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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
17/083,668	10/29/2020	Matthew T. Scholz	59889US018	5906
32692	7590	12/06/2022	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY			PURDY, KYLE A	
PO BOX 33427			ART UNIT	PAPER NUMBER
ST. PAUL, MN 55133-3427			1611	
			NOTIFICATION DATE	DELIVERY MODE
			12/06/2022	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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<b>Office Action Summary</b>	<b>Application No.</b> 17/083,668	<b>Applicant(s)</b> Scholz et al.	
	<b>Examiner</b> KYLE A PURDY	<b>Art Unit</b> 1611	<b>AIA (FITF) Status</b> No

-- 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 6/30/2022.  
☐ 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) 102-109 and 111-122 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) 102-109 and 111-122 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](http://www.uspto.gov/patents/init_events/pph/index.jsp) or send an inquiry to [PPHfeedback@uspto.gov](mailto: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**

1. 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 6/30/2022 has been entered.

### ***Status of Application***

2. The Examiner acknowledges receipt of the amendments filed on 6/30/2022 wherein claims 102-105, 112 and 115 have been amended.

3. Claims 102-109 and 111-122 are presented for examination on the merits. The following rejections are made.

### ***Response to Applicants' Arguments***

4. Applicants arguments filed 6/30/2022 regarding the rejection of claims 102-109 and 111-121 made by the Examiner under 35 USC 103(a) over Wei et al. (US 2002/0098159; of record) in view of Scholz (US 5908619) and Wilkins, Jr (US 2004/0131567; of record) have been fully considered but they are not found persuasive and is **MAINTAINED** for the reasons of record in the office action mailed on 3/31/2022.

5. Applicants arguments filed 6/30/2022 regarding the rejection of claim 122 made by the Examiner under 35 USC 103(a) over Wei et al. (US 2002/0098159; of record) in view of Scholz (US 5908619) and Wilkins, Jr (US 2004/0131567; of record), further in view of Watanabe et al. (1995) have been fully considered but they are not found persuasive and is **MAINTAINED** for the reasons of record in the office action mailed on 3/31/2022.

6. In regards to the 103(a) rejection, Applicant asserts the following:

A) The combination of Wei, Scholz and Wilkins cannot be assumed to kill *S. aureus* at a rate of 6 log reduction after 2.5 minutes.

7. In response to A, the combination of Wei, Scholz and Wilkins teaches the instant claimed method. Moreover, Wei teaches that there exists a need to provide improved immediate antibacterial activity (see [0009]) and that their invention provides a new level of hostility to bacteria contacting the skin while maintaining good mildness characteristics (see [0012]). Wei teaches that their compositions have an antibacterial residual effectiveness index of greater than 2.5 wherein the index measures the efficacy against *E. coli* (see [0080]). It is noted that *E. coli* and *S. Aureus* are both gram positive bacteria targeted by the disinfection method of Wei (see [0008]). Thus, it is reasonable to assume that the method of Wei is a) active against *S. Aureus* and b) when combined with Scholz and Wilkins provides activity on level with that claimed, i.e. 6 log reduction in 2.5 minutes. Applicants arguments are not considered persuasive.

**Maintained Rejections, of Record**  
**Claim Rejections - 35 USC § 103**

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

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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(a) are summarized as follows:

Art Unit: 1611

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.

**10. Claims 102-109 and 111-121 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Wei et al. (US 2002/0098159; of record) in view of Scholz (US 5908619) and Wilkins, Jr (US 2004/0131567; of record), evidenced by PubChem: Docusate sodium.**

11. Wei provides antimicrobial compositions and methods of using such compositions.

12. Methods involve applying the antimicrobial composition to the skin to achieve a disinfecting benefit (see [0321]). The amount of the antimicrobial formulation, and the frequency applied, and the period applied vary depending on the disinfection and cleansing desired.

Preferably the composition is applied at least once per day, and more preferably at least three time per day. Inhibition of *S. aureus* is contemplated (see [0008]) (see instant claim 102).

13. The composition used in the methods may comprise **lauric acid** (see [0313]) (see instant claim 102, 104 and 105) in an amount ranging from 0.1-10% (see [0302]) (see instant claim 111). It's noted that Wei uses lauric acid as a stabilizer. However, as Wei's lauric acid is chemically identical to the lauric acid of the claims, it would necessarily possess antimicrobial activity, despite being used for a different purpose (by Wei).

14. Wei teaches including an aqueous component that includes water, water soluble alcohols such as **ethanol**, propanol or isopropanol, and mixtures thereof (see [0091]) in amounts ranging from **10-38%** (see [0093]) (see instant claims 106 and 111). It is noted that ethanol, propanol and isopropanol are all C1-C10 alkyl alcohols (see instant claim 113).



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