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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MASSIMO RONCHI and GIACOMO MOMBELLI

Appeal 2023-000604
Application 16/466,846
Technology Center 1600

Before DONALD E. ADAMS, ERIC B. GRIMES, and
RACHEL H. TOWNSEND, *Administrative Patent Judges*.

TOWNSEND, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims to a powder solid composition as being indefinite, directed to patent-ineligible subject matter, and obvious. Oral argument was heard on March 6, 2023. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ 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 INDENA S.P.A. (Appeal Br. 1.)

STATEMENT OF THE CASE

Appellant's Specification teaches that flavonoids have a positive effect in preventing and ameliorating metabolic syndrome, and treating associated pathologies, like cardiovascular diseases, hyperlipidemia, and type 2 diabetes. (Spec. 1.) Appellant's Specification indicates that citrus fruits are a source of flavonoids, and that bergamot "represents an important source of specific flavanon[e]-7-O-glycosides, such as naringin, neohesperidin, brutelidin and melitidin, that cannot be found in any other citrus fruits, which have demonstrated potential health benefits in clinical testing." (*Id.* at 1–2.)

Appellant's Specification acknowledges that the prior art teaches hydroalcoholic extracts of Bergamot fruit. (Spec. 2.) However, "flavanone[]-7-O-glycosides of bergamot fruit extracts are characterized by poor oral bioavailability." (*Id.*) Appellant's invention is directed at Bergamot fruit extract derivatives having improved oral bioavailability. (*Id.* at 3.)

CLAIMED SUBJECT MATTER

Claims 13, 14, and 21–26 are on appeal. Claims 13 and 21, reproduced below, are illustrative of the claimed subject matter:

13. A powder solid composition comprising at least one phospholipid and a hydroalcoholic extract of Bergamot fruit containing flavonoids, neoeriocitrin, naringin and neohesperidin as the only extract.

21. The powder solid composition according to claim 13, wherein the at least one phospholipid is selected from the group consisting of lecithins from soy, sunflower or egg, phosphatidyl choline, phosphatidyl serine, phosphatidyl ethanolamine, wherein the acyl groups being the same or different are mostly

derived from palmitic, stearic, oleic, linoleic, linolenic acids; or combinations thereof.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Lombardo	US 8,741,362 B2	June 3, 2014
Sebree	WO 2013/003670 A1	Jan. 3, 2013

REJECTIONS

The following grounds of rejection by the Examiner are before us on appeal.

Claim 21 under 35 U.S.C. § 112(b) as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor regards as the invention.

Claims 13, 14, and 21–26 under 35 U.S.C. § 101 because the claimed invention is directed to a natural composition of matter without significantly more.

Claims 13, 14, and 21–26 under 35 U.S.C. § 103 as being unpatentable over Lombardo and Sebree.

DISCUSSION

I. Indefiniteness

The Examiner found claim 21 to be indefinite due to the claim limitation “the acyl groups being the same or different are mostly derived” for lack of antecedent basis. (Ans. 3.) The Examiner noted that “[t]here is no recitation of acyl groups in any of the preceding claims or in claim 21.” (*Id.*)

The Examiner further found that this phrase renders the metes and bounds of the claim uncertain. (Ans. 3.) The Examiner acknowledged that phospholipids contain acyl groups, but determined that because “there is

more than one type of acyl group” in such compounds that “there may be acyl groups as part of a side chain” rather than an acyl group of the phospholipid, “it is not clear what acyl group Appellant is referring to.” (*Id.* 14.)

The Examiner also found that “it is not clear what the acyl groups are the same as or different from.” (Ans. 3.)

And, the Examiner also found that “it is not clear what Applicant regards as acyl groups derived from.” (Ans. 3.) The Examiner stated in this regard:

While Applicant recites different acids, it is not clear what acyl compounds that are derived from the fatty acids are. Applicant does not provide representative examples in the claims or the specification.

(*Id.*)

We do not agree with the Examiner’s conclusion. In particular, as Appellant noted, the fatty acid moieties of phospholipids necessarily include acyl groups. (Appeal Br. 3.) Thus, the term phospholipid provides antecedent basis for “the acyl groups.”

