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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/519,137	03/25/2010	Manish Saxena	4449-103	1510
23448	7590	04/10/2012	EXAMINER	
Hultquist IP			CLARK, AMY LYNN	
P.O. Box 14329			ART UNIT	
RESEARCH TRIANGLE PARK, NC 27709			PAPER NUMBER	
			1655	
			NOTIFICATION DATE	
			04/10/2012	
			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):

hip@hultquistip.com

Office Action Summary	Application No.	Applicant(s)	
	12/519,137	SAXENA, MANISH	
	Examiner	Art Unit	
	Amy L. Clark	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 08 February 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) 7,8 and 10-23 is/are pending in the application.
- 5a) Of the above claim(s) 20-23 is/are withdrawn from consideration.
- 6) Claim(s) _____ is/are allowed.
- 7) Claim(s) 7,8 and 10-19 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 _____ 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 checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>01/30/2012</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on 02/08/2012 with the amendment of claims 7, 11, 15 and 17.

Election/Restrictions

The election/restriction requirement is maintained for the reasons of record.

Any rejection found in the previous Office Action and not repeated herein has been withdrawn based upon Applicant's amendments to the claims.

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

Claims 7, 8 and 10-19 are currently under examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 01/30/2012 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claim 7 is objected to because of the following informalities: the term "oil" is singular. The term "oil" should be plural (newly applied as necessitated by amendment). Appropriate correction is required.

Claim 7 is objected to because of the following informalities: the phrase "Berberis aristata/Berberis vulgaris" is missing its coordinating conjunction. The use of a forward slash is not appropriate and the term or should be present instead (newly applied as necessitated by amendment). The Appropriate correction is required.

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Claim Rejections - 35 USC § 112

Claims 7, 8 and 10-19 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention (newly reapplied as necessitated by amendment).

The metes and bounds of claim 7 and 17 are rendered uncertain by the term "Stelletta wild" because does not appear to be a plant with the name "Stellata wild". There are several genres of plants that have the name "Stellata" in them. For example, there is Quercus stellate, Halieutaea stellate, Nymphaea stellata Willd. or Magnolia stellata. Therefore, it is unclear as to what plant Applicant is claiming. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Please note that since the identity of stellata wild is not clear (there is no guidance in the specification, either). Therefore, Applicant must supply evidence that the plant that they are claiming is the one that they actually used, if the entire name is not being claimed. If the plant is actually called "Stellata Wild, Applicant should supply the common name and Latin name and provide evidence showing that the names are synonymous). However, the Examiner is examining Nymphaea stellata Willd., since this plant name appears to contain two of the names (although willd is misspelled, if this is the plant being claimed by Applicant).

Claim Rejections - 35 USC § 103

Claims 7, 8 and 10-19 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Jatyadi Tailam (U*), in view of Doka et al. (N*, WO 0033855 A1), Balodygha tam (X), Nguyen (A*), "Coconut-info" (U1), Suguna (V*) and Tiladi Yoga (W*) (newly applied as necessitated by amendment).

Jatyadi Tailam teaches a composition for treating ulcers/healing wounds, healing lacerated wounds and for wound cleansing comprising 1 part Azadirachta indica stem bark, 1 part Jasminum officinale leaf, 1 part Trichosanthes dioica leaf, 1 part Pongamia pinnata leaf, beeswax (which reads on a thickening agent), 1 part Glycyrrhiza glabra root, 1 part Saussurea lappa root, 1 part Curcuma longa

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rhizome (which send out roots and, therefore, contains and reads on root), 1 part Berberis aristata/Berberis asiatica/Berberis lycium root, 1 part Picrorhiza kurroa Rhizome, 1 part Rubia cordicolia stem, 1 part Pongamia pinnata seed, blue vitriol/copper sulfate (which reads on a preservative), water and sesamum indicum (black sesame) oil in the form of a medicated oil (which reads on an oil extract of herbs).

Baldygha tam teaches a composition useful for treating lacerated wounds comprising Glycyrrhiza glabra rhizome (which reads on stem, since rhizomes are defined as stems) in an amount of 192 grams.

Nguyen teaches a composition for treating skin conditions comprising turmeric and Saussurea lappa (please note that Nguyen teaches the whole plant of Saussurea lappa and that this would include rhizomes of Saussurea lappa).

