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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 15/465,037 | 03/21/2017 | Luke Logan Wagner | 13813.57.3.US.1U | 4147 |

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| EXAMINER | |
|---|---|
| WILLIAMS, LELA | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1792 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 01/24/2018 | 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):

patent@winthrop.com

| Office Action Summary | Application No. 15/465,037 | Applicant(s) Wagner, Luke Logan | |
|---|---|---|---|
| | Examiner LELA S WILLIAMS | Art Unit 1792 | AIA 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 3/21/2017 .

☐ 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) 1-18 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) 1-18 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 CORRESPONDENCE

### *Notice of Pre-AIA or AIA Status*

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

### *Claim Rejections - 35 USC § 101*

**2.** 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.** The claim(s) does/do not fall within at least one of the four categories of patent eligible subject matter because the claims are not clear as to what statutory category "System" falls under. Applicant can overcome this rejection by amending the preamble of claims 1-18 to read, "A flavor release article…", "A flavor enhancing article…", or the like.

### *Claim Rejections - 35 USC § 102*

**3.** In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

**4.** 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.

**5. Claim(s) 1-2, 4, 5, 10, 12, 13, are rejected under 35 U.S.C. 102(a)(1) as being anticipated by Ashcraft US 5,249,676.**

**Regarding claims 1-2, 4, 5, 10, 12, 13,** Ashcraft discloses a flavor burst structure comprising a multilayer film with a flavor carrier label disposed between barrier layers (Abstract). Given the broadest reasonable interpretation of "label", the multilayer film of Ashcraft is expected to meet the claimed limitation. The flavor burst film comprises a flavor carrier layer, a first polymeric barrier layer on one side of the flavor carrier layer and a second barrier layer on the other side of the flavor carrier layer (col. 2, lines 15-20). Ashcraft teaches the film comprises an adhesive between the flavor layer and barrier layers (col. 2, line 45) and in use an overwrapped package with a tear tape, a strip of the flavor burst film is adhesively bonded to the package beneath the overwrap so that the entire tear tape or a portion thereof overlies the flavor burst film and is adhesively bonded to the separable barrier layer of the film. To open the package the tear tape is pulled to slit the overwrap. At the same time, the tear tape separates the outermost barrier layer from the flavor burst film thereby exposing the surface of the flavor carrier layer and simultaneously releasing a burst of flavor from the film. The flavor burst film can also be incorporated in the tear tape of an overwrapped package (col. 4, lines 10-25) or a flavor burst film comprising one barrier layer and a flavor carrier layer may be applied to the surface of a metal or glass container or package so that removal of the one barrier layer will release the flavorant (col. 4, line 65-col. 5, line 5). Ashcraft further teaches flavors may comprises essential oils and flavors such as dessert flavors (vanillin flavor) (col. 3, lines 5-30, col. 4, lines 2).

***Claim Rejections - 35 USC § 103***

**6.** In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

**7.** This application currently names joint inventors. In considering patentability of the claims the examiner presumes that the subject matter of the various claims was commonly owned as of the effective filing date of the claimed invention(s) absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and effective filing dates of each claim that was not commonly owned as of the effective filing date of the later invention in order for the examiner to consider the applicability of 35 U.S.C. 102(b)(2)(C) for any potential 35 U.S.C. 102(a)(2) prior art against the later invention.

**8.** The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**9.** The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied 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.

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