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15/465,037	03/21/2017	Luke Logan Wagner	13813.57.3.US.1U	4147
94740	7590	01/24/2018	EXAMINER	
Winthrop & Weinstine, P.A. Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MINNESOTA 55402			WILLIAMS, LELA	
			ART UNIT	PAPER NUMBER
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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):

patent@winthrop.com

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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