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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER D. BREDER

Appeal 2018-006913
Application 14/795,983
Technology Center 1600

Before ERIC B. GRIMES, JEFFREY N. FREDMAN, and ULRIKE W. JENKS, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject the claim for obviousness and on the ground of non-statutory obviousness-type double patenting. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

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[1] Appellant identifies the real party in interest as Supernus Pharmaceuticals, Inc. Appeal Br. 3.
We have considered, and herein refer to, the Specification of July 10, 2017 ("Spec."); Non-Final Office Action of January 17, 2018 ("Non-Final Act."); Appeal Brief of April 16, 2018 ("Appeal Br."); Examiner's Answer of May 18, 2018 ("Ans."); and Reply Brief of June 26, 2018 ("Reply Br.").

STATEMENT OF THE CASE

Claim 10 is on appeal, and reads as follows:

> 10. A method of treating attention deficit hyperactivity disorder in a mammalian subject comprising orally administering to a subject in need thereof a total dose of 0.1 mg to 0.5 mg of mazindol per day as the sole active agent.

Appeal Br. 11 (Claims Appendix).

The claim stands rejected as follows:

Claim Rejected	Basis
10	pre-AIA 35 U.S.C. § 103(a) over Kovacs '520[2] or Kovacs '139[3]
10	pre-AIA 35 U.S.C. § 103(a) over Konofal[4] in view of Kovacs '520 or Kovacs '139
10	pre-AIA 35 U.S.C. § 103(a) over Epstein[5] and Kovacs '139
10	provisional nonstatutory obviousness-type double patenting over Application No. 14/841,898

Appellant does not provide substantive argument with respect to the nonstatutory obviousness-type double patenting rejection, but instead requests that this rejection[6] be held in abeyance until allowable subject matter is identified. *See* Appeal Br. 4. We, therefore, summarily affirm this rejection over Application No. 14/841,898. *See* MPEP § 1205.02.

[2] Kovacs et al., US 2009/0318520 A1, published Dec. 24, 2009.
[3] Kovacs et al., WO 2009/155139 A1, published Dec. 23, 2009.
[4] Konofal et al., US 2009/0136593 A1, published May 28, 2009.
[5] Epstein et al., US 2002/0161002 A1, published Oct. 31, 2002.
[6] Examiner additionally rejected claim 10 on the ground of nonstatutory obviousness-type double patenting over Application No. 13/638,294 (*see* Ans. 14). The notice of abandonment was mailed on Feb. 13, 2019, so this rejection is moot.

Obviousness

Since all three obviousness rejections rely on Kovacs '520 or Kovacs '139 individually or in conjunction with either Konofal or Epstein, we will discuss the rejections together. We note that Appellant does not provide separate arguments with respect the obviousness combinations set forth by Examiner but instead discusses the rejections together. *See* Appeal Br. 4–10.

The issue is whether the preponderance of evidence of record supports Examiner's conclusion that treating attention deficit hyperactivity disorder (ADHD) with 0.1 mg to 0.5 mg per day of mazindol as the sole active agent is obvious?

A. Findings of Fact (FF)

FF1. Kovacs teaches isoindole derivatives encompassing mazindol. Kovacs '520 ¶ 13, 46; Kovacs '139 ¶ 13, 45; *see* Ans. 5. Kovacs teaches using mazindol to treat attention deficit hyperactivity disorder (ADHD). Kovacs '520 ¶¶ 13, 147; Kovacs '139 ¶¶ 13, 123.

FF2. Kovacs teaches that "'[t]herapeutically effective amount' as used herein, means the amount of a compound that, when administered to an individual for treating a disease, is sufficient to effect such treatment for the disease or to achieve the desired clinical response." Kovacs '520 ¶ 44; Kovacs '139 ¶ 43; *see* Ans. 5.

> An effective amount means that amount necessary to delay; the onset, inhibit the progression, halt altogether the onset or progression of, or to reduce the clinical manifestations or symptoms of the particular condition being treated. In general, an effective amount for treating a neurobehavioral disorder will be that amount necessary to inhibit the symptoms of the particular neurobehavioral disorder in-situ in a particular individual. When

> administered to an individual, effective amounts will depend, of course, on the particular condition being treated; the severity of the condition; individual patient parameters including age, physical condition, *size and weight*; concurrent treatment; frequency of treatment; and the mode of administration. These factors are well known to those of ordinary skill in the art and can be addressed with no more than routine experimentation. *It is preferred generally that a minimum dose be used, that is, the lowest safe dosage that provides appropriate relief of symptoms*.

Kovacs '520 ¶ 135 (emphasis added); Kovacs '139 ¶ 111; *see* Ans. 6 ("It is preferred generally that a minimum dose be used, that is, the lowest safe dosage that provides appropriate relief of symptoms.").

FF3. Kovacs teaches dosage units containing "from about 0.001 to about 9000 mg of the active ingredient." Kovacs '520 ¶ 72; Kovacs '139 ¶ 53.

> Dosage may be adjusted appropriately to achieve desired drug levels, locally or systemically. Generally, daily doses of active compounds will be from about 0.001 mg/kg per day to 200 mg/kg per day. However, it is recognized that these are general ranges and the actual dose used as contemplated in a given individual may [be] less or greater than this dosage range. In the event that the response in an individual subject is insufficient at such doses, even higher doses (or effective higher doses by a different, more localized delivery route) may be employed to the extent that patient tolerance permits.

Kovacs '520 ¶ 136; Kovacs '139 ¶ 112.

FF4. Kovacs exemplifies treating a 14 year old patient having ADHD with "[m]azindol at 2.5 mg/day as the sole agent." Kovacs '520 ¶ 147; Kovacs '139 ¶ 123. Kovacs teaches treating ADHD with an effective amount of mazindol (Kovacs '520 claims 11; Kovacs '139 claims 21),

and narrows the dose to between 1 and 2 mg per day (Kovacs '520 claims 15; Kovacs '139 claims 25).

FF5. Examiner finds that dosages of the isoindole derivatives contemplated in Kovacs fall within the range claimed. "If for example, 0.01 mg of mazindol is administered to ADHD patient (weighing 40 kg), the amount administered will be 0.4 mg or 0.2 mg (20 kg subject) which falls within the claimed range of 0.1–0.5 mg." Ans. 20.

FF6. Konofal teaches using mazindol to treat ADHD. Konofal ¶ 1; Ans. 7. The patient population in Konofal includes a newborn baby, a child, an adolescent, or an adult; preferably "a child aged approximately 5 to 12 years." *See id.* ¶ 38, claim 2; Ans. 8. The dosage of mazindol can correspond to a daily dose of 1 to 2 mg. *See id.* claim 9 ("the dosage corresponds to a daily dose of mazindol of between 1 and 2 mg.").

FF7. Epstein teaches "treating ADHD (adult or child) by co-administering (e.g., simultaneously or at different times) to the patient . . . an amount of a catecholamine reuptake inhibitor sufficient to treat the attention component of ADHD, and an amount of a dopamine reuptake inhibitor sufficient to treat the movement disorder component." Epstein ¶ 196; *see* Ans. 9. Epstein teaches that mazindol is a catecholamine reuptake inhibitor (Epstein ¶ 78), dopamine reuptake inhibitor (*id.* ¶ 195), as well as a norepinephrine reuptake inhibitor (*id.* ¶ 8).

FF8. Epstein teaches starting low and gradually increasing the dose over time.

> A physician or veterinarian having ordinary skill in the art can readily determine and prescribe the effective amount of the pharmaceutical composition required. For example,

> the physician or veterinarian could start doses of the compounds of the invention employed in the pharmaceutical composition at levels lower than that required in order to achieve the desired therapeutic effect and gradually increase the dosage until the desired effect is achieved.

Epstein ¶ 111. In addition, Epstein teaches that "[i]n general, a suitable daily dose of a compound of the invention will be that amount of the compound which is the lowest dose effective to produce a therapeutic effect" and that a range of 0.0001 to 100 mg per kilogram per day is generally sufficient. *Id.* ¶ 112; *see* Ans. 10.

B. Analysis

Examiner finds that Kovacs teaches treating ADHD with mazindol. Ans. 5, FF1–FF4. Examiner finds that Kovacs teaches a daily dose between 1 and 2 mg and exemplifies a dosage of 2.5 mg per day. Ans. 5; FF4. Examiner finds that Kovacs contemplates daily "dosage ranging from 0.001 mg/kg per day to 200 mg/kg/day." Ans. 6; FF3. Examiner concludes that "[i]t is obvious to vary and/or optimize the dosage amount of mazindol provided in the composition, according to the guidance provided by Kovacs, such as the desired concentrations of mazindol to effectively treat ADHD." Ans. 6; *see* FF3. Examiner recognizes that Konofal does not exemplify dosages below 1 mg/day but finds that Kovacs teaches an overlapping range and varying patient populations. Ans. 8 ("Though Konofal teach administration of an effective amount of mazindol, the reference is not explicit in teaching the total dose of mazindol as being 0.1 mg to 0.5 mg per day); FF6 ("newborn baby, a child, an adolescent or an adult"); FF7 ("adult or child"). Examiner finds that "[i]f for example the amount administered is 0.1 mg/kg and for a child weighing an average of 40 kg, an amount of 0.4

mg will be administered which falls within the claimed amount." Ans. 6; FF5. In other words, Examiner concludes that the teachings of Kovacs, either alone or in combination with and Epstein, suggests adjusting the amount of active agent – mazindol – based on the per weight dosage. *See* Ans. 5–6; *see* FF1–FF7. Equipped with this knowledge of adjusting the mazindol dosage on a per weight basis in conjunction with appreciating the difference in the size of the patients in the populations contemplated by the references, one of ordinary skill in the art would have found it obvious to treat ADHD with mazindol with the claimed dosage. *See* Ans. 5–6; *see* FF1–FF7.

Appellant contends (1) there is no reason to drop the dose below that shown to be effective in the prior art (Appeal Br. 4–5 (citing *In re Sebek*, 465 F.2d 904 (CCPA 1972) and *In re Patel*, 566 Fed. App'x 105 (2014)); (2) that the results at lower doses are unexpected (*id.* and 7–8 (citing the Kidane Declaration[7]); and (3) that Examiner is improperly shifting the burden (*id.* at 9–10); *see* Reply Br. 3.

We have reviewed Appellant's contention but are not persuaded that Examiner erred. We adopt the findings concerning the scope and content of the prior art as well as conclusion as set forth in Examiner's Answer and the Non-Final Office Action. The findings of fact reproduced above are referenced to highlight certain pertinent evidence. We address Appellant's arguments below.

[7] Declaration under 37 C.F.R. § 1.132 by Dr. Argaw Kidane, signed July 28, 2017 ("Kidane Dec.").

1. Lowering Daily Dosage of Mazindol

Appellant contends that there is no reason to drop the dosage of mazindol for the treatment of ADHD below the 1 to 2 mg disclosed in Kovacs. Appeal Br. 4–5 (citing *In re Sebek*, 465 F.2d 904 (CCPA 1972) and *In re Patel*, 566 Fed. App'x 105 (2014); Reply Br. 2–3.

We are not persuaded. Kovacs specifically discloses administering the compounds having daily dosage range from 0.001 mg/kg per day to 200 mg/kg per day. FF3. Epstein similarly suggests a daily dosage range from 0.0001–100 mg/kg per day. FF8. Examiner finds that a child at 20 kg (44 lb.) or 40 kg (88 lb.) given a dosage of 0.01 mg/kg per day falls within the claimed range. FF5. Of particular note is that the selected dosage picked by Examiner is somewhere in the middle of the ranges disclosed in either Kovacs or Epstein which suggests that if the endpoints were selected then the claimed range squarely falls inside range disclosed in the prior art. That overlap is sufficient to establish a prima facie case of obviousness. That both Kovacs and Epstein specifically suggest dose optimization only serves to emphasize this point. FF2, FF3, and FF8. *See In re Peterson*, 315 F.3d 1325, 1329 (Fed. Cir. 2003) ("[W]e and our predecessor court have consistently held that even a slight overlap in range establishes a *prima facie* case of obviousness."). Such a prima facie case may be rebutted "by establishing that the claimed range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range." *Id.* at 1330 (citations omitted).

We do not agree with Appellant's position that Examiner's selection of a child weight at 40 kg is somehow arbitrary. Appeal Br. 9. The average weight of an adult human can be ascertained by consulting weight charts,

therefore, Examiner's selection of a child at 40 kg as being about half of the average adult weight does not seem unreasonable (FF5), especially since Kovacs, Konofal, and Epstein disclose that the patient population treatable with mazindol includes newborns, children, adolescents, and adults. *See* FF4, FF6, and FF7.

We agree with Examiner's position that *In re Sebek* is not on point. *See* Ans. 18. In *Sebek* the question was whether it was obvious to substitute citrus molasses for the same concentration of citrus meal when there was no indication that the two components worked similarly. Here, the question is whether it would be obvious to adjust the dosage range of mazindol slightly outside the numeric range claimed in Kovacs, but well within the range contemplated in Kovacs as encompassing an effective amount of active agent. As Examiner explains, the dosage optimization in this case is very different than those considered in *Sebek*. Kovacs exemplifies a maintenance dose of 2.5 mg/day for a 14 year old patient while claiming a range between 1–2 mg/day. Here, Kovacs' claimed dose is already lower than the dose specifically exemplified. FF4. Kovacs also explicitly teaches that you want to give a therapeutically effective amount of mazindol when treating ADHD and suggests that you would adjust the active agent depending on the severity of the condition. Ans. 18; FF2–FF3. Kovacs, therefore, already teaches that one of ordinary skill would adjust the amount of mazindol to the lowest dose based on severity of symptoms and patient condition. *See* Ans. 18 ("Kovacs claim a method of treating ADHD comprising administering an effective amount of mazindol."); FF2 ("It is preferred generally that a minimum dose be used, that is, the lowest safe dosage that provides appropriate relief of symptoms.").

We also agree with Examiner that *In re Patel* is not on point because Kovacs does teach an overlapping range with the claimed range. *See* Ans. 18–19; FF3. In addition, Examiner points out that Kovacs teaches that one of ordinary skill in the art would be interested in applying the lowest effective dosage that provides relief of symptoms. *See* Ans. 19; *see* FF2; Kovacs '520 claim 11 ("A method for the prevention and/or curative treatment of attention deficit hyperactivity disorder, (ADHD) or at least one of the symptoms associated with ADHD comprising administering to a patient in need thereof an effective amount of mazindol."). Examiner explains that these teachings in Kovacs recognize that a therapeutically effective amount will vary depending on compound, disease severity, age, and weight. Ans. 19; *see* FF3 ("daily doses of active compounds will be from 0.001 mg/kg per day to 200 mg/kg per day").

Appellant also contends that the art already studied the full spectrum of obvious doses and concluded that only those between 1–2 mg per day appear to be effective, and therefore there is no reason to lower the dosage. *See* Appeal. Br. 5–6. Appellant relies on the declaration of Dr. Kidane for supporting the position "that once the effective range of a drug has been established, 'any further 'optimization' of the dose is typically carried out within the range established during initial studies.'" Appeal Br. 6 (citing Kidane Dec. ¶ 11). In other words, optimization would only occur within the conventional dosage range already taught in the art. *Id.* at 7 (citing Kidane Dec. ¶ 20).

We are not persuaded. As Examiner explains Kovacs recognizes that a therapeutically effective amount will vary depending on compound, disease severity, age, and weight. Ans. 19; *see* FF3 ("daily doses of active

compounds will be from 0.001 mg/kg per day to 200 mg/kg per day"). The Kidane Declaration provides a table from various clinical trials using mazindol and finds that the lowest dose reported for ADHD treatment was 1 mg per day while the lowest oral dose for a different application was 0.5 mg per day. Kidane Dec. ¶ 13; *see* Appeal Br. 7. Thus, the Kidane Declaration supports Examiner's position that depending on the disease a therapeutically effective amount of mazindol will differ.

Kovacs teaches that isoindole derivatives, such as mazindol, can be administered in the range from 0.001–200 mg/kg per day. FF3. Kovacs claims an effective dose mazindol to treat ADHD is in the range of 1–2 mg/day. FF4. Kovacs exemplifies administering 2.5 mg/day as a maintenance dose of mazindol to a 14 year old patient. FF4. It is well settled that "in a section 103 inquiry, 'the fact that a specific [embodiment] is taught to be preferred is not controlling, since all disclosures of the prior art, including unpreferred embodiments, must be considered.'" *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)); *see also In re Mills*, 470 F.2d 649, 651 (CCPA 1972) ("All the disclosures in a reference must be evaluated, including nonpreferred embodiments, and a reference is not limited to the disclosure of specific working examples." (Citations omitted).) Here, Kovacs teaches a general range of isoindole derivatives that include mazindol (FF1), explains that an effective amount is the minimum dose that provides the appropriate relief of symptom (FF2), and contemplates adjusting the daily dose on a per kilogram basis (FF3). Based on these combined disclosures in Kovacs, we agree with Examiner's finding that the claimed mazindol dose for the treatment of ADHD is obvious.

2. Unexpected Results

Appellant contends that it was unexpected that mazindol exhibits specific agonist activity at the μ-opioid receptor. Appeal Br. 7. "Those of ordinary skill in the art, being unaware of this 'additional' activity, lacked any basis to assume that a dose lower than those reported could be effective, let alone one that is 50% lower." Appeal Br. 8 (citing Kidane Dec. ¶ 17)

We are not persuaded. There has to be a nexus between the unexpected property and the claimed invention. *See In re Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011) ("Where the offered secondary consideration actually results from something other than what is both claimed and *novel* in the claim, there is no nexus to the merits of the claimed invention."). In addition, "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).

Examiner explains that Appellant has "not provided any evidence or support identifying that the dosage amounts of 0.1–0.5 mg is critical to the invention." Ans. 21. Examiner points out that the Specification does not provide any data that compares the presently claimed range of 0.1–0.5 mg per day as providing any unexpected results over any other range contemplated in the Specification. *Id.* Indeed, the Specification as originally filed suggests that mazindol can be administered to treat central nervous system disorders, including ADHD, at a range from 0.1–20 mg per day. Spec. 9 (claims 1–8); *see id.* We agree with Examiner's position that there is insufficient "data or evidence in the specification demonstrating some data points outside and inside of the [claimed] range[] . . . [from which to extrapolate that one] is more effective or efficacious to support [a

conclusion] that the claimed range, 0.1–0.5 mg has unexpected results." Ans. 7, *id.* at 21. The claims are directed to treating ADHD using mazindol as a sole active agent at a daily dosage from 0.1–0.5 mg. The discovery that the μ-opioid receptor is another target for mazindol and may also be a target for ADHD is a valuable contribution but does not give rise to a patentable invention because the art already recognizes that administration of mazindol provides relief for ADHD. *See* FF1–FF7. Appellant's declarant Dr. Kidane attests that Appellant has discovered another receptor that is a target for mazindol but the declaration has not established that there is a nexus between the claimed dosage range and the μ-opioid receptor. *See* Kidane Dec. ¶ 17. A showing in the Specification that μ-opioid receptor binds mazindol tightly in an in vivo assay does not explain why the effect of administering mazindol to patients at the claimed dosages is surprising, especially when viewed in light of Kovacs' teaching of administering an overlapping range of active compound. As Examiner explains, "mazindol being an agonist of μ-opioid receptor(s) is an inherent property of the compound. . . . If additional activity is the reason for the dosage amount of 0.1–0.5 mg, there is no data in the specification as for administration of such amounts has provided unexpected results (e.g. higher efficacy, or potency) compared to 1 mg or 2 mg as argued by the Appellant[]." Ans. 22. Here, Examiner acknowledged the alleged unexpected results but was just not persuaded by the evidence. *See Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1372 (Fed. Cir. 2007) ("[W]e hold that even if Pfizer showed . . . unexpectedly superior results, this secondary consideration does not overcome the strong showing of obviousness in this case. Although

secondary considerations must be taken into account, they do not necessarily control the obviousness conclusion").

We agree with Examiner that Appellant has not persuasively demonstrated that the claimed dosage range is critical or that it otherwise exhibits unexpected results over the dosages taught in Kovacs. Thus, when weighing the record as a whole in light of Examiner's comparatively strong prima facie case, we determine that the preponderance of the evidence supports Examiner's rejections as to claim 10.

3. Burden

We agree that Examiner "'bears the initial burden . . . of presenting a prima facie case of unpatentability.'" *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Appellant contends that Examiner is improperly shifting the burden to Appellant to prove non-obviousness. Appeal Br. 9–10; *see* Reply Br. 3. We are not persuaded. As discussed above, we find that Examiner has identified sufficient evidence in the record from which to conclude that administering mazindol for the purpose of treating ADHD was known. FF1, FF6, FF7. Examiner has directed us to teachings in Kovacs that suggest administering a dose of active ingredient ranging from 0.001 mg/kg per day to 200 mg/kg per day. FF3. Examiner also directs us to teachings in Kovacs that suggest it is preferred that "the minimum dose be used, that is, the lowest safe dosage that provides appropriate relief of symptoms." FF2; Ans. 6. Thus, Kovacs recognizes that "the actual dose used as contemplated in a given individual may [be] less or greater than th[e] dosage range" contemplated. FF3.

It is only in response to Appellant's unexpected results argument that Examiner asks that Appellant establish the criticality of the presently

claimed range. Thus, there is nothing wrong with the timing of Examiner's request to provide more evidence or data because it was only made after Examiner had already established a prima facie case and after Appellant asserted unexpected results in rebuttal. As discussed above, we do not find that the teaching in the Specification that mazindol exhibits specific agonist activity at the μ-opioid receptor rises to the level of being unexpected. As Examiner responds, the agonist activity of mazindol is an inherent property associated with the compound. Ans. 22. Here, the art suggests treating the same patient population (those suffering from ADHD) with the same compound (mazindol) at overlapping concentration range (0.001–200 mg/kg per day). FF1–FF8. The discovery that mazindol exhibits specific agonist activity at the μ-opioid receptor is admittedly scientifically interesting but this is not captured in the present claims. Scientific explanation how the compound may work on the cellular level to treat a particular disease does not take away from what is already taught in the art — in this case treating a patient with ADHD using mazindol at a daily dosage of 0.001 mg/kg–200 mg/kg. FF1–FF3.

Kovacs specifically discloses administering the compounds having daily dosage from 0.001 mg/ kg per day to 200 mg/kg per day. FF3. Epstein suggests a daily dosage range from 0.0001–100 mg/kg. FF8. Examiner's calculation that a child at 20 kg or 40 kg given a dosage is 0.01 mg/kg falls within the claimed range seems reasonable. FF5. Accordingly, we find that Examiner has made a sufficient showing that the disclosures relied upon provide a reasonable basis for the initial prima facie case. Having determine that Examiner has presented sufficient evidence for a

prima facie showing of obviousness, the burden then reasonably shifted to Appellant provide a rebuttal.

We also do not agree with Appellant's position that there is no dispute that the prior art dosage range of mazindol does not overlap with the range claimed. *See* Appeal Br. 8–9. Here, Appellant is limiting the dosage of mazindol to those amounts exemplified in the references. A reference is not limited to the specific embodiments. *See Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 874 F.2d at 807. Thus, there is no reason to limit the teachings of a reference to the exemplified embodiments while ignoring that wider dosage ranges contemplated by the same reference.

We conclude that the evidence cited by the Examiner supports a prima facie case of obviousness with respect to claim 10, and Appellant has not provided sufficient rebuttal evidence or evidence of secondary considerations when balanced with the evidence supporting the Examiner's conclusion of obviousness.

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
10	pre-AIA 35 U.S.C. § 103(a) over Kovacs '520 or Kovacs '139	10	
10	pre-AIA 35 U.S.C. § 103(a) over Konofal in view of Kovacs '520 or Kovacs '139	10	
10	pre-AIA 35 U.S.C. § 103(a) over Epstein and Kovacs '139	10	
10	provisional nonstatutory obviousness-type double patenting over Application No 14/841,898	10	
Outcome		10	

TIME PERIOD FOR RESPONSE

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