

Interview Summary	Application No. 10/458,078	Applicant(s) ROLF, DAVID	
	Examiner Isis Ghali	Art Unit 1615	

All participants (applicant, applicant's representative, PTO personnel):

(1) Isis Ghali. (3) _____.

(2) Mr. Gary Speier. (4) _____.

Date of Interview: 24 May 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____.

Claim(s) discussed: _____.

Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Attorney indicated that no repose to the office action mailed 11/09/2005 has been filed.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Isis Ghali
Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/458,078	06/10/2003	David Rolf	240.079US1	9269
21186	7590	11/09/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH 1600 TCF TOWER 121 SOUTH EIGHT STREET MINNEAPOLIS, MN 55402			GHALI, ISIS A D	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/458,078

Applicant(s)

ROLF, DAVID

Examiner

Isis Ghali

Art Unit

1615

-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final:
- 3) ☐ 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

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-87 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ 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).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

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).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ 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) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) ☐ Other: ____. |

DETAILED ACTION

Claims 1-87 are pending and included in the prosecution.

Specification

1. The use of the trademark "Vilmed" and "Q-15" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

Art Unit: 1615

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-87 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 21-30 of U.S. Patent No. 6,090,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are directed to method for treating (or preventing) respiratory infection using patch comprising backing layer and formulation comprising essential oils positioned in or on the backing layer. The claims of the issued patent are directed to method for relieving cough or bronchial irritation using composition comprising essential oils on a foraminous carrier. It is anticipatory type double patenting rejection since the patented claims anticipate the present claims.

5. Claims 1-87 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/300,559. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are directed to method for treating (or preventing) respiratory infection using patch comprising backing layer and formulation comprising essential oils positioned in or on the backing layer. The claims of the copending Application 10/300,559 are directed to patch

comprising essential oils positioned on or in a backing layer and used to treat bronchitis and asthma. Therefore, the present claims and the claims of the copending applications are directed to the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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

7. Claims 1-81, 84, 85 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The factors to be considered in determining whether a disclosure meets the enablement requirement of 35 U.S.C. 112, first paragraph, have been described in *In re Wands*, 8 USPQ2d 1400 (Fed. Cir. 1988). Among these factors are: the nature of the invention; the breadth of the claims; the state of the prior art; the relative skill of those in the art; the amount of direction or guidance presented; the predictability or unpredictability of the art; the presence or absence of working examples; and the quantity of experimentation necessary. When the above factors are weighed, it is the

examiner's position that one skilled in the art could not practice the invention without undue experimentation.

The nature of the invention: The nature of the invention is method for preventing respiratory infection using patch comprising essential oils. The specification does not enable the prevention of respiratory infection in susceptible patients.

The breadth of the claims: The claims are broad. The claims encompass prevention of respiratory infection in susceptible patients at risk, and the burden of enabling prevention of respiratory infection would be greater than that of enabling a treatment due to the need of additional testing and screening to those humans susceptible to such infection. The prevention of respiratory infection may or may not be addressed by the administration of the instant patch. Further, the claims encompass a wide class of essential oils and many respiratory infections.

The state of the prior art: The state of the art does not recognize the administration of essential oils to prevent respiratory infection as required in the instant claims. The state of the art recognizes the treatment of respiratory infection, but not its cure.

The relative skill of those in the art: The relative skill of those in the art is high.

The amount of direction or guidance presented: The guidance given by the specification on how to prevent the respiratory infection is absent. Guidance for treatment of respiratory infection is provided, however, no evidence that respiratory infection is prevented is provided. It is not obvious from the disclosure of treatment of respiratory infection using essential oils if the prevention of respiratory infection will be

achieved. A disclosure should contain representative examples which provide reasonable assurance to one skilled in the art that the compounds fall within the scope of a claim will possess the alleged activity. See *In re Riat et al.* (CCPA 1964) 327 F2d 685, 140 USPQ 471; *In re Barr et al.* (CCPA 1971) 444 F 2d 349, 151 USPQ 724.

The predictability or unpredictability of the art: The lack of significant guidance from the specification or prior art with regard to completely preventing respiratory infection by using the instant patch makes practicing the claimed invention unpredictable in terms of the prevention of the infection.

The presence or absence of working examples: No working examples to show preventing respiratory. Therefore, the specification has enabled treating respiratory infection, but not its prevention or cure.

The quantity of experimentation necessary: Therefore, the practitioner would turn to trial and error experimentation to practice the instant method for treating respiratory infection using the claimed patch without guidance from the specification or the prior art. Therefore, undue experimentation becomes the burden of the practitioner and as set forth the burden of enabling prevention of respiratory infection would be greater than that of enabling a treatment due to the need of additional testing and screening to those humans susceptible to such infection.

