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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 14/233,915, 04/18/2014, Risto H. Jokinen, BGG0113US, 7093
Row 2: 23413, 7590, 03/10/2020, [EXAMINER: EFTA, ALEX B], [ART UNIT: 1745, PAPER NUMBER]
Row 3: [NOTIFICATION DATE: 03/10/2020, DELIVERY MODE: ELECTRONIC]

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RISTO H. JOKINEN, JORMA HENTTONEN, JAN-ERIK  
FORSSTROM, SAMPO PYNNÖNEN, and KAI HEINONEN

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Appeal 2019-002118  
Application 14/233,915  
Technology Center 1700

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Before BEVERLY A. FRANKLIN, CHRISTOPHER L. OGDEN, and  
LILAN REN, *Administrative Patent Judges*.

REN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the  
Examiner’s decision to reject claims 28, 29, and 31–38. *See* Final Act. 8, 11,  
12, 16. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R.  
§ 1.42. Appellant identifies the real party in interest as “UPM RAFLATAC  
OY.” Appeal Br. 2.

CLAIMED SUBJECT MATTER

“This invention relates to a label laminate. In addition, this invention relates to a method for manufacturing a label laminate. The invention further relates to a system for manufacturing a label laminate.” Spec. 1:6–8. Claim 28, reproduced below, is illustrative of the claimed subject matter:

28. A method for manufacturing a pressure sensitive label laminate, the method comprising:
- forming at least one water based adhesive layer on a metal belt,
  - drying said at least one water based adhesive layer at least partially by heating the metal belt,
  - unwinding a first material layer, wherein the first material layer comprises at least one plastic film layer,
  - unwinding a second material layer, attaching said at least one dried water based adhesive layer to the surface of the first material layer,
  - laminating the first material layer comprising the dried at least one water based adhesive layer together with the second material layer in order to form the pressure sensitive label laminate;
  - wherein the first material layer or the second material layer is a release liner comprising at least one backing material layer, which is coated with at least one release coating layer comprising silicone.

Claims Appendix (Appeal Br. 33).

REFERENCES

The prior art references relied upon by the Examiner are:

Name	Reference	Date
Smith	US 6,312,777 B1	Nov. 6, 2001
Duncan	US 4,582,736	Apr. 15, 1986
Pagendarm 777	FR 1598777	July 6, 1970
Pagendarm	US 4,886,564	Dec. 12, 1989

## REJECTIONS

Claims 28, 31, 32, and 34–38 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Smith in view of Pagendarm. Final Act. 8.

Claims 28, 31, 32, and 34–38 are alternatively rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Pagendarm 777 in view of Pagendarm and Smith. Final Act. 12.

Claims 29 and 33 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Smith in view of Pagendarm and Duncan. Final Act. 11.

Claims 29 and 33 are alternatively rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Pagendarm 777 in view of Pagendarm, Smith, and Duncan. Final Act. 16.

## 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. *Cf. 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 having considered the evidence presented in this Appeal and each of Appellant’s contentions, we are not persuaded that reversible error has been identified, and we affirm the Examiner’s § 103 rejections for the reasons expressed in the Final Office Action and the Answer. We add the following primarily for emphasis.

*Rejection Over Smith & Pagendarm*

In rejecting claim 28 over Smith and Pagendarm, the Examiner finds that Smith teaches or suggests all the recited steps except using a metal belt to at least partially dry a water based adhesive layer. Final Act. 8–9 (citing various portions of Smith). The Examiner in turn relies on Pagendarm for the teaching. *Id.* at 9. The Examiner provides a rationale in support of the determination of obviousness. *Id.* at 9–10 (citing Smith and explaining why a skilled artisan would have found the method recited in claim 28 obvious).

