

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Marc Krüger

Group Art Unit: 1792

Serial No.: 16/860,441

Examiner: Smith, Chaim A.

Filed: April 28, 2020

Confirmation Number: 1768

For: PORTION CAPSULE HAVING AN IDENTIFIER

Attorney Docket No.: 1859.029USC6 (KRU0022-WO-US-T7)

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE AND AMENDMENT

In response to the Office Action mailed July 13, 2020, please amend the above-identified application as follows and consider the following remarks.

Amendments to the Claims

1. (Currently Amended) A method of using a portion capsule for producing a beverage, the method comprising:

providing an apparatus including a barcode reader, the apparatus including a pump adapted to supply heated water;

~~loading~~ inserting the portion capsule into the apparatus, the portion capsule including a foil lid sealed to a base element having a cavity in which a beverage raw material is provided, the base element comprising a flange, the flange having a top side to which the foil lid is sealed and an opposing bottom side with a barcode located on the bottom side, the base element has a wall region with an electrically conductive section and radially spaced and vertically oriented grooves, the cavity has radially spaced and vertically oriented ribs, the portion capsule being free of a filter, the base element and/or the lid are made of metal;

piercing the foil lid;

reading the barcode with the barcode reader;

determining whether the read barcode agrees with a stored reference; and

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

- 2. (Cancelled)
- 3. (Cancelled)
- 4. (Cancelled)
- 5. (Cancelled)
- 6. (Cancelled)
- 7. (Cancelled)
- 8. (Cancelled)
- 9. (Cancelled)
- 10. (Cancelled)
- 11. (Cancelled)

12. (Currently Amended) The method according to claim 1, wherein the method comprises not activating the pump to push the heated water into the portion capsule upon a determination that the read barcode does not agree with the stored reference.

13. (Currently Amended) The method according to claim 1, wherein the method comprises ~~holding~~ engaging the portion capsule with a pair of holding arms, and
wherein the base element and/or the foil lid are made of aluminum.

14. (Currently Amended) The method according to claim 1, wherein the method comprises dropping the portion capsule into a dropping box,
wherein the base element comprises a bottom that opposes the flange, the bottom comprises an indentation.

15. (Currently Amended) The method according to claim 1, wherein the method comprises sealing a seal of the apparatus against the foil lid, and
wherein the grooves are free from extending all the way into a region of the base element that is immediately adjacent to the flange.

16. (Currently Amended) The method according to claim 1, wherein the method comprises introducing the heated water into the portion capsule along a central axis of the portion capsule, and
wherein the lid is crowned in a region of the central axis of the portion capsule relative to a region of the lid adjacent to the flange.

17. (Currently Amended) The method according to claim 1, wherein the method comprises piercing the foil lid in a region that is offset from a central axis of the ~~first~~ portion capsule, and wherein the lid is crowned in a region of the central axis of the portion capsule relative to a region of the lid adjacent to the flange.

18. (Currently Amended) The method according to claim 1, wherein the method comprises controlling a production process of the beverage according to the read barcode, and wherein the wall comprises an upper section and a lower section, the upper section is located adjacent to the flange, and the lower section is located in between the upper section and a bottom of the base element,

wherein the wall in the lower section has a greater slope than the wall in the upper section.

19. (Currently Amended) The method according to claim 1, wherein the method comprises inducing a turbulent flow of the heated water through the portion capsule, and wherein the base element comprises a bottom that opposes the flange, the bottom comprises an indentation.

20. (Currently Amended) A method of using a portion capsule for making a coffee beverage, the method comprising:

providing an apparatus including a barcode reader, the apparatus having a pump and being adapted to supply heated water;

~~inserting~~ ~~loading~~ the portion capsule into the apparatus, the portion capsule including a foil lid sealed to a base element having a cavity within which a powdered coffee material is located, the base element including a circumferential flange having a top side and a bottom side with a barcode located on the bottom side, the portion capsule being free of a filter and comprising a plurality of ribs that are radially spaced, vertically oriented and extend toward a central portion of the cavity, wherein an outer surface of the base element comprises radially spaced and vertically oriented grooves;

piercing the foil lid;

reading the barcode with the barcode reader; and

activating the pump to introduce the heated water into the portion capsule only upon a determination that the read barcode agrees with a stored reference, or not activating the pump upon a determination that the read barcode does not agree with the stored reference.

