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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/174,723	06/06/2016	Mark Stern	04709.0507USC3	1034
127749	7590	09/30/2019	EXAMINER	
M&G Spectrum P.O. Box 2903 Minneapolis, MN 55402			HUSON, JOSHUA DANIEL	
			ART UNIT	PAPER NUMBER
			3642	
			NOTIFICATION DATE	DELIVERY MODE
			09/30/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK STERN

Appeal 2018-008961
Application 15/174,723
Technology Center 3600

Before JENNIFER D. BAHR, MICHELLE R. OSINSKI, and
SEAN P. O’HANLON, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s
decision rejecting claims 1–6. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to the “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Spectrum Brands Pet Group, Inc., a wholly owned subsidiary of Spectrum Brands, Inc. Appeal Br. 2.

THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A method of forming an edible pet chew, said method comprising:
 - providing a plant based mixture that is extrudable and initially malleable;
 - forming said initially malleable plant based mixture into a first sheet;
 - providing a second sheet made from flavor material;
 - placing said first and second sheets in superimposed relation and rolling said first and second sheets up to have said first sheet and second sheet forming alternating layers; and
 - hardening said first sheet after it is wrapped with said second sheet.

REJECTIONS

- I. Claims 1 and 6 stand rejected under 35 U.S.C. § 102(b) as anticipated by Lira (US 6,165,522, iss. Dec. 26, 2000).
- II. Claims 1–6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sherrill (US 5,673,653, iss. Oct. 7, 1997) and Axelrod (US 2005/0153040 A1, pub. July 14, 2005).
- III. Claims 1–6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sherrill and Greene (US 4,419,372, iss. Dec. 6, 1983).

DISCUSSION

Rejection I–Anticipation by Lira

The Examiner finds that Lira discloses a method of forming an edible pet chew including, in relevant part, “providing a plant based mixture . . .

that is extrudable and initially malleable 12; [and] forming said initially malleable plant based mixture into a first sheet 110.” Final Act. 2.

Appellant argues that Lira does not disclose “that the material of outer layer 12 is extrudable and initially malleable. Lira teaches only that outer layer 12 is ‘a shell or crust’ . . . such as a ‘tortilla shell 12’ . . . , and that ‘the shell 10 is rolled.’” Appeal Br. 6 (boldface and italics omitted) (citing Lira, col. 2, ll. 56–57; col. 3, ll. 48–49; col. 4, ll. 1–2, 38). According to Appellant, “[n]owhere in Lira does it teach or suggest that outer shell 12 or anything else comprises an extrudable plant based mixture.” *Id.* (italics omitted). We are not persuaded by this argument.

Lira discloses that “an edible, pliable outer layer 12 provides a shell or crust.” Lira, col. 3, ll. 48–49 (boldface omitted). Lira discloses that

various ingredients, such as flour from silo 104, salt from bin 102 and shortening from tower 106 are metered into a blender or mixer 108 where the ingredients are mixed to a desired consistency. The resulting mixture is then metered into a roller press 110 for forming discrete, generally circular tortillas 12 which are deposited on the moving conveyor 114.

Id., col. 5, ll. 7–13 (boldface omitted). The Examiner takes the position that Lira’s mixture of plant-based ingredients “is extrudable and initially malleable as shown in figure 5 wherein the resulting mixture within [mixer] 108 is then metered through an outlet of [mixer] 108 (see tubing) and into the roller press 110 for forming discrete, generally circular tortillas 12 which are deposited on the moving conveyor 114.” Ans. 3. The Examiner explains that, because tortilla 12 (first sheet) “is formed by providing a plant based mixture within mixer 108 to a desired consistency/dough which is expelled and forced through [roller press] 110, Lira teaches the plant based mixture being extrudable and initially malleable as claimed.” *Id.* at 6 (citing

Lira, col. 2, ll. 44–46). In this regard, Appellant does not persuasively refute the Examiner’s position. Given Lira’s disclosure that the mixture includes plant based ingredients mixed to a desired consistency for metering and forming by a roller press (Lira, col. 5, ll. 10–12) and Lira’s description of “an edible, pliable outer layer 12 provid[ing] a shell or crust” (*id.*, col. 3, ll. 47–48 (boldface omitted)), a preponderance of the evidence supports the Examiner’s finding that Lira discloses an extrudable and initially malleable plant based mixture.

