPA 1980); *In re Greenfield*, 571 F.2d 1185, 1189, 197 USPQ 227, 230 (CCPA 1978); *Lindner*, 457 F.2d at 508, 173 USPQ at 358 ("The affidavit and specification do contain allegations that synergistic results are obtained with all the claimed compositions, but those statements are not supported by any factual evidence other than that limited amount of evidence discussed above. This court has said . . . that

mere lawyers' arguments unsupported by factual evidence are insufficient to establish unexpected results." (citations omitted)).

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of Baeck and Hermant and of Perkins and Baeck with Appellants' countervailing evidence of and argument for nonobviousness, and conclude that the claimed invention encompassed by appealed claims 2, 4, 5, 7, 8, 11 through 18, and 20 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

With respect to the ground of rejection advanced by the Examiner but not acknowledged by Appellants as a ground to be reviewed and not argued, *see* 37 C.F.R. §§ 41.37(c)(1)(iii), (vi), and (vii) (2005), we summarily affirm the ground of rejection. Manual of Patent Examining Procedure § 1205.02 (8th ed., Rev. 3, August 2005).

The Primary Examiner's decision is affirmed.

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) (2007).

AFFIRMED

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