"Coconut-info" teaches that coconut oil is effective for treating wounds.

Doka teaches a pepper (Capsicum) extract obtained by extracting fully ripe fruits of Capsicum in sunflower or pumpkin seed oil for treating burns or open injuries (which is synonymous with wounds).

Suguna teaches that a fine paste obtained by mixing Terminalia chebula fruit with water and carron oil is useful for treating burns and scales.

Tiladi Yoga teaches a therapeutic formulation for burns comprising Nymphaea stellate Willd. flower in sesame seed oil, milk and clarified butter.

Although the teachings above do not teach that the composition will protect against amputation, the claimed functional properties are intrinsic to the preparation taught by the above teaches because the ingredients and the route of administration for the delivery of the ingredients taught by the above teachings are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the compositions taught by the above teachings would inherently protect against amputation.

It would have been obvious to modify the composition used in the method taught by Jatyadi Tailam by combining a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra stem, Saussurea lappa rhizome, Curcuma longa root, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome,

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Rubia cordicollia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate and water with coconut oil, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower for treating burns and wounds because at the time the invention was made, it was known that a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra stem, Saussurea lappa rhizome, Curcuma longa root, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicollia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, coconut oil, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower could be used for burns and other wounds, 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 a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra stem, Saussurea lappa rhizome, Curcuma longa root, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicollia stem, Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, coconut oil, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower were useful for treating burns and other wounds, the artisan would have been motivated to combine the claimed ingredients into a 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 a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra stem, Saussurea lappa rhizome, Curcuma longa root, Berberis

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aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicolia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, with coconut oil, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower would provide an even more effective composition for treating burns and wounds. This reasonable expectation of success would motivate the artisan to use a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra stem, Saussurea lappa rhizome, Curcuma longa root, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicolia stem, Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, coconut oil, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower to treat burns and wounds.

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 a concentration of a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra stem, Saussurea lappa rhizome, Curcuma longa root, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicolia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower to provide a more effective and safe preparation for treating burns and other wounds. 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.

Response to Arguments

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Applicant's arguments filed 02/08/2012 have been fully considered but they are not persuasive.

Applicant argues that the unique combination of herbs, as claimed, provides surprising/unexpected therapeutic effects with respect to wound healing, and has proven to be particularly useful for preventing amputations that would be necessary due to complications from various wounds. Applicant further argues that the combination of ingredients taught by Jatyadi Tailam is different than that claimed by Applicant's instantly claimed invention. Applicant further argues that the ratio of ingredients are different and that only one oil is taught, not a combination of oils and that the oils contribute to the unexpected effect. Applicant further argues that the other references do not cure the deficiencies of Jatyadi Tailam.

However, this is not found persuasive because Jatyadi Tailam clearly teaches the combination of the majority of ingredients as claimed by Applicant and that these ingredients are useful for the same purpose as that claimed by Applicant. The additional ingredients are well known in the art to have the same functional effect of topical wound healing. Therefore, combining ingredients that can be applied topically and are well known for wound healing would be expected to provide an even more effective composition for wound healing. Therefore, these references are reapplied as set forth above.

Please note that if the amounts of ingredients are what sets the invention apart from the prior art of record, it recommended that Applicant's claims be drawn to the formulation as disclosed in the specification with the particular amounts of each of the individual ingredients claimed in the independent claims. Furthermore, the limitation of what type of wound healing the composition accelerates would also be an important addition to help distinguish Applicant's composition from the prior art of record. These amendments taken with evidence to show a distinction between Applicant's claimed invention and the combination of ingredients taught in the prior art would appear to help to distinguish Applicant's claimed invention over the prior art of record.

Conclusion

No claims are allowed.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). 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 date of this final action.

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.

Application/Control Number: 12/519,137

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/Amy L Clark/
Primary Examiner, Art Unit 1655

Notice of References Cited	Application/Control No. 12/519,137	Applicant(s)/Patent Under Reexamination SAXENA, MANISH	
	Examiner Amy L. Clark	Art Unit 1655	Page 1 of 2

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A US-5,897,865	04-1999	Nguyen, Van Bich	424/756
	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				
	O				
	P				
	Q				
	R				
	S				
	T				

NON-PATENT DOCUMENTS

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
X	Balodyagh [†] tam. Rasaratnckara [†] -Rasendra kha [†] am Comm. Datto Vallci Borakara. Ed. 2nd 1986, Shri Gajchan Book Depot, (Pune), page 599 [Retrieved from the Internet on: 2012-04-05]. Retrieved from the Internet: TKDL website.

