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

The time period for reply, if any, is set in the attached communication.
Pursuant to 35 U.S.C. § 134(a), Appellants appeal from the Examiner’s decision finally rejecting claims 29–49 and 51–54. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is Symrise AG. Appeal Br. 1.
STATEMENT OF THE CASE

The invention relates to an aroma composition for reducing or suppressing an undesired bitter and astringent impression in the oral cavity, the composition including (i) one or more salivatory (salivation inducing) aroma substances and/or flavorings, and (ii) one or more specific bitterness-masking aroma substances and/or flavorings. Spec. 1:29–32. Appellants further disclose that the composition may optionally include one or more further aroma substances and one or more auxiliary substances or carriers. Id. at 1:33–34. In addition, Appellants disclose that one, several, or all of the salivatory aroma substances and/or flavorings are trigeminally active, i.e., are capable of imparting a warming, spicy hot, pungent, cooling, and/or tingling impression in the oral cavity. Id. at 5:17–19; 9:26–28. The invention further relates to a preparation comprising the aroma composition and a method of reducing or suppressing the bitter, astringent effect of a compound using the aroma composition. Id. at 1:34–2:4.

Claim 29, reproduced below from the Claims Appendix to Appellants’ Brief, is illustrative of the subject matter on appeal:

29. An oral preparation comprising an aroma composition for reducing or suppressing both a bitter and an astringent taste impression of a compound in the oral cavity, comprising
(i) one or more trigeminally active salivatory aroma substances or flavorings selected from the group consisting of:

2E,4E-decadienoic acid N-isobutylamide (trans-pellitorine),
2E,4Z-decadienoic acid N-isobutylamide (cis-pellitorine),
2Z,4Z-decadienoic acid N-isobutylamide; 2Z,4E-decadienoic acid N-isobutylamide,
2E,4E-decadienoic acid N-([2S]-2-methylbutyl)amide,
2E,4E-decadienoic acid N-([2S]-2-methylbutyl)amide,\(^3\)
2E,4E-decadienoic acid N-([2R]-2-methylbutylamide),
2E,4Z-decadienoic acid N-(2-methylbutyl)amide,
2E,4E-decadienoic acid N-piperide (achilleamide),
2E,4E-decadienoic acid N-piperide (sarmentine),
2E-decenoic acid N-isobutylamide,
3E-decenoic acid N-isobutylamide,
3E-nonenoic acid N-isobutylamide,
2E,6Z,8E-decatrienoic acid N-isobutylamide (spilanthol),
2E,6Z,8E-decatrienoic acid N-([2S]-2-methylbutyl)amide (homospilanthol),
2E,6Z,8E-decatrienoic acid N-([2R]-2-methylbutyl)amide; 2E-decen-4-ynoic acid N-isobutylamide,
2Z-decen-4-ynoic acid N-isobutylamide,
2E,6Z,8E,10E-dodecatetraenoic acid N-(2-methylpropyl)amide (α-sanshool),
2E,6Z,8E,10E-dodecatetraenoic acid N-(2-hydroxy-2-methylpropyl)amide (α-hydroxysanshool),
2E,6E,8E,10E-dodecatetraenoic acid N-(2-hydroxy-2-methylpropyl)amide (γ-hydroxysanshool),
2E,4E,8Z,10E,12E-tetradecapentaenoic acid N-(2-hydroxy-2-methylpropyl)amide (γ-hydroxyisosanshool),
2E,4E,8Z,10E,12E-tetradecapentaenoic acid N-(2-methyl-2-propenyl)amide (γ-dehydrosanshool),
2E,4E,8Z,10E,12E-tetradecapentaenoic acid N-(2-methylpropyl)amide (γ-sanshool),
2E,4E,8Z,11Z-tetradecatetraenoic acid N-(2-hydroxy-2-methylpropyl)amide (bungeanool),
2E,4E,8Z,11E-tetradecatetraenoic acid N-(2-hydroxy-2-methylpropyl)amide (isobungeanool),