For examination purposes, the term “preventing” will be interpreted as “treating” respiratory infection.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 1615

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.

9. Claims 7, 46, 47, 67-69 and 78 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding to claim 7, the claim is confusing as it contains angina and mumps listed within the respiratory infections while these disorders are not respiratory infections. Angina is a thrombovascular disease caused by coronary arteries spasm or occlusion and not an infectious conditions. Mumps is infection of the salivary glands which is part of the digestive tract.

Claims 46, 47, 67-69 contain the trademark/trade name Vilmed and quat-15. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe fluorocarbon and preservative, accordingly, the identification/description is indefinite.

Regarding claim 78, the claim recite that "the source of essential oil is located within 6 inch of the mammal" and it is not clear what spot the patch will be 6 inch from?

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-8, 20-22, 32-37, 41-43, 71, 78-83 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 86/02270 ('270).

The present claim 1 recites treating respiratory infection using patch comprising an essential oil.

WO '270 discloses dressing comprising formulation for relieving cough comprising eucalyptus oil impregnated into a carrier of gauze, cotton or cloth and covered by a removable protective layer (page 4, lines 7-16; page 5, lines 17-20, 24). The dressing further comprising acrylate adhesive (page 5, lines 14-16). The essential oil is present in an amount ranging from 5-100% (page 6, lines 4-7). The formulation exerts its effect by the route of evaporation inhalation (page 3, lines 17-18). The formulation is effective against infection, bronchitis, and pneumonia (page 10, lines 4, 20, 25-27; page 11, lines 9-18).

12. Claims 1-15, 17-25, 28-37, 41-43, 59, 78-83 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,090,403 ('403).

The present claim 1 recites treating respiratory infection using patch comprising an essential oil.

US '403 discloses method to treat cold and cough using patch comprising essential oil the wherein the patch to be applied to the face, neck or chest to allow evaporated essential oils to be available to the natural inhalation through the nose or mouth (abstract). The patch comprising formulation comprising the essential oils and a carrier (col.2, lines 12-36). Essential oils included eucalyptus and peppermint (col.2, lines 61-65). The formulation further comprises 0.5-30% acrylic adhesive, 5-50% karaya gum, 44% glycerin (solvent), and water (col.3, lines 20-25; col.7, lines 63-67; col.8, lines 1-4, 15-20, 32-40). The carrier layer that can be porous to allow escape of the moisture or non-porous (col.2, lines 50-60). The carrier layer is typically a flexible sheet of open cell polyurethane foam, polyethylene, nonwoven fabric or cloth (col.4, lines 61-65).

13. Claims 1-9, 11-16, 19-22, 32-43, 52, 53, 61, 65, 71, 78-83 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,244,265 ('265).

The present claim 1 recites treating respiratory infection using patch comprising an essential oil.

US '265 discloses nasal strip or patch to treat cold and congestion comprising flexible backing and adhesive formulation comprising aromatic medication that can be

Art Unit: 1615

consumed by inhalation through the nose (abstract; col.4, lines 24-32; col.5, lines 44-47; col.16, lines 49-60). The adhesive formulation comprises acrylate or acrylic adhesive (col.7, lines 15-30). The formulation further comprising fragrance such as lemon fragrance, antiviral agents such as chloride containing agents, antimicrobial, vitamin E (col.5, lines 52-54; col.10, lines 15-17; col.11, lines 38-63, col.12, lines 1-3). Preferred aromatic medication is eucalyptus oil, peppermint oil and menthol (col.11, lines 19-25). The backing layer is porous permits the passage of air and moisture made of melt blown fibers of polyethylene or woven or nonwoven material and may contain fibers or material that improve resiliency (sizing agent) (col.7, lines 1-13, 58-67). The patch further comprising release liner (col.9, lines 13-15).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 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 of this title, 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 negated by the manner in which the invention was made.

15. Claims 9-19, 23-31, 38-40, 44-70, 72-77, 84-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '270 in view of US 5,536,263 ('263).

The teachings of WO '270 are discussed above. However, WO '270 does not teach material of the backing, the amount of the adhesive, the solvent and its amount,

the karaya gum and its amount, the fragrance, the sizing agents, the skin protectant, the polyhydric alcohol, the additional antimicrobial agent, and the kit comprising mask.

The claimed amounts of different ingredients do not impart patentability to the claims, absent evidence to the contrary.

All the additional ingredients are well known in the art and it is within the skill in the art to use them in a conventional patch. The mask is known to deliver respiratory treatment.

