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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
17/961,089	10/06/2022	David Arthur STURGIS	15150CC	6536
27752	7590	09/11/2024	EXAMINER	
THE PROCTER & GAMBLE COMPANY			MERCIER, MELISSA S	
GLOBAL IP SERVICES			ART UNIT	
CENTRAL BUILDING, C9			PAPER NUMBER	
ONE PROCTER AND GAMBLE PLAZA			1615	
CINCINNATI, OH 45202			NOTIFICATION DATE	
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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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Office Action Summary

Application No.

17/961,089

Applicant(s)

STURGIS et al.

Examiner

MELISSA S MERCIER

Art Unit

1615

AIA (FITF) Status

Yes

-- 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 6-20-2024 (RCE).

☐ 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) 1,3-6,9-17 and 19-20 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) 1,3-6,9-17 and 19-20 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 ____ 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)

3) ☐ Interview Summary (PTO-413)

Paper No(s)/Mail Date ____.

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)

4) ☐ Other: ____.

Paper No(s)/Mail Date ____.

DETAILED ACTION

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 20, 2024 has been entered.

Summary

Receipt of Applicant's remarks and amended claims filed on June 20, 2024 is acknowledged.

Claims 1, 3-6, 9-17, and 19-20 are pending in this application.

Claims 1 and 11 have been amended.

Claims 2, 7-8, and 18 have been cancelled.

Maintained Objections/Rejections

Claim Rejections - 35 USC § 103

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

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries for establishing a background for determining obviousness under 35 U.S.C. 103 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.

Claims 1, 3-4, 6, 9-14, 16-17 and 19-20 are rejected under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425) in view of Park et al. (EP 0 471 392 A2).

Lesniak discloses a non-greasy personal care composition.

The anhydrous composition comprises:

20 weight % zinc oxide; and

53 weight % caprylic/capric triglyceride (paragraph 0039).

It is noted that zinc oxide, an antimicrobial agent having deodorant properties.

The composition is in stick form (paragraph 0040).

The composition is not disclosed to contain an aluminum salt.

The composition comprises natural fragrances, including lavender oil, apricot oil, bay oil, for example (paragraph 0088). The fragrances are, therefore, not synthetic.

Regarding claims 4 and 14, 15 weight % beeswax is disclosed (paragraph 0039). It is noted that beeswax has a melting point of 62-65 ° Celsius. According to the instant

specification on pages 19-20 discloses the structurants provide suspending, gelling, viscosifying, solidifying, and/or thickening properties. Beeswax is disclosed as an example. Additional waxes include candelilla wax, bayberry wax, castor oil, sunflower oil, carnauba wax, rice bran wax, and combinations thereof (paragraph 0007-0008).

Regarding claims 6 and 16, the composition is not disclosed to contain baking soda.

Regarding claims 9 and 18-19, according to the specification 18-19, a deodorant stick having at least 25% of a liquid triglyceride and structurants having a melting point greater than about 50 °Celsius can result in a deodorant stick with a hardness from about 70 mm * 10 to about 140 mm * 10. Since Lesniak's composition anticipates the cited components, it would also necessarily possess the claimed hardness as recited in the instant claims.

Regarding claims 10 and 20, as noted above, natural fragrances including lavender oil, apricot oil, bay oil, for example, as disclosed for inclusion (paragraph 0088).

Applicant's attention is directed to MPEP 2112.01(I) which discloses where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

Lesniak does not disclose the use of primary antimicrobials selected from the group consisting of beryllium carbonate, magnesium carbonate, calcium carbonate, magnesium hydroxide, magnesium carbonate hydroxide, magnesium hydroxide and

magnesium carbonate hydroxide, partially carbonated magnesium hydroxide, and piroctone olamine.

Park discloses a propellant free deodorant composition suitable for topical application to human skin which comprises an effective amount of a deodorant chosen from salts or oxides of zinc or magnesium, which are sparingly soluble in water (abstract).

The composition is in the form of a solid composition in stick form (page 2, lines 4-5).

Regarding claims 3 and 12-13, Examples of suitable salts or oxides include zinc oxide, magnesium carbonate, and magnesium hydroxide (page 2, lines 35-58).

It would have been obvious to one of ordinary skill in the art prior to the effective filing date of the invention to have substituted the zinc oxide disclosed by Lesniak for the magnesium hydroxide disclosed by Park since they are disclosed as functional equivalents.

Claims 1, 3-6, 9-17, and 19-20 are rejected under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425) in view of Park et al. (EP 0 471 392) and further in view of McCall (US 4,944,937).

The teachings of Lesniak and Park are discussed above.

Lesniak and Park do not disclose stearyl alcohol as a structurants.