21. (Currently Amended) The method according to claim 20, wherein the method comprises ~~holding~~ ~~engaging~~ the portion capsule with a pair of holding arms, and wherein the base element comprises an electrically conductive section.

22. (Currently Amended) The method according to claim 21, wherein the method comprises dropping the portion capsule into a dropping box, and
wherein the grooves are free from extending all the way into a region of the base element that is immediately adjacent to the flange.

23. (Currently Amended) The method according to claim 22, wherein the method comprises

inducing turbulent flow of the heated water through the portion capsule, and

wherein the base element comprises a bottom that opposes the flange, the bottom comprises an indentation.

24. (Currently Amended) The method according to claim 20, wherein the method comprises dropping the portion capsule into a dropping box, wherein the base element and/or the lid are made of metal.

25. (Currently Amended) The method according to claim 20, wherein the method comprises inducing turbulent flow of the heated water through the portion capsule, wherein the base element and/or the lid are made of aluminum.

26. (Currently Amended) The method according to claim 20, wherein the method comprises sealing a seal of the apparatus against the foil lid, wherein the wall comprises an upper section and a lower section, the upper section is located adjacent to the flange, and the lower section is located between the upper section and a bottom of the base element, wherein the wall in the lower section has a greater slope than the wall in the upper section.

Amendments to the Drawings

Replacement Drawings are submitted. No new matter has been added. Applicant requests entry of the Replacement Drawings.

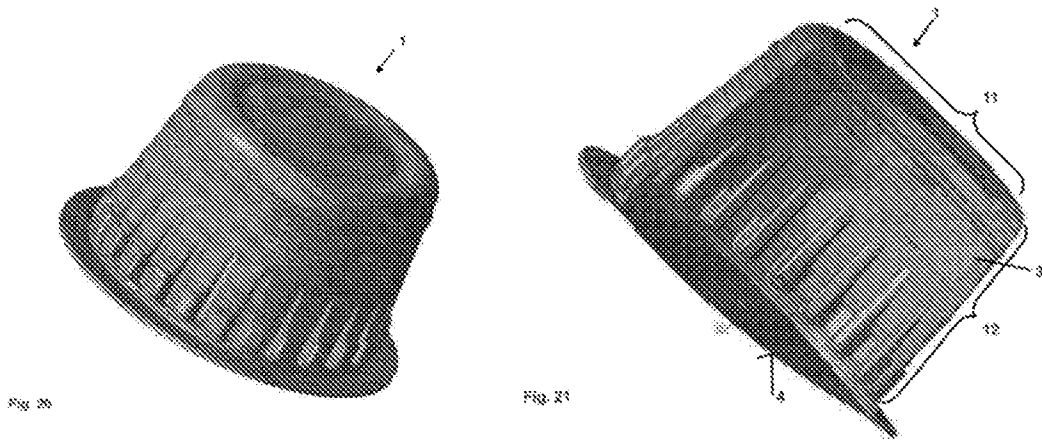
REMARKS

In the Office Action mailed July 13, 2020, the Examiner rejected claims 1 and 12-26.

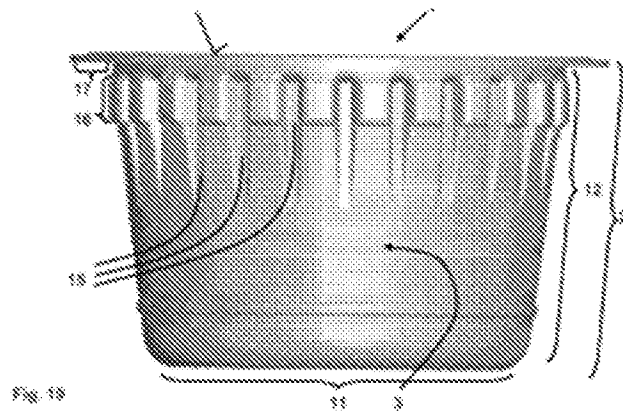
Claim Amendments

By way of the foregoing amendments and the markings to show changes Applicant has amended the claims. No new matter has been added.

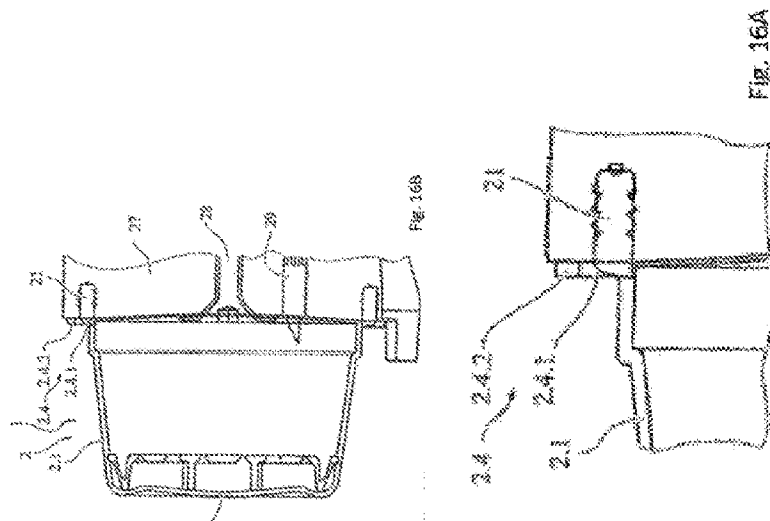
Amendments to the claims regarding the bottom of the base element having an indentation are supported throughout Applicant's originally-filed patent application, including, at the very least: Figures 20 and 21, reproduced immediately below



Amendments to the claims regarding the grooves being free from extending all the way into a region of the base element that is immediately adjacent to the flange are supported throughout Applicant's originally-filed patent application, including, at the very least: Figure 19, reproduced immediately below:



Amendments to the claims regarding the lid being crowned in a region of the central axis of the portion capsule relative to a region of the lid adjacent to the flange are supported throughout Applicant's originally-filed patent application, including, at the very least: Figure 19, reproduced immediately below:



These and the foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

The amendments are supported throughout Applicant's originally-filed patent and the priority applications. The amendment relating to the indentation at the bottom of base element is supported at least in Fig. 20.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicant from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled.

Priority

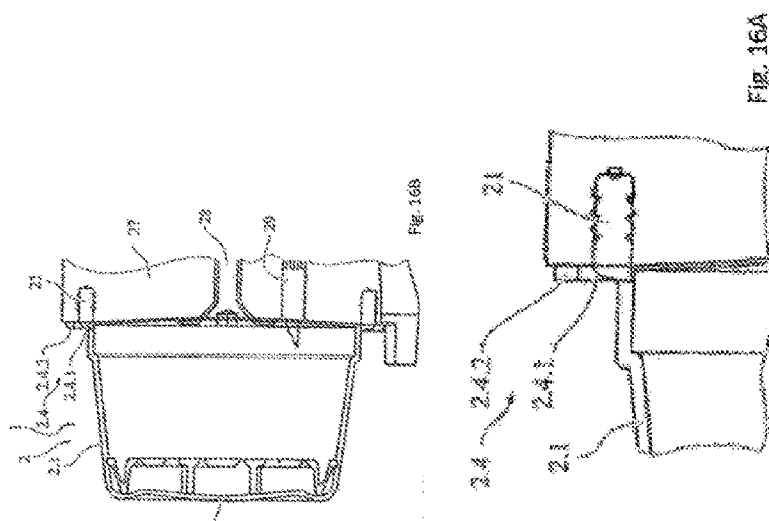
It is alleged on pages 2-3 of the Office Action that the priority applications fail to provide adequate support or enablement for one or more of the claims. This allegation is respectfully traversed. Applicant submits all claims and amendments are supported, as shown below.

It is alleged on page 3 of the Office Action that there is no disclosure of using a portion capsule for making a coffee beverage. Applicant respectfully disagrees, and kindly directs the Examiner's attention to at least the following passage from Applicant's priority application DE 10 2010 031 988.0 dated July 22, 2010: Page 6, lns. 6-7: "Figure 1 shows, in the right-hand illustration, a portion capsule 1,"; Page 6, lns. 14-19: "This coffee capsule is introduced into a brewing chamber 12 (illustrated 15 schematically here), in which a liquid, for example water, flows through it. The raw beverage material here undergoes extraction, or is dissolved, to give the desired beverage"; Page 6, lns. 25-26: "For example, using 25 an incorrect portion capsule..."; Page 6, lns. 25-26: "For example, using 25 an incorrect portion capsule may have"; Page 7, lns. 5-11: "Once the identifier has been sensed, it is compared 5 with a reference identifier and, for the case where these are identical, operation of the coffee machine is permitted. For the case where these identifiers do not coincide, in particular operation of the pump which forces, for example, hot water through the brewing 10 chamber is prevented"

It is alleged on page 3 of the Office Action that there is no disclosure of loading a portion capsule into the apparatus. Applicant respectfully disagrees, and kindly directs the Examiner's attention to at least the following passage from Applicant's priority application DE 10 2010 031 988.0 dated July 22, 2010: Page 10, lns. 6-7 "The identifier is read, for example during the insertion of the capsule." In the interest of expediting prosecution, the previously presented claim term "loading" is now replaced with "inserting", to be consistent with the text of the disclosure. Accordingly, Applicant submits the priority applications describe the claimed invention in

sufficient detail and with reasonable clarity that one skilled in the art can reasonably conclude that Applicant had possession of the claimed invention.

It is alleged on page 3 of the Office Action that there is no disclosure of sealing the top side of the flange and/or the foil lid against a seal of the apparatus. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least the following passage from Applicant's priority application DE 10 2010 044 251.8: Page 12, lns. 27-31: "a sealing surface 2.4.1 is provided in the peripheral region 2.4 . . . and interacts with sealing action with a seal 21, which is arranged on the brewing chamber 27"; Page 5, lns. 24-25: "the periphery can be used as a stop and/or sealing surface"; and Claim 17: "a sealing surface (2.4.1) is provided on the periphery (2.4)." Moreover, referring to Figs. 16A and 16B reproduced immediately below, the top side of the flange 17 or periphery/edge region 2.4 and/or the foil lid 4 is sealed against a seal 31 of the apparatus.



Accordingly, Applicant submits one having skill in the art will readily conclude from at least the aforementioned passage an understanding that at the time of application filing, Applicant had in its possession the claimed subject matter.

It is alleged on page 3 of the Office Action that there is no disclosure of activating a pump to push heated water into the portion capsule. Applicant respectfully disagrees and kindly directs

the Examiner's attention to at least the passage recited at Page 2, Ins. 19-22 in Applicant's priority application DE 10 2010 031 988.0 dated July 22, 2010: "the pressure pump therefor, which makes the water available, can preferably be operated only when the identifier determines coincides with the reference identifier"; page 7, Ins. 5-11, "Once the identifier has been sensed, it is compared with a reference identifier and, for the case where these are identical, operation of the coffee machine is permitted. For the case where these identifiers do not coincide, in particular operation of the pump which forces, for example, hot water through the brewing chamber is prevented." Accordingly, Applicant submits one having skill in the art will readily conclude from at least the aforementioned passage an understanding that at the time of application filing, Applicant had in its possession the claimed subject matter.

Accordingly, in view of at least the aforementioned remarks, Applicant submits this application is not a CIP as alleged on page 3 of the Office Action. Applicant respectfully requests the Examiner acknowledge Applicant's priority claim.

Drawing Objections

The drawings are objected to for the reasons alleged on pages 4-7 of the office action. Without conceding the validity of these rejections, Applicant includes herewith a Substitute Specification and Replacement Sheets that are believed to overcome and render these objections moot. Applicant respectfully requests the Examiner enter the Substitute Specification and the Replacement Sheets and withdrawal the drawing objections.

Specification Objections

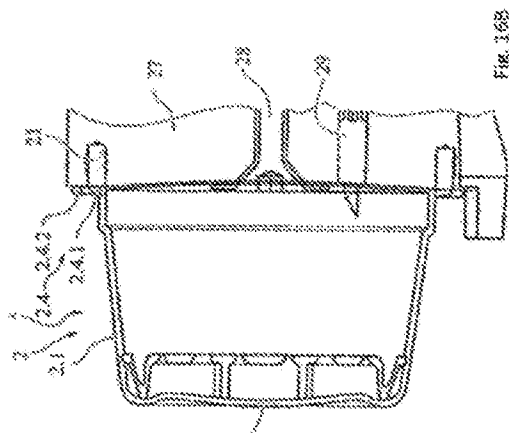
The specification is objected to for the reasons alleged on pages 8-10 of the office action. Without conceding the validity of these rejections, Applicant includes herewith a Substitute

Specification and Replacement Sheets that are believed to overcome and render these objections moot. Applicant respectfully requests the Examiner enter the Substitute Specification and the Replacement Sheets and withdrawal the specification objections.

The Specification is objected to for allegedly failing to provide antecedent basis for certain claimed features recited on pages 8-10 of the Office Action. These allegations are respectfully traversed.

It is alleged on page 8 of the Office Action that there is no antecedent basis in the specification for loading a portion capsule into the apparatus and reading the barcode with a barcode reader. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least at paragraph [00058] "This portion capsule can be inserted into a brewing chamber 12, with a liquid, in particular water, flowing through it" and "After the identifier has been read out the identifier is compared to a stored reference." Paragraph [00060] further provides antecedent basis for reading the barcode by a detector 13.

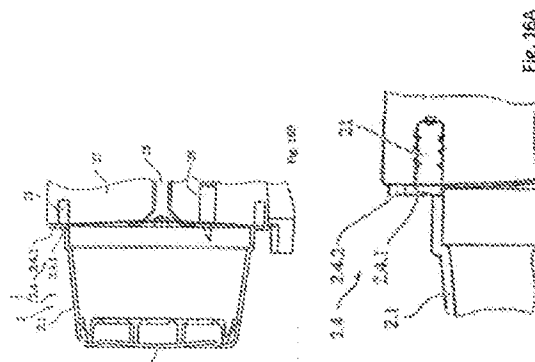
It is alleged on page 8 of the Office Action that there is no antecedent basis in the specification for piercing the foil lid with a mandrel of the apparatus. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least Fig. 16A, B and its corresponding description which describes a piercing spike 29 that forms an opening in the lid 4.



It is alleged on page 8 of the Office Action that there is no antecedent basis in the specification for determining whether the read barcode agrees with a stored reference and activating a pump to push heated water into the portion capsule only upon a determination that the read barcode agrees with the stored reference. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least the passages recited in paragraph [0007] "Preferably, the coffee machine, in particular the water-providing-pressure pump, will be activated if the detected identifier matches with the reference. Otherwise the coffee machine will not start operating" and paragraph [0062], which recites in relevant part "After the identifier has been read out the identifier is compared to a stored reference. If the identifier agrees with the reference, the coffee machine will start operating. 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."

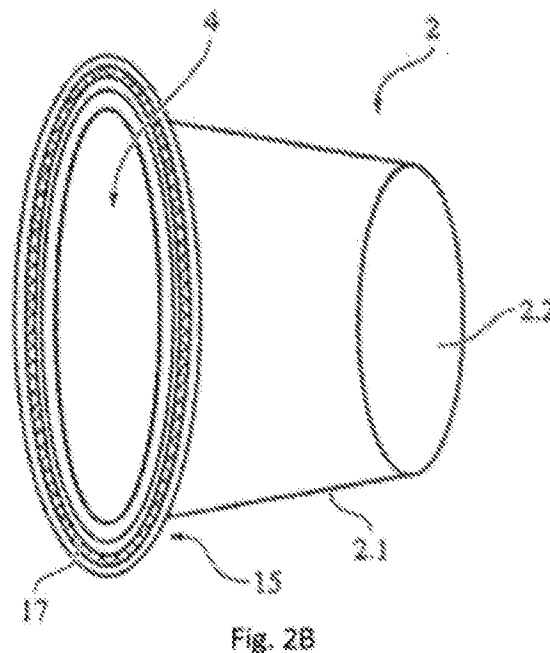
It is alleged on page 8 of the Office Action that there is no antecedent basis in the specification for sealing the top side of the flange and/or the foil lid against a seal of the apparatus. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least at paragraph [00074] and Figures 16A,B where it is disclosed that the edge region of the portion capsule has a sealing surface 2.4.1, which sealingly interacts with the seal 31 attached to the brewing chamber

27.



It is alleged on page 9 of the Office Action that there is no antecedent basis in the specification for introducing the heated water into the portion capsule along a central axis of the portion capsule. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least Figure 16A and its corresponding description, which discloses a water inlet adapted to supply water at reference numeral 28, which is arranged along a central axis of the portion capsule.