US '263 teaches patch comprising porous flexible backing and formulation applied to the backing that solidify on the backing and permits sustained release comprising 3.3% eucalyptus oil, acrylic adhesive, solvent such as propylene glycol or glycerin, more than 20% karaya gum, and 0.2% quaternium-15 (abstract; col.2, lines 2-9, 29-31; col.5, lines 26-28; col.6, lines 35-37; col.8, line 50-col.10, line 32). The backing comprising water-insoluble material and sizing agent, and is made of polyester fibers, cotton fibers, or cellulose fibers so it provides the required strength and integrity to the patch and conforms to the body contours therefore better tolerated by patients and more unobtrusive and allow moisture from the skin to evaporate to the atmosphere (col.1, lines 60-65; col.3, lines 1-29; col.5, lines 65-67). The patch further comprises a release liner (col.4, line 62).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to treat respiratory infection using patch comprising backing and formulation comprising essential oils as disclosed by WO '270 and add quat-15 and polyethylene glycol as disclosed by US '263 motivated by the teaching of US '263 that

Art Unit: 1615

composition comprising these ingredient provides sustained release of the active agent, and further replace the backing with a porous backing of fibers comprising sizing agent as disclosed by US '263, motivated by the teaching of US '263 that this kind of backing material provides the required strength and integrity to the patch and conforms to the body contours therefore better tolerated by the patient and more unobtrusive, with reasonable expectation of having patch comprising porous backing made of fibers of polyester and formulation comprising essential oils and quart-15 wherein the patch provides sustained release of the essential oils and has the required strength and integrity to conforms to the body contours wherein the patch is better tolerated by the patient and more unobtrusive.

16. Claims 16, 26, 27, 38-40, 44-58, 60-77, 84-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '403 in view of US '263.

The teachings of both references are discussed above. However, US '403 does not teach the backing made of fibers, the solvent and its amount, the fragrance, the specific sizing agents, the skin protectant, the polyhydric alcohol, the additional antimicrobial agent, and the kit comprising mask.

The claimed amounts of different ingredients do not impart patentability to the claims, absent evidence to the contrary.

All the additional ingredients are well known in the art and it is within the skill in the art to use them in a conventional patch. The mask is known to deliver respiratory treatment.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to treat respiratory infection using patch comprising backing and formulation comprising essential oils as disclosed by US '403 and add quat-15 and polyethylene glycol as disclosed by US '263 motivated by the teaching of US '263 that composition comprising these ingredient provides sustained release of the active agent, and further replace the backing with a porous backing of fibers comprising sizing agent as disclosed by US '263, motivated by the teaching of US '263 that this kind of backing material provides the required strength and integrity to the patch and conforms to the body contours therefore better tolerated by the patient and more unobtrusive, with reasonable expectation of having patch comprising porous backing made of fibers of polyester and formulation comprising essential oils and quart-15 wherein the patch provides sustained release of the essential oils and has the required strength and integrity to conforms to the body contours wherein the patch is better tolerated by the patient and more unobtrusive.

17. Claims 10, 17, 18, 23-31, 44-51, 54-60, 62-64, 66-77, 84-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '265 in view of US '263.

The teachings of both references are discussed above. However, US '265 does not teach the non-porous backing or the open cell foam backing, the amount of the adhesive, the solvent and its amount, the specific sizing agents, the polyhydric alcohol, the specific additional antimicrobial agent, and the kit comprising mask.

The claimed amounts of different ingredients do not impart patentability to the claims, absent evidence to the contrary.

All the additional ingredients are well known in the art and it is within the skill in the art to use them in a conventional patch. The mask is known to deliver respiratory treatment.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to treat respiratory infection using patch comprising backing and formulation comprising essential oils as disclosed by US '265 and add quat-15 and polyethylene glycol as disclosed by US '263 motivated by the teaching of US '263 that composition comprising these ingredient provides sustained release of the active agent, and further replace the backing with a porous backing of fibers comprising sizing agent as disclosed by US '263, motivated by the teaching of US '263 that this kind of backing material provides the required strength and integrity to the patch and conforms to the body contours therefore better tolerated by the patient and more unobtrusive, with reasonable expectation of having patch comprising porous backing made of fibers of polyester and formulation comprising essential oils and quart-15 wherein the patch provides sustained release of the essential oils and has the required strength and integrity to conforms to the body contours wherein the patch is better tolerated by the patient and more unobtrusive.

Art Unit: 1615

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (571) 272-0595.

The examiner can normally be reached on Monday-Thursday, 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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 <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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