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THE GOODYEAR TIRE & RUBBER COMPANY 200 Innovation Way AKRON, OH 44316-0001			DEES, NIKKI H	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEENA NEBHANI and GREGORY DANIEL ZARTMAN

Appeal 2019-001779
Application 14/567,127
Technology Center 1700

Before KAREN M. HASTINGS, JULIA HEANEY, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

HEANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner’s decision to reject claims 1–12 and 14–16. We have jurisdiction under 35 U.S.C. § 6(b).

¹ In this Decision, we refer to the Final Office Action dated March 2, 2018 (“Final Act.”), the Appeal Brief dated July 31, 2018 (“Appeal Br.”), and the Examiner’s Answer dated November 1, 2018 (“Ans.”).

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as The Goodyear Tire & Rubber Company. Appeal Br. 3.

We AFFIRM.

CLAIMED SUBJECT MATTER

The claimed subject matter relates to a chewing gum base. Appeal Br.

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

1. A chewing gum base comprising from about 10 to about 70 weight percent of a solution polymerized styrene-butadiene rubber having a glass transition temperature T_g ranging from $-20\text{ }^\circ\text{C}$ to $0\text{ }^\circ\text{C}$; and at least one food grade additive selected from the group consisting of plasticizers, waxes, softeners/emulsifiers, fillers/texturizers, colorants, stabilizers, and whiteners.

Appeal Br. 7 (Claims Appendix).

REFERENCES

The Examiner relies upon the following prior art:

Name	Reference	Date
Blok	US 6,242,523 B1	June 5, 2001
Donaire	US 2010/0303954 A1	Dec. 2, 2010

REJECTION

The Examiner maintains the rejection of claims 1–12 and 14–16 under 35 U.S.C. § 103 as being unpatentable over Donaire in view of Blok. Final Act. 3.

OPINION

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential),

cited with approval in In re Jung, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”). After considering the evidence presented and each of Appellant’s arguments in this appeal, we are not persuaded that Appellant identifies reversible error. Thus, we affirm the Examiner’s rejections for the reasons expressed in the Final Office Action and the Answer. We add the following primarily for emphasis.

Appellant argues all claims as a group. *See* Appeal Br. 4–6. Therefore, consistent with the provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2013), we limit our discussion to claim 1, and all other claims on appeal stand or fall together with claim 1.

The Examiner finds that Donaire teaches a chewing gum base comprising about 1 to about 40 weight percent of a solution polymerized styrene-butadiene rubber (S-SBR), and food grade additives including waxes, plasticizers, softeners, colorants, and stabilizers. Ans. 3–4 (citing Donaire Abstract, ¶¶ 26, 27, 29). The Examiner further finds that Donaire teaches an S-SBR having a Mooney viscosity above 50. *Id.* The Examiner finds that Donaire does not teach a T_g within the claimed range, but finds that Blok teaches an S-SBR having a T_g within the claimed range. *Id.* (citing Blok). The Examiner determines that because Donaire’s weight percent range of S-SBR overlaps the claimed range, it would have been obvious to optimize Donaire’s amount of S-SBR to the claimed range. Ans. 4. The Examiner further determines that it would have been obvious to a person of ordinary skill in the art to have used Blok’s S-SBR in Donaire’s chewing gum base to provide a chewing gum having a T_g as claimed, because Blok teaches an S-SBR having a viscosity taught by Donaire. *Id.*

Appellant argues that the Examiner's proposed modification of Donaire by Blok fails because the range of Mooney viscosities required by Donaire and Blok are well outside each other. Appeal Br. 4. Appellant asserts that Donaire teaches an S-SBR having a Mooney viscosity between 50 and 75, whereas Blok teaches only an S-SBR having a Mooney viscosity of 90. *Id.* (citing Donaire ¶ 24; Blok 7:50–55). Appellant further argues that Blok's S-SBR is oil-extended, and therefore the actual Mooney viscosity of a non-oil extended version of the Blok S-SBR would necessarily be higher than 90, i.e., about 140. *Id.* at 5, n.1.

Appellant's arguments do not persuasively identify error because they do not address the entire teaching of Donaire, which includes an S-SBR having a Mooney viscosity "above 50." Donaire ¶ 24. The Examiner did not err in finding that the viscosities of Donaire's and Blok's S-SBRs are similar, because Donaire may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804 (Fed. Cir. 1989). Further, Appellant does not point to evidence of record to show that the Mooney viscosities of S-SBRs are critical.

Based on the preponderance of the evidence, we agree with the Examiner's rationale as to why a person of ordinary skill in the art would have modified Donaire's chewing gum base by using Blok's S-SBR. Accordingly, we affirm the rejection.

CONCLUSION

The Examiner's rejection is affirmed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-12, 14-16	103	Donaire, Blok	1-12, 14-16	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED