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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	07/16/2012		
Neugeboren O'Dowd PC 1227 Spruce Street SUITE 200 BOULDER, CO 80302			EXAMINER GREENE, JASON M	
			ART UNIT 1776	PAPER NUMBER
			NOTIFICATION DATE 07/16/2012	DELIVERY MODE 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):

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Office Action Summary	Application No. 11/801,647	Applicant(s) HAGGQUIST, GREGORY W.	
	Examiner Jason M. Greene	Art Unit 1776	

-- 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 07 May 2012 and 24 May 2012.
- 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) 1,3-33 and 35-73 is/are pending in the application.
- 5a) Of the above claim(s) 42-62 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,3-33,35-41 and 63-73 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ 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).
- 12) ☐ 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

- 13) ☐ 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 checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/25/12</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Amendment

Response to Arguments

1. Applicant's arguments filed 7 May 2012 and 24 May 2012 have been fully considered but they are not persuasive. Applicants have amended the claims to recite the water-proof composition or breathable membrane having a specific moisture vapor transmission rate of about 600 g/m²/day to about 11,000 g/m²/day, but the Examiner contends such does not overcome the prior art. In particular, while the Spijkers et al. reference does not explicitly recite the moisture vapor transmission rate of the membrane, the Examiner notes that the membrane will inherently exhibit the recited moisture vapor transmission rate since it is formed from the same material and has the same thickness as the instantly claimed membrane. Namely, both the claimed membrane and the Spijkers et al. membrane are formed from a polymeric material impregnated with 1-10 weight percent activated carbon particles and have the same thickness (see instant Example 1 wherein the membrane has a thickness of 1 mil (25.4 μ m) and col. 5, lines 36-49 of Spijkers et al. wherein the membrane has a thickness of 5-50 μ m or 20-50 μ m). Since the membranes are substantially identical, the claimed properties are assumed to be inherent and the burden of proof shifts to Applicants to demonstrate otherwise. See MPEP 2112.01. This is especially true for the 103

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rejections since the secondary reference teaches the same polymers as are instantly claimed.

Furthermore, while Applicants contend that Spijkers et al. fails to even mention the membrane having any moisture vapor transmission rate (see the remarks at page 12, lines 15-16), the Examiner especially notes the first sentence of the Spijkers et al. reference, wherein the membrane is identified as a water vapor permeable membrane.

Claim Rejections - 35 USC § 102

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

3. Claims 28, 29, 31, 33, 35-39, 63, 64, 67, 68, 69 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Spijkers et al. (US 6,028,019).

Spijkers et al. discloses a water-proof composition comprising a liquid-impermeable breathable (water vapor permeable) cured base material, and a plurality of active particles (activated carbon) in contact with the liquid impermeable breathable cured base material, wherein the active particles inherently improve the moisture vapor transport capacity of the composition, along with imparting anti-static (see col. 5, lines 29-30), stealth, and odor absorbance properties, and wherein the active particles comprise 1-10% of the total weight of the composition (see col. 4, lines 40-47) at col. 1, line 55 to col. 5, line 49.

While Spijkers et al. does not explicitly recite the active particles imparting stealth or quick drying properties, the Examiner contends that the active particles will inherently impart such properties since the membrane of Spijkers et al. is substantially identical to the instantly claimed membrane. Specifically both teach a polymeric membrane impregnated with activated carbon particles. Since the membranes are substantially identical, the claimed properties are assumed to be inherent and the burden of proof shifts to Applicants to demonstrate otherwise. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

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

5. Claims 30, 32, 66 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spijkers et al. (US 6,028,019).

While Spijkers et al. does not 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.

6. Claims 1, 3-27, 40, 41, 65, 70 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spijkers et al. (US 6,028,019) in view of Haggquist (US 2004/0018359 A1).

Spijkers et al. teaches the claimed water-proof breathable membrane except for the active particles having a removable encapsulate. However, Haggquist teaches a similar membrane wherein active particles are encapsulated (including using the claimed materials) to prevent premature deactivation (see paragraphs [0028]-[0033]), and one of ordinary skill in the art would have recognized that the removable encapsulate could be used for such a purpose in the Spijkers et al. membrane. It is noted that Haggquist also teaches using zeolites as an alternate to activated carbon as well using active particles providing anti-microbial activity (see paragraph [0030]). Haggquist also teaches using multiple encapsulants at paragraph [0040].

Spijkers et al. also teaches the membrane being incorporated into various articles including fabrics, clothing and laminates at col. 4, line 60 to col. 5, line 35.

With particular regard to claim 7, Spijkers et al. does not teach the recited polymers, but Haggquist teaches such polymers being suitable in water-resistant, vapor permeable applications (see paragraphs [0030] and [0035]) and substitution of one polymeric material for another would have been within the scope of one having ordinary skill. Additionally, the polymers recited in claim 7 are well known hydrophobic materials and their use in place of the polyether ester of Spijkers et al. would have been within the scope of one having ordinary skill.

Conclusion

7. 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 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.

8. 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, Duane Smith 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.

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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 1776

jmg
July 2, 2012