



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/801,647	05/09/2007	Gregory W. Haggquist	6000.108.01US (TT-8)	4523
61529	7590	03/03/2011	EXAMINER	
Neugeboren O'Dowd PC 1227 Spruce Street SUITE 200 BOULDER, CO 80302			GREENE, JASON M	
			ART UNIT	PAPER NUMBER
			1775	
			NOTIFICATION DATE	DELIVERY MODE
			03/03/2011	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):

craig@neugeborenlaw.com
sean@neugeborenlaw.com
bbarrett@neugeborenlaw.com

Office Action Summary	Application No. 11/801,647	Applicant(s) HAGGQUIST, GREGORY W.	
	Examiner Jason M. Greene	Art Unit 1775	

-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 10 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ 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

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) 42-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 and 63-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2007 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).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

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).
- a) ☐ All b) ☐ Some * c) ☐ None of:
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) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Response to Arguments

1. Applicant's arguments, see page 10, lines 7-22, filed 10 December 2010, with respect to the 35 USC 112 rejections of claims 12-16, 29-33, 41, 66, 67, 71 and 72 have been fully considered and are persuasive. The 35 USC 112 rejections of claims 12-16, 29-33, 41, 66, 67, 71 and 72 have been withdrawn.
2. Applicant's arguments, see page 11, line 1 to page 14, line 21 and page 15, line 13 to page 18, line 13, filed 10 December 2010, with respect to the 35 USC 102 and 103 rejections of claims 1-21, 23-26 and 28-41 as anticipated by or obvious over Trogolo or Williams have been fully considered and are persuasive. The 35 USC 102 and 103 rejections of claims 1-21, 23-26 and 28-41 as anticipated by or obvious over Trogolo or Williams have been withdrawn.
3. Applicant's arguments filed 10 December 2010 regarding the 35 USC 102 and 103 rejections of claims 63-72 as anticipated by or obvious over Trogolo or Williams have been fully considered but they are not persuasive.

Applicants direct the vast majority of arguments regarding the references to the “breathability” or water vapor transport properties of the composition. While the Examiner agrees that there is no disclosure of the Trogolo or Williams compositions being capable of transporting water vapor, claims 63-72 do not recite such a property and the rejections are maintained. In particular, it is noted that the active particles (e.g. activated carbon) in the composition will inherently improve the anti-static properties and stealth properties regardless of whether or not such is explicitly recognized by the references. It is especially noted that the Trogolo and Williams additives are the same additives disclosed by Applicants. Furthermore, Applicants have not demonstrated that the Trogolo or Williams additives will not impart the requisite properties despite the fact that identical additives are employed.

4. Applicant's arguments filed 10 December 2010 regarding the 35 USC 102 and 103 rejections of claims 1-41 and 63-72 as anticipated by or obvious over Haggquist have been fully considered but they are not persuasive.

Applicants argue that Haggquist fails to teach a “breathable” membrane, but the Examiner does not agree. In fact, Haggquist explicitly teaches the membrane being for “moisture management” at paragraphs [0003] and [0030]. While the reference does not use the exact same term verbatim (namely “breathable”) as Applicants, such does differentiate the Haggquist membrane from the instant claims. The term “Moisture management” is used routinely in the art to describe materials that permit water vapor transport while blocking liquid water. Applicants term “breathable” appears to be

Art Unit: 1775

directed to the same property and mere use of alternate phrasing to describe the same property does not impart patentability.

Claim Rejections - 35 USC § 102

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

6. Claims 1-13, 15-29, 31, 33-41, 63-65, 67-70 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Haggquist (US 2004/0018359 A1).

Haggquist discloses a breathable membrane (for moisture management, see paragraph [0030]) comprising a base material solution, a plurality of active particles (100) in contact with the base material solution, wherein the active particles are inherently capable of improving the breathability of the base material solution, at least one removable encapsulant (110) in an amount effective to prevent at least a substantial portion of the active particles from being deactivated prior to removal of the removable encapsulant, wherein the removable encapsulant is removable to reactivate at least a portion of the active particles to improve the breathability of the membrane, and where the base material exhibits water-proof properties (since it is formed from a non-hydrophilic polymer, such as polyacrylic or PTFE, see paragraph [0035])) when converted into a non-solution state, and the membrane is a water-proof breathable membrane, wherein the membrane inherently possesses anti-static, stealth, odor

Art Unit: 1775

absorbance, and quick drying properties due at least in part to the active particles, wherein the active particles comprise zeolites or activated carbon and are antimicrobial (see paragraph [0030]), wherein the at least one removable encapsulant includes PVA, salts, surfactants, wax, etc. (see paragraph [0033]), wherein the active particles comprise about 15% by weight of the membrane (see paragraph [0049]), wherein the membrane is a fabric, an article of clothing, a laminate (coating), a mat, a diaper, a filter, a bag, and is a non-woven (see paragraphs [0080]-[0081]), and wherein multiple encapsulants can be provided (see paragraph [0040]) in Figs. 1-5 and paragraphs [0003]-[0083].

7. Claims 63, 65, 67, 68, 70 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Trogolo et al. (US 2003/0118664 A1).

Trogolo et al. discloses a composition comprising a base material (1) and a plurality of active particles (4) in contact with the base material, wherein the active particles inherently improve the anti-static and stealth properties of the composition in Figs. 2 and 3 and paragraphs [0017]-[0075].

8. Claims 63, 64, 68 and 69 are rejected under 35 U.S.C. 102(e) as being anticipated by Williams (US 2006/0068124 A1).

Williams discloses a composition comprising a base material and a plurality of active particles (activated carbon) in contact with the base material, wherein the active

Art Unit: 1775

particles inherently improve the anti-static and stealth properties of the composition in paragraphs [0005]-[0010].

Claim Rejections - 35 USC § 103

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

10. Claims 14, 30, 32, 66 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. (US 2003/0118664 A1) or Haggquist (US 2004/0018359 A1).

While neither of the references explicitly teach an active particle loading of 25-75wt% or 30-50wt% one of ordinary skill in the art would have recognized that the loading could have been increased to provide an enhanced effect.

Conclusion

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 1775

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (571) 272-1157. The examiner can normally be reached on Monday - Friday (10:00 AM to 6:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1775

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason M. Greene/
Primary Examiner, Art Unit 1775

jmg
February 28, 2011