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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/039,566	09/27/2013	Pattie S. Lerner	SML-PT001.1	5258
3624	7590	05/30/2014	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			SMITH, CHAIM A	
			ART UNIT	PAPER NUMBER
			1792	
			NOTIFICATION DATE	DELIVERY MODE
			05/30/2014	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):

eoffice@volpe-koenig.com

Office Action Summary	Application No. 14/039,566	Applicant(s) LERNER, Pattie S.	
	Examiner CHAIM SMITH	Art Unit 1792	AIA (First Inventor to File) 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 _____.
 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) 1 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) 1 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 FPHfeedback@uspto.gov.

Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on 27 September 2013 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

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because applicant has submitted a photograph instead of a drawing. Black and white photographs are not ordinarily permitted in utility patent applications unless photographs are the only practicable medium for illustrating the claimed invention which is not seen to be the case in this instance. Applicant's attention in this regards is directed to the Manual of Patent Examining Procedure (MPEP § 608.01(f)). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.
2. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

3. The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

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4. Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37CFR 1.84(b)(2). Note that the requirement for three sets of color drawings under 37 CFR 1.84(a)(2)(ii) is not applicable to color drawings submitted via EFS-Web. Therefore, only one set of such color drawings is necessary when filing via EFS-Web.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of pre-AIA 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.

6. Claim 1 is rejected under pre-AIA 35 U.S.C. 102(b) as being clearly anticipated by Amanda Cupcake.

7. Regarding claim 1, Amanda Cupcake discloses a composition comprising a dessert (pie) attached to a utensil (wooden spoon) (page 4) by an edible attachment means (melted candy wafers) (page 6) thus it is seen that applicant is not the first to attach a composition comprising a dessert to a utensil by an edible attachment means.

Conclusion

8. Contrary to what is asserted in the specification, and as evidenced by the art taken as a whole, applicant is not the first attach a dessert to a utensil by an edible attachment means, as is further evidenced by the art of interest which is made of record on the PTO form 892 but has not been used to formulate the rejections at this time.

9. Come Celebrate discloses it was well established to attach a dessert to a utensil.

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10. Darjeeling Dreams discloses it was well established to attach a dessert to a utensil by an edible attachment means.

11. Edens US 2008/0248171 discloses a package which would comprise cake and ice cream which could be attached to a utensil.

12. Nevot Banus US 2011/0039005 discloses it was well known to attach a dessert to a utensil by an edible attachment means.

13. Omelchenko US 2011/0091521 discloses it was well known to attach a dessert to a utensil.

14. As one can see from the rejection above, the USPTO, as directed by the U.S. Congress through its laws (and ultimately as set forth in the US Constitution), in determining patentability, must consider what the body of references (termed prior art) teaches one of ordinary skill and then compare this to the claimed invention. Thus under 35 USC 103, the USPTO can combine references. An invention to be patentable must be novel under 35 USC 102. That is, no one reference may teach the invention as claimed. However, to be patentable, the claims must also be unobvious in view of the prior art taken as a whole. Under 35 USC 103 both conditions must be met, novelty and unobviousness.

15. Applicant now has two choices:

a. Upon reviewing this Office Action and the references relied upon in the rejection, applicant may choose to end the prosecution of this application by not responding the Office Action within the statutory period set on the PTO 326 coversheet,

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thus abandoning the application. The shortened statutory period is 3 months from the mailing date of this Office Action.

b. The other choice is that applicant may choose to continue prosecution of this application by filing a response within the statutory period as noted on the PTO 326 coversheet. If applicant chooses to respond, note the following:

The applicant must request reconsideration in writing, and must distinctly and specifically point out the supposed errors in the examiner's action. The applicant must respond to every ground of objection and rejection in the prior Office Action and the applicant's reply must appear throughout to be a bona fide attempt to advance the prosecution of the case to final action. The mere allegation that the examiner has erred will not be received as a proper reason for such reexamination or reconsideration.

16. If applicant chooses to respond, applicant may file an amendment. However applicant is cautioned that the amendment cannot contain New Matter, which is defined as subject matter not supported by the original disclosure. In amending an application in response to a rejection, the applicant must clearly point out why he/she thinks the amended claims are patentable in view of the state art disclosed by the references cited. Applicant must also show how the amendments, if any, avoid the references used in the rejections. If applicant chooses to respond, the response will be considered and the applicant will be notified if the claims are rejected in the same manner as in the first examination of applicant's application.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. 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.

/C. S./
Chaim Smith
Examiner, Art Unit 1792
20 May 2014

/Rena L Dye/
Supervisory Patent Examiner, Art Unit 1792