UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte NICHOLAS V. PERRICONE

Appeal 2007-4000
Application 10/609,777
Technology Center 1600

Decided: February 15, 2008

Before DONALD E. ADAMS, ERIC GRIMES, and FRANCISCO C. PRATS, *Administrative Patent Judges*.

PRATS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to methods of treating skin damage. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.[1]

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[1] In this decision we consider only those arguments actually made by Appellant. Arguments that Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

STATEMENT OF THE CASE

THE INVENTION

The Specification discloses "methods for the treatment of skin damage, such as atopic dermatitis, contact dermatitis, xerosis, eczema, rosacea, seborrhea, psoriasis, thermal and radiation burns, other types of skin inflammation, as well as aging" (Spec. 4).

Claims 1-25 are pending and on appeal (App. Br. 2). Claim 1 is representative and reads as follows:

> 1. A method for the treatment of skin damage comprising topically applying to affected skin areas a composition containing an effective amount of acetyl carnitine and lipoic acid or a lipoic acid derivative in a dermatologically acceptable carrier comprising phosphatidylcholine.

THE REJECTIONS

The Examiner applies the following documents in rejecting the claims:

Perricone	WO 01/82878 A1	Nov. 8, 2001
Perricone	US 2002/0013361 A1	Jan. 31, 2002
Perricone	US 6,365,623 B1	Apr. 2, 2002
Stäb (as translated)	EP 1 175 898 A2	Jan. 30, 2002

The following rejections are before us for review:

Claims 1-16 and 18 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878 and Perricone '361 (Ans. 3-4).

Claims 1-18 and 20-24 stand rejected under 35 U.S.C. § 103(a) as being obvious in view Perricone '878 and Perricone '623. (Ans. 4-5).

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878, Perricone '361, and EP '898 (Ans. 5).

Claims 19 and 25 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878, Perricone '623, and EP '898 (Ans. 6).

OBVIOUSNESS -- CLAIMS 1-16 AND 18

ISSUE

The Examiner cites Perricone '878 as teaching a method for treating a variety of skin conditions, including rosacea, "by topically applying a composition containing 0.025-5% of acetyl carnitine, phosphatidylcholine and/or 0.5-7% of ascorbyl palmitate to the affected skin areas" (Ans. 3). The Examiner concedes that Perricone '878 "does not teach lipoic acid of the instant claims. However, Perricone '361 teaches using lipoic acid for the topical treatment of rosacea" (*id.*). The Examiner concludes that one of ordinary skill would have considered it obvious to include lipoic acid in the rosacea-treating compositions of Perricone '878 "to obtain an additional anti-inflammatory and antioxidant effect as suggested by Perricone '361" (*id.* at 4).

Appellant contends that neither reference suggests combining the disclosed ingredients with the ingredients in the other reference, and that therefore "[a] person of ordinary skill in the art would not be motivated by the disclosure in these references to combine acetyl carnitine and lipoic acid in a phosphatidylcholine (PC) carrier to provide a method of treatment of skin damage" (App. Br. 5). Appellant also contends that the claimed ingredients provide synergistic effects with respect to therapeutic efficacy and penetration, and that therefore, "Perricone '878 and Perricone '361, both individually or in combination, fail to disclose, suggest or teach the *uniquely effective combination* of acetyl carnitine, lipoic acid (or lipoic acid derivative) in a PC carrier used in methods to treat skin damage (claims

1-10) or to treat the combination of skin inflammation and aging (claims 11-19)" (App. Br. 6).

The issue with respect to this rejection, therefore, is whether the Examiner erred in concluding that one of ordinary skill would have considered claims 1-16 and 18 obvious in view of Perricone '878 and Perricone '361.

FINDINGS OF FACT

1. Claim 1 recites a method of treating skin damage by topically applying a composition to the affected areas of the skin. The composition contains the following ingredients:

(a) acetyl carnitine;

(b) lipoic acid or a lipoic acid derivative; and

(c) a dermatologically acceptable carrier that contains phosphatidylcholine.