[†]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.

Notice of References Cited	Application/Control No. 12/519,137	Applicant(s)/Patent Under Reexamination SAXENA, MANISH	
	Examiner Amy L. Clark	Art Unit 1655	Page 2 of 2

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A US-			
	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				
	O				
	P				
	Q				
	R				
	S				
	T				

NON-PATENT DOCUMENTS

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
U	(U1) "Coconut-info". Internet Archive Date: 2002-08-06 [Retrieved from the Internet on: 2012-04-05]. Retrieved from the Internet: <URL: http://web.archive.org/web/20020806081633/http://www.coconut-info.com/virgin_coconut_Oil_for_your_skin.html >.
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.

Search Notes 	Application/Control No. 12519137	Applicant(s)/Patent Under Reexamination SAXENA, MANISH
	Examiner AMY L CLARK	Art Unit 1655

SEARCHED			
Class	Subclass	Date	Examiner
NONE	NONE		

SEARCH NOTES		
Search Notes	Date	Examiner
EAST-See Search Notes	4/5/2012	ALC
Google/TKDL Search for plant names in the claims including common and Latin names	4/5/2012	ALC
IDS Search Performed	4/5/2012	ALC
Inventor's Name searched in PALM	4/5/2012	ALC

INTERFERENCE SEARCH			
Class	Subclass	Date	Examiner
NONE	NONE		

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/519,137	03/25/2010	Manish Saxena	4449-103	1510
23448	7590	11/08/2011	EXAMINER	
Hultquist IP			CLARK, AMY LYNN	
P.O. Box 14329			ART UNIT	PAPER NUMBER
RESEARCH TRIANGLE PARK, NC 27709			1655	
			MAIL DATE	DELIVERY MODE
			11/08/2011	PAPER

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	Examiner	Art Unit	
	Amy L. Clark	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

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- 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 22 September 2011.
- 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) 7,8 and 10-23 is/are pending in the application.
 - 5a) Of the above claim(s) 20-23 is/are withdrawn from consideration.
- 6) Claim(s) _____ is/are allowed.
- 7) Claim(s) 7,8 and 10-19 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 _____ 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) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 06/12/2009.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

Art Unit: 1655

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on 09/22/2011 with the cancellation of claim 9 and newly amended claims 7, 8, 10, 11, 17-19.

Election/Restrictions

Claims 20-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 09/22/2011.

Applicant's election without traverse of Group I, claims 7, 8 and 10-19 in the reply filed on 09/22/2011 is acknowledged.

Claims 7, 8 and 10-19 are currently under examination.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 06/12/2009 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Any reference with a line through it has not been considered because no date was provided for the reference.

Specification

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The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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.

Claims 7, 8 and 10-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of claim 7 are rendered uncertain by the phrase "an effective amount of an extract of herbs selected from the group consisting of" because the group of herbs appear to all be required ingredients based upon how the rest of the claim is written; however, the way "an effective amount of an extract of herbs selected from the group consisting of" is written, it appears that there should be a choice of which herb(s) is/are used. The phrase "an effective amount of an extract of herbs selected from the group consisting of" should be corrected to reflect that the herbs are all required, or the list of herbs should be written with the term or between the last two herbs. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

The metes and bounds of claim 7 and 17 are rendered uncertain by the term "Stelleta wild" because does not appear to be a plant with the name "Stellata wild". There are several genres of plants that have the name "Stellata" in them. For example, there is *Quercus stellate*, *Halieutaea stellate*, *Nymphaea stellata* Willd. or *Magnolia stellata*. Therefore, it is unclear as to what plant Applicant is claiming. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

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The metes and bounds of claim 11 are rendered uncertain by the phrase "wherein said one or more oil(s) are present in equal ratios" because only one oil can be present. Therefore, it is unclear as to what the term "equal ratios" is in relation to. Does Applicant mean that the oil is in equal ratios with respect to the other ingredients in the composition, the herb mixture or other oils? The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Please note that since the identity of stellata wild is not clear (there is no guidance in the specification, either). Therefore, Applicant must supply evidence that the plant that they are claiming is the one that they actually used, if the entire name is not being claimed. If the plant is actually called "Stellata Wild, Applicant should supply the common name and Latin name and provide evidence showing that the names are synonymous). However, the Examiner is examining *Nymphaea stellata* Willd., since this plant name appears to contain two of the names (although willd is misspelled, if this is the plant being claimed by Applicant).

