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Alvin J. Riddles 44 Lake Drive South P.O. Box 34 Candlewood, Isle New Fairfield, CT 06812-0034			MASKELL, MICHAEL P	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN LAWRENCE FREEOUF

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Appeal 2010-009573  
Application 11/301,324  
Technology Center 2800

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Before, KALYAN K. DESHPANDE, DAVID M. KOHUT, and  
JOHN G. NEW, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1-9.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejection of these claims.

### INVENTION

The invention is directed to a quadrupole mass spectrometer apparatus for measuring signals of content and quantity of ionized gaseous ambient. Spec. 3-4. Claim 1 is representative of the invention and is reproduced below:

1. Quadrupole mass spectrometer apparatus comprising in combination:
  - a body member having first and second parallel plane surfaces,
  - a spatial volume positioned and enclosed within said body member,
  - a configuration of four, parallel, equidistant around a circle, rod shaped, specific length, conductor members, located within said spatial volume, each said rod shaped conductor member extending between said first and second parallel plane surfaces,
  - a first ion path opening through said first plane surface member extending into the center of said configuration of conductor members,
  - a second ion path opening through said second plane surface member exiting at the center of said configuration of conductor member,
  - means establishing in said spatial volume, in diagonally located pairs of said four rod members, a combined field, containing a direct current (DC) level and a phased radio frequency (RF) signal;
  - means introducing into said first ion path opening an ionized gaseous ambient containing at least one desired chemical, and,
  - means detecting at said second ion path opening the presence of ions of said desired chemical.

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<sup>1</sup> Claims 10 and 11 were previously withdrawn.

#### REFERENCES

Korte	US 4,757,198	July 12, 1988
Chutjian	US 5,596,193	Jan. 21, 1997
Parker	US 2002/0120404 A1	Aug. 29, 2002
Collings	US 7,256,395 B2	Aug. 14, 2007 (filed Jan. 10, 2005)

#### REJECTION AT ISSUE

Claims 1, 2, 5, 8, and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Chutjian. Ans. 3-5.

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chutjian and Korte. Ans. 6.

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chutjian and Parker. Ans. 6-7.

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chutjian and Collings. Ans. 7.

#### ISSUE

Did the Examiner err in finding that Chutjian discloses a body member with two parallel surfaces and a spatial volume, as required by independent claims 1 and 5?

#### ANALYSIS

Appellant argues that the Examiner has failed to provide any guidance as to how Chutjian discloses the claimed structural features, which include a circle of rods that form a spatial volume through a stack of supporting

members, as required by claims 1 and 5. App. Br. 18-19. However, the Examiner finds that Chutjian teaches rods 130 that form a circle that defines the spatial volume through the stack of retainer plates (120 and 145), i.e., supporting members. Ans. 8. We agree with the Examiner's findings that each of Appellant's elements are disclosed by Chutjian.

Appellant replies by contending that the plates disclosed by Chutjian have extra material that interferes with the operation and the conducting rods project beyond the retainer plates and into a region that can disrupt the performance of the invention and disrupt the trajectories of the ions. Reply Br. 2-3. Therefore, Appellant contends the retainer plates disclosed by Chutjian cannot serve the same function as Appellant's insulating surfaces. Reply Br. 3. We note that Appellant's argument regarding the reference containing extra material is not commensurate in scope with the claim. Even if the reference contains rod counter bores and conducting rods that project beyond the retainer plates, as argued by Appellant (Reply Br. 2-3), the claim does not preclude them. Additionally, Appellant has not provided sufficient evidence to show that the reference would not function as Appellant's invention, especially in light of the fact that both the invention and the reference are quadrupole mass spectrometers. As such, we sustain the Examiner's rejection of claims 1 and 5 and claims 2-4 and 6-9 that are dependent upon claims 1 and 5 since Appellant does not argue any of the other claims with particularity.

### CONCLUSION

The Examiner did not err in finding that Chutjian discloses a body member with two parallel surfaces and a spatial volume, as required by independent claims 1 and 5.

### SUMMARY

The Examiner's decision to reject claims 1-9 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD