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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/860,441	04/28/2020	Marc Krüger	1859.029USC6	1768

25215 7590 07/13/2020
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EXAMINER
SMITH, CHAIM A

ART UNIT	PAPER NUMBER
1792	

NOTIFICATION DATE	DELIVERY MODE
07/13/2020	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):

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PTOL-90A (Rev. 04/07)

Office Action Summary	Application No. 16/860,441	Applicant(s) Krüger, Marc	
	Examiner CHAIM A SMITH	Art Unit 1792	AIA (FITF) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL.** 2b) ☑ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5) ☑ Claim(s) 1 and 12-26 is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6) ☐ Claim(s) _____ is/are allowed.

7) ☑ Claim(s) 1 and 12-26 is/are rejected.

8) ☐ Claim(s) _____ is/are objected to.

9) ☐ Claim(s) _____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to **PPHfeedback@uspto.gov.**

Application Papers

10)☑ The specification is objected to by the Examiner.

11)☑ The drawing(s) filed on 28 April 2020 is/are: a)☐ accepted or b)☑ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☑ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☑ All b)☐ Some** c)☐ None of the:

1.☑ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☑ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

4) ☐ Other: _____.

DETAILED ACTION

1. The present application is being examined under the pre-AIA first to invent provisions.

2. In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority based on applications DE 10 2010 031 988.0, DE 10 2010 044 251.8, and DE 10 2011 010 534.4 filed in Germany on 22 July 2010, 02 September 2010, and 07 February 2011 respectively, the official translations of which were received 28 April 2020.

4. Under 35 U.S.C. 119(a) or (e), the claims in a U.S. application are entitled to the benefit of a foreign priority date or the filing date of a provisional application if the corresponding foreign application or provisional application supports the claims in the manner required by 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, first paragraph.

5. This is to say that current application must be an application for a patent for an invention which is also disclosed in the prior application(s), foreign or domestic. The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of 35 U.S.C. 112(a) or the first paragraph of pre-AIA 35 U.S.C. 112, except for the best mode requirement. See

Transco Products, Inc. v. Performance Contracting, Inc., 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994)

6. The disclosure of the prior-filed applications, Applications No. DE 10 2010 031 988.0, DE 10 2010 044 251.8, and DE 10 2011 010 534.4, as well as US Applications 15/646980, 15/211823, and 13/744623 fail to provide adequate support or enablement in the manner provided by 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, first paragraph for one or more claims of this application. Claims 1 and 12 – 26 are directed to a method of using a portion capsule for making a coffee beverage. There is no disclosure of a method of using a "portion capsule" for making a coffee beverage found in any of applicant's prior filed applications. Regarding all the claims and claims 1 and 20 particularly, there is no disclosure of loading a portion capsule into an apparatus, sealing the top side of the flange and/or the first foil lid against a seal of the apparatus, and activating a pump to push heated water into the portion capsule therefore for the claims in the current application are not entitled to the benefit of the claimed priority dates, foreign or domestic and the priority date is the filing date of the application, that is 28 April 2020.

7. This application has been filed as a continuation application. The application repeats a substantial portion of prior Applications No. 15/646980, 15/211823, and 13/744623, filed 11 July 2017, 15 July 2016, and 18 January 2013 respectively but, by way of the claims adds *significant* disclosure not presented in the prior applications. Because this application names the inventor or at least one joint inventor named in the prior application, it should constitute a continuation-in-part of the prior application and not a divisional application. Appropriate correction is required.

Drawings

8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because they are replete with reference characters that have been used to designate various unrelated parts of the capsule.

9. For example, reference character "1" has been used to designate both the capsule of at least figure 1 and the capsule of figure 16 as well as the capsule of figures19 – 22 all of which appear to represent different capsules.

10. Reference character "2.4" has been used to designate both a flange and/or edge (see fig. 1 and 16), and what appears to be gear teeth (see fig. 18).

11. Reference character "2.4.2" has been used to designate both a "fit locking" and "friction locking and/or detection" in an outer area circumference in figure 16 and a gearwheel formed by recesses/bulges in figure 17.

12. Reference character "12" has been used to designate both what appears to be a capsule holder in figure 1 and a wall region of the capsule in figure 19.

13. Reference character "15" has been used to designate both an arrow in figure 2 and grooves placed in a wall region in figures 19 and 22.

14. Reference character "16" has been used to designate both an unknown device in figure 3 and a border in figure 19.

15. The above examples are but a few of the reference characters that have been used to designate various unrelated parts of the capsule. The applicant should review the application and make appropriate corrections.

16. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

17. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include at least the following reference sign(s) mentioned in the description: reference character “7” is recited as being directed to a flange in figure 19.

18. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

19. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include at least the following reference character(s) not mentioned in the description: 2.4.1, 3, 5.6 (fig. 4), 5-8 (fig. 7), 5.8 (fig. 1), 7, (fig. 3), 8 (fig. 5), 10 (fig. 6, 9, 10, 11), 14 (fig. 1), 16 (fig 3), 17 (fig. 2, 14), 22, (fig, 17c), 23 (fig, 18). Corrected

drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

20. Figures 1, 2, 3, 16, and 17 contain partial views.

21. The different views must be numbered in consecutive Arabic numerals, starting with 1, independent of the numbering of the sheets and, if possible, in the order in which they appear on the drawing sheets. Partial views intended to form one complete view, on one or several sheets, must be identified by the same number followed by a CAPITAL letter (see applicant's figure 17). View numbers must be preceded by the abbreviation "FIG." Where only a single view is used in an application to illustrate the claimed invention, it must not be numbered and the abbreviation "FIG." must not appear (MPEP § 608.02 V.(u)).

22. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "15" has been used to designate both an arrow in figure 2 and grooves in at least figures 19 and 22. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the

application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

23. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

24. The disclosure is objected to because of the following informalities:

25. Figures 2, 3, 4 – 13, and 15 contain numerous reference characters now of which are mentioned in the specification.

26. The specification refers to figure 10 in both paragraphs [00068] and [00072]. It is believed that paragraph [00072] should refer to figure 14 which is not mentioned in the detailed description.

27. Reference character "7" has been used to designate both an unknown feature in figure 3 but is referred to as a flange in paragraphs [00080] and [00081].

28. Paragraph [00058], lines 8 and 9, recites "the portion capsule has only one identifier that allows to determinate whether the respective portion capsule goes with . . ." It would appear the term "determinate" should read 'determine'.

29. Paragraph [00075], line 5, recites "Figures 17a – 17c demonstrate how the portion capsule 1 can be hold by a part of the brewing chamber . . ." It would appear the term "hold" should read 'held'.

30. These are but some of the informalities and applicant is requested to carefully review the specification and make appropriate corrections as required.

31. The specification is objected to as failing to provide proper antecedent basis for at least the following claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of at least the following is required:

32. There is no antecedent basis in the specification for the following limitations recited in claims 1, 15, 16, 17 and 20:

loading a first portion capsule into an apparatus;

piercing the foil lid;

reading the barcode with a barcode reader;

determining whether the read barcode agrees with a stored reference;

activating the pump to push heated water into the portion capsule only upon a determination that the read barcode agrees with the stored reference

sealing the top side of the flange and/or the first foil lid against a seal of the apparatus;

introducing the heated water into the portion capsule along a central axis of the portion capsule;

33. Paragraph [00060] and figure 2 clearly disclose the position/placement of the barcode on the portion capsule which, due to applicant's disclosure is taken to be the position of the barcode as recited in the claims. If applicant deigns to say this disclosure does not represent the claimed position/placement of the barcode on the portion capsule then there is no antecedent basis for "a barcode located on the bottom side" in the specification.

34. 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, requires the specification to be written in "full, clear, concise, and exact terms." The specification is contains terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112. Examples of some unclear, inexact or verbose terms used in the specification are: "If the media chute's ring gear only revolves for a corresponding ring gear of the portion capsule and its revolving allows the portion capsule to pass, only portion capsules equipped with the proper ring gear will pass the insertion lock." in paragraph [00010]. "Particularly the pump, which is for example responsible for pushing hot water through the brewing chamber, will not start operating, if the identifier does not agree with the reference." in

paragraph [00058]. "The sealing 21 makes sure that the water coming from a water inlet 28 flows rather through the portion capsule by passing a opening, which has been made by a mandrel 29, than around it." in paragraph [00074].

Claim Rejections - 35 USC § 112

35. The following is a quotation of 35 U.S.C. 112(b):

> (b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

36. Claim 17 is rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

37. Regarding claim 17, there is no antecedent basis for the recitation "the first portion capsule".

Claim Rejections - 35 USC § 103

38. The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

39. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under pre-AIA 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

40. Claims 1 and 12 – 26 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Krüger US 2013/0129872.

41. Regarding claims 1, 12, and 20, Krüger discloses a portion capsule and an apparatus for making a coffee beverage which could obviously be used in a method for producing a beverage which method would comprise providing an apparatus (coffee machine) including a <u>barcode</u> reader (detector 13) and a pump that is capable of suppling heated (hot) water (paragraph [00061] and [00063]). A portion capsule would have to be loaded (inserted) into the apparatus, which portion capsule includes a foil lid (membrane, cover foil) sealed to a base element (2) having a cavity within which a beverage raw material (powdered coffee) would be provided (paragraph [00023]). The base element includes a circumferential flange (17) having a top side and a bottom side with a barcode (shown by the arrow 15) located on the bottom side (attached to the base element's edge region being averted from the membrane) (paragraph [00063] and fig. 2). In order for a beverage to be produced the foil lid would necessarily have to be pierced (by a mandrel 29) or the heated water could not possibly enter the portion capsule. Krüger further discloses that the pump will not activate to push heated water into the portion capsule (will not start operating) if the read barcode does not agree with

the stored reference, which is to say the pump will only be activated to push heated water into the portion capsule only upon a determination that the read barcode agrees with the stored reference (paragraph [00061]).

42. Regarding claims 13 and 21, Krüger discloses there would be a pair of holding arms to hold the portion capsule (paragraph [00078]).

43. Regarding claims 14, 22, and 24, Krüger discloses the portion capsule could drop into a dropping box (paragraph [00078]).

44. Regarding claims 15 and 26, Krüger discloses that a seal (sealing 21) of the apparatus could be sealed against the foil lid (paragraph [00077]).

45. Regarding claims 16 and 17, Krüger discloses heated water could be introduced into the portion capsule along a central axis of the portion capsule (water inlet 28) and that the foil lid would be pierced in a region that is offset from a central axis of the portion capsule (paragraph [00077] and fig. 16).

46. Regarding claim 18, Krüger discloses a production process of the beverage would be controlled according to a read barcode (paragraph [00061]).

47. Regarding claims 19, 23 and 25, since Krüger discloses the portion capsule as claimed in claims 1 and 20 and that heated water would be introduced into the foil lid of the portion capsule in a region that is offset from a central axis of said portion capsule it would be expected that a turbulent flow of the heated water would be induced through the portion capsule.

48. Claims 1, 12, 13, 15, and 17 – 26 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Halliday et al. US 2004/0188459 or Halliday in view of Jarisch et al. WO 2011/141532.

49. Regarding claims 1, 12, and 20, as set forth above the current application is not entitled to the benefit of the claimed priority dates, foreign or domestic and thus the priority date is the filing date of the application, which is 28 April 2020. In the event that applicant would be entitled to the benefit of the claimed priority dates then Halliday discloses a method of using a portion capsule and an apparatus for producing a beverage which method comprises providing an apparatus (beverage preparation machine 201) including a barcode reader (252) (paragraph [0159]) and which apparatus includes a pump (230) that is capable of suppling heated water (paragraph [0128]). A portion capsule would be loaded into the apparatus (paragraph [0157]), which portion capsule includes a foil lid (laminate 5) (paragraph [0076]) sealed to a base element (2) (paragraph [0082]) having a cavity within which a beverage raw material (ground coffee) would be provided (paragraph [0086]). The base element includes a circumferential flange (35) (paragraph [0087]) having a top side and a bottom side and a barcode is present on the capsule bottom in the area of the flange (paragraph [0159] and fig. 45). Halliday further discloses the foil lid would be pierced (paragraph [0157]), the barcode (320) would be read with a barcode reader (252) (paragraph [0159]), which would determine whether the read barcode agrees with a stored reference (paragraph [0143]). It is obvious that if the read bar code would agree with a stored reference the pump would be activated to push heated water into the portion capsule, which is to say if the read barcode did not agree with said stored reference the apparatus would not know what parameters would be required to produce a beverage and obviously would not be activated, which is to say the pump would not be activated to push heated water into the portion capsule should that be the case.

50. With respect to the claimed placement of a barcode as being located on the "bottom" side of a circumferential flange, it is The Office's position that applicant's figure 2 clearly shows the position of the barcode reader (13) when it would read the barcode and where the barcode would be located on the circumferential flange and figure 14 further shows the location of the barcode in a view from the membrane side which is also as also shown in figure 2. Therefore it is seen that these views show what would be the bottom side of the flange and the location of the barcode thereon as determined from applicant's figures and specification.

51. Should applicant deign to disagree with The Office's position Jarisch discloses a method for a beverage by reading a code (70) located on the flange bottom ('937, fig. 4, reference signs 62 and 72) and the capsule is sealed by a foil lid ('937, paragraph [0036]). Jarisch further discloses that it was well established to place barcodes (small rectangles 65) on the bottom side of the flange of a portion capsule (fig. 2 and 3), that the location of the barcode would be relevant to the location of the barcode reader and the arrangement of said barcode on the portion capsule provides an improved way to identify the capsule within an apparatus (beverage production machine) to ensure reliable and convenient retrieval of information so as to adjust the working parameters of the apparatus (paragraph [0014]). To therefore modify the portion capsule of Halliday and place the barcode on the flange as taught by Jarisch would have been an obvious matter of choice and/or design to the ordinarily skilled artisan.

52. Regarding claims 13 and 21, Halliday discloses the portion capsule would be held with a pair of holding arms (clamping levers U-shaped arms 281/282) (paragraph [0147] – [0148]) and fig. 39 – 42).

53. Regarding claims 15 and 26, Halliday discloses a seal of the apparatus would be sealed against the foil lid (paragraph [0153]).

54. Regarding claim 17, Halliday discloses the foil lid would be pierced in a region (inlet 121) that is offset from a central axis of the portion capsule (paragraph [0089] and fig. 2).

55. Regarding claim 18, Halliday discloses a production process of the beverage would be controlled according to the red barcode (paragraph [0143]).

56. Regarding claims 19, 23, and 25, Halliday discloses a turbulent flow of heated water would be induced through the portion capsule (paragraph [0086]).

57. Claims 14, 22, and 24 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Halliday et al. US 2004/0188459 or Halliday in view of Jarisch et al. WO 2011/141532 in view of Saxton et al. US 2010/0147872.

58. Claims 14, 22, and 24 differ from Halliday or Halliday in view of Jarisch in the portion capsule being dropped into a drop box. Saxton discloses a method of using a portion capsule and an apparatus for making a coffee beverage which method comprises providing an apparatus (beverage preparation machine) including a barcode reader (120) (paragraph [0112]) and which apparatus includes a pump (paragraph [0078]) that is capable of suppling heated water (paragraph [0076]). A portion capsule would be loaded into the apparatus (paragraph [0108]), which portion capsule includes a foil lid (flexible lower membrane 77) (paragraph [0108]) sealed to a base element (cartridge 70) (paragraph [0108]) having a cavity within which a beverage raw material (coffee) would be provided (paragraph [0003]). The base element includes a circumferential flange (78) (paragraph [0108]) having a top side and a bottom side and a

barcode is present on the capsule bottom in the area of the flange (paragraph [0159] and fig. 45). Halliday further discloses the foil lid would be pierced (paragraph [0157]), the barcode would be read with a barcode reader (120), which would determine whether the read barcode agrees with a stored reference (paragraph [0112]). It is obvious that if the read bar code would agree with a stored reference the pump would be activated to push heated water into the portion capsule, which is to say if the read barcode did not agree with said stored reference the apparatus would not know what parameters would be required to produce a beverage and obviously would not be activated, which is to say the pump would not be activated to push heated water into the portion capsule.

59. Saxton further discloses the portion capsule would be dropped (ejection) (paragraph [0004] – [0009]) which would obviously result in the portion capsule being dropped into a dropping box. Saxton is dropping the portion capsule into a dropping box for the convenience of the end user so they can avoid having to handle a used heated portion capsule which is applicant's reason for doing so as well. To therefore modify Halliday or Halliday in view of Jarisch and drop the portion capsule into a dropping box as taught by Saxton would have been an obvious matter of choice and/or design.

60. Claims 16 and 17 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Halliday et al. US 2004/0188459 or Halliday in view of Jarisch et al. WO 2011/141532 in view of Denisart US 2007/0144355.

61. Regarding claims 16 and 17, claim 16 differs from Halliday or Halliday in view of Jarisch in heated water being introduced to the portion capsule along a central axis of said capsule and further, should applicant deign to say that claim 17 differs from

Halliday or Halliday in view of Jarisch piercing the foil lid in a region that is offset from a central axis, Denisart discloses a portion capsule capable of producing a beverage which capsule would have al lid (perforatable membrane) (paragraph [0029]) that would be used in an apparatus and into which heated water would be pressure-injected (paragraph [0074]), which is to say that said apparatus would have to include a pump. In order for a beverage to be produced the portion capsule would have to be loaded into said apparatus and the lid pierced. Further Denisart discloses that the heated water would be introduced along a central axis and the lid would be pierced in a region that is offset from a central axis of the portion capsule (fig. 2). Denisart is introducing water along a central axis and then piercing the lid in a region that is offset from said central axis of the portion capsule for the art recognized as well as applicant's intended function, which is to create a turbulence within the portion capsule to ensure a homogeneous mixing of the beverage raw material and the injected liquid (paragraph [0020]). To therefore modify Halliday or Halliday in view of Jarisch if required and introduce water along a central axis and pierce the lid in a region that is offset from the central axis as taught by Denisart would have been an obvious matter of choice and/or design for the ordinarily skilled artisan.

Conclusion

62. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM A SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 09:00-18:00.

63. Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to please telephone the Examiner.

64. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erik Kashnikow can be reached on (571) 270-3475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

65. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see https://ppair-my.uspto.gov/pair/PrivatePair. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C.S./
Chaim Smith
Examiner, Art Unit 1792
05 July 2020

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