\(^3\) We note that claim 29 twice recites the same compound, 2E,4E-decadienoic acid N-([2S]-2-methylbutyl)amide.
2E,4E,8Z-tetradecatrienoic acid N-(2-hydroxy-2-methylpropyl)amide (dihydrobungeanool), and
2E,4E-tetradecadienoic acid N-(2-hydroxy-2-methylpropyl)amide (tetrahydrobungeanool); and
(ii) one or more bitterness-masking aroma substances or flavorings selected from the group consisting of:
eriodictyol, homoeriodictyol or a sodium salt thereof,
2,4-dihydroxybenzoic acid vanillylamide,
2,4,6-trihydroxybenzoic acid N-(4-hydroxy-3-methoxybenzyl)amide,
2,4-dihydroxybenzoic acid N-(4-hydroxy-3-methoxybenzyl)amide monosodium salt,
gingerdione-[2],
gingerdione-[3],
gingerdione-[4],
dehydrogingerdione-[2],
dehydrogingerdione-[3],
dehydrogingerdione-[4], diacetyl trimers,
γ-aminobutyric acid,
divanillin,
phloretin, and
davidigenin;
and optionally,
(iii) one or more further aroma substances;
and optionally,
(iv) one or more auxiliary substances or carriers;
provided that the amount of the (i) one or more trigeminally active salivatory aroma substances and the (ii) one or more bitterness-masking aroma substances or flavorings is sufficient to reduce or suppress both a bitter and an astringent taste impression in the oral cavity;
and provided that the preparation does not comprise menthol or a menthol derivative.

REJECTIONS
The Examiner maintains, and Appellants request our review of, the following grounds of rejection under 35 U.S.C. § 103(a):
1. Claims 29–34, 36–43, 45–49, and 51–54 as unpatentable over Gatfield⁴ in view of Ley¹;⁵
2. Claims 35 and 44 as unpatentable over Gatfield in view of Ley¹ and Ley²;⁶ and
3. Claim 54 as unpatentable over Shimada⁷ in view of Ley¹.

ANALYSIS

Appellants argue claims 29, 35, 38, 39, 40, 42, 44, 47, 48, 52, and 54 separately. However, Appellants’ arguments directed to claims 42, 47, and 48, are substantially the same as those directed to claims 29, 39, and 40, respectively. We, therefore, address Appellants’ separate arguments as to claims 29, 35, 38, 39, 40, 42, 44, 47, 48, 52, and 54 below. The remaining claims stand or fall with their respective independent claim.

After review of the Examiner’s and Appellants’ opposing positions, the applied prior art, and Appellants’ claims and Specification disclosures, we determine that Appellants’ arguments are insufficient to identify reversible error in Rejections 1 and 2 above, but are sufficient to identify reversible error in Rejection 3. In re Jung, 637 F.3d 1356, 1365 (Fed. Cir. 2011). Accordingly, we affirm Rejections 1 and 2 for substantially the fact findings and the reasons set forth by the Examiner in the Examiner’s Answer and the Final Office Action, but reverse Rejection 3 for the reasons set forth in the Appeal Brief and below. We offer the following for emphasis only.

⁵ Ley et al., US 2002/0188019 A1, published December 12, 2002 (“Ley¹”).
⁷ Shimada et al., US 5,626,837, issued May 6, 1997 (“Shimada”).
Claim 29

The Examiner finds that Gatfield teaches oral compositions comprising trigeminally active salivatory aroma substances such as 2E,4E-decadienoic acid-N-isobutyl amide (trans-pellitorine) in combination with a bitterness-masking substance and/or flavoring. Ans. 3. However, the Examiner finds that Gatfield does not recite the use of one of the bitterness-masking compounds recited in claim 1 as the bitterness-masking substance and/or flavoring. Id. Instead, the Examiner finds that Ley1 teaches eriodictyol, homoeriodictyol, and the sodium salt of homoeriodictyol are effective bitterness-masking compounds at 100 ppm and identifies aspartame, cyclamate, neotame, saccharin, and sucralose as substances having a bitter aftertaste. Id. at 3–4. The Examiner concludes that it would have been obvious to combine Ley1’s bitterness-masking compounds, e.g., eriodictyol, homoeriodictyol, and sodium salts thereof, with Gatfield’s compositions, including that of Example 3—which include high-intensity sweeteners known to have a bitter aftertaste—for their known bitterness masking function with a reasonable expectation of success. Id. at 4.

Appellants present five primary arguments that the Examiner has failed to present a prima facie case of obviousness: 1) that Gatfield and Ley1 are directed to non-analogous prior art; 2) that there is no need or reason to modify Gatfield’s compositions because Gatfield uses a high level of sugar and sorbitol and only a small amount of saccharin and would not have any bitterness to be reduced; 3) Gatfield desires a neutral taste profile such that one skilled in the art would not add further components that could affect this profile; 4) neither Gatfield nor Ley1 describes the reduction or suppression
of both a bitter and an astringent taste impression; and 5) that the Examiner engaged in improper hindsight in selecting eriodictyol, homoeriodictyol, and the sodium salt of homoeriodictyol from Ley1 for combination with Gatfield’s composition of Example 3 in view of Ley1’s disclosure of at least 2700 different compounds and combinations. Appeal Br. 15–20.

These arguments fail to persuade us of reversible error in the Examiner’s obviousness rejection. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 416 (2007).

With respect to argument (1) above, our reviewing court has stated that “[t]wo separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” In re Bigio, 381 F.3d 1320, 1325 (Fed. Cir. 2004) (citations and internal quotes omitted). In this case, both Gatfield and Ley1 are directed to the same field of endeavor because both are directed to formulations for improving the taste impressions of foodstuffs and oral hygiene preparations. Gatfield ¶ 2; Ley1 ¶ 1. Moreover, even if Gatfield and Ley1 were not from the same field of endeavor, these references are reasonably pertinent to the particular problem—improving the taste impression of foodstuffs and other oral preparations by reducing undesired bitter and astringent impressions—with which the inventors were involved.
With regard to Appellants’ argument (2) above, as the Examiner responds (Ans. 9), the reason to combine is based on the reasonable expectation that Ley1’s compounds would have been expected to reduce the bitter taste of Gatfield’s high intensity sweeteners. *KSR*, 550 U.S. at 416. Although Gatfield teaches compositions including sugar and sorbitol, Appellants neither provide persuasive technical reasoning nor direct our attention to any disclosure in Gatfield that adding Ley1’s compounds to Gatfield’s compositions would not supplement or improve the taste properties of those compositions. Nor do Appellants direct our attention to any disclosure in Gatfield that limits Gatfield’s taste or flavor compounds to the specific ones disclosed therein, or that teaches away from any others known in the art. Indeed, Gatfield provides some indication that other salivation inducing compounds could be used. *See* Gatfield ¶ 14.

As to argument (3) above, as the Examiner responds (Ans. 11), Appellants fail to present either persuasive technical reasoning or evidentiary showing that the addition of Ley1’s bitter-masking compounds would alter Gatfield’s neutral taste profile. Gatfield teaches that the use of low amounts of trans-pelletorin provides the desired salivation inducing effect without providing additional detectable sensory impressions. *Gatfield* ¶ 9. We note that Ley1 likewise teaches that very low levels of eriodictyol or homoeriodictyol are effective for reducing bitterness. Ley1, Fig. 1. Thus, contrary to Appellants’ argument, the ordinary artisan would not expect that

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8 We note that Ley2 actually teaches that compounds such as those taught in Ley1 can be used with a nearly identical toothpaste preparation to Gatfield’s having high amounts of sugar and sorbitol for improving the taste and sweetness of the preparation. *Compare* Gatfield P68, Ex. 3, *with* Ley2, p. 25, Ex. 7.
the addition of effective amounts of Ley1’s bitter-masking compounds to Gatfield’s preparation would add detectable sensory impressions.

Turning next to Appellants’ fourth argument above, we note that the Examiner’s rejection relies on a combination of Gatfield and Ley1. Thus, pointing out that neither reference discloses reduction of both a bitter and astringent taste impression is not helpful in identifying reversible error by the Examiner when the Examiner is not relying on the reference for teaching that claim element. One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Each reference cited by the Examiner must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Moreover, although Ley1 describes the function of eriodictyol and homoeriodictyol as masking or reducing the bitter or metallic taste impression, these compounds necessarily would possess the astringent property which Appellants ascribe to them. *In re Papesch*, 315 F.2d 381, 391 (CCPA 1963) (“From the standpoint of patent law, a compound and all of its properties are inseparable; they are one and the same thing.”) Further, although the motivation to add Ley1’s compounds to Gatfield ostensibly is to mask bitter taste impressions, the motivation for the combination need not be the same as Appellants’ purpose for these same compounds. *KSR*, 550 U.S. at 419–20 (2007) (“In determining whether the subject matter of a . . . claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls.”)
Finally, as to argument (5) above, as the Examiner responds (Ans. 12), Ley 1 discloses eriodictyol and homoeriodictyol as only two of five known bitterness masking compounds. See Ley 1 ¶ 33. That these compounds may be combined or used as enantiomers or as salts thereof does not negate the obviousness of using either of these compounds. *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (“That the ’813 patent discloses a multitude of effective combinations does not render any particular formulation less obvious. This is especially true because the claimed composition is used for the identical purpose.”); *see also, In re Susi*, 440 F.2d 442, 445 (CCPA 1971) (obviousness rejection affirmed where the disclosure of the prior art was “huge, but it undeniably include[d] at least some of the compounds recited in appellant's generic claims and [was] of a class of chemicals to be used for the same purpose as appellant's additives”); *In re Kubin*, 561 F.3d 1351, 1359 (Fed. Cir. 2009) (“Where a skilled artisan merely pursues ‘known options’ from a ‘finite number of identified, predictable solutions,’ obviousness under § 103 arises.”) (quoting *KSR*, 550 U.S. at 421). As the knowledge for the Examiner’s proposed combination of Gatfield and Ley 1 comes from the prior art, and not from Appellants’ disclosure, we discern no improper hindsight in its formulation. *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

Accordingly, we sustain the Examiner’s obviousness rejection of claim 29, and claims 30–34, 36, 37, 42, 43, 45–49, 51, and 53.

*Claim 38*

Claim 38 depends from claim 29, and further requires a compound having both a bitter and astringent taste impression.
The Examiner finds that Gatfield’s compositions comprise pharmaceutically active ingredients which meet the requirement for a compound having both bitter and astringent taste impression. Ans. 5, citing Gatfield, Ex. 3. The Examiner also notes that Gatfield’s compositions include saccharin which Appellants describe as a compound having bitter and astringent taste impression. Ans. 13.

Appellants argue that nowhere do either Gatfield or Ley1 describe saccharin as having both a bitter and astringent taste. Appeal Br. 21. Appellants also contend that the Examiner must provide a reference to show that saccharin would inherently be astringent. Id. We disagree. Appellants disclose that saccharin is a compound that is both bitter and astringent. The Examiner need not demonstrate this fact independently because a compound and all of its properties are inseparable. Papesch, 315 F.2d at 391.

Claims 39, 40, 47, and 48

Claims 39 and 47 depend from claims 38 and 42, respectively, and further require that the compound is selected from a list of compounds including a pharmaceutically active ingredient.

Claims 40 and 48 depend from claims 38 and 42, respectively, and further require that the compound is selected from another list of compounds also including pharmaceutically active ingredients.

As set forth above, the Examiner finds that Gatfield’s compositions comprise pharmaceutically active ingredients which meet the requirement for a compound having both bitter and astringent taste impression. Ans. 5, citing Gatfield, Ex. 3. The Examiner also finds that “pharmaceutically active ingredient” as recited in claims 39, 40, 47, and 48 “is so broad as to be
considered to be met by a number of compounds in the toothpaste of Gatfield, such as the Solbrol®.” Ans. 13, citing Gatfield ¶ 68.

Appellants argue that the Examiner fails to identify the asserted pharmaceutically active ingredient. Appeal Br. 22–25. However, Appellants fail to dispute or otherwise respond to the Examiner’s finding that Solbrol® is a pharmaceutically active ingredient within the scope of claims 39, 40, 47, and 48. Accordingly, Appellants have not identified reversible error in the Examiner’s obviousness rejection of these claims.

Claim 52

Claim 52 depends from claim 29, and further requires that that the concentration of at least one component of group (i) lies in the range of 0.005–5 ppm, and the total of all components of group (ii) lies in the range of 0.5–500 ppm.

The Examiner finds that Gatfield teaches the concentration of trans-pellitorin (group (i) of claim 29) in a preparation preferably lies in the range from 0.1–15 ppm, and Ley1 teaches that the effective concentration of bitter-masking compounds (group (ii) of claim 29) can be about 100 ppm. Ans. 6. The Examiner determines that these values render obvious the concentration ranges recited in claim 52. Id.

Appellants argue that Gatfield’s Example 3 recites a trans-pellitorin concentration of 10 ppm which is outside the range recited in claim 52. Appeal Br. 25. Appellants acknowledge that Gatfield teaches other concentrations, but urges that these concentrations are not recited in Example 3. Id.

This argument is not persuasive of reversible error because Gatfield’s teaching is not limited to Example 3 only. See In re Fracalossi, 681 F.2d
Instead, all disclosures therein must be evaluated for what they would have fairly suggested to one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965 (CCPA 1966). There is no dispute that Gatfield teaches that the concentration of trans-pellitorin preferably lies in the range from 0.1–15 ppm. Because this range overlaps the range recited in claim 52, a prima facie case of obviousness exists. See E.I. DuPont de Nemours & Co. v. Synvina C.V., 904 F.3d 996 (Fed. Cir. 2018) (“[A] prima facie case of obviousness typically exists when the ranges of a claimed composition overlap the ranges disclosed in the prior art.” (quoting In re Peterson, 315 F.3d 1325, 1329 (Fed. Cir. 2003))).

Claim 54

Claim 54 recites a method of reducing or suppressing both a bitter and an astringent taste impression of a compound, comprising mixing the aroma composition of claim 29 and a compound having both a bitter and an astringent taste impression in a ratio such that the bitter and astringent taste impression is reduced or suppressed.

Appellants repeat their argument raised against claim 38 that nowhere do either Gatfield or Ley1 describe saccharin as having both a bitter and astringent taste and that the Examiner must provide a reference to show that saccharin would inherently be astringent. Appeal Br. 26. For the same reasons given above with regard to claim 38, this argument is not persuasive of reversible error.

Appellants further argue that nowhere do either Gatfield or Ley1 disclose that the composition including compounds from groups (i) and (ii) of claim 29 be mixed with a bitter and astringent compound in a ratio that
reduces or suppresses the bitter and astringent taste impression. Appeal Br. 26. However, as the Examiner responds (Ans. 16), the combination of Gatfield and Ley1 provides a preparation having concentrations of compounds from groups (i) and (ii) of claim 29, along with a compound, saccharin, known to have both a bitter and an astringent taste impression. The Examiner, therefore, reasonably concluded that Gatfield’s preparation, modified to include a bitter-masking compound from Ley1, would necessarily result in a reduction in saccharin’s bitter and astringent taste impression. Accordingly, Appellants’ argument is not persuasive of reversible error.

Rejection 2

Claims 35 and 44

Claim 35 depends from claim 29 via claim 34, and further requires the addition of one of hesperetin, propenylphenyl glycosides, chavicol glycosides, and umami compounds.

Claim 44 depends from claim 42 via claim 43, and further requires the addition of hesperetin as the compound having both a bitter and an astringent taste impression.