McCall discloses a cosmetic stick comprises solidifying agents having wax-like characteristics. Examples includes beeswax and other wax like materials such as stearyl alcohol (column 4, line 41 through column 5, line 39).

It would have been obvious to one of ordinary skill in the art prior to the effective filing date of the invention to have substituted beeswax disclosed by Lesniak for the stearyl alcohol disclosed by McCall since they are disclosed as functional equivalents.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicant has addressed the 35 USC 103 rejections together, therefore, the Examiner will address the arguments together.

Applicant argues:

***Lesniak does not disclose deodorant compositions and focuses on sunscreens and diaper creams. While Lesniak mentions antiperspirants in passing, one of ordinary skill in the art would understand that to be considered an antiperspirant in the US, an aluminum salt must be used. The present invention explicitly states that it is free of an aluminum salt.**

The Examiner disagrees with Applicant's interpretation of the intended use of the composition recited in the instant claims. The claims recite a "deodorant stick", however, as noted in MPEP 2111.02 II which discloses If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Shoes by Firebug LLC v. Stride Rite Children's Grp., LLC*, 962 F.3d 1362, 2020 USPQ2d 10701 (Fed. Cir. 2020). The recitation of "deodorant" is regarded as future intended use in the claims.

Additionally, it is noted that the instant specification discloses antiperspirants and/or deodorants on page 18 discloses them to equivalents and page 22 discloses additional antiperspirants include zirconium salts.

Furthermore, the standards for obviousness are distinct from FDA regulatory requirements.

Newly Applied Objections

Claim Objections

Claim 1 and 11 are objected to because of the following informalities: the claims recite a. and b. to note different components. However, Applicant's attention is directed to MPEP 608.01(m) which discloses each claim begins with a capital letter and ends with a period. Periods may not be used elsewhere in the claims except for abbreviations. Appropriate correction is required.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached M-F 5:30 am to 4 pm EST.

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 use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A Wax can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit: <https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MELISSA S MERCIER/
Primary Examiner, Art Unit 1615

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 17/961,089
Inventor(s) : David Arthur STURGIS
Filed : October 6, 2022
Art Unit : 1615
Examiner : Melissa S. Mercier
Docket No. : 15150CC
Confirmation No. : 6536
Customer No. : 27752
Title : ANTIPERSPIRANT AND DEODORANT COMPOSITIONS

SUBMISSION OF AMENDMENT WITH FILING OF RCE

INTRODUCTORY REMARKS

The Director is hereby authorized to charge all required fees (including any extension of time fees) and to credit any overpayments in this and any concurrent or future correspondence to Deposit Account No. 16-2480.

In response to the Office Action of December 23, 2023, please amend the above-identified application as follows, consider the following remarks and reconsider the application.

Amendments to the Claims begin on page 2 of this paper.

Remarks begin on page 5 of this paper.

AMENDMENTS TO THE CLAIMS

The following listing of claims replaces all prior versions and listings of the claims in the application.

Listing of Claims

1. (Currently Amended) A deodorant stick comprising:
 - a. at least about 25% caprylic / capric triglyceride;
 - b. an ~~primary~~ antimicrobial selected from the group consisting of beryllium carbonate, magnesium carbonate, calcium carbonate, magnesium hydroxide, magnesium carbonate hydroxide, magnesium hydroxide and magnesium carbonate hydroxide, partially carbonated magnesium hydroxide, and piroctone olamine; andsaid deodorant stick being free of an aluminum salt;
wherein the deodorant stick is substantially free of a synthetic fragrance; and
wherein the deodorant stick is anhydrous and is substantially free of silicones;
wherein the deodorant stick has a hardness from about 70 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle.
2. (Cancelled)
3. (Original) The deodorant stick of claim 1, wherein the primary antimicrobial is magnesium hydroxide.
4. (Previously presented) The deodorant stick of claim 1, further comprising a structurant with a melting point of at least about 50° Celsius.
5. (Previously presented) The deodorant stick of claim 4, wherein the structurant is stearyl alcohol.

6. (Original) The deodorant stick of claim 1, wherein the deodorant stick is substantially free of baking soda.
7. (Cancelled)
8. (Canceled)
9. (Original) The deodorant stick of claim 1, wherein the deodorant stick has a hardness from about 80 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle.
10. (Original) The deodorant stick of claim 1, further comprising a natural fragrance.
11. (Currently Amended) A deodorant stick comprising:
 - a. at least about 25% of a triglyceride;
 - b. ~~an primary~~ antimicrobial selected from the group consisting of beryllium carbonate, magnesium carbonate, calcium carbonate, magnesium hydroxide, magnesium carbonate hydroxide, magnesium hydroxide and magnesium carbonate hydroxide, partially carbonated magnesium hydroxide, and piroctone olamine; and
said deodorant stick being free of an aluminum salt;
wherein the deodorant stick has a hardness from about 70 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle; and
wherein the deodorant stick is anhydrous and is substantially free of silicones.
12. (Original) The deodorant stick of claim 11, wherein the primary antimicrobial is selected from the group consisting of beryllium carbonate, magnesium carbonate, calcium carbonate, magnesium hydroxide, magnesium carbonate hydroxide, magnesium hydroxide and magnesium carbonate hydroxide, partially carbonated magnesium hydroxide, and piroctone olamine.

13. (Original) The deodorant stick of claim 11, wherein the primary antimicrobial is magnesium hydroxide.
14. (Previously presented) The deodorant stick of claim 11, further comprising a structurant with a melting point of at least about 50° Celsius.
15. (Previously presented) The deodorant stick of claim 14, wherein the structurant is stearyl alcohol.
16. (Original) The deodorant stick of claim 11, wherein the deodorant stick is substantially free of baking soda.
17. (Original) The deodorant stick of claim 11, wherein the deodorant stick is substantially free of a synthetic fragrance.
18. (Cancelled)
19. (Original) The deodorant stick of claim 11, wherein the deodorant stick has a hardness from about 80 mm*10 to about 140 mm*10, as measured by penetration with ASTM D-1321 needle.
20. (Original) The deodorant stick of claim 11, further comprising a natural fragrance.

REMARKS

Claim Status

Claims 1, 3-6, 9-17, 19 and 20 are pending in the present application. Claims 2, 7, 8, and 18 are cancelled. No additional claims fee is believed to be due.

Claims 1 and 11 are amended to remove the word “primary”.

Applicants submit that these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. § 103 (AIA) Over Lesniak in View of Park

Claims 1, 3-4, 6, 9-14, 16-17 and 19-20 are rejected under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425) in view of Park et al. (EP 0471392A2).

Rejection Under 35 U.S.C. § 103 (AIA) Over Lesniak in View of Park in Further View of McCall

Claims 1, 3-6, 9-17, and 19-20 are rejected under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425) in view of Park et al. (EP 0471392) and further in view of McCall (US 4,944,937).

In sustaining a rejection under 35 USC §103, the asserted combination must teach or suggest each and every feature of a claim. *In re Royka*, 490 F.2d 981 (CCPA 1974). Absent such a teaching or suggestion, an obviousness rejection under 35 U.S.C. §103 cannot be maintained. In establishing a *prima facie* case, the Office must set forth “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” MPEP §2141, citing *KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rejections based on obviousness “cannot be sustained by mere conclusory statements.” *Id.* If the Office does not prove a *prima facie* case of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See *In re Oetiker*, 977 F.2d 1443.

Applicants assert that Lesniak combined with Park fails to read on the claims of the present invention. First, Lesniak does not disclose deodorant compositions. Lesniak focuses on different types of compositions, such as sunscreens and diaper creams, as evidenced by its use of zinc oxide in every inventive example. Zinc oxide is generally understood by one of ordinary skill in the art to be used in sunscreens and diaper rash compositions. And while Lesniak mentions antiperspirants

in passing, one of ordinary skill in the art would understand that to be considered an antiperspirant in the US, an aluminum salt must be used – all of the 18 active ingredients allowed by the FDA to achieve sweat reduction are a form of aluminum salt. The present invention explicitly states that it is free of an aluminum salt. Thus, even if Lesniak can be read to disclose an antiperspirant (which it does not enable), it does not read on or disclose the deodorants of the present invention, which exclude the very ingredient that would be required for Lesniak to disclose an antiperspirant. Therefore, there is no reason why one of skill in the art would look to Lesniak alone, or in combination with any other reference for any teaching or suggestion relevant to the deodorants of the present invention.

Park discloses certain deodorant antimicrobials, but there is no motivation in Lesniak to add such antimicrobials. Lesniak contemplates only sunscreens, diaper creams, antiperspirants, or lip balms, and sunscreens, diaper creams, and lip balms typically do not have antimicrobials, while antiperspirants comprise aluminum salts as their active ingredient. There is no suggestion or motivation for one of skill in the art to add an antimicrobial to Lesniak, much less any disclosure of how such an addition might impact the other properties and qualities of the disclosed compositions to retain their disclosed benefits.

The addition of McCall fails to remedy these deficiencies. Therefore, Applicants respectfully contend that a prima facie case of obviousness has not been made. Applicants respectfully request that the rejections be withdrawn and the claims allowed.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, the Applicant respectfully requests the Examiner to enter the amendments presented herein, reconsider this application, and allow the pending claims.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By /Kathleen Y. Carter/

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Date: June 20, 2024
Customer No. 27752