2. Claim 11 recites a similar method of treating "skin inflammation and aging" by applying to the skin a composition containing the same three ingredients as recited in claim 1. Claim 11 limits the composition to one that contains, by weight, from about 0.1 to about 7% lipoic acid or its derivative, and about 0.025% to about 5% acetyl carnitine.

3. Perricone '878 discloses that "[a]cetyl carnitine and phosphatidylcholine . . . are topically applied to treat skin damage, such as . . . rosacea . . . and other types of skin inflammation . . ." (Perricone '878, Abstract). Perricone '878's composition contains "from about 0.025% to about 5% . . . acetyl carnitine" (*id.*).

4. Perricone '361 discloses that "[r]osacea is treated by application of a composition containing lipoic acid and/or a lipoic acid derivative"

(Perricone '361, Abstract). Perricone '361 discloses that "[i]n some typical embodiments, the composition contains from about 0.1% to about 7 weight %, lipoic acid" (*id.* at [0022]). Perricone discloses that "[r]osacea is a chronic inflammatory disorder affecting the blood vessels and pilosebaceous units of the face in middle-aged individuals" (*id.* at [0004]).

5. Perricone '361 discloses a study in which a composition comprising 5% lipoic acid in a lecithin-based oil-in-water cream was applied to patients having rosacea (*id.* at [0041]). Perricone '361 discloses that "[i]n every patient, marked improvement and a decrease in erythema was observed on the face side treated with lipoic acid after two weeks. After four weeks, erythema was even more markedly reduced on the face side to which lipoic [acid] had been applied in every patient" (*id.*).

6. Perricone '878 contains the following paragraph:

> All references cited herein are hereby incorporated by reference, as are additional ingredients and methods set out in U.S. Pat. Nos. 4,775,530, 5,376,361, 5,409,693, 5,545,398, 5,574,063, 5,643,586, 5,709,868, 5,879,690, 5,965,618, and 5,968,618. Generally, these compositions contain other active ingredients summarized above that enhance the effect of active ingredients of the invention.

(Perricone '878, page 13.) Two of the patents listed on page 13 of Perricone '878 are of record: U.S. Patent Nos. 5,709,868 and 5,965,618. (*See* "Supplemental Information Disclosure Statement by Applicant," filed January 26, 2004, page 2).

The '868 patent is entitled "Lipoic Acid In Topical Compositions," and the Abstract states that, "[i]n a method for the prevention and/or treatment of skin damage, particularly inflammation and aging, a composition containing lipoic acid and/or a lipoic acid derivative is topically

applied to affected skin areas" (U.S. Patent No. 5,709,868, Title, Abstract). The '618 patent relates to treating scar tissue with lipoic acid (U.S. Patent No. 5,965,618, Abstract).

7. The Specification states that a "synergistic combination of acetyl carnitine and lipoic acid" is disclosed (Spec. 4, l. 19), that "[a]cetyl carnitine and lipoic acid appear to intersperse in the cell membrane, stabilizing the membrane, and, at the same time, providing antioxidant capability and re[i]nforcing one another" (Spec. 15, ll. 18-20), and that combining acetyl carnitine "with lipoic acid and phosphatidyl choline considerably enhances penetration of this active ingredient" (Spec. 13, ll. 15-16) .

However, the Specification does not provide any data in support of these statements.

PRINCIPLES OF LAW

> In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. "[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references."

In re Fritch, 972 F.2d 1260, 1265 (Fed. Cir. 1992) (citations omitted, bracketed material in original).

Thus, as the Supreme Court recently pointed out, "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). However, the Court also indicated that the analysis under 35 U.S.C. § 103 "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for

a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." (*Id.)* The Supreme Court thus implicitly endorsed the principle, stated in *In re Kerkhoven*, 626 F.2d 846, 850 (CCPA 1980) (citations omitted), that:

> It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. . . . [T]he idea of combining them flows logically from their having been individually taught in the prior art.

