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P.O. Box 1845  
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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HANNA P. KRAJEWSKA

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Appeal 2019-003718  
Application 13/999,639  
Technology Center 1600

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Before DEBORAH KATZ, TAWEN CHANG, and DAVID COTTA,  
*Administrative Patent Judges.*

KATZ, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant<sup>1</sup> seeks our review<sup>2</sup>, under 35 U.S.C. § 134(a), of the Examiner's decision to reject claims 1, 2, 4, 6 and 9–19. (Appeal Br. 1.) We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as inventor Hanna P. Krajewska. (Appeal Br. 4.)

<sup>2</sup> We consider the Final Office Action issued August 15, 2016 (“Final Act.”), the Appeal Brief filed June 13, 2017 (“Appeal Br.”), and the Examiner's Answer issued on January 12, 2018 (“Ans.”). The record shows that no Reply Brief was filed.

The Examiner rejected all of the claims on appeal under 35 U.S.C. § 112, first paragraph, for lack of enablement (Final Act. 5–17) and for lack of a sufficient written description (*id.* at 17–21). The Examiner also entered a new grounds of rejection, determining that Appellant’s claim 18 is indefinite under 35 U.S.C. § 112(b) in the Final Office Action. (*See* Final Act. 21.)

Appellant presents arguments in the Appeal Brief regarding several actions by the Examiner including the restriction requirement (*see* Appeal Br. 7–8), objections for improper multiple claim dependency (*see id.* at 8–10), and objection to new matter (*see id.* at 18–19). An Examiner’s objection is not ordinarily appealable to the Board, although some matters may be contested by petition. If an Examiner’s objection is determinative of a rejection appealed by Appellant, it will be discussed below. Otherwise, we render no opinion on these objections. *See Ex parte Frye*, 94 USPQ2d 1072, 1077-78 (BPAI 2010) (precedential); *see* Manual of Patent Examining Procedure § 1201 (“MPEP”).

Appellant’s claim 1 recites:

1. (a) A method of regenerating fossilized species of extinct origin comprising releasing their fossilized or heat killed content in an amount effective to reverse their fossilized or heat killed constituent mass by exposing the fossils to ionizing radiation in a condition of carefully calibrated (i) Alpha actual radioactive particles; (ii) Beta element particle radioactive atoms or their ions; (iii) Gamma rays of electromagnetic waves sent out by radioactive particles;

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- (b) exposing the fossilized species in which their plasmoid DNAP content has been synthesized by ionizing radiation in a condition of carefully calibrated instant organics and related intermediates to thereby induce reverse transcription and genetic expression;

(c) enhance growth of the fossilized species in which their regenerated plasmoid DNAP content has been ionized compared to the fossilized species in which the reassociation kinetics induced no decidual reactions.

(Amended Appeal Br., filed November 8, 2017 at 4.)

The Patent Statute requires:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same . . . .

35 U.S.C. § 112(a). Thus, Appellant's Specification must explain how to make and use the claimed method, under the enablement requirement, and it must describe the method, under the written description requirement.

#### *Enablement*

An invention may fulfill the enablement requirement even if it is necessary to perform some routine experimentation. The amount of experimentation, though, must not be undue. *See In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988). If undue experimentation is required, a claim is unpatentable under 35 U.S.C. § 112(a).

To determine if undue experimentation is required, we look to several factors, including

(1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims.

*Wands*, 858 F.2d at 737. Review of these factors in regard to Appellant’s Specification and claims reveals that undue experimentation would be required to carry out Appellant’s claimed methods.

The Examiner rejected Appellant’s claims as not being sufficiently enabled because the claims recite “plasmoid DNAP,” which the Examiner finds is not known to one of ordinary skill in the art. (*See* Final Act. 10; *see* Ans. 4, 8.) The Examiner cites to the definition of “plasmoid DNAP” in Appellant’s Specification and finds that it does not provide sufficient guidance for the ordinarily skilled artisan to understand the term. (*See* Final Act. 12–17.)

Specifically, the Examiner cites to the definition of DNAP in Appellant’s Specification, which provides:

**DNAP:** A “housing” of *Penates*; a passive molecular unit (SSM Class I) that simultaneously represents an active, live 3-D live view into matter and tissue in an energy provoked new state.

(Specification filed March 15, 2014 (“Spec.”) 24<sup>3</sup>.) Appellant’s Specification defines the term “SSM,” used to characterize the “passive molecular unit” that is part of the definition of DNAP, as:

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<sup>3</sup> Appellant filed an Amended Specification on June 24, 2016 (“Amended Specification” or “Amended Spec.”), which includes a longer definition of DNAP. (*See* Amended Spec. ¶ 118.) The Examiner objected to the Amended Specification as including new matter such as additional limitations in paragraph 118. (*See* Final Act. 3–4.) The Examiner denied entry of the Amended Specification. (*See id.* at 4.) Because the Examiner’s decision is based on an objection, which is not an appealable matter, we do not consider the amended definition of DNAP. *See* 35 U.S.C. § 132(a) (“No amendment shall introduce new matter into the disclosure of the invention.”); *see* MPEP § 706.03(o) (“In the examination of an application

**SSM:** Species-Specific Microbia. The new consensus that each element in the three classes of the KNS Model, constituting all matter in existence, is based on a species specific bio-molecule that functions independently in collaboration of the whole organism.

(*Id.*) Appellant's Specification further defines "KNS" as:

**KNS:** Krajewskan New Science, based on the discoveries and scientific concepts defined in "A Nuclear Spring".

(*Id.*) The Examiner finds, though, that one of ordinary skill in the art cannot know what is meant by the definition of SSM Species-Specific Microbiota because a copy of the book "A Nuclear Spring" is not available in a public collection to which the Examiner or the general public has access. (*See* Final Act. 13.) The Examiner finds, further, that a skilled artisan would not be able to understand what is meant by the term "DNAP" because "a passive unit" has no context without access to the book "A Nuclear Spring" by the inventor. (*See* Final Act. 13.)

Appellant argues that the Examiner's rejection for lack of enablement "is a consequence of the Examiner's improper restriction election, causing enabling confines." (Appeal Br. 11.) Specifically, Appellant argues:

The Examiner is misreading the invention into limitations from a preferred embodiment in view of a mammalian experiment, instead of providing a full and complete prima facie examination on nucleosynthesis with energy esters known in the art, as disclosed by examples in specification §[0019],

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following amendment thereof, the examiner must be on the alert to detect new matter. 35 U.S.C. § 132(a) should be employed as a basis for objection to amendments to the abstract, specification, or drawings attempting to add new disclosure to that originally disclosed on filing.").

§[0025], [0027, lines 15-22], to name a few, and Claims 1, 2, 16, 18.

(*Id.* at 7.) This argument does not explain how one of ordinary skill in the art would know how to make or use a “fossilized species in which their plasmoid DNAP content has been synthesized by ionizing radiation” because the argument does not provide any further information about “plasmoid DNAP.” Assuming that Appellant is referring to the paragraph numbers of the Amended Specification<sup>4</sup>, the cited paragraphs also fail to provide any more explanation of “plasmoid DNAP.” Accordingly, Appellant’s argument that the Examiner’s enablement rejection is a consequence of the restriction requirement is not persuasive.

Appellant argues further that analysis of the *Wands* factors weigh in favor of the patentability of the pending claims. (*See* Appeal Br. 11–16.) First, Appellant argues that, in regard to the breadth of the claims, “DNAP function is enabled by the multiple claims structure . . . .” (*See id.* at 11.) According to Appellant, “DNAP structure is thoroughly defined by the Markush claim structure,” wherein the “molecular mass of the DNAP function at inception . . . and in response” and the “catalyst species” satisfy “calibration factors.” (*See id.*) Providing calibration factors or other parameters, though, does explain what “plasmoid DNAP” is or how to make

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<sup>4</sup> The Examiner objected to the Amended Specification, finding that it too contains new matter. (*See* Final Act. 3.) Nevertheless, this version of the Specification appears to be the only one with paragraph numbers. Because Appellant refers to these paragraph numbers and for clarity, we cite to the Amended Specification in our opinion. Such citation in no way indicates that we have rendered an opinion on the Examiner’s objection to the Amended Specification.

or use it in the claimed method. Calibration factors may provide characteristics of “plasmoid DNAP,” but do not explain its nature. Similarly, the Amended Specification refers to “Catalyst Factor,” “Safety Issues,” and “Results,” but does not provide a more complete explanation of “plasmoid DNAP.” (*See id.*)

As the Examiner notes, the *structure* of the claims is not a factor to be considered in *Wands* regarding undue experimentation, although the *breadth* of the claims is. Thus, Appellant’s argument is not persuasive. Because the claims recite an element, “plasmoid DNAP,” which is unknown, the breadth of the claims is indeterminable. (*See* Final Act. 12.)

