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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 THE PROCTER & GAMBLE COMPANY GLOBAL IP SERVICES CENTRAL BUILDING, C9 ONE PROCTER AND GAMBLE PLAZA CINCINNATI, OH 45202			EXAMINER MERCIER, MELISSA S	
			ART UNIT 1615	PAPER NUMBER
			NOTIFICATION DATE 09/11/2024	DELIVERY MODE 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.

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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and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.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.

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/MELISSA S MERCIER/
Primary Examiner, Art Unit 1615