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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|-----------------------------|
| 13/157,040 | 06/09/2011 | Fred M. COWAN | COW 101 | 6299 |
| 59241 7590 02/25/2013 LATIMER INTELLECTUAL PROPERTY LAW, LLC P.O. BOX 711200 HERNDON, VA 20171 | | | EXAMINER CLARK, AMY LYNN | |
| | | | ART UNIT 1655 | PAPER NUMBER |
| | | | NOTIFICATION DATE 02/25/2013 | 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):

matt.latimer@latimerip.com
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Office Action Summary

Application No.

13/157,040

Applicant(s)

COWAN, FRED M.

Examiner

Amy L. Clark

Art Unit

1655

-- 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 25 November 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) 1-24 is/are pending in the application.
- 5a) Of the above claim(s) 21-24 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-20 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 09 June 2011 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).
- 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) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/19/2011
- 3) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 4) ☐ Other: ____

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DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1- in the reply filed on 11/25/2012 is acknowledged. The traversal is on the ground(s) that the inventions are related and that a search for all of the inventions together would not be an undue burden. This is not found persuasive because the inventions are drawn to a distinct composition and to a distinct method of making and method of using. The composition can be used in a materially different method than that claimed and can be made in a different manner. The requirement is still deemed proper and is therefore made FINAL.

Claims 21-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/25/2012.

Claims 1-20 are currently being examined on the merits.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 10/19/2011 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of 35 U.S.C. 112(b):

(B) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.



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Claim 2 is rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Claim 2 recites the limitation "the biomarker" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

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 –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki et al. (A*, US 5972391 A).

Suzuki teaches a composition comprising spices, wherein the spices are ginger in an amount of 0.1% and cinnamon in an amount of 0.4% and further comprising vitamin E (which reads on a phytochemical) and wherein the spices can be incorporated as whole spice or in dried and pulverized form (See column 2, lines 43-56).

Although Suzuki does not teach his composition has an effect on the instantly claimed biomarker, the claimed functional properties are inherent to the preparation taught by Suzuki because the ingredients, the amounts of the ingredients, and the route of administration for the delivery of the ingredients taught by Suzuki are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the biomarkers are inherently affected by the composition taught by Suzuki.

Therefore, the reference anticipates the instantly claimed invention.

Claims 1-3 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nirei (N, JP 2007-135493 A, translation provided herein).

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Nirei teaches a health food composition comprising sugarcane (sucrose) (which reads on), long pepper in an amount of 1% by weight (which reads on capsicum), cinnamon in an amount of 0.5% by weight, ginger in an amount of 0.5% by weight and turmeric in an amount of 0.5%. Nirei further teaches that the composition comprises refining butter (which reads on emulsifier).

Although Nirei does not teach his composition has an effect on the instantly claimed biomarker, the claimed functional properties are inherent to the preparation taught by Nirei because the ingredients, the amounts of the ingredients, and the route of administration for the delivery of the ingredients taught by Nirei are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the biomarkers are inherently affected by the composition taught by Nirei.

Therefore, the reference anticipates the instantly claimed invention

Claim Rejections - 35 USC § 103

The following is a quotation of 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.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bherata Bhijajya Ratnekara (U), in view of Iwahara et al. (O).

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Bherata Bhijajya Ratnekara teaches a composition for treating itching (which is an inflammatory response), eczema (which is a type of inflammation), and pitta dominance conditions (which includes inflammation) comprising cinnamomum zeylanicum (cinnamon) in an amount of 0.33 parts, zingiber officinale (ginger) in an amount of 1 part, curcuma longa (turmeric) in an amount of 1 part and vitis vinifera (whole fruit, grape and seeds on grape skin and grape seed, since whole grape contain both the seed and the skin) in an amount of 1 part and wherein the composition is a powder comprising powders of the above ingredients and wherein the powder can be combined with expressed juice of plants or formulated into a decoction for oral administration.