It is alleged on page 9 of the Office Action that there is no antecedent basis in the specification for a barcode located on the bottom side of the flange. Applicant respectfully disagrees and kindly directs the Examiner's attention to at least paragraph [0064], which recites in relevant part "As shown by the arrow 15 in FIG. 2B, the bar-code alternatively can be attached to the base element's edge region being averted from the membrane. The membrane is identified at reference numeral 4 in the below figure and is attached to the top side of the flange/edge region identified at 17. Applicant submits one having ordinary skill in the art can understand from the aforementioned description and the below Figure that the arrow 15 points to the barcode being on the bottom side of the flange



Claim Rejections – 35 USC 112

Claim 17 is objected to for a typographical informality discussed on page 10 of the Office Action. In the interest of expediting prosecution, Applicant has amended claim 17 in a manner believed to be sufficient to overcome and render this rejection moot. Applicant respectfully requests the amendment to claim 17 be entered and this rejection be withdrawn.

Claim Rejections – 35 USC 103

1. Claims 1 and 12-26 are rejected under 35 USC 103(a) as allegedly being unpatentable over “Kruger” (US 2013/0129872). This rejection is respectfully traversed.

In view of the remarks included in this Response that all amendments are supported in the priority applications, Applicant submits the rejection of the pending claims under 35 USC 103(a) as being unpatentable over “Kruger” (US 2013/0129872) is not proper. Applicant respectfully requests the Examiner withdrawal this rejection. Should the Examiner have any additional questions regarding support for the claim amendments, the Examiner is kindly requested to contact the undersigned via telephone to expedite examination.

2. Claims 1, 12, 13, 15, and 17-26 are rejected under 35 USC 103(a) as allegedly being unpatentable over “Halliday” (US 2004/0188459) or “Halliday” in view of “Jarisch” (WO 2011/141532). These rejections are respectfully traversed.

Without conceding the validity of the rejection of these claims, or the appropriateness of the Examiner relying on a combination of Halliday and Jarisch to reject these claims, Applicant submits claims 1 and 20 are allowable for at least their inclusion of the limitation relating to the barcode located on the bottom side of the flange. Applicant has also included other claim

limitations in the interest of expediting prosecution that are believed to further differentiate from the references relied upon by the Examiner in this rejection. Accordingly, Applicant respectfully requests the Examiner withdrawal the rejection of claims 1 and 20 and the rejection of the corresponding depending claims and then allow all pending claims. Should the Examiner have any additional questions regarding this rejection or any of the claim amendments submitted herewith, the Examiner is kindly requested to contact the undersigned via telephone to expedite examination.

3. Claims 14, 22, and 24 are rejected under 35 USC 103(a) as allegedly being unpatentable over “Halliday” (US 2004/0188459) or “Halliday” in view of “Jarisch” (WO 2011/141532) in view of “Saxton” (US 2010/0147872). These rejections are respectfully traversed.

Without conceding the validity of the rejection of these claims, or the appropriateness of the Examiner relying on a combination of Halliday, Jarisch, and Saxton to reject these claims, Applicant submits claims 14, 22, and 24 are allowable for at least their dependent on the respective independent claim. Applicant has also included other claim limitations in the interest of expediting prosecution that are believed to further differentiate from the references relied upon by the Examiner in this rejection. Accordingly, Applicant respectfully requests the Examiner withdrawal the rejection of claims 14, 22, and 24 and allow these claims.

4. Claims 16 and 17 are rejected under 35 USC 103(a) as allegedly being unpatentable over “Halliday” (US 2004/0188459) or “Halliday” in view of “Jarisch” (WO 2011/141532) in view of “Denisart” (US 2007/0144355). These rejections are respectfully traversed.

Without conceding the validity of the rejection of these claims, or the appropriateness of the Examiner relying on a combination of Halliday, Jarisch, and Denisart to reject these claims, Applicant submits claims 16 and 17 are allowable for at least their dependent on claim 1. Applicant has also included other claim limitations in the interest of expediting prosecution that are believed to further differentiate from the references relied upon by the Examiner in this rejection. Accordingly, Applicant respectfully requests the Examiner withdrawal the rejection of claims 16 and 17 and allow these claims.

CONCLUSIONS

In view of Applicant's amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicant submits that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any questions or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or has not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Date: October 13, 2020

/Paul J. Palinski/
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