Regarding the requirement of “the acyl groups being the same or different,” we conclude that the claim is reasonably understood to mean that the acyl groups of the at least one phospholipid of the composition are the same or different from each other. And because the claim recites that the acyl groups are “derived from palmitic, stearic, oleic, linoleic, linolenic acids; or combinations thereof,” we do not agree with the Examiner that it is unclear “what acyl compounds that are derived from the fatty acids are.” That the acyl compounds may include a large number of compounds derived from the recited acids is insufficient to establish indefiniteness; “breadth is

not to be equated with indefiniteness.” *In re Miller*, 441 F.2d 689, 693 (CCPA 1971).

Thus, for the foregoing reasons, we reverse the Examiner’s rejection of claim 21 under 35 U.S.C. § 112(b).

II. Patent Ineligibility

A. The Examiner’s Position

The Examiner found the claim 13 is drawn to a “product of nature, namely naturally occurring compounds found in Bergamot fruit.” (Non-Final Action 4 (noting that not only are neoeriocitrin, naringin, and neohesperidin present in Bergamot, but so is lecithin “(which is synonymous with phosphatidylcholine[.])” The Examiner noted that “[w]hile the [claimed] hydroalcoholic extract itself may not be found in the nature, the compounds which are present in the plant and soluble in the selected solvent **are** found in nature.” (*Id.*) The Examiner further explained that “[t]he creation of a solvent extract only partitions and concentrates the molecules that are naturally in the plant.” (*Id.*) The Examiner found that “[t]here is no evidence or reason to expect that any new compounds are formed” by the extraction. (*Id.*) The Examiner concluded therefore that “the instantly claimed extract of Bergamot and the additional compounds claimed that are naturally found in Bergamot does not amount to an exception of the judicial exception, because isolation or purification does not result in a product which is ‘markedly different’ from the naturally-occurring component.” (*Id.*)

Regarding claim 21, requiring the phospholipid be selected from certain named products including “lecithins from soy, sunflower or egg,” the Examiner noted that “[t]here is no indication that mixing the specified

Bergamot fruit extract together with the at least one” such phospholipid “changes the structure, function, or other properties of the extracts in any marked way in comparison with the closest naturally occurring counterpart.” (Non-Final Action 6–7, *see also id.* (“there is nothing to show that mixing the ingredients in the particular concentrations produces any sort of marked distinction”).)

The Examiner next determined that the composition claimed does not recite additional ingredients beyond the natural products and thus, the claims do not integrate the judicial exception into a practical application. (Non-Final Action 7.) Finally, the Examiner noted that the claimed composition does not amount to significantly more than the judicial exception because it is well-understood, routine, and conventional to mix “soy phosphatidylserine with phospholipids other than soy phospholipids, middle chain triglycerides and vitamin E (which are all found in plants) . . . in the field for improving memory.” (*Id.* at 8 (citing Kato-Kataoka²).

Appellant contests the Examiner’s rejection for a few reasons. First, Appellant argues that, unlike isolating naturally-occurring DNA, a hydroalcoholic extraction of Bergamot comprises a group of materials not just an isolated compound. (Appeal Br. 3.) Appellant also argues that the composition claimed requires at least one phospholipid in addition to the hydroalcoholic extract from the Bergamot fruit. (*Id.*)

² A. Kato-Kataoka et al., *Soybean-Derived Phosphatidylserine Improves Memory Function of the Elderly Japanese Subjects with Memory Complaints*, 47 J. Clin Biochem. Nutr. 246–55 (2010).

Appellant additionally argues that the composition is required to be a “powdered solid composition, which is a physical form distinct from any of the naturally-occurring sources of the claimed composition.” (Appeal Br. 4.)

Appellant further argues that the combination of the phospholipid with the hydroalcoholic extract provides a markedly different characteristic compared with that possessed by the extract alone, namely improved bioavailability of at least the naringin and neohesperidin. (Appeal Br. 4 (citing Spec. Example 3).)