Although Bherata Bhijajya Ratnekara does not teach his composition has an effect on the instantly claimed biomarker, the claimed functional properties are inherent to the preparation taught by Bherata Bhijajya Ratnekara because the ingredients, the amounts of the ingredients, and the route of administration for the delivery of the ingredients taught by Bherata Bhijajya Ratnekara are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the biomarkers are inherently affected by the composition taught by Bherata Bhijajya Ratnekara.

Iwahara teaches an orally administered food composition for treating inflammation comprising capsicum extract as the active component and further comprising

It would have been obvious to modify the composition taught by Bherata Bhijajya Ratnekara by combining cinnamon, ginger, turmeric and grape skin and seed extract with capsicum because at the time the invention was made, it was known that cinnamon, ginger, turmeric, grape skin and seed extract and capsicum were all useful ingredients that could be orally administered to treat inflammation as clearly taught by the above references.

It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. Based on the disclosure by these references that cinnamon, ginger, turmeric, grape skin and seed extract and capsicum were all useful ingredients that could be orally administered to treat inflammation, the artisan would have been motivated to combine the claimed ingredients into a

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single composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See MPEP section 2144.06, *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980), *Ex parte Quadranti*, 25 USPQ2d 1071 (Bd. Pat. App. & Inter. 1992).

Thus, an artisan of ordinary skill would reasonably expect that combining cinnamon, ginger, turmeric, grape skin and seed extract and capsicum would be even more effective for treating inflammation. This reasonable expectation of success would motivate the artisan to orally administer cinnamon, ginger, turmeric, grape skin and seed extract and capsicum to treat inflammation based upon the beneficial teachings of the above references.

Moreover, it would have been merely a matter of judicious selection to one of ordinary skill in the art at the time the invention was made to modify the referenced composition because it would have been well in the purview of one of ordinary skill in the art practicing the invention to pick and choose an effective amount of cinnamon, ginger, turmeric, grape skin and seed extract and capsicum for treating inflammation based upon the teachings of the above references. Thus, the claimed invention is no more than the routine optimization of a result effect variable.

Based upon the beneficial teachings of the cited references, the skill of one of ordinary skill in the art, and absent evidence to the contrary, there would have been a reasonable expectation of success to result in the claimed invention.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Conclusion

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-1310. The examiner can normally be reached on Monday to Friday 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571)272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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.

/Amy L Clark/
Primary Examiner, Art Unit 1655

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|-----------------------------------|---------------------------------------|--|-------------|
| Notice of References Cited | Application/Control No. 13/157,040 | Applicant(s)/Patent Under Reexamination COWAN, FRED M. | |
| | Examiner Amy L. Clark | Art Unit 1655 | Page 1 of 1 |

U.S. PATENT DOCUMENTS

| * | | Document Number Country Code-Number-Kind Code | Date MM-YYYY | Name | Classification |
|---|---|--|-----------------|---------------|----------------|
| * | A | US-5,972,391 | 10-1999 | Suzuki et al. | 426/2 |
| | B | US- | | | |
| | C | US- | | | |
| | D | US- | | | |
| | E | US- | | | |
| | F | US- | | | |
| | G | US- | | | |
| | H | US- | | | |
| | I | US- | | | |
| | J | US- | | | |
| | K | US- | | | |
| | L | US- | | | |
| | M | US- | | | |

FOREIGN PATENT DOCUMENTS

| * | | Document Number Country Code-Number-Kind Code | Date MM-YYYY | Country | Name | Classification |
|---|---|--|-----------------|---------|--------------------|----------------|
| | N | JP 2007135493 A | 06-2007 | Japan | NIREI, YASURO | |
| | O | JP 2008291001 A | 12-2008 | Japan | IWAHASHI, HIROYASU | |
| | P | | | | | |
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| | R | | | | | |
| | S | | | | | |
| | T | | | | | |

NON-PATENT DOCUMENTS

| * | | Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages) |
|---|---|---|
| | U | Bherata Bhijaiya Ratnekara. August 1999 [Retrieved from the Internet on: 2013-02-18]. Retrieved from: TKDL. |
| | V | |
| | W | |
| | X | |

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.