

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 17/961,089
Inventor(s) : David Arthur Sturgis
Filed : October 6, 2022
Art Unit : Not yet assigned
Examiner : Not yet assigned
Docket No. : 15150CC
Confirmation No. : 6536
Customer No. : 27752
Title : ANTIPERSPIRANT AND DEODORANT COMPOSITIONS

PRELIMINARY AMENDMENT UNDER 37 C.F.R. § 1.115

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.

Please amend the above-identified application as follows:

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. (Original) A deodorant stick comprising:
 - a. at least about 25% caprylic / capric triglyceride;
 - b. a primary antimicrobial having a water solubility of at most about 90 g/L at 25° C; andsaid deodorant stick being free of an aluminum salt.
2. (Original) The deodorant stick of claim 1, 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.
3. (Original) The deodorant stick of claim 1, wherein the primary antimicrobial is magnesium hydroxide.
4. (Currently Amended) The deodorant stick of claim 1, further comprising a ~~primary~~-structurant with a melting point of at least about 50° Celsius.
5. (Currently Amended) The deodorant stick of claim 4, wherein the ~~primary~~-structurant is stearyl alcohol.
6. (Original) The deodorant stick of claim 1, wherein the deodorant stick is substantially free of baking soda.
7. (Original) The deodorant stick of claim 1, wherein the deodorant stick is substantially free of a synthetic fragrance.
8. (Original) The deodorant stick of claim 1, 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.

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. (Original) A deodorant stick comprising:

a. at least about 25% of a triglyceride;

b. a primary antimicrobial having a water solubility of at most about 90 g/L at 25° C; and said deodorant stick being free of an aluminum salt.

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. (Currently Amended) The deodorant stick of claim 11, further comprising a ~~primary~~ structurant with a melting point of at least about 50° Celsius.

15. (Currently Amended) The deodorant stick of claim 14, wherein the ~~primary~~ 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. (Original) The deodorant stick of claim 11, 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.

Appl. No. 17/961,089
Docket No. 15150CC
Amdt. dated April 11, 2023
Customer No. 27752

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.



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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 07/03/2023
THE PROCTER & GAMBLE COMPANY
GLOBAL IP SERVICES
CENTRAL BUILDING, C9
ONE PROCTER AND GAMBLE PLAZA
CINCINNATI, OH 45202

EXAMINER

MERCIER, MELISSA S

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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07/03/2023

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):

centraldocket.im@pg.com
mayer.jk@pg.com
pair_pg@firsttofile.com

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.

Summary

Receipt of the Preliminary Amendment filed on April 11, 2023 is acknowledged. Claims 1-20 are pending in this application. Claims 4-5 and 14-15 have been amended. All pending claims are under examination.

Information Disclosure Statement

Receipt of the Information Disclosure Statements filed on November 11, 2022; January 5, 2023; and April 19, 2023 is acknowledged. Signed copies are attached to this office action. It is noted that NPL entries 2-9 on the IDS dated November 11, 2022 and NPL enter 1 on the IDS dated January 5, 2023 have not been considered. Applicant's attention is directed to MPEP 609. Specific documents of each application cited must be referenced, for example the Non-final office action dated XX/XX/XXXX; or Final office action dated XX/XX/XXXX.

Claim Rejections - 35 USC § 102

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 –

(a)(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention.

Claims 1, 4, 6-11, 14, and 16-20 are rejected under 35 U.S.C. 102(a)(1) as being anticipated by Lesniak et al. (WO 2016/048425), as evidenced by Zinc Oxide, The Original Tom's of Maine, accessed online June 28, 2023).

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, is considered insoluble in water, thereby meeting "having a water solubility of at most about 90 g/L at 25 ° Celsius.", as evidenced by Tom's of Maine.

The composition is in stick form (paragraph 0040).

The composition is not disclosed to contain an aluminum salt.

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 7 and 17, the composition is not disclosed to contain a synthetic fragrance.

Regarding claim 8- 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, 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, therefore, anticipates the rejected claims.

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 1-4, 6-14, and 16-20 are rejected under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425), as evidenced by Zinc Oxide, The Original Tom's of Maine, accessed online June 28, 2023), in view of Park et al. (EP 0 471 392 A2).