Appellant argues that “Lira does not disclose a method of forming an edible pet chew. Lira discloses only ‘a food product and a method of making a food product suitable for high volume production’ for humans.” Appeal Br. 7 (boldface and italics omitted) (citing Lira, col. 2, ll. 2–3). Appellant asserts that the Examiner “ignores the differences between a food product for humans and a pet chew for animals.” *Id.* (citing Final. Act. 9). According to Appellant, the Specification describes that “pet chews are desirable for their ability to clean a pet’s teeth and/or distract the pet from chewing on objects such as furniture” (*id.* (citing Spec. ¶ 3)), whereas “Lira’s food product is readily consumed and would not be expected to provide long-lasting stimulatory effects such as a pet chew (*id.* at 7–8 (italics omitted) (citing Lira, col. 4, ll. 44–46)). This line of argument is unpersuasive because it is not commensurate with the scope of claim 1.

As stated by our reviewing court in *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998), “the name of the game is the claim.” It is well established that limitations not appearing in the claim cannot be relied upon for patentability. See *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Here, the preamble of claim 1 recites “[a] method of forming an edible pet chew.”

Appeal Br. 21 (Claims App.). Claim 1 recites steps of providing a plant based mixture, forming it into a sheet, superimposing the first sheet with a second sheet of flavor material, rolling the sheets to create alternating layers, and hardening the rolled sheets. *Id.* However, the claim does not recite any limitations regarding cleaning a pet’s teeth, distracting a pet, or providing long-lasting stimulatory effects. In other words, although the Specification describes that “[p]et owners believe chew toys are desirable for cleaning the teeth of dogs and other pets, providing for dental hygiene and resulting in better breath . . . [, and] also distract the pet from chewing on other objects such as shoes or furniture” (Spec. ¶ 2), such disclosure in the Specification does not impart any limitations to the claimed method. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (Although the claims are interpreted in light of the Specification, limitations from the Specification are not read into the claims.).

For the above reasons, Appellant does not apprise us of error in the Examiner’s finding that Lira anticipates the subject matter of claim 1. Accordingly, we sustain the rejection of claim 1, as well as dependent claim 6, for which Appellant relies on the same arguments (*see* Appeal Br. 8), as anticipated by Lira.

Rejection II—Obviousness based on Sherrill and Axelrod

The Examiner finds that Sherrill teaches a method of forming an edible pet chew including, in relevant part, “providing a rawhide material that is extrudable and initially malleable (Fig. 2 #11) . . . [and] forming the initially malleable material into a first sheet (Fig. 3 #11)” (Final Act. 3), but “fails to teach that the first sheet mixture/material is a plant based mixture

that is extrudable and initially malleable; and forming the initially malleable plant based mixture into a first sheet” (*id.* at 4). *See also id.* at 10 (clarifying that “[t]he only claimed limitation not supported by Sherrill is the first sheet being of a plant based mixture”). However, the Examiner finds that Axelrod teaches “a method of forming an edible pet chew by providing a plant based mixture that is extrudable and initially malleable into a first sheet.” *Id.* at 4 (citing Axelrod ¶¶ 12, 38). The Examiner determines that it would have been obvious to modify Sherrill to use a plant-based mixture for the first sheet, as taught by Axelrod,

in order to provide the animal with both plant based nourishment as well as animal based nourishment for greater nutritional value and additional nutritional value to the pet chew, [and] since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Id. (citing *In re Leshin*, 277 F.2d 197, 199 (CCPA 1960)). The Examiner also explains that “substituting one malleable sheet (Sherrill ‘rawhide’) with a different malleable and extru[d]able sheet (Axelrod Para 12, 38) . . . would yield predictable results to one of ordinary skill in the art.” *Id.* at 12; *see also id.* (finding that “Axelrod teaches that a plant based material can be substituted for a rawhide material in an edible pet chew” (citing Axelrod ¶ 10)).