It is well settled that evidence of unexpected results may rebut an examiner's prima facie case of obviousness. *See In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998); *see also KSR*, 127 S. Ct. at 1740 ("The fact that the elements worked together in an unexpected and fruitful manner supported the conclusion that Adams's design was not obvious to those skilled in the art.") (discussing *United States v. Adams*, 383 U.S. 39 (1966)).

However, it is also "well settled that unexpected results must be established by factual evidence. 'Mere argument or conclusory statements in the specification does not suffice.'" *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (quoting *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984)). Thus, to establish that claimed subject matter yields an unexpected result, the claimed subject matter must be actually compared to the prior art. *In re De Blauwe*, 736 F.2d at 705 ("When an article is said to achieve unexpected (i.e. superior) results, those results must logically be shown as superior *compared* to the results achieved with other articles."); *see also In re Baxter-Travenol Labs.*, 952 F.2d 388, 392 (Fed. Cir. 1991) ("[W]hen

unexpected results are used as evidence of nonobviousness, the results must be shown to be unexpected compared with the closest prior art.”).

ANALYSIS

We agree with the Examiner that one of ordinary skill would have considered claims 1 and 11 obvious in view of Perricone ‘878 and ‘361. Between them, the references teach that all three of the claimed ingredients are desirable in a topical composition useful for treating skin damage or inflammation, including rosacea (*see* Findings of Fact (“FF”) 3 to 5, above). Thus, a person of ordinary skill, advised by Perricone ‘878 and ‘361 that lipoic acid, acetyl carnitine, and phosphatidylcholine were desirable in multi-ingredient compositions used in the topical treatment of skin damage or inflammation such as rosacea, would have been prompted to combine those ingredients and topically applied them to affected areas of the skin. *See In re Kerkhoven*, 626 F.2d at 850.

Therefore, because the cited references suggest combining the claimed ingredients and applying them topically to treat a condition encompassed by claim 1, we agree with the Examiner that claim 1 would have been obvious to a person of ordinary skill. Moreover, because the cited references disclose that lipoic acid and acetyl carnitine in the amounts recited in claim 11 were useful in treating skin inflammation (*see* FF 2-5), we also agree with the Examiner’s conclusion that claim 11 would also have been obvious to a person of ordinary skill.

Appellant argues:

> There is nothing taught by Perricone ‘878 with regard to acetyl L-carnitine beyond its use as the primary active ingredient along with adjunct ingredients ascorbyl palmitate and/or PC [(phosphatidylcholine)]. There is no suggestion that acetyl

> carnitine [] could be applied in combination with lipoic acid in a topical composition for the treatment of skin damage (claims 1-10), and in particular, treatment of skin inflammation and aging (claims 11-19).

(App. Br. 4-5.) With respect to Perricone '361, Appellant similarly argues that "[t]here is no disclosure or suggestion to combine lipoic acid with acetyl carnitine to provide a treatment for other skin disorders" (*id.* at 5).

We are not persuaded by this argument. As discussed above (*see* FF 6), Perricone '878 provides a list of supplementary literature that discloses "other active ingredients . . . that enhance the effect of active ingredients of the invention" (Perricone '878, page 13). We therefore do not agree with Appellant that "[t]here is nothing taught by Perricone '878 with regard to acetyl L-carnitine beyond its use as the primary active ingredient along with adjunct ingredients ascorbyl palmitate and/or PC" (App. Br. 4).

Regarding the asserted failure of Perricone '878 and '361 to provide explicit teachings suggesting the combination of the claimed ingredients, as noted above, the Supreme Court recently made it clear that the analysis under 35 U.S.C. § 103 "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S. Ct. at 1741. Thus, in the instant case, given the disclosures of Perricone '878 and '361 that acetyl carnitine, lipoic acid, and phosphatidylcholine were useful in a composition applied topically to treat skin damage such as rosacea, we agree with the Examiner that a person of ordinary skill would have reasonably inferred that it would have been suitable to combine the ingredients and apply them topically.

