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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	05/25/2023	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
			05/25/2023	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.

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Office Action Summary	Application No. 17/083,668	Applicant(s) Scholz et al.	
	Examiner KYLE A PURDY	Art Unit 1611	AIA (FITF) Status 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 4/6/2023.
☐ 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) 102,104-107,109 and 111-124 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5a) Of the above claim(s) ____ is/are withdrawn from consideration.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) 102,104-107,109 and 111-124 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

Status of Application

1. The Examiner acknowledges receipt of the amendments filed on 4/6/2023 wherein claims 102, 107, 112 and 122 have been amended, claims 103 and 108 have been cancelled and claims 123 and 124 have been added.

2. Claims 102, 104-106, 107, 109 and 111-124 are presented for examination on the merits. The following rejections are made.

Response to Applicants' Arguments

3. Applicants arguments filed 4/6/2023 regarding the rejection of claims 102, 104-106, 107, 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 12/6/2022.

4. Applicants arguments filed 4/6/2023 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 12/6/2022.

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

- A) Wei teaches that *S. aureus* is Gram positive whereas *E. coli* is Gram negative. Both are not described by Wei as Gram positive. Moreover, the Office has not provided any reason one would assume that antimicrobial activity on a skin surface would be effective on a mucosal surface; and

B) Scholz does not teach emollients for use on mucosal membranes, nor does Scholz mention that emollients can be used in formulations against Gram positive bacteria.

6. In response to A, the Examiner agrees. The Examiner mischaracterized Wei's teaching. This, however, does not mitigate the obviousness rejection as the framework for inhibiting bacteria, gram positive and gram negative, would have been readily envisaged from Wei's teaching.

7. Regarding the issue of treating a skin surface and a mucosal surface, it is not seen why treatment of one surface would result in loss of antimicrobial activity. Wei teaches that their composition is useful for inhibiting bacterial infections of the skin. Thus, it would be reasonable to expect the antibacterial composition to be used on other biological surfaces, such as a mucosal surface, and expect a similar outcome. Applicant has provided no evidence or articulated a reason as to why would not expect a similar outcome.

8. In response to B, emollients are described by Wei. See [0092]. Thus, it would have been obvious to look to the prior art for other known emollients commonly used in similar type compositions, i.e. those described by Scholz. The selection of a known material based on its suitability for an intended purpose is indicia of obviousness.

Claim Rejections - 35 USC § 103

9. 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.

10. 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:

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.

11. Claims 102, 104-106, 107, 109 and 111-123 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.

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

13. 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).

14. The composition used in the methods may comprise **lauric acid** (see [0313]) (see instant claim 102, 104, 105, 123 and 124) 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

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