Appellant argues that “the combination of Sherrill and Axelrod proposed by the Examiner fails to disclose ‘forming said initially malleable plant based mixture into a first sheet’ and ‘placing said first and second sheets in superimposed relation and rolling said first and second sheets up’” Appeal Br. 9 (italics omitted). In particular, Appellant asserts:

As the Board recently held in its Decision on Appeal [2016-000639] in the case of Application 13/329,736, nothing in Axelrod “supports a finding that Axelrod’s formed sheet is ‘. . . malleable for use as a wrap by flexing, folding, or rolling into a shape.’” (PTAB Decision at pg. 4.) To the contrary, Axelrod discloses merely an unformed and unshaped material that is malleable prior to being formed into a sheet, but that once formed, the sheet is immediately cooked and hardened and the final shape achieved only by cutting. *See* Axelrod, ¶¶ [0009], [0010], [0022], [0024]. Axelrod does not disclose that the sheet can be further flexed, folded, or rolled once formed.

Id. at 10 (italics omitted in all but one occurrence). This line of argument is unpersuasive for the following reasons.

First, Appellant’s argument is not commensurate with the scope of claim 1. *See In re Self*, 671 F.2d at 1348. The claim at issue in the referenced appeal of application 13/329,736 recites “forming said initially malleable plant based mixture into a first sheet that is dimensioned large enough and thin enough to be initially malleable for use as a wrap by flexing, folding or rolling into a shape.” *See Ex parte Stern*, Appeal No. 2016-000639, at 2 (PTAB Jan. 16, 2018); *see id.* at 4 (focusing on this limitation in the analysis reversing the rejection).² However, present claim 1 does not recite this limitation. Rather, claim 1 only recites “forming said initially malleable plant based mixture into a first sheet.” Appeal Br. 21 (Claims App.).

² It is concerning that, having brought to our attention the Board’s decision in Appeal No. 2016-000639, Appellant neglects to bring to the Board’s attention the Board’s decision in *Ex parte Stern*, Appeal No. 2014-003660, at 1–2, 5–10 (PTAB April 4, 2016) (sustaining substantially the same rejection of substantially the same claim as in Appeal No. 2016-000639). *See* 37 C.F.R. § 11.303(a)(2).

Second, Appellant’s argument is not responsive to the proposed modification set forth in the rejection. As discussed above, the Examiner proposes modifying Sherrill by substituting Axelrod’s sheet formed of a plant-based mixture for Sherrill’s sheet formed of rawhide. *See* Final Act. 3–4, 12. Although Axelrod’s disclosed method includes a heating step to harden a single sheet *after* it is formed (*see* Axelrod ¶¶ 22–23), the Examiner’s rejection does not propose incorporating this heating step into Sherrill’s method, which already includes a drying step to harden first and second sheets after they are superimposed and rolled (*see* Sherrill, col. 5, ll. 52–62). In this regard, Appellant’s argument appears to improperly presume a bodily incorporation of Axelrod’s heating step into the process of Sherrill. *See* Appeal Br. 9–10, 13–14. “It is well-established that a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements.” *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (stating, “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference”).

Appellant argues that the Examiner’s proposed combination of Sherrill and Axelrod “would not improve Sherrill and would render it inoperable for its intended purpose[.]” Appeal Br. 10 (italics omitted). Appellant asserts that “the results that can be predicted from combining the entire teaching of Sherrill and Axelrod are not that of the claimed invention, but results in a first sheet made of the inflexible sheet material of Axelrod that cannot be rolled up to form alternating layers.” *Id.* at 13–14 (italics omitted). According to Appellant, “[t]he Examiner’s cited rationales

provide no motivation to combine or reasonable expectation of success to arrive at the Appellant's claimed invention." *Id.* at 14. This line of argument is not convincing. Appellant's contention that Axelrod's plant-based sheet would be inflexible and, thus, render Sherrill inoperable, appears to be predicated upon an assumption that Axelrod's plant-based sheet would be heated immediately after forming. However, as discussed above, this improperly presumes a bodily incorporation of Axelrod's heating step into Sherrill's method, where the rejection does not propose such a modification.