B. Framework for Analysis

35 U.S.C. § 101 defines patent-eligible subject matter. An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has carved out exceptions to what would otherwise appear to be within the literal scope of § 101, e.g., “[l]aws of nature [and] natural phenomena” such as products of nature that are considered “building blocks of human ingenuity.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotations omitted) (citing *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 590 (2013) and *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66, 89 (2012)). “[T]he ‘manifestations of laws of nature’ are ‘part of the storehouse of knowledge,’ ‘free to all men and reserved exclusively to none.’” Manual of Patent Examiner Procedure (“MPEP”) § 2106.04 (b) (quoting *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 130 (1948)). “When a law of nature or natural phenomenon is claimed as a physical product, the courts have often referred to the exception as a ‘product of nature.’” MPEP § 2106.04(b)(II).

The Supreme Court has established a two-step framework for “distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217. “First, we determine whether the claims at issue are directed to” a patent-ineligible concept. *Id.* If so, “we consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 78–79).

The United States Patent and Trademark Office (“PTO”) issued the 2019 Revised Patent Subject Matter Eligibility Guidance (“Guidance”), indicating how the PTO would analyze patent eligibility under the Supreme Court’s two-step framework. 84 Fed. Reg. 50–57 (January 7, 2019).³

Under the Guidance, in determining what concept the claim is “directed to,” we first look to whether the claim recites any judicial exceptions, including laws of nature, natural phenomena, and/or abstract ideas. (Guidance, 84 Fed. Reg. at 53–54.) (“Step 2A, Prong One”). If it does, then we look to whether the claim recites additional elements that integrate the recited judicial exception into a practical application. (*Id.* at 54–55 (citing MPEP § 2106.05(a)–(c), (e)–(h)).) (“Step 2A, Prong Two”).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, i.e., it is found to be “directed to” a judicial exception, do we then look to whether the claim

³ The Office issued further guidance on October 17, 2019, clarifying the Guidance. USPTO, October 2019 Update: Subject Matter Eligibility (the “October 2019 Update”).

contains an “‘inventive concept’ sufficient to ‘transform’” the claimed judicial exception into a patent-eligible application of the judicial exception. Guidance, 84 Fed. Reg. at 56; *see also Alice*, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 82).

Claims alleged to be patent-ineligible because they recite products of nature are properly analyzed under the framework of the Guidance. *See* Guidance, 84 Fed. Reg. at 54 n.20 (“This notice does not change the type of claim limitations that are considered to recite a law of nature or natural phenomenon. For more information about laws of nature and natural phenomena, including products of nature, *see* MPEP 2106.04(b) and (c).”) (Emphasis omitted.)

Applying the Guidance, we do not agree with the Examiner’s conclusion that the claims on appeal are directed to patent-ineligible subject matter.

STEP 2A, Prong One:

In Step 2A, Prong One of the Guidance, we evaluate whether claim 13 recites a judicial exception, i.e., whether it sets forth or describes a product of nature in accordance with the guidance in MPEP § 2106.04 (b) and (c). Guidance, 84 Fed. Reg. at 54; October 2019 Guidance, available at <https://www.uspto.gov/PatentEligibility>.

a. Product of Nature Analysis

There can be no question that Appellant’s claimed composition includes products derived from nature. Extractives from a fruit are by their very nature natural products of the fruit. And as claim 21 makes clear, the phospholipid may be obtained from soy, sunflower or eggs, and is thus a natural product.

As the Supreme Court noted in *Myriad*, claiming a natural product that is merely separated from elements found in its natural environment, where the structure of the natural product is not otherwise altered, does not support a conclusion that the isolated product is patent eligible. *Myriad*, 569 U.S. at 593–95 (contrasting cDNA, which is an exons-only molecule that is not naturally occurring, from an isolated DNA segment because the isolated DNA segment does not contain altered genetic information compared to the gene from which it was isolated, notwithstanding that the isolated DNA segment had to be obtained from the gene by breaking chemical bonds); *see also In re BRCA1- & BRCA2-Based Hereditary Cancer Test Patent Litig.*, 774 F.3d 755, 761 (Fed. Cir. 2014) (“A DNA structure with a function similar to that found in nature can only be patent eligible as a composition of matter if it has a unique structure, different from anything found in nature. Primers do not have such a different structure and are patent ineligible.”).