Appellant argues that the nature of the invention supports enablement. (*See* Appeal Br. 11.) Specifically, Appellant refers to a definition of DNAP function at paragraphs 22–37 of the Amended Specification. (*See id.*) Appellant also asserts that this definition is “embodied in the claims.” (*See id.*) None of the paragraphs cited by Appellant provides further insight into the nature of “plasmoid DNAP.” Paragraph 22 of the Amended Specification refers to “the underlying energy-producing bio-activity (a precedent termed DNAP),” but does not explain what this “bio-activity” is. Paragraph 23 refers to “the 400-page, computer-dated publication ‘A Nuclear Spring’ (2011) by H. P. Krajewska,” but this book is not publicly available. (*See* Final Act. 13.) Paragraph 24 refers to “SSM-directed K-ROM calibrations of *toxicity intermediates* at proton/neutron equilibrium (DNAP) . . . .” Appellant cites to paragraph 30 in particular, but we agree with the Examiner that this paragraph does not mention “plasmoid DNAP” and does not provide any further explanation of it. (*See* Ans. 5.) Because it is not clear what SSM-directed K-ROM is, this paragraph fails to enable

“plasmoid DNAP.” None of the other portions of the Specification provide any further insight into the meaning of “plasmoid DNAP” and the nature of the invention. (*See* Final Act. 12; *see* Ans. 6–8.)

We agree with the Examiner that, to the extent we understand Appellant’s Specification, “DNAP” refers to “some type of energy that exists in mineralized cytoskeletons and when exposed to certain radiation, would result [or] ‘enable’ the mineral cytoskeleton of an organism to be converted back into a living form.”<sup>5</sup> (Ans. 7.) We agree with the Examiner further that “DNAP” and “housed energy” are not known to any artisan other than the instant inventor, and that the principle of “K-ROM,” in which a piece of matter will activate into its original life-form, called, living “Penates” or “DNAP,” is known only to Appellant, and has not been independently and publically verified by other investigators. (*See id.*) Appellant’s Specification does not contradict that the nature of the invention is unverified and based on principles not known to others in the art.

Appellant argues that the Background section of the Specification indicates the state of the prior art, citing references found in paragraphs 7, 8, and 13–21. (*See* Appeal Br. 11–12.) The only reference cited in these paragraphs are inventions related to nitroglycerin in 1846 and 1847. (*See* Amended Spec. ¶ 7.) We are not persuaded that the prior art adds sufficient knowledge to enable the method without undue experimentation. Appellant’s Specification emphasizes that the invention is not based on traditional knowledge, stating: “The present invention is elucidating the

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<sup>5</sup> As the Examiner notes, DNAP is not deoxyribonucleic acid (“DNA”). (*See* Ans. 7.)

mechanism of the biological response to the traditionally understood energy-producing mtDNA molecule in *extant* species, replacing it with inventor's new DNA proton-neutron physics model, DNAP, in *extinct* species from fossils substantially as herein described.” (*Id.* ¶ 15.) Thus, we are not persuaded that the state in the art of Appellant's claimed method, which is admittedly not traditional, weigh in Appellant's favor regarding the need for undue experimentation.

Similarly, in regard to the level of skill in the art, Appellant's argument that a “combination of chemicals known within the Laws of Physics [were] . . . used in a novel form” does not support the argument that undue experimentation would be unnecessary to make and use the claimed method. (*See* Appeal Br. 12.) We agree with the Examiner that a knowledge of chemistry and physics would not be sufficient for one to understand “plasmoid DNAP” or Appellant's claimed method. (*See* Ans. 8.) We disagree with Appellant that the Examiner improperly took official notice of the level of skill in the art and the breadth of the art as a matter of law. (*See* Appeal Br. 15.) The Examiner's finding is based on the reasonable conclusion that because there would not have been an understanding of “plasmoid DNAP,” the level of skill to understand the claimed invention cannot be merely an understanding of physics. (*See* Ans. 8.)

Appellant argues that the claimed method is predictable because [d]uring the 10-year research (Claim 19), working to control the unpredictability factor, Inventor compared a sufficient number of tests both inside (Species Claims 11-14) and outside §[0089] the claimed range. The resulting formula calibration factors, defining the criticality points of the analytical test perimeters §[0057-0073], are firmly established in the disclosure, and will

not, cannot change. The only unpredictable issue requiring some experimentation is described §[0035] in terms of high quantity energy reactions not experimented with to demonstrate all possible embodiments . . . .

(Appeal Br. 12.) This argument is not persuasive because even if the calibration factors have been definitively determined for the claimed method, it is not clear from Appellant’s Specification that fossils of extinct origin can be regenerated or that any corral was actually resurrected through irradiation of “plasmoid DNAP.” (*See* Ans. 9.) We agree with the Examiner that because the theory of the Appellant’s invention is contrary to scientific convention and because the book, “A Nuclear Spring,” is unavailable,<sup>6</sup> a skilled artisan would not conclude there is a high level of predictability in the art. (*See id.*)

Appellant argues that working examples are provided in paragraph 40 of the Amended Specification and that results are provided in paragraphs 94–96. (*See* Appeal Br. 12.) Appellant cites many other portions of the Specification as providing other working examples, direction, and guidance. (*See id.* at 12–13.) Paragraph 40 of the Amended Specification recites three factors that “determined the reverse transcription of the silicate remnants of the primitive species extinct in fossilized time capsules and the viability of the experiments . . . .” (*See* Amended Spec. ¶ 40.) These factors, though, appear to be things necessary for carrying out the claimed method, not actual results of any method. We find no results in the Specification demonstrating

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<sup>6</sup> Because we have not been able to review the book, “A Nuclear Spring,” cited in Appellant’s Specification, we make no determination based on its contents. That is, even if the book were available, it would not necessarily provide information to enable Appellant’s claimed methods.

that fossilized species of extinct origin have been regenerated through irradiation of “plasmoid DNAP.” None of the other paragraphs cited by Appellant provide results of the claimed method, even if, as Appellant argues, they provide information related to how such an example or experiment would be carried out. (*See* Appeal Br. 13 (citing Amended Spec. ¶¶ 44–56, 7–8, 116, 25–27, 29, 31, 47–48, etc.)) The lack of working examples showing the successful practice of the claimed method weighs heavily against Appellant’s argument that undue experimentation would not be necessary to enable the method. (*See id.* at 12–13.)

Working examples are not absolutely required for a claim to be patentable, but where the art is particularly unpredictable and the claims require functionality, the lack of working examples has been a significant factor for courts to find claims unpatentable. *See Enzo Life Scis., Inc. v. Roche Molecular Sys., Inc.*, 928 F.3d 1340, 1348 (Fed. Cir. 2019) (holding that claims to a new way of labeling oligonucleotides were not enabled because the claims require not just a particular structure, but a particular functionality, claims were broad, the art was highly unpredictable and there were no working examples, among other reasons). The predecessor to our reviewing court explained that

in the usual case where the mode of operation alleged can be readily understood and conforms to the known laws of physics and chemistry, operativeness is not questioned, and no further evidence is required. On the other hand, if the alleged operation seems clearly to conflict with a recognized scientific principle as, for example, where an applicant purports to have discovered a machine producing perpetual motion, the presumption of inoperativeness is so strong that very clear evidence is required to overcome it.

*In re Chilowsky*, 229 F.2d 457, 462 (CCPA 1956). Because Appellant’s claimed method delves into a new area of science – irradiating “plasmoid DNAP” to regenerate fossilized, extinct species – we are not persuaded by Appellant’s argument that the Examiner erred in determining a lack of enablement without working examples and a showing of successful results. (*See* Appeal Br. 17.)

Appellant argues that the amount of experimentation needed to carry out the claimed invention in light of the guidance provided by the Specification weighs in favor of enablement. (*See id.* at 14.) But Appellant has not directed us to any showing, with actual results from experiments conducted, that the claimed method would successfully achieve irradiation of “plasmoid DNAP” or the claimed goal of regenerating fossilized species. Appellant also fails to provide evidence to contradict the Examiner’s finding that material is not publicly available to explain “plasmoid DNAP.” Because Appellant acknowledges that the invention is based on the inventor’s “new DNA proton-neutron physics model” (*see* Amended Spec. ¶ 15) and, thus, the nature of the invention and the state of the art are in an entirely new scientific field involving a previously unknown entity, “plasmoid DNAP,” Appellant has not explained how the Specification provides enough guidance to make it routine to regenerate fossilized species of extinct origin. (*See* Ans. 10.)

We disagree with Appellant that review of the *Wands* factors reveals that undue experimentation would not be necessary to make or use the claimed method. (*See* Appeal Br. 15–16.) Accordingly, we agree with the Examiner that Appellant’s claims are not supported by a sufficiently enabling disclosure and are unpatentable under 35 U.S.C. § 112(a).

*Written Description*

The Examiner rejected Appellant's claims under 35 U.S.C. § 112(a) for lack of a sufficient written description. The test for written description under 35 U.S.C. § 112 "is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date." *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F3d 1336, 1351 (Fed. Cir. 2010).

The Examiner determined that Appellant's Specification fails to show evidence of regenerating fossilized species of extinct origin comprising synthesized "plasmoid DNAP" through ionizing radiation. (*See* Final Act. 18.) The Examiner determines, further, that Appellant's Specification fails to provide a structure for "plasmoid DNAP." (*See id.*)

Appellant argues that paragraph 27 of the Amended Specification provides structural evidence for DNAP as "a rare hypothesis of spontaneous mutagenesis, a long-standing concept that has previously been difficult to demonstrate . . . . If insufficient energy is provided . . . the desired conversions may not be completed", absent the instant formula. (*See* Appeal Br. 16 (quoting Amended Spec. ¶ 27).) Appellant also cites to paragraphs 89 and 92, which are characterized as working examples, and to paragraph 28. (*See* Appeal Br. 16.)

We are not persuaded that these portions of the Amended Specification show evidence of that fossils can be regenerated by Appellant's method or reveal the structure of "plasmoid DNAP." Paragraph 27 does not provide any results, referring instead to a hypothesis and the difficulties of the method. (*See* Ans. 11.) Paragraph 92 refers to safety issues and presents no results. Paragraph 89 refers to the effects of boiling

water, but reports that “the K-Life catalyst (the fossil animal) will stagnate on boiling water alone.” (Amended Spec. ¶ 89.) Thus, paragraph 89 fails to demonstrate regeneration of a fossilized species. Neither of these paragraphs refers to “plasmoid DNAP.”

Appellant asserts that “the disclosed critical ranges leave *no room for unpredictability*; the unpredictability *only* remains in calculating the expenditure of nuclear values *in aggregation* thereof.” (Appeal Br. 16.) Appellant appears to be arguing that by providing the conditions reportedly necessary to achieve regeneration of extinct species from fossils, the Specification has shown that such species can be regenerated. We disagree. Bringing extinct organisms back to life would be an unprecedented feat. Accordingly, results of such efforts would be highly unpredictable without support from actual results and data. In the absence of evidence in the Specification or elsewhere that the claimed invention produces the recited result of regenerating fossilized species, Appellant’s conclusory statements do not persuade us that the inventor had possession of the method at the time of filing.

Appellant argues further that providing formula instructions under critical ranges for the use of the invention is sufficient for compact prosecution and that specific working examples are not necessary. (*See* Appeal Br. 17.) Although Appellant is correct that working examples are not absolutely required to show a best mode, the Examiner’s rejection is not that the best mode has not been described. Instead, the Examiner’s rejection is that the entire scope of the claims and on the finding that the evidence for “plasmoid DNAP” is a hypothesis only, without evidence of actual possession by Appellant. (*See* Ans. 11.) A “mere wish or plan” to obtain

the claimed invention is not sufficient. *See Streck, Inc. v. Research & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1285 (Fed. Cir. 2012) (citing *Centocor Ortho Biotech, Inc. v. Abbott Labs.*, 636 F.3d 1341, 1348 (Fed. Cir. 2011); *Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1566 (Fed. Cir. 1997)).

Appellant argues that Examiner improperly “rejected” Appellant’s lexicography. (*See* Appeal Br. 19–20.) According to Appellant,

to understand the inventor-created term DNAP, one must necessarily accept the existence of the invented DNAP-activating formula disclosed; without which, the visual embodiment of the DNAP structure does not occur in a stable, permanent, or isolatable form. Since the DNAP function (Claims 9-10) is activated from matter *by the invented formula factor’s* under the specific ranges necessary for synthesis, to request the Appellant to explain DNAP *without* the formula relied upon in the rejected claims constitutes a judicial impossibility, as Appellant is requested to make DNAP under a *rejected* practical utility advantage.

(*Id.* at 20.) To the extent we understand Appellant’s argument, we are not persuaded that the specific parameters or “formulas” recited in Appellant’s claims demonstrates possession of “plasmoid DNAP” or of a method of regenerating fossilized species of extinct origin. Even if Appellant had not used the term “plasmoid DNAP,” we would not be able to necessarily accept that fossilized species can be regenerated without actual proof in the Specification.

Appellant argues further that the “invention establishes that all life forms utilize an unusual form of ‘housed’ species-specific cytoskeleton-attracting energy on the nuclear particle level (DNAP) responsible for the energy and neurochemical reaction *separate* from DNA/RNA

recombination.” (*See id.*) This statement, though, is unsupported because Appellant has not directed us to proof of any such energy. Without specific evidence, we can only conclude that such energy and the associated “DNAP” is merely speculation.

Appellant argues that the Examiner erred by not addressing the “K-ROM formula,” which is reportedly provided in paragraph 40 of the Amended Specification with working examples. (*See Appeal Br. 22–23.*) Appellant also argues that claims 10–19, as well as paragraphs 44–56 and 59–89 of the Amended Specification, provide further information demonstrating possession, as well as enablement, of the invention. (*See id.*) These claims and portions of the Specification may discuss “K-ROM” factors, but they fail to show that Appellant was ever able to successfully regenerate fossilized species of extinct origin as claimed.

#### *Dependent Claims*

Appellant argues separately for the patentability of several dependent claims. (*See Appeal Br. 24–25.*) For the reasons discussed above, specifically the lack of evidence that fossilized species of extinct origin were ever regenerated, we are not persuaded that the specific conditions recited in Appellant’s dependent claims renders them patentable.

#### *Indefiniteness*

The Examiner entered a new grounds of rejection in the Final Office Action under 35 U.S.C. § 112(b) of claim 18 determining that it is indefinite. (*See Final Act. 21.*) Claim 18 recites:

The method of claim 17, wherein the functioning radioactive range is valid at v/w one cup of water to 1 ml nuclear ions released from high-energy matter, at v/w 2 dl water to 1-2mmg particles of the primary component uranium, and at v/w

5 gallons of water to a few threads of the primary component uranium to provide the necessary formula activation energy.

(Amended Appeal Br., 6.) The Examiner determines that the term “the functioning radioactive range” does not have antecedent basis in any of the claims from which claim 18 depends. (*See* Final Act. 21.)

Appellant argues that claim 1 defines the word “radioactive” with three “range points,” which we assume to be (i) Alpha actual radioactive particles; (ii) Beta element particle radioactive atoms or their ions; (iii) Gamma rays of electromagnetic waves sent out by radioactive particles, as recited in claim 1. (*See* Appeal Br. 18.) Appellant argues further that claim 4 “establish[es] the minimal nuclear range charge for activation.” (*See id.*) Claim 4 recites:

The process according to claim 2, wherein the radioactive energy source is supplied to the portion of the instant mixture in an amount equal to or greater than about 0.94 kcal per gram of the portion of the mixture; and, wherein water is supplied to the portion of the instant mixture in an amount equal to or greater than about 0.94 kcal per gram of the portion of the mixture.

(Amended Appeal Br. 4.)

Appellant’s argument is not persuasive and we agree with the Examiner that claim 18 is indefinite under 35 U.S.C. § 112(b). Although it appears that Appellant intended “the functioning radioactive range” to be the amount of radioactivity recited in claim 4, without an antecedent, such as the use of the term “functioning radioactive range” in claim 4, one of ordinary skill in the art would not know what this term means in claim 18.

*Conclusion*

Upon consideration of the record and for the reasons given, we affirm the Examiner's rejection.

In summary:

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 4, 6, and 9-19	35 U.S.C. § 112(a) – enablement	1, 2, 4, 6, and 9-19	
1, 2, 4, 6, and 9-19	35 U.S.C. § 112(a) – written description	1, 2, 4, 6, and 9-19	
18	35 U.S.C. § 112(b)	18	
<b>Overall Outcome</b>		1, 2, 4, 6, and 9-19	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

**AFFIRMED**