Appellant has not provided any factual evidence or persuasive technical reasoning to explain why modifying Sherrill's process so that the first sheet is formed of a plant-based mixture, as taught by Axelrod, would yield anything other than a predictable result, or that doing so in an operable manner would be somehow beyond the level of ordinary skill in the art, especially given Axelrod's disclosure of rawhide, plant, and vegetable as alternative base materials. *See* Axelrod ¶ 12. In this regard, the Examiner's proposed modification of Sherrill so that the first sheet is formed of a plant-based mixture, as taught by Axelrod, does not amount to more than the simple substitution of one known edible sheet material (i.e., Axelrod's plant-based mixture) for another (i.e., Sherrill's rawhide) or the mere application of a known technique to a piece of prior art ready for the improvement. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).

Appellant argues:

The Examiner cites no evidence of record to suggest that substituting the non-rawhide material of Axelrod for the rawhide of Sherrill would improve upon or solve a problem in Sherrill in the same way that Sherrill's intended purpose is to provide a chew "with a high content of rawhide . . . to reduce

the tartar on teeth of the dogs chewing” or to “satisf[y] the dog’s inherent urge to chew.”

Appeal Br. 13 (italics omitted, alteration in original) (quoting Sherrill col. 2, ll. 21–23; col. 3, ll. 8–10, 40–42). According to Appellant:

Neither changed nutritional value nor better digestion are objectives of Sherrill, however, such that the Examiner’s stated rationale of adding these properties at the expense of the advantageous properties of rawhide praised in Sherrill destroys the structural identity and operability taught by Sherrill and is based entirely on impermissible hindsight.

Appeal Br. 13 (italics omitted). This argument is unpersuasive. Even if substituting Axelrod’s plant-based sheet for Sherrill’s rawhide sheet would eliminate the purported advantageous properties of rawhide (*see id.*), our reviewing court has recognized that a given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate any or all reasons to combine teachings. *See Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (if there are tradeoffs involved regarding features, such things do not necessarily prevent the proposed combination); *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 n.8 (Fed. Cir. 2000) (“The fact that the motivating benefit comes at the expense of another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another. Instead, the benefits, both lost and gained, should be weighed against one another.”).

Moreover, Appellant does not identify, nor do we discern, any knowledge relied upon by the Examiner that was gleaned only from Appellant’s disclosure and that was not otherwise within the level of ordinary skill at the time of the invention. *See In re McLaughlin*, 443 F.2d

1392, 1395 (CCPA 1971) (“Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from [Appellant’s] disclosure, such a reconstruction is proper.”). As such, we are unpersuaded by Appellant’s contention that the Examiner relied on impermissible hindsight in reaching the determination of obviousness of the claimed subject matter. *See* Appeal Br. 12–14.

For the above reasons, Appellant does not apprise us of error in the Examiner’s determination that the subject matter of claim 1 would have been obvious. Accordingly, we sustain the rejection of claim 1, and its dependent claims 2–6, for which Appellant does not present any separate arguments (*see id.* at 8–14), under 35 U.S.C. § 103(a) as unpatentable over Sherrill and Axelrod.

Rejection III—Obviousness based on Sherrill and Greene

In Rejection III, the Examiner relies on the same findings as to the disclosure of Sherrill discussed above in connection with Rejection II. *See* Final Act. 5–6 (finding that Sherrill teaches all of the limitations of claim 1, except for the first sheet being a plant-based material). The Examiner finds that Greene teaches “providing a rawhide substitute material made from a plant based mixture that is extrudable and initially malleable into a first sheet.” *Id.* at 6 (citing Greene, col. 2, l. 40–col. 3, l. 2; col. 5, ll. 1–56). The Examiner determines that it would have been obvious to modify Sherrill to use a plant-based mixture for the first sheet, as taught by Greene, for the same reasons explained in the proposed combination of Sherrill and Axelrod

in Rejection II. *See* Final Act. 6; *see also id.* at 14 (explaining that “[t]he same rational[e] and conclusion of obviousness for the substitution of Sherrill’s rawhide layer with Axelrod’s plant based mixture as the first sheet applies to the combination of Sherrill in view of Greene”).

Appellant initially relies on the same arguments and reasoning that we found unpersuasive in connection with Rejection II. *See* Appeal Br. 15 (asserting that “Greene, for reasons similar to those explained for Axelrod, does not cure the conceded deficiencies of Sherrill” (italics omitted)); *id.* at 17 (asserting that the Examiner’s “rationales and conclusions should be rejected for the reasons already explained with respect to the combination of Sherrill and Axelrod” (italics omitted)). For the same reasons discussed above, we are not persuaded by these arguments.

Appellant argues that Greene “teaches limited flexibility of its non-rawhide material and fails to disclose a first sheet that can be superimposed with a second sheet and ‘roll[ed] . . . up.’” Appeal Br. 15 (alteration in original). Appellant asserts that “Greene discloses nothing with respect to being able to place a second sheet of a flavor material superimposed with its sheet of non-rawhide material while the material is still malleable and then ‘roll [them] up.’ Greene teaches using only a single sheet.” *Id.* at 16 (italics omitted, alteration in original). This argument against Greene is unpersuasive because it attacks the reference individually rather than as combined by the Examiner in the rejection, rather than the rejection as presented, which is based on the combined teachings of Sherrill and Greene. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *Keller*, 642 F.2d at 425). Here, the Examiner does not rely on Greene for teaching a second sheet of flavor material being superimposed with the first sheet and

rolled up, but, rather, as discussed above, the Examiner relies on Sherrill for teaching this feature. *See* Final Act. 5–6. The Examiner relies on Greene only for teaching a plant-based mixture that is extrudable and initially malleable into a first sheet. *Id.* at 6.

Appellant argues that “Greene teaches that its non-rawhide material is initially flowable at high temperature, but rapidly hardens when cooled to room temperature.” Appeal Br. 15 (italics omitted) (citing Greene, col. 2, ll. 44–46). Appellant asserts that, “[u]nlike the high temperatures required to manipulate the non-rawhide material in Greene, Sherrill explains that its rawhide material is sufficiently malleable to be manipulated at room temperature after being soaked in a solution.” *Id.* at 16 (boldface and italics omitted) (citing Sherrill, col 5, ll. 27–29). According to Appellant,

based on the different properties of the two materials disclosed in Sherrill and Greene, a person of ordinary skill in the art would understand the material in Greene to be cooled and hardened at the temperatures and conditions suitable for working with the superimposed rawhide and jerky sheets disclosed in Sherrill. Thus, a person of ordinary skill would not understand the non-rawhide material in Greene as capable of being substituted for Sherrill’s rawhide layer, superimposed with Sherrill’s jerky layer, and then rolled.

Id. (italics omitted); *see also id.* at 19 (asserting that “a person of ordinary skill in the art would not have a reasonable expectation of success of combin[ing] Sherrill and Greene” (italics omitted)). This line of argument is unpersuasive.

Although Sherrill discloses soaking rawhide sheets in a solution to make them malleable (*see* Sherrill, col. 5, ll. 27–29), Appellant does not point to, nor do we find, any disclosure in Sherrill requiring that the sheet rolling step be performed at room temperature (*see* Appeal Br. 16). In this

regard, Appellant's assertion amounts to nothing more than attorney argument unsupported by evidence and, thus, is entitled to little, if any, weight. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (An attorney's arguments in a brief cannot take the place of evidence.).

With respect to Appellant's argument that one of ordinary skill in the art would have no reasonable expectation of success in modifying the method of Sherrill to use a first sheet formed of a plant-based mixture, as taught by Greene (*see* Appeal Br. 19), Appellant does not proffer factual evidence or persuasive technical reasoning to explain how combining the teachings of Sherrill and Greene in an operable manner would be beyond the level of ordinary skill in the art. *See KSR*, 550 U.S. at 417. Even if Greene's plant-based mixture requires a higher temperature for malleability than Sherrill's rawhide,³ we are unpersuaded that a person of ordinary skill in the art would be incapable of making any necessary adjustments to Sherrill's method to use Greene's plant-based material therein successfully. "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 421. In other words, we are not persuaded that the ability to address any implementation problems (e.g., temperature differences) that might arise in combining the teachings of Sherrill and Greene would be beyond the skill and creativity of an ordinary artisan. We