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.

Claims 7, 8 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jatyadi Tailam (U), in view of Doka et al. (N, WO 0033855 A1), Suguna (V) and Tiladi Yoga (W).

Jatyadi Tailam teaches a composition for treating ulcers/healing wounds, healing lacerated wounds and for wound cleansing comprising 1 part *Azadirachta indica* stem bark, 1 part *Jasminum officinale* leaf, 1 part *Trichosanthes dioica* leaf, 1 part *Pongamia pinnata* leaf, beeswax (which reads on a thickening agent), 1 part *Glycyrrhiza glabra* root (which reads on underground stem), 1 part *Saussurea*

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lappa root (which is synonymous with rhizome), 1 part Curcuma longa rhizome (which is synonymous with root), 1 part Berberis aristata/Berberis asiatica/Berberis lycium root, 1 part Picrorhiza kurroa Rhizome, 1 part Rubia cordicollia stem, 1 part Pongamia pinnata seed, blue vitriol/copper sulfate (which reads on a preservative), water and sesamum indicum (black sesame) oil (which reads on one or more oil, wherein the oil is black sesame) in the form of a medicated oil (which reads on an oil extract of herbs).

Doka teaches a pepper (Capsicum) extract obtained by extracting fully ripe fruits of Capsicum in sunflower or pumpkin seed oil for treating burns or open injuries (which is synonymous with wounds).

Suguna teaches that a fine paste obtained by mixing Terminalia chebula fruit with water and carron oil is useful for treating burns and scales.

Tiladi Yoga teaches a therapeutic formulation for burns comprising Nymphaea stellate Willd. flower in sesame seed oil, milk and clarified butter.

Although the teachings above do not teach that the composition will protect against amputation, the claimed functional properties are intrinsic to the preparation taught by the above teaches because the ingredients and the route of administration for the delivery of the ingredients taught by the above teachings are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, the compositions taught by the above teachings would inherently protect against amputation.

It would have been obvious to modify the composition used in the method taught by Jatyadi Tailam by combining a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra root, Saussurea lappa root, Curcuma longa rhizome, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicollia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate and water with an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower for treating burns and wounds because at the time the invention was made, it was known that a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra root, Saussurea lappa root, Curcuma longa rhizome, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicollia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, an oil

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extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower could be used for burns and other wounds, as clearly taught by Jatyadi Tailam, Doka, Suguna and Tiladi Yoga.

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 a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra root, Saussurea lappa root, Curcuma longa rhizome, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicolia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower were useful for treating burns and other wounds, the artisan would have been motivated to combine the claimed ingredients into a 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 a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra root, Saussurea lappa root, Curcuma longa rhizome, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicolia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower would provide an even more effective composition for treating burns and wounds. This reasonable expectation of success would motivate the artisan to use a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra root, Saussurea lappa root, Curcuma longa rhizome, Berberis aristata/Berberis asiatica/Berberis lycium root,

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Picrorhiza kurroa Rhizome, Rubia cordicolia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower to treat burns and wounds.

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 a concentration of a black sesame oil extract of Azadirachta indica stem bark, Jasminum officinale leaf, Trichosanthes dioica leaf, Pongamia pinnata leaf, Glycyrrhiza glabra root, Saussurea lappa root, Curcuma longa rhizome, Berberis aristata/Berberis asiatica/Berberis lycium root, Picrorhiza kurroa Rhizome, Rubia cordicolia stem and Pongamia pinnata seed, beeswax, blue vitriol/copper sulfate, an oil extract of Capsicum fruit extract, an oil extract of Terminalia chebula fruit and an oil extract of Nymphaea stellate Willd. flower to provide a more effective and safe preparation for treating burns and other wounds. 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.

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.

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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

Notice of References Cited

Application/Control No.

12/519,137

Applicant(s)/Patent Under Reexamination
SAXENA, MANISH

Examiner

Amy L. Clark

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	D	US-			
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	F	US-			
	G	US-			
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