Nevertheless, the mere fact that the components of the claimed composition are all nature-based does not end the inquiry as to whether the claimed composition recites a judicial exception. The Supreme Court has explained that a claimed composition becomes more than a product of nature where it is “a product of human ingenuity” that is “new ‘with markedly different characteristics from any found in nature.’” *Myriad*, 569 U.S. at 590–91 (quoting *Diamond v. Chakrabarty*, 447 U.S. 303, 319–20 (1980)); MPEP § 2106.04(c)(I)(A).

b. Markedly Different Characteristics Analysis

“Where the claim is to a nature-based product produced by combining multiple components . . . , the markedly different characteristics analysis

should be applied to the resultant nature-based combination, rather than its component parts.” MPEP § 2106.04(c)(I)(A). That is, the analysis compares the claimed mixture of nature-based products to the appropriate counterpart. Where, as here, the nature-based product is a mixture of nature-based components

the closest counterpart may be the individual nature-based components of the combination. For example, assume that applicant claims an inoculant comprising a mixture of bacteria from different species, *e.g.*, some bacteria of species E and some bacteria of species F. Because there is no counterpart mixture in nature, the closest counterparts to the claimed mixture are the individual components of the mixture, *i.e.*, each naturally occurring species by itself. *See, e.g., Funk Bros.*, 333 U.S. at 130 (comparing claimed mixture of bacterial species to each species as it occurs in nature).

MPEP § 2106.04(c)(II)(A) (internal citation omitted).

Claim 13

Markedly different characteristics can be expressed as the product’s structure, function, and/or other properties, and are evaluated based on what is recited in the claim on a case-by-case basis. *See* MPEP § 2106.04(c)(II).

We must compare the characteristics of the claimed nature-based composition to its naturally occurring counterpart in its natural state, in order to determine whether the characteristics of the claimed nature-based product are markedly different. If there is no change in any characteristic, the claimed composition lacks markedly different characteristics, and is a product of nature exception.

The Examiner seems to suggest that Bergamot fruit extract can contain the phospholipid lecithin. (Non-Final Action 4 (citing Dugo⁴ 31).) We disagree with the Examiner's finding. The only reference to lecithins on page 31 of Dugo is the mention that the phosphorus that is present in fertilizers participates in metabolic activity of plants and their vegetative development, is part of the protein structure and of "reserve compounds" which includes lecithin. There is nothing in Dugo that teaches lecithin is part of the Bergamot fruit or that it is extracted therefrom in a hydroalcoholic extraction.

Consequently, we determine that claim 13 recites two nature-based compositions: (1) the extract having flavonoids, neoeriocitrin, naringin, and neohesperidin, and (2) the phospholipid. We compare the claimed mixture of nature based products to the appropriate counterpart, which in this case is the individual nature-based components (1) and (2) of the combination. Appellant has provided evidence that the extract (1) when combined with the phospholipid (2) provides improved bioavailability of naringin and neohesperidin compared to the extract (1) in the absence of the phospholipid (2), as measured by concentration of those compounds in plasma samples collected 1 and 2 hours after administration of the relevant composition. (*See* Spec. 8–9 (Example 3).) The analytical results of the experiment are set forth in Table 1 of Appellant's Specification, which we provide below

⁴ Giovanni Dugo & Ivana Bonaccorsi, eds., *Citrus bergamia: Bergamot and Its Derivatives*, CRC Press 2014, 31.

Table 1

	Naringin (ppm)		Neohesperidin (ppm)	
	Hydroalcoholic extract of Bergamot fruit	Composition of Example 1	Hydroalcoholic extract of Bergamot fruit	Composition of Example 1
Rat 1 (1 hour)	0.2029	1.4409	0.2728	1.5621
Rat 2 (1 hour)	0.2286	1.545	0.2751	1.1917
Rat 3 (1 hour)	0.2186	1.7878	0.3201	1.543
Rat 1 (2 hour)	0.1089	1.9046	0.1648	3.5433
Rat 2 (2 hour)	0.1029	2.334	0.1447	3.0571
Rat 3 (2 hour)	0.1067	2.0516	0.1417	3.2322

Table 1 above indicates the concentration of naringin and neohesperidin (in parts per million) in the plasma of rats after oral administration of a single dose of the claimed composition compared to administration of just the hydroalcoholic extract of Bergamot fruit. The concentration of each of those compounds was significantly higher when the composition included the phospholipid, i.e., lecithin. Thus, Appellant has established the bioavailability of the claimed composition is improved compared to the nature-based composition (1): the extract having flavonoids neoeriocitrin, naringin, and neohesperidin. As such, Appellant has established the overall characteristic of the claimed composition is changed compared to the nature-based composition. And we disagree with the Examiner that “Appellant admits that the phospholipid had no effect” (Ans. 16). Appellant states in the Appeal Brief:

the claims on appeal also require the combination of a hydroalcoholic extract of Bergamot fruit with at least one phospholipid, which is thus even further remote from any application of the product of nature doctrine contemplated by the case law cited in the rejection on appeal. We note that this conclusion would obtain *even if* the at least one phospholipid

had no effect in conjunction with the recited hydroalcoholic extract of Bergamot fruit.

However, the present specification demonstrates that the claimed combination indeed produces results not attributable to the extract alone

(Appeal Br. 3–4) (emphases added). Clearly, Appellant argued that the phospholipid contributed to the composition having a markedly different characteristic than the extract alone.

We also do not find persuasive the Examiner’s argument that the one exemplification of the claimed composition is not commensurate in scope with the claims so as to establish a markedly different characteristic. (Ans. 16.) It is certainly true that providing evidence that is commensurate in scope with the claim is a requirement when objective evidence of non-obviousness is being relied upon to establish that the full scope of the claim is not obvious, because a claim which reads on both obvious and nonobvious subject matter is unpatentable under § 103. *See In re Muchmore*, 433 F.2d 824, 826 (CCPA 1970). However, we are not aware of any legal requirement that to establish markedly different characteristic for a claim, the Appellant must establish multiple embodiments of the claimed invention (over the full scope of the claim) meet the markedly different characteristic.

The Examiner “bears the initial burden . . . of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). In the case of a written description rejection, “[i]f . . . the specification contains a description of the claimed invention, albeit not *in ipso verbis* (in the identical words), then the examiner . . . , in order to meet the burden of proof, must provide reasons why one of ordinary skill in the art would not consider the description sufficient.” *In re Alton*, 76 F.3d 1168,

1175 (Fed. Cir. 1996). Similarly, regarding utility “[o]nly after the PTO provides evidence showing that one of ordinary skill in the art would reasonably doubt the asserted utility does the burden shift to the applicant to provide rebuttal evidence sufficient to convince such a person of the invention’s asserted utility.” *In re Brana*, 51 F.3d 1560, 1566 (Fed. Cir. 1995) (citation omitted). We conclude the same should be true of the markedly different characteristic analysis. Here, the Specification contains a disclosure demonstrating a markedly different characteristic, and the Examiner has not provided reasons why one of ordinary skill in the art would not expect other embodiments within the scope of the claim would likewise have the same characteristic.

Having made the foregoing determination, we need not address whether the claim recites an inventive concept. We conclude that Appellant’s evidence is sufficient to establish the claimed composition has a markedly different characteristic, and thus, does not recite a product of nature.

Thus, for the foregoing reasons, we reverse the Examiner’s rejection of claims 13, 14, and 21–26 under 35 U.S.C. § 101.