The teaching of Lesniak are discussed above.

Lesniak does not disclose the use of magnesium hydroxide.

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 2-3 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, 4-11, 14-15, and 16-20 are rejected under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425), as evidenced by Zinc Oxide, The Original Tom's of Maine, accessed online June 28, 2023), in view of McCall (US 4,944,937).

The teachings of Lesniak are discussed above.

Lesniak does 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.

Double Patenting

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. A nonstatutory double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *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 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *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) or 1.321(d) may be used to overcome an actual or provisional rejection based on nonstatutory double patenting provided the reference application or patent either is shown to be commonly owned with the examined application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. See MPEP § 717.02 for applications subject to examination under the first inventor to file provisions of the AIA as explained in MPEP § 2159. See MPEP § 2146 *et seq.* for applications not subject to examination under the first inventor to file provisions of the AIA. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO Internet website contains terminal disclaimer forms which may be used. Please visit www.uspto.gov/patent/patents-forms. The filing date of the application in which the form is filed determines what form (e.g., PTO/SB/25, PTO/SB/26, PTO/AIA/25, or PTO/AIA/26) should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp.

Claims 1-20 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 10,905,647. Although the claims at issue are not identical, they are not patentably distinct from each other because the instant claims are a species of the patented claims. The instant claims recite a species of

the liquid triglyceride recited in the patented claims. The patented claims additionally recite the presence of a structurants, however, this limitation is recited in the instant application as a dependent claims. Therefore, it would have been obvious to one of ordinary skill in the art prior to the effective filing date of the invention to have used a species of the liquid triglycerides in the patented claims to prepare the instant composition.

Claims 1-20 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 10,543,164. Although the claims at issue are not identical, they are not patentably distinct from each other because the instant claims are a species of the patented claims. The instant claims recite a species of the liquid triglyceride recited in the patented claims. The patented claims additionally recite the presence of a structurants, however, this limitation is recited in the instant application as a dependent claims. Therefore, it would have been obvious to one of ordinary skill in the art prior to the effective filing date of the invention to have used a species of the liquid triglycerides in the patented claims to prepare the instant composition.

Claims 1-20 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 10,966,915. Although the claims at issue are not identical, they are not patentably distinct from each other because the patented claims anticipate the instant claims. The instant claims recite a species of the liquid triglyceride recited in the patented claims. The patented claims additionally recite the presence of a structurants, however, this limitation is recited in the instant

application as a dependent claims. Therefore, it would have been obvious to one of ordinary skill in the art prior to the effective filing date of the invention to have used a species of the liquid triglycerides in the patented claims to prepare the instant composition.

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-

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Art Unit: 1615

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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



UNITED STATES
PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313 - 1450
www.uspto.gov

TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL DOUBLE PATENTING REJECTION OVER A PENDING "REFERENCE" APPLICATION

APPLICATION #
17961089

FILING DATE
10/06/2022

FIRST NAMED INVENTOR
David STURGIS

ATTORNEY DOCKET #
15150CC

Title of Invention

ANTIPERSPIRANT AND DEODORANT COMPOSITIONS



Filing of terminal disclaimer does not obviate requirement for response under 37 CFR 1.111 to outstanding Office Action



This electronic Terminal Disclaimer is not being used for a Joint Research Agreement.

Owner	Percent interest
The Procter & Gamble Company	100%
Total	100%

The owner(s) of percent interest listed above in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number(s)

Application #	Filing Date
17979822	11/03/2022

as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent

granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term of any patent granted on said reference application, "as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that any such patent granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

The owner(s) of percent interest listed above in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of prior patent number(s)

Patent #
10543164
11497706
10905647
11540999
10966915

as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.



Terminal disclaimer fee under 37 CFR 1.20(d) included with Electronic Terminal Disclaimer request.

Applicant claims the following entity status:

Regular Undiscounted

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I certify, in accordance with 37 CFR 1.4(d)(4) that I am: An attorney or agent registered to practice before the Patent and Trademark Office who is of record in this application

Signature	Name	Registration #
/Kathleen Y. Carter/	Kathleen Carter	60583

* Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP 324.