The Examiner finds that Ley2 teaches the use of herperitin for enhancing the sweet taste of sweeteners such as saccharin, aspartame, and acesulfame. Ans. 7. Because Gatfield’s preparations, as modified in view of Ley1, comprise sweeteners including saccharin, aspartame, and acesulfame, the Examiner concludes that it would have been obvious to include hesperetin in Gatfield’s preparations to enhance the sweetness of these sweeteners. Id.
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Appellants argue that Gatfield’s preparations would already be over-abundantly sweet and would not require any enhancement of the sweet taste, especially considering the small amount of saccharin used in Example 3. Id. This argument is not persuasive of reversible error because Appellants fail to provide persuasive technical reasoning or an evidentiary showing establishing that Gatfield’s preparations would not have been expected to benefit from the addition of hesperetin to enhance the sweetness of the sweeteners therein. ‘Mere argument or conclusory statements in the specification does not suffice.’” See In re Geisler, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (quoting In re De Blauwe, 736 F.2d 699, 705 (Fed. Cir. 1994)); see also In re Pearson, 494 F.2d 1399, 1405 (CCPA 1974) (‘Attorney’s argument in a brief cannot take the place of evidence.’).9

Appellants also argue that nowhere do either Gatfield or Ley1 describe hesperetin as having both a bitter and astringent taste. Appeal Br. 27. Appellants also contend that the Examiner must provide a reference to show that hesperetin would inherently be astringent. Id. at 27–28. We disagree. Appellants disclose that hesperetin is a compound that is both bitter and astringent. Spec. 13:6–11. The Examiner need not demonstrate this fact independently because a compound and all of its properties are inseparable. Papesch, 315 F.2d at 391.

Rejection 3

The Examiner rejects claim 54 as unpatentable over the combination of Shimada and Ley1. The Examiner finds that Shimada teaches a method

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9 In addition, though not relied on by the Examiner in the rejection, we note that Ley2 teaches that the use of hesperetin permits the reduction in the amount of sweeteners in a composition. See Ley2, 3:28–4:2, 7:1–10.
for reducing the strong bitterness of a cationic bactericide having a bitter
taste by blending with components from group (i) of claim 29. Ans. 8. The
Examiner finds that Ley1 teaches adding a component of group (ii) of claim
29 as a bitter-masking compound. Id. The Examiner concludes that it
would have been obvious to have mixed the compounds provided in steps
(a) and (b) of claim 54 in a ratio such that the bitter and astringent taste
impression is reduced or suppressed. Id. The Examiner explains that claim
54 does not exclude the compound of step (a) in combination with menthol.
Id. at 17. Therefore, the Examiner determines that Shimada’s composition
comprising spilanthol, modified to include the bitterness-masking
compounds of Ley1, renders obvious claim 54, “regardless of the presence
of menthol in Shimada’s preparation. Id.

As Appellant argues (Appeal Br. 28–29), step (b) of claim 54 cannot
contain menthol. Moreover, the compound having both a bitter and an
astringent taste impression provided in step (a) cannot be menthol.
Although the Examiner correctly interprets claim 54 as permitting the
inclusion of menthol in another unrecited step of the method—the method
uses the transitional phrase “comprising”—, the problem with this rejection
is that the Examiner has not established that the menthol is not a part of, or is
added separate from, Shimada’s flavor (aroma) composition. In other
words, the rejection requires that Shimada’s menthol is not a part of, and is
added separately from, the flavor composition comprising both spilanthol
and eriodictyol or homoeriodictyol. However, the Examiner fails to
establish the manner of preparing any of Shimada’s preparations, such that
menthol would not be included with the flavor composition comprising
spilanthol and eriodictyol or homoeriodictyol, but would be included either
with the compound having both a bitter and an astringent taste impression or would be added separately while or after this compound is mixed with the flavor composition. The Examiner does not direct our attention to any disclosure in either Shimada or Ley1 supporting the inclusion of menthol in the preparations separate from the flavor composition. Accordingly, we cannot sustain the Examiner’s rejection of claim 54 over the combination of Shimada and Ley1.

DECISION

Upon consideration of the record, and for the reasons given above and in the Answer, the decision of the Examiner rejecting claims 29–49 and 51–54 under 35 U.S.C. § 103(a) as unpatentable over Gatfield in view of Ley1, alone or further in view of Ley2, is affirmed.

However, the decision of the Examiner rejecting claim 54 under 35 U.S.C. § 103(a) as unpatentable over Shimad in view of Ley1 is reversed.

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).

AFFIRMED