On appeal, Appellant does not address much of the Examiner’s fact findings in support of the rejection. For example, the Examiner finds and Appellant does not refute that Smith teaches a method for making a label that includes a water-based pressure sensitive adhesive that is dried on a belt. *Compare* Final Act. 8 (citing various portions of Smith including Abstract, 2:20–37, 2:50–65, 1:5–15, 2:50–65), *with* Appeal Br. 4 (citing Smith 3:61–63 and acknowledging that Smith “relates to pressure sensitive label laminates and discloses a release sheet, which is coated with a modified pressure sensitive adhesive”), *and id.* at 5–20 (acknowledging that Smith teaches the use of a belt and arguing without addressing the Examiner’s findings). The Examiner finds and Appellant does not refute that Smith discloses the recited face layer and the recited release layer. *Compare* Final Act. 9, 10 (citing Smith 4:44–68, 5:1–5, 6:10–20, 6:45–65), *with* Appeal Br. 5 (acknowledging that Smith forms “an endless belt of release liner” which may have certain advantages). Appellant also acknowledges that Pagendarm

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teaches “an adhesive tape”<sup>2</sup> (Appeal Br. 6) and a metal core belt. Appeal Br. 11–12.

Appellant instead argues that the Examiner reversibly erred in rejecting claim 28<sup>3</sup> based on Smith and Pagendarm because “the skilled person would not have been motivated to combine the references as suggested by the Examiner. Appeal Br. 20 (summarizing arguments raised in the Appeal Brief).

We are not persuaded by Appellant’s arguments for the following reasons. From the outset, to prevail in an appeal to this Board, Appellant must adequately explain or identify reversible error in the Examiner’s § 103(a) rejections. *See* 37 C.F.R. § 41.37(c)(1) (iv) (2012); *see also Jung*, 637 at 1365. By statute, this Board functions as a board of review, not a *de novo* examination tribunal. 35 U.S.C. § 6(b) (“The [board] shall . . . review adverse decisions of examiners upon applications for patents . . .”).

In this case, Appellant does not address the Examiner’s rationale for the rejection over Smith and Pagendarm. *Compare id.* at 3–21,<sup>4</sup> with Final Act. 10 (explaining that it would have been obvious “to use an endless belt having a metal core as the belt of SMITH et al. which is heated to dry the

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<sup>2</sup> Appellant does not structurally distinguish the prior art adhesive tape from the recited pressure sensitive laminate. Appeal Br. 6. The Specification broadly provides, “the term ‘label laminate’ 1 refers to so called pressure sensitive label laminates and self-adhesive label laminates.” Spec. 7:11–12.

<sup>3</sup> Appellant does not separately argue for the rejection of claims 31, 32, and 34–38 over Smith in view of Pagendarm 564. *See* Appeal Br. 21. We select claim 28 as representative for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv).

<sup>4</sup> Appellant addresses part of the rationale in combining Pagendarm 777, Pagendarm, and Smith which is similar to the rationale in combining Smith and Pagendarm. Appeal Br. 26. We address this argument in the part of the opinion for the rejection of claim 28 over Pagendarm 777, Pagendarm, and Smith.

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adhesive thereon, as taught by PAGENDARM et al. such that a more compact apparatus with relatively lower costs can be used and to reduce the likelihood of charring or otherwise affecting the quality and appearance of the layers”); *see* Ans. 11–50<sup>5</sup>; *see also* *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (*quoting In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (the Examiner must show “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)).

Appellant instead raises various arguments that Smith and Pagendarm solve problems different from those to which the Specification refers. Appeal Br. 5–10. For example, Appellant argues that Smith and Pagendarm relate to “different technical areas” and “different technical challenges.” *Id.* at 5, 9. These arguments are unpersuasive because it is well-established that

[i]n determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. . . . [A]ny need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.

*KSR*, 550 U.S. at 419–20.

Appellant also argues that the combined prior art “would have led to a more complex solution.” Appeal Br. 5–10 (emphasis removed); *see also id.* at 14 (arguing that a skilled artisan would not have had the need to modify the particular embodiment disclosed in Smith), 17–18 (arguing that a skilled artisan would not have been motivated “to create complexity in the solution provided by Smith”). We are not persuaded by these arguments as “[i]f a person of ordinary skill in the art can implement a predictable variation [of a

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<sup>5</sup> No Reply Brief was filed.

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known work], § 103 likely bars its patentability.” *KSR*, 550 U.S. at 417. We further note that these arguments that a skilled artisan would have considered the Examiner’s proposed combination more complex and thus unnecessary (Appeal Br. 14) are not supported by evidence. “Attorneys’ argument is no substitute for evidence.” *Johnston v. IVAC Corp.*, 885 F.2d 1574, 1581 (Fed. Cir. 1989).

Appellant’s arguments are also unpersuasive because the arguments are not based on the Examiner’s factual findings in support of the rejection. For example, Appellant argues that Smith does not teach or suggest a recited “metal belt.” Appeal Br. 4, 5, 8, 10, 12, 15, 16. The Examiner’s rejection, however, is based on the finding that Pagendarm teaches “a metal cored belt.” Final Act. 9 (citing Pagendarm 4:10–30, Fig. 1). Appellant in fact acknowledges that Pagendarm “comprises a belt . . . having a flexible iron core.” Appeal Br. 12. As another example, Appellant argues that “the skilled person would not have any reasons to modify Smith because Smith does not face any problems related to applying adhesives” (Appeal Br. 9) which does not address the rationale that the Examiner provides in support of the rejection. *See* Final Act. 9–10. As yet another example, Appellant argues that Pagendarm does not teach or suggest the recited release liner (Appeal Br. 6) without addressing the Examiner’s finding that Smith teaches this limitation. *See* Final Act. 10 (citing Smith 4:44–68, 5:1–5, 6:10–20, 6:45–65).

Moreover, we note that Appellant’s arguments attack the references individually, rather than considering what the combined references would have suggested to the person of ordinary skill in the art. “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re*

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*Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). Moreover, all of the features of the secondary reference need not be bodily incorporated into the primary reference and the skilled artisan is not compelled to blindly follow the teaching of one prior art reference over the other without the exercise of independent judgment. *See Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984). For example, Appellant argues that Smith teaches a temperature of 115 °C for drying the adhesive whereas Pagendarm teaches a lower temperature of 70 to 90 °C for heating the belt on which the adhesive may be placed and therefore a skilled artisan would not have made the substitution. Appeal Br. 17. As the Examiner points out, and Appellant does not dispute, “[c]hanging the temperatures based on the materials being evaporated is readily obvious to one having ordinary skill.” Ans. 49. As with Appellant’s other similar arguments, such arguments are unpersuasive because a “person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421.

Appellant’s arguments are unpersuasive also because they are not based on the limitations recited in method claim 28. For example, Appellant argues that Pagendarm is distinguishable from claim 28 because “[i]n the claimed solution, there is a heated metal belt having rather large air space around the belt, therefore the evaporating rate of the water to be removed may be improved” (Appeal Br. 8) which are not limitations recited in claim 28. As another example, Appellant argues that claim 28 requires “a substrate to be coated with an adhesive layer is a first material layer of a pressure sensitive label laminate” (Appeal Br. 7) which is not recited in claim 28. Other similar examples of such unpersuasive argument include Appellant’s distinction that, “the adhesive is never dried prior to attaching the adhesive

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to the first material layer of the label laminate” in Smith (Appeal Br. 11) (emphasis removed) which is not a limitation recited in claim 28.

Appellant’s arguments that the combined references “would have provided a different product” (Appeal Br. 6, 18) and that the references do not teach certain features of “the claimed product” (*id.* at 10, 13, 14) are not persuasive because the arguments do not structurally distinguish the prior art pressure sensitive label laminate from that recited in claim 28. *See, e.g.*, Appeal Br. 7–18. Appellant acknowledges that “Smith relates to pressure sensitive label laminates.” *Id.* at 4. Appellant does not argue that the recited step “to form the pressure sensitive label laminate” has a structural requirement for the pressure sensitive label laminate. *Id.* at 7–18. The Specification likewise broadly provides that “the term ‘label laminate’ 1 refers to so called pressure sensitive label laminates and self-adhesive label laminates” without particular attributes or parameters. Spec. 7:11–12. The Specification provides only that the structure of such a label laminate “comprises two layers which are laminated together.” *Id.* at 7:12. Appellant’s argument does not structurally distinguish the prior art pressure sensitive label from that recited and is therefore unpersuasive of patentability.

