UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/265,756	01/04/2012	Gordon Alastair Bell	SYG-0106PA(115479.000007)	6545

153842 7590 06/15/2020

BakerHostetler
Washington Square, Suite 1100
Washington, DC 20036-5304

EXAMINER
KEYS, ROSALYND ANN

ART UNIT	PAPER NUMBER
1699	

NOTIFICATION DATE	DELIVERY MODE
06/15/2020	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eofficemonitor@bakerlaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte GORDON ALASTAIR BELL

_____

Appeal 2019-005798
Application 13/265,756
Technology Center 1600

_____

Before FRANCISCO C. PRATS, ULRIKE W. JENKS, and RACHEL H. TOWNSEND, *Administrative Patent Judges*.

PRATS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 30–38. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant states that the real party in interest is Syngenta Limited, of Surrey, United Kingdom. Appeal Br. 3.

STATEMENT OF THE CASE

The sole rejection before us for review is the Examiner's rejection of claims 30–38 under 35 U.S.C. § 103(a) as being unpatentable over Vermeer,[2] Weil,[3] and Scherl[4] (Ans. 3–7).

Appellant's claim 30, the sole independent claim on appeal, is representative and reads as follows:

> 30. A method of enhancing the biological performance of an agrochemical, the method comprising:
>
> combining an agrochemical with a compound of formula (I)
>
> $$R_1O[BO]_nR_2 \qquad (I)$$
>
> where BO is $CH(R_4)CH(R_5)O$;
>
> n is from 1 to 12;
>
> R_1 is $C_{4\text{-}20}$ alkyl or $C_{4\text{-}20}$ alkenyl;
>
> R_2 is hydrogen or $C_{1\text{-}3}$ alkyl;
>
> and a combination of R_4 and R_5 are selected independently from the following:
>
> R_4 is methyl and R_5 is methyl; R_4 is ethyl and R_5 is hydrogen; or R_4 is hydrogen and R_5 is ethyl.

Appeal Br. 19 (some paragraphing added).

DISCUSSION

The Examiner's Prima Facie Case

The Examiner found that Vermeer describes a process of combining an agrochemical with an alkanol alkoxylate penetrant compound encompassed by formula (I) of Appellant's claim 30. Ans. 4 (citing

---

[2] US 2008/0312290 A1 (published Dec.18, 2008).
[3] J.K. Weil et al., *Ether Alcohol Sulfates from Oleyl Alcohol*, 44 J. AM. OIL CHEM. SOC. 522–524 (1967).
[4] US 2009/0286684 A1 (published Nov. 19, 2009).

Vermeer ¶¶ 54–58). While the Examiner found that Vermeer's penetrant compounds include a butylene oxide moiety at the corresponding position recited in formula (I) of claim 30, the Examiner conceded that Vermeer did not specify that the butylene oxide moiety has the particular structure required by claim 30:

> Vermeer et al. differ from the instant invention in that BO is not disclosed as being limited to CH(R4)CH(R5)O and a combination of R4 and R5 being selected from R4 is methyl and R5 is methyl; R4 is ethyl and R5 is hydrogen; or R4 is hydrogen and R5 is ethyl.

Ans. 4.

The Examiner concluded that the claimed process would have been obvious to a skilled artisan, despite Vermeer's failure to disclose the specific butylene oxide recited in the claims, because "compounds which are position isomers (compounds having the same radicals in physically different positions on the same nucleus) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties." Ans. 5 (citing *In re Wilder*, 563 F.2d 457 (CCPA 1977)).

In addition, the Examiner cited Weil to show that the butylene oxide moiety recited in Appellant's claims was a butylene oxide isomer known to be useful in the preparation of alkanol alkoxylates, and reasoned that a skilled artisan would have reasonably expected success

> in modifying the BO radical of Vermeer et al. with an isomeric form, such as the one disclosed in Table I of Weil et al., since Weil et al. has shown that one can successfully obtain alkanol alkoxylates with a BO isomer having the claimed formula CH(R4)CH(R5)O wherein R4 is hydrogen and R5 is ethyl.

Ans. 5.

The Examiner found that the rejected claims also differ from the prior art in that, while Appellant's claims recite that either a C_{4-20} alkyl or C_{4-20} alkenyl could be present at position R_1 of formula, neither Vermeer nor Weil "disclose alcohol alkoxylates wherein R1 is a C4-20 alkenyl, in particular oleyl." Ans. 5.

The Examiner cited Scherl as evidence that, when preparing alkanol alkoxylates including butylene oxide groups, it was known in the art to use alkenyl groups encompassed by Appellant's claims at the position specified by Appellant's formula I. Ans. 5–6. The Examiner concluded that a skilled artisan would have considered it obvious to substitute an alkenyl group for the $C_{4–20}$ alkyl group of Vermeer's penetrants, "since Scherl et al. has shown that a C6-30 saturated and C6-30 unsaturated alkyl group can be interchanged at this position of an alcohol alkoxylate and still maintain its usefulness as a surfactant which improves activity in an agrochemical formulation." *Id.* at 6.

Analysis

As stated in *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992):

> [T]he examiner bears the initial burden . . . of presenting a *prima facie* case of unpatentability. . . .
>
> After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.

Having carefully considered all of the arguments and evidence advanced by Appellant and the Examiner, Appellant does not persuade us that a preponderance of the evidence does not support the Examiner's conclusion that the process of Appellant's claims would have been obvious. To the contrary, we agree with the Examiner's findings of fact regarding the

cited references, as well as the Examiner's ultimate conclusion of obviousness based on the totality of the evidence, and adopt the Examiner's findings and conclusion of obviousness as our own.

Appellant's claim 30 recites a process that has a single step, "combining an agrochemical with a compound of formula (I)." Appeal Br. 19. As recited in claim 30, Vermeer describes a process in which an agrochemical is combined with a number of other ingredients, including "at least one penetrant." Vermeer, abstract.

Vermeer discloses that "[p]referred penetrants are alkanol alkoxylates of the formula R–O–$[AO]_mR'$ (I)." Vermeer ¶ 54.

Vermeer discloses that the substituent at position R of its formula I may be "linear or branched alkyl having 4 to 20 carbon atoms" (Vermeer ¶ 55), which is substantially the same as one of the two alternative moieties recited in Appellant's claim 30 at the corresponding position. *See* Appeal Br. 19 (reciting that "R_1 is $C_{4\text{-}20}$ alkyl").

Vermeer discloses that the substituent at position R' of its formula I may be "H, methyl, ethyl, n-propyl, isopropyl, n-butyl, isobutyl, tert-butyl, n-pentyl or n-hexyl" (Vermeer ¶ 56), several of which are among the moieties recited in Appellant's claim 30 at the corresponding position. *See* Appeal Br. 19 (reciting that "R_2 is hydrogen or $C_{1\text{-}3}$ alkyl").

Vermeer discloses that the function group AO of its formula I may be "an ethylene oxide radical, a propylene oxide radical, ***a butylene oxide radical*** or mixtures of ethylene oxide and propylene oxide radicals or butylene oxide radicals" (Vermeer ¶ 57 (emphasis added)), which includes the butylene oxide moiety recited in Appellant's claim 30. *See* Spec. 1 ("BO is butylene oxide" in Appellant's formula I).

And, Vermeer discloses that the number of alkoxide radicals in its preferred penetrants ("m is a number from 2 to 30" (Vermeer ¶ 58)) overlaps the number of butylene oxide groups in formula I of Appellant's claim 30. *See* Appeal Br. 19 ("n is from 1 to 12").

Thus, Vermeer discloses its preferred penetrants as having a formula that has the same or substantially the same substituents at the same positions as formula I of Appellant's claim 30, except for the particular butylene oxide isomers recited in claim 30. Appellant does not persuade us, therefore, that Vermeer would have failed to suggest using a compound of formula I of Appellant's claim 30 as the penetrant in Vermeer's methods of making agrochemical formulations. *See* Appeal Br. 6–8.

Indeed, as seen above, formula I of Appellant's claim 30 encompasses compounds having the same combination of substituents at the same positions as the preferred penetrants described in formula I of Vermeer, except for the particular butylene oxide isomers recited in claim 30. Vermeer, therefore, differs from Appellant's claim 30 only in that Vermeer does not describe the particular butylene oxide isomers recited in the claim.

As the Examiner found, and Appellant does not dispute, the butylene oxide moiety recited in formula I of Appellant's claim 30 encompasses at least one butylene oxide moiety that was known in the art to be used in the preparation of alkanol alkoxylates, the same type of compound used as Vermeer's penetrants. *See* Weil 522 (Table 1). We acknowledge, as Appellant contends (Appeal Br. 8), that Weil's alkanol alkoxylates were intermediate compounds that were ultimately sulfated to produce detergents. *See* Weil 522. However, that acknowledgement does not take away from the fact that Weil teaches the preparation of alkanol alkoxylates with a butylene

oxide moiety within the scope of claim 30. And, intermediate compounds can have uses beyond those disclosed in a reference.

As noted above, Vermeer discloses that butylene oxides, in general, were useful as the alkylene oxide moiety in its preferred alkanol alkoxylate penetrant compounds, and Weil discloses that its butylene oxide isomer (undisputedly encompassed by Appellant's claim 30) was used in preparing alkanol alkoxylates. We therefore agree with the Examiner that a skilled artisan had a good reason for, and a reasonable expectation of success in, using Weil's butylene oxide isomer as the butylene oxide moiety in Vermeer's preferred penetrants. *See KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) ("When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp.").

We therefore also agree with the Examiner that the process recited in Appellant's claim 30 would have been prima facie obvious to a skilled artisan. *See KSR*, 550 U.S. at 417 ("[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious.") (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

To be complete, formula I of Appellant's claim 30 recites that R_1 also may be "$C_{4\text{-}20}$ alkenyl," as an alternative to the $C_{4\text{-}20}$ alkyl group disclosed in Vermeer. Appeal Br. 19.

In that regard, Scherl discloses "fatty alcohol alkoxylates and alkoxylates based on synthetic starter alcohols" in a number of applications

including "widespread [use] as an activity improver in agrochemical formulations." Scherl ¶ 2.

As the Examiner found, Scherl discloses its alkoxylates as having a formula I closely similar to the formula I of Vermeer (and Appellant's formula I), including alkyl groups and a butylene oxide moiety at the same positions. *See* Scherl ¶¶ 6–11. And as the Examiner also found, Scherl discloses that, in addition to an alkyl moiety at the position corresponding to the R_1 group of Appellant's claim 30, Scherl's functional group may be an "unsaturated alkyl group having from 6 to 30 and preferably from 8 to 22 carbon atoms." *Id.* ¶ 7; *see also id.* ¶ 16 (listing oleyl alcohol among "preferred" moieties at the R_1 position). Accordingly, we also agree with the Examiner that the collective teachings of Vermeer, Weil, and Scherl suggest combining a compound having the butylene oxide isomer recited in claim 30, and the alternative $C_{4\text{-}20}$ alkenyl moiety at the R_1 position of formula I of claim 30, with an agrochemical.

In sum, for the reasons discussed, we agree with the Examiner that a process having each of the steps and features recited in Appellant's claim 30 would have been prima facie obvious to a skilled artisan. Appellant's arguments do not persuade us to the contrary.

In particular, as seen above, Vermeer discloses that its preferred penetrants have a formula I that has the same or substantially the same substituents at the same positions as formula I of Appellant's claim 30, except for the particular butylene oxide isomers recited in claim 30. Appellant does not persuade us, therefore, that the present situation is one in which claim 30 recites a narrow species relative to a broad genus disclosed in the prior art. *See* Appeal Br. 10–12; Reply Br 3–5. The fact that Vermeer

might not exemplify the preferred penetrants of its formula I does not demonstrate that it would have been unobvious to combine Vermeer's preferred penetrants with an agrochemical. *See In re Mills*, 470 F.2d 649, 651 (CCPA 1972) ("All the disclosures in a reference must be evaluated, including nonpreferred embodiments, and a reference is not limited to the disclosure of specific working examples.") (citations omitted)).

Moreover, because the Examiner's findings of reasonable expectation of success and motivation are based on the express teachings in the cited references, noted above, Appellant does not persuade us that the present situation is similar to that in *In re Stepan Co.*, 868 F.3d 1342 (Fed. Cir. 2017), or that the ultimate conclusion of obviousness is based on improper hindsight, or that the Examiner applied an improper unguided obvious to try rationale. *See* Appeal Br. 12–14, 16; Reply Br. 2–3, 8.

We also do not find Appellant's arguments regarding *In re Wilder* persuasive of nonobviousness. *See* Appeal Br. 14; Reply Br. 5. As noted above, Vermeer discloses that butylene oxides, in general, were useful as the alkylene oxide moiety in its preferred alkanol alkoxylate penetrant compounds, and Weil discloses that its butylene oxide isomer (undisputedly encompassed by Appellant's claim 30) was useful for preparing alkanol alkoxylates. Thus, even if *Wilder* does not support a *per se* rule of obviousness as to isomers, the references cited by the Examiner provided a skilled artisan with a good reason for using Weil's butylene oxide isomer as the butylene oxide moiety in Vermeer's preferred penetrants. *See KSR*, 550 U.S. at 421 ("When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a

person of ordinary skill has good reason to pursue the known options within his or her technical grasp.").

In sum, for the reasons discussed, Appellant does not persuade us that the Examiner erred in determining that the process recited in Appellant's claim 30 would have been prima facie obvious in view of the combined teachings Vermeer, Weil, and Scherl. Appellant also does not persuade us that it has advanced evidence of unexpected results sufficient to outweigh the prior art evidence of prima facie obviousness advanced by the Examiner. *See* Appeal Br. 14–16 (citing Examples 26–29 and 32 from Appellant's Specification); Reply Br. 5–8.

We first note that, by themselves, assertions in briefing by counsel as to the unexpectedness of experimental results are of little probative value toward nonobviousness, absent some evidence, beyond the assertions in the briefs, that a skilled artisan actually would have considered the results unexpected. *See In re Geisler*, 116 F.3d 1465, 1470–71 (Fed. Cir. 1997) (finding arguments of unexpected results unpersuasive "naked attorney argument" because applicant "did not offer evidence of unexpected results in the form of a statement to that effect from the inventors or any third party, or any objective evidence from a respected source" nor did applicant make any statements of unexpectedness in its specification or in an affidavit under 37 C.F.R. § 1.132).

In the present case, other than the assertions in briefs, Appellant does not identify, nor do we discern, any statements in the Specification, or elsewhere in the record, suggesting that the experimental results shown in Examples 26–29 and 32 would have been unexpected by a skilled artisan.

Appellant's assertions of unexpectedness in its briefs are, therefore, of little probative value.

It is also well settled that "[e]vidence of secondary considerations must be reasonably commensurate with the scope of the claims." *In re Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011).

In the present case, the asserted unexpected results are based on a single embodiment of Appellant's invention, sample 28. *See* Appeal Br. 14–15. As the Examiner points out (Ans. 20), the alcohol alkoxylate of sample 28 has a $C_{12–15}$ alkyl chain at the R_1 position of formula I, "n" (the number of butylene oxide moieties) is 4, and R_2 is hydrogen. *See* Spec. 3–4.

In contrast, formula I of Appellant's claim 30 encompasses a C_{4-20} alkyl group as well as a C_{4-20} alkenyl group at the R_1 position, as few as 1 and as many as 12 butylene oxide moieties, and includes a C_{1-3} alkyl group at the R_2 position in addition to the hydrogen at that position in sample 28. *See* Appeal Br. 19. Given the significant differences between the scope of claim 30 and the structure of the compounds used in sample 28, we are not persuaded that the evidence of unexpected results advanced by Appellant is sufficiently commensurate in scope with claim 30 to support a finding of nonobviousness as to claim 30.

It is well settled that, "when unexpected results are used as evidence of nonobviousness, the results must be shown to be unexpected compared with the closest prior art." *In re Baxter-Travenol Labs.*, 952 F.2d 388, 392 (Fed. Cir. 1991).

In the present case, the Examiner found, and Appellant does not dispute, that none of the compounds that were compared against Appellant's sample 28 in Appellant's Examples 26–29 was an alkanol alkoxylate, the

type of compound disclosed in both Vermeer and Scherl, and recited in Appellant's claim 30. Ans. 20. Accordingly, we agree with the Examiner that Appellant's Examples 26–29 did not compare a compound encompassed by claim 30 to the closest prior art.

It might be true, as Appellant contends, that the compared compounds in Examples 26–29 are commercially available. *See* Reply Br. 5–6. As Appellant recognizes, however, Vermeer exemplifies compounds of the same type as the compound of claim 30 (alkanol alkoxylate), having butylene oxide moieties like the compounds recited in claim 30, used for the same purpose as recited in claim 30. *See* Appeal Br. 7 (citing Tables 1 and 2 and Examples 18, 20, and 24 of Vermeer). Appellant identifies no persuasive evidence suggesting that any of the commercially available compounds in Examples 26–29 has a closer similarity to the compounds of Appellant' claim 30 than the compounds exemplified in Vermeer. Appellant does not persuade us, therefore, that Examples 26–29 represent a comparison to the closest prior art.

As to Example 32, we acknowledge that sample 28 has a lower phytoxicity than Genapol O100, which is an oleyl ethoxylate with 10 moles of ethylene oxide. *See* Appeal Br. 15; Spec. 29. Unlike the compounds of Vermeer and Appellant's claim 30, however, Genapol O100 does not have a butylene oxide moiety. We are not persuaded, therefore, that Appellant has explained sufficiently why Genapol O100 is the closest prior art. As discussed above, moreover, we are not persuaded that sample 28 is sufficiently commensurate in scope with claim 30 to establish the nonobviousness of the full scope of the subject matter encompassed by the claim. As also discussed above, we are not persuaded that sufficient

objective evidence of true unexpectedness, as opposed to unsupported attorney argument, has been advanced by Appellant. *See In re Geisler*, 116 F.3d at 1470–71.

In sum, for the reasons discussed, Appellant does not persuade us that the Examiner erred in determining that the process recited in Appellant's claim 30 would have been prima facie obvious in view of the combined teachings Vermeer, Weil, and Scherl. For the reasons discussed, Appellant also does not persuade us that it has advanced evidence of unexpected results sufficient to outweigh the prior art evidence of prima facie obviousness advanced by the Examiner. We therefore affirm the Examiner's rejection of claim 30 over Vermeer, Weil, and Scherl. Because they were not separately argued, claims 31 and 33–36 fall with claim 33.

Appellant's claim 32 recites "[t]he method of claim 30, wherein R_1 is oleyl." Appeal Br. 19.

As discussed above, Scherl discloses combining agrochemicals with alkoxylates having a formula I closely similar to the formula I of Vermeer (and Appellant's formula I), including alkyl groups and a butylene oxide moiety at the same positions. *See* Scherl ¶¶ 6–11. As also discussed above, in addition to an alkyl moiety at the position corresponding to the R_1 group of Appellant's claim 30, Scherl discloses that the functional group also may be an "unsaturated alkyl group having from 6 to 30 and preferably from 8 to 22 carbon atoms." *Id.* ¶ 7; *see also id.* ¶ 16 (listing oleyl alcohol among "preferred" moieties at the R_1 position).

Accordingly, given Scherl's teaching that an oleyl group was useful at the R position of Vermeer's penetrant compounds (corresponding to the R_1 group of Appellant's claim 30), Appellant does not persuade us that a skilled

artisan lacked motivation for placing an oleyl group at that location, or that the Examiner's reasoning for that modification was based on hindsight. *See* Appeal Br. 17. Nor does Appellant persuade us that the Examiner erred in concluding that the collective teachings of Vermeer, Weil, and Scherl would have suggested combining a compound having the butylene oxide isomer recited in claim 30, and an oleyl moiety at the R_1 position of formula I as recited in claim 32, with an agrochemical. We therefore affirm the Examiner's rejection of claim 32 over Vermeer, Weil, and Scherl.

Appellant's claim 37 recites "[t]he method of claim 30, wherein R_1 is C12-15 alkyl; n is 4; and R_2 is hydrogen." Appeal Br. 19.

Appellant contends that Scherl teaches away from using uncapped alkanol alkoxylates, that is, alkanol alkoxylates that have hydrogen at the R_2 position as recited in claim 37, as opposed to capped versions having a substituent such as an alkyl group at the R_2 position. Appeal Br. 17–18 (citing Scherl ¶ 3).

We are not persuaded. We first note that the portion of Scherl quoted by Appellant identifies disadvantages to end-capped alkanol alkoxylates. *See* Scherl ¶ 3 ("A disadvantage of this property has been found to be that the end group-capped fatty alcohol alkoxylates tend to pH decline in the course of prolonged storage.").

Moreover, even assuming that Scherl preferred capped alkanol alkoxylates, both Scherl and Vermeer expressly taught that hydrogen was useful at the position corresponding to R_2 of Appellant's claims. *See* Scherl ¶ 11 (listing hydrogen as first useful substituent); Vermeer ¶ 56 (same). We are not persuaded, therefore, that Scherl teaches away from hydrogen at the R_2 position, as recited in Appellant's claim 37. *See In re Fulton*, 391 F.3d

1195, 1201 (Fed. Cir. 2004) ("The prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed. . . .").

As seen above, moreover, each of the substituents recited in Appellant's claim 37 is described in Vermeer as being among those useful in its preferred penetrant compounds. *See* Vermeer ¶ 55 (R of Vermeer's formula I may be "linear or branched alkyl having 4 to 20 carbon atoms"); *id.* ¶ 58 (the number of alkoxide radicals in Vermeer's preferred penetrants "is a number from 2 to 30"); *id.* ¶ 56 (R' of Vermeer's formula I may be "H, methyl, ethyl, n-propyl, isopropyl, n-butyl, isobutyl, tert-butyl, n-pentyl or n-hexyl"). Because each of the substituents recited in Appellant's claim 37 is described in Vermeer as being among those useful in its preferred penetrant compounds, Appellant does not persuade us that the cited references fail to suggest the combination of substituents recited in claim 37, or that hindsight would be required to arrive at claim 37's combination of substituents.

Accordingly, because Appellant does not persuade us, for the reasons discussed, that the Examiner erred in concluding that the process recited in claim 37 would have been obvious over Vermeer, Weil, and Scherl, we affirm the Examiner's rejection of claim 37 over those references.

Appellant's claim 38 recites "[t]he method of claim 30, wherein R_1 is oleyl; n is 4; and R_2 is hydrogen." Appeal Br. 19.

As discussed above, the collective teachings of Vermeer, Weil, and Scherl demonstrate that alkanol alkoxylates having each of the substituents recited in claim 38 would be useful as the penetrant compound in Vermeer's process. Appellant does not persuade us, therefore, that the collective

teachings of the cited references would have failed to suggest using a compound encompassed by Appellant's claim 38 as the penetrant compound in Vermeer's process. Because Appellant does not persuade us that the Examiner erred in concluding that the process recited in Appellant's claim 38 would have been obvious over Vermeer, Weil, and Scherl, we affirm the Examiner's rejection of claim 38 over those references.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
30–38	103(a)	Vermeer, Weil, Scherl	30–38	

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