Appellant argues that the claimed method provides a synergistic effect because "the combination used in the method is considerably more effective than either compound alone because the combination of compounds provides an enhanced activity" (App. Br. 6 (citing Spec. 4, l. 19, and Spec. 15, ll. 18-20)). Appellant argues that "[a] further beneficial synergistic effect is that the combination used in the method is considerably more effective than either compound alone because the combination considerably enhances penetration of this active ingredient" (App. Br. 6 (citing Spec. 13, ll. 14-16)).

We are not persuaded by this argument. While we agree with Appellant that the cited portions of the Specification state that the claimed combination of ingredients provides a synergistic effect (*see* FF 7), none of those statements is supported by any data, nor is there any comparison of the claimed process to any prior art process.

As noted above, it is "well settled that unexpected results must be established by factual evidence. 'Mere argument or conclusory statements in the specification does not suffice.'" *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (quoting *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984)). Moreover, "when unexpected results are used as evidence of nonobviousness, the results must be shown to be unexpected compared with the closest prior art." *In re Baxter-Travenol Labs.*, 952 F.2d 388, 392 (Fed. Cir. 1991). Appellant's unsupported statements are therefore insufficient to overcome the Examiner's prima facie case of obviousness.

Appellant contends that, rather than affecting dermal cells like the other disorders mentioned by Perricone '878, rosacea affects the cells lining the subdermal vasculature (Reply Br. 1). Appellant argues that because

Perricone '361 discloses that lipoic acid acts on an inflammatory mediator different than that involved in inflammation of the vasculature, "the established scientific principles would lead one skilled in the art to think that beneficial effect would be *unlikely*," and that one of ordinary skill would therefore not have been motivated "to combine acetyl carnitine and lipoic acid in a phosphatidylcholine (PC) carrier to provide a method of treatment of skin damage" (*id.* at 2).

We are not persuaded by this argument. As noted above, Perricone '361 states that lipoic acid is useful in treating rosacea, and provides experimental evidence showing the effectiveness of the treatment (*see* FF 4 and 5). Thus, regardless of the mechanism of action of lipoic acid, a person of ordinary skill would have reasoned from Perricone '361's disclosure that lipoic acid was useful in treating rosacea, and would have considered it desirable to combine it with other rosacea treatments, including those of Perricone '878.

In sum, we agree with the Examiner that one of ordinary skill viewing Perricone '878 and '361 would have considered it obvious to prepare a composition having the claimed ingredients in the claimed amounts, and to apply that composition to skin suffering from rosacea. We therefore affirm the Examiner's obviousness rejections of claims 1 and 11. Because claims 2-10, 12-16, and 18 were not argued separately, we also affirm the Examiner's rejection of those claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

OBVIOUSNESS -- CLAIMS 1-18 AND 20-24

ISSUE

Claims 1-18 and 20-24 stand rejected under 35 U.S.C. § 103(a) as being obvious in view Perricone '878 and Perricone '623 (Ans. 4-5).

Again citing Perricone '878 as teaching a method for treating a variety of inflammatory skin conditions with a composition containing acetyl carnitine and phosphatidylcholine, the Examiner concedes that Perricone '878 "does not teach lipoic acid of the instant claims" (Ans. 4). The Examiner cites Perricone '623 to meet that limitation (*id.*). Specifically, the Examiner cites Perricone '623 as disclosing lipoic acid in the topical treatment of acne, and also disclosing that "[l]ipoic acid decreases pore size and erythema, minimizes sebum accumulation and scar formation, lubricates skin and minimizes or eliminates side effects of conventional acne medications" (*id.* at 5). The Examiner concludes that one of ordinary skill would have considered it obvious to include lipoic acid in the anti-inflammatory skin-treating compositions of Perricone '878 "to obtain anti-inflammatory and skin lubricating effects as well as to minimize scar formation, decrease pore size and reduce sebum accumulation as suggested by Perricone '623" (*id.*).

Appellant contends that Perricone '878 does not disclose using lipoic acid in its compositions, that Perricone '623 does not suggest combining its lipoic acid with acetyl carnitine to treat skin disorders other than acne, and that therefore one of ordinary skill "would not be motivated by the disclosure in these references to combine acetyl carnitine and lipoic acid in a phosphatidylcholine (PC) carrier to provide a method of treatment of skin damage" (App. Br. 7). Appellant concludes that "Perricone '878 and Perricone '623, both individually or in combination, fail to disclose, suggest or teach the *unique combination* of acetyl carnitine, lipoic acid (or lipoic acid derivative) in a PC carrier used in methods to treat skin damage (claims

1-10) or to treat the combination of skin inflammation and aging (claims 11-19)" (*id.*).

The issue with respect to this rejection, therefore, is whether the Examiner erred in concluding that one of ordinary skill would have considered claims 1-16 and 18 obvious in view of Perricone '878 and Perricone '623.

FINDINGS OF FACT

8. Perricone '623 discloses that "[a]ctive acne and acneiform scars are treated by topical application of a composition containing lipoic acid and/or a lipoic acid derivative . . . to reduce erythema, pore size, and scarring" (Perricone '623, Abstract). Perricone '623 discloses that lipoic acid is useful in treating "acne in all stages, including acne *vulgaris* observed in adolescents, acne observed in endocrinologic conditions characterized by excess androgen secretion, and the like, in the active inflammatory (pustule-, papule-, comedone-forming) and noninflammatory (blackhead- and cyst-forming) phases, and post-inflammatory (healing, scarring, and scarred) phase" (*id.* at col. 6, ll. 20-27). Perricone '623 discloses that compositions containing "from about 0.1% to about 7% by weight" lipoic acid are useful in treating acne (*id.* at col. 7, ll. 9-10).

ANALYSIS

We agree with the Examiner that claims 1 and 11 would have been prima facie obvious to a person of ordinary skill. Specifically, one of ordinary skill using lipoic acid to treat the inflammation and skin damage caused by acne according to the teachings of Perricone '623 would have reasoned that it would be desirable to include acetyl carnitine and phosphatidylcholine in the applied composition, based on Perricone '878's

disclosure that "[a]cetyl carnitine and phosphatidylcholine . . . are topically applied to treat skin damage, such as . . . rosacea . . . *and other types of skin inflammation*" (Perricone '878, Abstract (emphasis added)). Thus, because the cited references show that the claimed ingredients, in the claimed amounts, were useful in treating skin inflammation and skin damage such as that caused by acne, we agree with the Examiner that a person of ordinary skill would have considered the processes recited in claims 1 and 11 obvious.

Appellant argues that Perricone '623 provides "no disclosure or suggestion to combine lipoic acid with acetyl carnitine to provide a treatment for . . . skin disorders" other than acne (App. Br. 7). Appellant also argues that because the inflammatory response causing acne is different than the autoimmune response that causes the specific diseases mentioned in Perricone '878, "[t]here is nothing taught by Perricone '623 with regard to lipoic acid beyond its use in response to inflammations resulting from such exogenous infections which cause the condition referred to as acne" (Reply Br. 3). Appellant concludes that, because "established scientific principles do not show a convincing line of reasoning that a beneficial result would occur through the combination of references," one of ordinary skill would therefore not have been motivated to combine the teachings of the cited references (*id.*).

We are not persuaded by these arguments. Claim 1 recites a "method for the treatment of skin damage . . . ." Claim 11 recites a "method of treating skin inflammation and aging . . . ." As is evident from Perricone '623, acne damages the skin, and has an inflammatory component (*see* FF 8, above). Thus, claims 1 and 11 both encompass treating acne.

As discussed above, because a person of ordinary skill would have reasoned from the cited references that the claimed ingredients would be useful in treating the skin damage and inflammation caused by acne, a person of ordinary skill would have been prompted to combine the claimed ingredients, and apply them topically, as recited in claims 1 and 11. We therefore affirm the Examiner's obviousness rejection of those claims. Because they were not argued separately, we also affirm the Examiner's rejection of claims 2-10, 12-18 and 20-24. *See* 37 C.F.R. § 41.37(c)(1)(vii).

OBVIOUSNESS -- CLAIM 19

ISSUE

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878, Perricone '361, and EP '898 (Ans. 5). Conceding that neither Perricone '878 nor '361 discloses applying folic acid to the skin, the Examiner nonetheless concludes that claim 19 would have been obvious to one of ordinary skill in the art because that person would have been prompted to include folic acid in a composition containing the acetyl carnitine/phosphatidylcholine of Perricone '878 and the lipoic acid of Perricone '361 "to obtain an additional antioxidant and anti-inflammatory effect as suggested by [EP '898]" (Ans. 5).

FINDINGS OF FACT

9. EP '898 discloses "the use of . . . (A) carnitine and/or at least one acylcarnitine . . . in combination with a compound or more than one compound from group B, which [includes] . . . lipoic acid . . . and folic acid . . ., for the treatment and prophylaxis of endogenously or exogenously conditioned skin phenomena, especially degenerative and/or inflammatory skin phenomena" (EP '898 [0033]).

ANALYSIS

Appellant contends that claim 19 is patentable "for the same reasons previously specified as to claims 1-18 and 20-24" (App. Br. 8). Appellant also argues that EP '898 "does not disclose or suggest the method of using the claimed combination of acetyl carnitine and lipoic acid in PC for treatment of skin damage" (App. Br. 8; *see also* Reply Br. 3-4).

We are not persuaded by this argument. EP '898 discloses using folic acid in combination with an acylcarnitine and lipoic acid and/or folic acid in a multi-ingredient composition useful for topically treating skin inflammation (*see* FF 9, above). Given this disclosure, we agree with the Examiner that one of ordinary skill would have considered it obvious to combine folic acid with the acetyl carnitine/phosphatidylcholine skin inflammation treatment of Perricone '878 and the lipoic acid rosacea treatment of Perricone '361, in order to topically treat skin inflammations, including rosacea. We therefore affirm the Examiner's obviousness rejection of claim 19.

OBVIOUSNESS -- CLAIMS 19 and 25

Claims 19 and 25 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878, Perricone '623, and EP '898 (Ans. 6).

Conceding that neither Perricone '878 nor '623 discloses applying folic acid to the skin, the Examiner nonetheless concludes that claims 19 and 25 would have been obvious because a person of ordinary skill in the art would have been prompted to include folic acid in the Perricone '878 and '623 composition "to obtain an additional antioxidant and anti-inflammatory effect as suggested by [EP '898]" (Ans. 6).

While Appellant contests the rejection of claims 19 and 25, Appellant addresses only the combination of Perricone '878, Perricone '361, and EP '898, and does not specifically address the Examiner's separately asserted combination of Perricone '878, Perricone '623, and EP '898 (*see* App. Br. 7-8; Reply Br. 3-4). As discussed above, we agree with the Examiner that a person of ordinary skill would have reasoned from Perricone '878 and '623 that a composition containing acetyl carnitine, phosphatidylcholine, and lipoic acid would be useful in treating the inflammation caused by acne. In view of EP '898's disclosure that folic acid is also useful in compositions applied to the skin to treat inflammation (*see* FF 9, above), we also agree with the Examiner that a person of ordinary skill would have been prompted to include folic acid in topically applied acne inflammation-treating compositions containing acetyl carnitine, phosphatidylcholine, and lipoic acid. We therefore affirm the Examiner's obviousness rejection of claims 19 and 25.

SUMMARY

We affirm the Examiner's rejection of claims 1-16 and 18 under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878 and Perricone '361.

We affirm the Examiner's rejection of claims 1-18 and 20-24 under 35 U.S.C. § 103(a) as being obvious in view Perricone '878 and Perricone '623.

We affirm the Examiner's rejection of claim 19 under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878, Perricone '361, and EP '898.

We affirm the Examiner's rejection of claims 19 and 25 under 35 U.S.C. § 103(a) as being obvious in view of Perricone '878, Perricone '623, and EP '898.

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

AFFIRMED

ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD CT 06905-5619

lp