III. Obviousness

The Examiner found that Lombardo teaches extracting a phytocomplex from bergamot fruit with ethanol and that the extract can be dried. (Non-Final Action 12 (citing Lombardo Abstr., 3:20–25, and 5:31–36).) The Examiner further found that Lombardo teaches that the extract can be combined “as an admixture with suitable excipients” and that it “can be combined with lecithin.” (Ans. 17 (citing Lombardo claim 5 and “Example

3, para 0028”).) The Examiner noted that “[t]he form of the lecithin and extract taught by Lombardo was a capsule.” (*Id.*)

The Examiner also found that Lombardo teaches the phytocomplex can be administered as a dietary supplement or pharmaceutical composition. (Non-Final Action 12 (citing Lombardo Abstr. and claim 3).)

The Examiner found that Sebree teaches a dry composition of lecithin and an emulsifier, such as a sucrose ester, that can be used in food applications. (Non-Final Action 12–13 (citing Sebree ¶¶ 7, 8).) The Examiner noted that Sebree teaches the emulsifier is used to disperse the compounds in water. (Ans. 17.)

The Examiner concluded that it would have been obvious to combine the emulsifier and lecithin composition of Sebree with the extract of Lombardo because “it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose.” (Ans. 13.) In addition, the Examiner noted that “combining the instantly claimed ingredients of a hydroalcoholic extract with a lecithin and emulsifier provides a formulation in dry form with better dispersion of compounds.” (*Id.* at 17.)

We do not agree with the Examiner’s conclusion of obviousness.

We agree with Appellant that “Lombardo nowhere mentions lecithin” (Reply Br. 2), and thus, the Examiner’s finding in the Answer that Lombardo teaches the extract can be combined with lecithin is not correct.

Regarding the combination with Sebree, Appellant argues the Examiner’s rejection is in error because “there is no suggestion in either reference that this combination could serve to increase the oral

bioavailability of the Lombardo extract” and because the Lombardo extract is a “dietary *supplement*, and thus not a food to which lecithin would conventionally be added to any art-recognized purpose.” (Appeal Br. 5–6.) Thus, Appellant argues that the rejection is based on impermissible hindsight. (*Id.*) We do not find Appellant’s arguments persuasive. “[T]he law does not require that the references be combined for the reasons contemplated by the inventor.” *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992); *see also KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419–20 (2007) (“[N]either the particular motivation nor the avowed purpose of the patentee controls” in assessing whether an invention is obvious). The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. *In re Lintner*, 458 F.2d 1013, 1016 (CCPA 1972) (“The fact that appellant uses sugar for a different purpose does not alter the conclusion that its use in a prior art composition would be *prima facie* obvious from the purpose disclosed in the references.”); *In re Dillon*, 919 F.2d 688, 693 (Fed. Cir. 1990).

Nevertheless, we conclude that the Examiner’s rational underpinning for the combination is erroneous. That is, we disagree that Sebree’s teaching that its emulsifier/lecithin composition provides compositions such as nutraceuticals with an ability to disperse in water would have motivated one of ordinary skill in the art to use that in the composition of Lombardo. It is true that Lombardo teaches that the phytocomplex from Bergamot fruit in the form of dry extract is a very fine hydrosoluble powder that can be formulated with additives and compatible excipients “usual in the formulations of dietary supplements.” (Lombardo 4:4–10, 4:22–28.) But

Lombardo teaches that “the phytocomplex of the present invention is extremely soluble in addition to alcohol also in water at room temperature.” (*Id.* at 5:31–34.) Thus, Sebree’s teaching that an emulsifier/lecithin composition helps a nutraceutical composition disperse in water would have held no sway to one of ordinary skill in the art regarding the extremely soluble extract in both water and alcohol of Lombardo. Thus, for the foregoing reasons, we reverse the Examiner’s rejection of claims 13, 14, and 21–26 under 35 U.S.C. § 103 as being unpatentable over Lombardo and Sebree.

DECISION SUMMARY

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
21	112	Indefiniteness		21
13, 14, 21– 26	101	Eligibility		13, 14, 21– 26
13, 14, 21– 26	103	Lombardo, Sebree		13, 14, 21– 26
Overall Outcome				13, 14, 21– 26

REVERSED