³ We note that Greene teaches that "the extruded product is maintained at a temperature which provides a workable surface hardness. For extrudates having a moisture content of from 15 to 30 weight percent, temperatures during surface treatments are from 25° to 90° C. and preferably from 60° to 80° C." Greene, col. 5, ll. 33–38. In other words, even if Sherrill requires malleability at room temperatures (*see* Appeal Br. 16), Greene teaches that its plant-based material is workable at a temperature of 25° C (i.e., 77° F).

note that the obviousness analysis “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*, 550 U.S. at 418.

Appellant asserts that “Sherrill further teaches away from certain other pet chew configurations, such as coated chews, explaining that coated chews can stain carpets and other household items and become malodorous to humans.” Appeal Br. 18 (*italics omitted*) (citing Sherrill, col. 1, ll. 55–64); *see also id.* at 19 (asserting that “a person of skill in the art would understand Sherrill to teach away from the use of coated materials such as Greene, which can stain carpets and other household items and become malodorous to humans” (*italics omitted*)). This argument is unconvincing.

A reference teaches away from a claimed invention or a proposed modification if “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.” *In re Kubin*, 561 F.3d 1351, 1357 (Fed. Cir. 2009) (quoting *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994)). Prior art does not teach away from claimed subject matter merely by disclosing a different solution to a similar problem unless the prior art also criticizes, discredits, or otherwise discourages the solution claimed. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Here, Appellant does not point to, nor do we find, any disclosure in Sherrill criticizing, discrediting, or otherwise discouraging the combination of teachings proposed by the Examiner in the rejection. The fact that Sherrill discloses disadvantages of coated chews does not constitute a teaching away from the Examiner’s proposal to use Greene’s plant-based

simulated rawhide material. Moreover, Appellant does not proffer any evidence that modifying Sherrill's process to use Greene's simulated rawhide material would result in an edible pet chew that would stain and be malodorous. In this regard, Appellant's assertion amounts to nothing more than attorney argument unsupported by evidence and, thus, is entitled to little, if any, weight. *In re Geisler*, 116 F.3d at 1470; *see also In re Pearson*, 494 F.2d at 1405.

Greene teaches that “[t]he extruded oil seed protein products of this invention have toughness, flexibility and appearance resembling rawhide products. In addition they are made of inexpensive but highly nutritious, fully digestible oil seed protein.” Greene, col. 2, ll. 44–48. The Examiner explains that Greene's “simulated rawhide has all of the benefits of real rawhide such as tartar control and exercising the animal. Greene teaches that the rawhide is ‘simulated’ and has the same toughness, flexibility and appearance of rawhide but also has the added benefit of being digestible and packed with nutrients.” Ans. 17–18. The Examiner takes the position that modifying Sherrill would “improve[] the method of forming a pet chew since it allows for the continuous mass production of chews that satisfy a dog[']s desire to chew on rawhide without causing any digestive issues known to be associated with rawhide.” *Id.* at 18. In this regard, the Examiner's proposed modification of Sherrill so that the first sheet is formed of a plant-based mixture, as taught by Greene, does not amount to more than the simple substitution of one known edible sheet material (i.e., Greene's plant-based mixture) for another (i.e., Sherrill's rawhide) or the mere application of a known technique to a piece of prior art ready for the improvement. *See KSR*, 550 U.S. at 417.

For the above reasons, Appellant does not apprise us of error in the Examiner's conclusion of obviousness with respect to claim 1. Accordingly, we sustain the rejection of claim 1, and its dependent claims 2–6, for which Appellant does not present any separate arguments (*see* Appeal Br. 14–19), under 35 U.S.C. § 103(a) as unpatentable over Sherrill and Greene.

DECISION

The Examiner's decision rejecting claims 1–6 is AFFIRMED.

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 6	§ 102(b) Lira	1, 6	
1–6	§ 103(a) Sherrill and Axelrod	1–6	
1–6	§ 103(a) Sherrill and Greene	1–6	
Overall Outcome		1–6	

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

AFFIRMED