We have considered the remaining arguments and found them unpersuasive for similar reasons including the lack of supporting evidence. For example, Appellant argues, without evidence, that a skilled artisan “would not apply water based adhesives to a first material layer comprising at least one plastic layer, because it would create complexity that no person of ordinary skill in the art would aim for.” Appeal Br. 15–16. As additional examples, Appellant argues, without evidentiary support, that “plastic together with water based adhesives create complexity that no person of

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ordinary skill in the art would aim for” and that “a person of ordinary skill in the art would not use water based adhesives with plastic.” *Id.* at 17, 18. Such attorney’s argument is not persuasive as it “is no substitute for evidence.” *Johnston*, 885 F.2d at 1581.

We further note that Appellant’s discussion of the references lacks pinpoint cites in various places. For example, Appellant asserts that “[a]ccording to Smith, the belt is a release sheet and it can only be used with linerless label” without providing a pinpoint cite to the reference. Appeal Br. 12. Appellant’s assertion that “Smith states that the endless belt solution cannot be combined with a release layer” (*id.* at 13) likewise lacks a pinpoint cite to the record. Our rules require that an Appeal Brief include “arguments” that “shall explain why the examiner erred.” 37 C.F.R. § 41.37(c)(1)(iv). Appellant’s assertions, without referring to specific supporting passages in Smith, is insufficient to explain why the Examiner reversibly erred.

Appellant lastly argues that claim 28 results in unexpectedly beneficial properties. Appeal Br. 21. “[A] party asserting unexpected results as evidence of nonobviousness has the burden of proving that the results are unexpected.” *In re Geisler*, 116 F.3d 1465, 1469–70 (Fed. Cir. 1997). In this case, Appellant’s assertion of unexpected results is unsupported by evidence (*see* Appeal Br. 21) and is therefore unpersuasive.

Appellant’s argument with regard to the rejection of claims 29 and 33 based on Smith, Pagendarm, and Duncan argues only that “Duncan does not cure the deficiencies” of Smith and Pagendarm. Appeal Br. 21. The rejection of claims 29 and 33 based on Smith, Pagendarm, and Duncan is accordingly affirmed for the reasons provided with regard to claim 28 *supra*.

*Rejection Over Pagendarm 777, Pagendarm, & Smith*

In rejecting claim 28 over Pagendarm 777, Pagendarm, and Smith, the Examiner finds that Smith teaches both water-soluble and solvent-soluble pressure sensitive adhesives as well as the recited first material layer and second material layer. Final Act. 12–14 (citing various portions of Smith). The Examiner finds that Pagendarm teaches using a metal belt to partially heat a water-soluble solvent. *Id.* at 12–13. The Examiner cites Pagendarm 777 for the remaining recited steps. *Id.* at 13. The Examiner provides a rationale in support of the determination of obviousness. *Id.* at 13–14 (citing various portions of the references including Pagendarm 777, Pagendarm, and Smith in support of the rationale).

Appellant’s arguments with regard to the rejection of claim 28<sup>6</sup> over Pagendarm 777, Pagendarm, and Smith are similar to those raised for the rejection of claim 28 over Smith and Pagendarm. *Compare* Appeal Br. 4, *with* Appeal Br. 22. More specifically, Appellant again raises arguments without addressing the Examiner’s fact findings. For example, Appellant argues that Pagendarm 777 does not mention water-based adhesives (Appeal Br. 25) which is unpersuasive because the Examiner’s rejection is based on Smith’s teaching of such an adhesive. Final Act. 12–13. As noted earlier, this type of argument is also unpersuasive because it attacks the references individually rather than addressing the Examiner’s findings based on the prior art as a whole. *See also* Appeal Br. 28 (arguing that “Pagendarm ’777

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<sup>6</sup> Appellant does not separately argue for the rejection of claims 31, 32, and 34–38 over Pagendarm 777 in view of Pagendarm and Smith. *See* Appeal Br. 31. We select claim 28 as representative for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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and Pagendarm '564 lack the pressure sensitive label laminates” which does not address the Examiner’s fact findings).

Similar to the rejection over Smith and Pagendarm, for the rejection of claim 28 over Pagendarm 777, Pagendarm, and Smith, Appellant does not address the Examiner’s rationale that a skilled artisan would have combined the references for the “release properties” taught in Smith and certain decorative effects. *Compare* Final Act. 14, *with* Appeal Br. 22–30. Appellant also does not identify error in the Examiner’s rationale that the combined teachings would have resulted in a more compact apparatus to carry out the recited process with a lower cost. *See* Appeal Br. 26. Appellant instead argues that the stated advantages of compactness in Pagendarm “is not a claimed feature of the present application” and therefore “cannot be a motivation” to combine. *Id.* As noted earlier, “any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *KSR*, 550 U.S. at 419–420. Appellant’s argument that claim 28 does not require certain features of Pagendarm 777 and Pagendarm (Appeal Br. 27) is not persuasive because it likewise does not address the Examiner’s rationale. In any event, claim 28 is an open-ended claim and does not exclude these features.

Appellant’s other arguments here are unpersuasive for similar reasons as provided with regard to the rejection of claim 28 over Smith and Pagendarm. For example, Appellant’s argument regarding the different temperatures used in Smith and Pagendarm (Appeal Br. 24) has been addressed *supra* as unpersuasive. As another example, Appellant argues that Pagendarm 777 does not mention pressure sensitive label laminates (Appeal Br. 22) and water-based adhesives (*id.* at 25) which is not persuasive

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because the Examiner cites Smith for these teachings. Final Act. 12. Such arguments are unpersuasive also because it attacks the references individually.

Appellant's argument that "the belt would only complicate the known solution in the case of pressure sensitive label laminates" (Appeal Br. 27) is unpersuasive as "[i]f a person of ordinary skill in the art can implement a predictable variation [of a known work], § 103 likely bars its patentability." *KSR*, 550 at 417. We further note that these arguments that a skilled artisan would have considered the Examiner's proposed combination more complex (Appeal Br. 27) are not supported by evidence.

Appellant's argument that Pagendarm 777 is non-analogous art is unpersuasive (Appeal Br. 22) because it does not apply the two criteria for determining whether prior art is analogous which are "(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 Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992). Appellant's argument is unpersuasive also because it does not refute the Examiner's finding that all references are analogous as they are in the same field of endeavor of manufacturing labels, tapes, and adhesives. *Compare* Appeal Br. 22, *with* Ans. 52.

Appellant's unelaborated argument that Pagendarm 777 is silent with regard to a metal belt does not show that it teaches away from the recited metal belt because Appellant has not shown that Pagendarm 777 "suggests that the developments flowing from its disclosures are unlikely to produce the objective of the applicant's invention." *Syntex (U.S.A.) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1380 (Fed. Cir. 2005) (citations omitted).

We have considered the remaining arguments and found them unpersuasive for similar reasons including the lack of supporting evidence. For example, Appellant argues, without evidence, that a skilled artisan “seeking to improve a method of manufacturing pressure sensitive label laminates is highly unlikely to select Pagendarm ‘777 as a starting point” (Appeal Br. 22) and that the Examiner’s proposed combination “would be too complex for a person of ordinary skilled in the art to aim for” (*id.* at 25) is speculative and unpersuasive. “Attorneys’ argument is no substitute for evidence.” *Johnston*, 885 F.2d at 1581.

Appellant’s argument with regard to the rejection of claims 29 and 33 based on Pagendarm 777, Pagendarm, Smith, and Duncan argues only that “Duncan does not cure the deficiencies” of the references cited for independent claim 28. Appeal Br. 31. The rejection of claims 29 and 33 based on Pagendarm 777, Pagendarm, Smith, and Duncan is accordingly affirmed for the reasons provided with regard to claim 28 *supra*.

### CONCLUSION

The Examiner’s rejections are affirmed.

More specifically,

### DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
28, 31, 32, 34–38	103(a)	Smith, Pagendarm	28, 31, 32, 34–38	
29, 33	103(a)	Smith, Pagendarm, Duncan	29, 33	
29, 33	103(a)	Pagendarm 777, Pagendarm, Smith, Duncan	29, 33	

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<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
28, 31, 32, 34–38	103(a)	Pagendarm 777, Pagendarm, Smith	28, 31, 32, 34–38	
<b>Overall Outcome</b>			28, 29, 31–38	

**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**