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APPROVAL LETTER

APPLICATION #
17/961,089

FILING DATE
10/06/2022

APPLICANT/PATENT UNDER REEXAMINATION
David STURGIS

Title of Invention

ANTIPERSPIRANT AND DEODORANT COMPOSITIONS

Electronic terminal disclaimer filed on 10/03/2023

☒ **Approved**

This patent is subject to a Terminal Disclaimer

Approved / Disapproved by: Electronic Terminal Disclaimer automatically approved

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 17/961,089
Inventor(s) : David Arthur Sturgis
Filed : October 6, 2022
Art Unit : Not yet assigned
Examiner : Not yet assigned
Docket No. : 15150CC
Confirmation No. : 6536
Customer No. : 27752
Title : ANTIPERSPIRANT AND DEODORANT COMPOSITIONS

AMENDMENT AFTER NON-FINAL OFFICE ACTION

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 July 3, 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. a 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~~having a water solubility of at most about 90 g/L at 25° C;~~ and
said 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. a 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 ~~having a water solubility of at most about 90 g/L at 25° C;~~ 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.



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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 12/26/2023
THE PROCTER & GAMBLE COMPANY
GLOBAL IP SERVICES
CENTRAL BUILDING, C9
ONE PROCTER AND GAMBLE PLAZA
CINCINNATI, OH 45202

EXAMINER

MERCIER, MELISSA S

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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12/26/2023

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):

centraldocket.im@pg.com
mayer.jk@pg.com
pair_pg@firsttofile.com

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 October 3, 2023 (response to non-final rejection).
☐ 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)
- 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

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.

Summary

Receipt of Applicant's remarks, amended claims, and terminal disclaimer filed on October 3, 2023 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.

Information Disclosure Statement

Receipt of the Information Disclosure Statement filed on October 3, 2023 is acknowledged. A signed copy is attached to this office action.

Withdrawn Objections/Rejections

Claim Rejections - 35 USC § 102

The rejection of claims 1, 4, 6-11, 14, and 16-20 are rejected under 35 U.S.C. 102(a)(1) as being anticipated by Lesniak et al. (WO 2016/048425), as evidenced by Zinc Oxide, The Original Tom's of Maine, accessed online June 28, 2023) has been withdrawn in view of Applicant's amendment to claim 1 to recite specific primary antimicrobials which are not disclosed by Lesniak.

Claim Rejections - 35 USC § 103

The rejection of claims 1-4, 6-14, and 16-20 under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425), as evidenced by Zinc Oxide, The Original Tom's of Maine, accessed online June 28,2023), in view of Park et al. (EP 0 471 392 A2) has been withdrawn in view of Applicant's amendment to the claims 1 and 11 recite 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.

The rejection of claims 1, 4-11, 14-15, and 16-20 under 35 U.S.C. 103 as being unpatentable over Lesniak et al. (WO 2016/048425), as evidenced by Zinc Oxide, The Original Tom's of Maine, accessed online June 28,2023), in view of McCall (US 4,944,937) has been withdrawn in view of Applicant's amendment to the claims 1 and 11 recite 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.

Double Patenting

The rejection of claims 1-20 on the ground of nonstatutory double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 10,905,647 has been withdrawn in view of Applicant's filing of a terminal disclaimer.

The rejection of claims 1-20 on the ground of nonstatutory double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 10,543,164 has been withdrawn in view of Applicant's filing of a terminal disclaimer.

The rejection of claims 1-20 on the ground of nonstatutory double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 10,966,915 has been withdrawn in view of Applicant's filing of a terminal disclaimer.

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 structurant.

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:

***Applicant has amended claims 1 and 11 to recite 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 and Applicant has amended claims 1 and 11 to recite the deodorant stick is anhydrous and substantially free of silicones.**

As noted in the rejection above, the prior art of Lesniak, the primary reference, does not disclose the primary antimicrobials currently recited in the independent claims. However, he does disclose all other structural elements of the claimed deodorant stick, including silicone free, anhydrous, aluminum free, and free of synthetic fragrances. Park is relied on solely for the teaching of zinc oxide (the antimicrobial taught by Lesniak) being a functional equivalent to the recited agents.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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