



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/504,150	08/15/2006	Jeffrey F. Andrews	54886US012	2388
32692	7590	01/31/2013	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			GHALI, ISIS A D	
			ART UNIT	PAPER NUMBER
			1611	
			NOTIFICATION DATE	DELIVERY MODE
			01/31/2013	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):

LegalUSDocketing@mmm.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY F. ANDREWS, MATTHEW T. SCHOLZ,
JOSEPH A. TUCKER, and KAVEH POURNOOR

Appeal 2011-003087
Application 11/504,150
Technology Center 1600

Before DONALD E. ADAMS, DEMETRA J. MILLS, and
LORA M. GREEN, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* MILLS.

Opinion Concurring-in-part filed by *Administrative Patent Judge* ADAMS.

MILLS, *Administrative Patent Judge*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF CASE

The following claims are representative.

5. A method of making an absorbent antimicrobial article, said method comprising:

treating said article with an antimicrobial composition, wherein said composition comprises:

0.01 wt. % to 5.0 wt. % of a C₈ to C₁₂ fatty acid monoester of glycerol and/or a propylene glycol, wherein said fatty acid monoester comprises greater than about 85 wt. % monoglyceride; and 0.5 wt. % to 5.0 wt. % of an enhancer selected from the group consisting of a chelating agent and an organic acid, wherein said organic acid is selected from the group consisting of lactic acid, tartaric acid, adipic acid, succinic acid, citric acid, ascorbic acid, malic acid, mandelic acid, acetic acid, sorbic acid, benzoic acid, salicylic acid, and combinations thereof; and

drying said treated article to form a dry or essentially dry coating comprising at least 50 wt. % solids based on the total weight of the dry coating,

wherein said antimicrobial article is effective for killing at least 99.9% of microorganisms when challenged in the dry or essentially dry state.

31. A method of making an absorbent antimicrobial article, said method comprising:

treating said article with an antimicrobial composition, wherein said composition comprises:

0.01 wt. % to 5.0 wt. % of a C₈ to C₁₂ fatty acid monoester of glycerol and/or propylene glycol, wherein said fatty acid monoester comprises greater than about 85 wt. % monoglyceride, and further wherein said fatty acid monoester is a glycerol monoester of lauric, caprylic, or capric acid and/or a propylene glycol monoester of lauric, caprylic, or capric acid, or mixtures thereof;

0.5 wt. % to 5.0 wt. % of an enhancer, wherein the enhancer comprises a chelating agent or an organic acid, wherein said organic acid is selected from the group consisting of lactic acid, tartaric acid, adipic acid, succinic acid, citric acid, ascorbic

acid, malic acid, mandelic acid, acetic acid, sorbic acid, benzoic acid, salicylic acid, and combinations thereof; and 0.001 wt. % to 30 wt. % of a surfactant; and

drying said treated article to form a dry or essentially dry coating comprising at least 50 wt. % solids based on the total weight of the dry coating,

wherein said antimicrobial article is effective for killing at least 99.9% of microorganisms when challenged in the dry or essentially dry state.

41. A method of making an absorbent antimicrobial article, said method comprising:

treating said article with an antimicrobial composition, wherein said composition comprises:

0.01 wt. % to 5.0 wt. % of a C8 to C12 fatty acid monoester of glycerol and/or propylene glycol, wherein said fatty acid monoester comprises greater than about 85 wt. % monoglyceride;

0.5 wt. % to 5.0 wt. % of an enhancer, wherein the enhancer comprises a chelating agent or an organic acid, and further wherein said organic acid is selected from the group consisting of lactic acid, tartaric acid, adipic acid, succinic acid, citric acid, ascorbic acid, malic acid, mandelic acid, acetic acid, sorbic acid, benzoic acid, salicylic acid, and combinations thereof; and 0.5 wt. % to 5.0 wt. % of a surfactant; and

drying said treated article to form a dry or essentially dry coating comprising at least 50 wt. % solids based on the total weight of the dry coating,

wherein said antimicrobial article is effective for killing at least 99.9% of microorganisms when challenged in the dry or essentially dry state at least about one year after being applied to the article.

54. A method of making an absorbent antimicrobial article, said method comprising:

treating said article with an antimicrobial composition, wherein said composition comprises:

0.01 wt. % to 5.0 wt. % of a C8 to C12 fatty acid monoester of glycerol and/or propylene glycol, wherein said fatty acid

monoester comprises greater than about 85 wt. %
monoglyceride;

0.5 wt. % to 5.0 wt. % of an enhancer, wherein the enhancer
comprises a chelating agent or an organic acid, and further
wherein said organic acid is selected from the group consisting
of lactic acid, tartaric acid, adipic acid, succinic acid, citric acid,
ascorbic acid, malic acid, mandelic acid, acetic acid, sorbic
acid, benzoic acid, salicylic acid, and combinations thereof; and
0.5 wt. % to 5.0 wt. % of a surfactant; and

drying said treated article to form a dry or essentially dry coating
comprising at least 50 wt. % solids based on the total weight of the dry
coating;

wherein said antimicrobial article is self-disinfecting.

Cited References

Brown-Skrobot,	US 5,705,182,	Jan. 6, 1998
Lefren et al.,	US 4,431,427,	Feb. 14, 1984
Yamaguchi et al.,	US 5,270,188,	Dec. 14, 1993
Donovan,	US 2,440,141,	Apr. 20, 1948
Kraskin,	US 4,356,190,	Oct. 26, 1982

Grounds of Rejection

1. Claims 5, 8, 9, 15-38, 40, 41, and 52-58 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.
2. Claims 5 and 15-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown-Skrobot in view of Lefren et al. and Yamaguchi et al.
3. Claims 8, 9, 31-38, 40, 41, and 52-58 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brown-Skrobot with Lefren et al. and Yamaguchi et al. and further in view of Donovan.

4. Claims 29 and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brown-Skrobot with Lefren et al. and Yamaguchi et al. and further in view of Kraskin.

FINDINGS OF FACT

The Examiner's findings of fact are set forth in the Answer at pages 9-18.

Discussion

Indefiniteness

ISSUE

The Examiner finds that Claims 5, 31, 41, and 54 recite "at least 50% solid content", and claims 52, 53, 57 and 58 recite "at least 75% solid content." (Ans. 10). According to the Examiner, it is unclear if that recitations means the rest of 50-25% are liquid, in which case the article is not dry or essentially dry. (Ans. 10.)

Appellants argue that,

Appellants have clearly defined "dry or essentially dry coating" as recited in claims 5, 31, 41, and 54. Specifically, the Specification discloses that a liquid carrier or solvent may be removed by drying "to provide an essentially dry coating of the enhancer material and monoester on the surface of the article" (page 7, lines 4-6). Further, Appellants have defined "dry coating" and "essentially dry coating" in the specification at, for example, page 7, lines 7-10 ("As used herein, 'dry coating,' 'essentially dry coating,' 'dry solids,' and the like, mean that the dried article contains a dry coating having at least about 50 wt. % solids, preferably at least about 75 wt. % solids, and more preferably at least about 95 wt. % solids."). As an initial matter, Appellants have

reminded the Examiner that the solids weight percentage in the claims refers to the coating, not the entire antimicrobial article. Further, Appellants submit that one of skill in the art would understand the meaning of "dry or essentially dry coating" (e.g., claims 5, 31, 41, and 54), especially in light of Appellants' Specification.

(Br. 7.)

The issue is: Are the phrases, "at least 50% solid content", and "at least 75% solid content," in the claims indefinite?

PRINCIPLES OF LAW

"The standard of indefiniteness is somewhat high; a claim is not indefinite merely because its scope is not ascertainable from the face of the claims." *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1342, 65 USPQ2d 1385, 1406 (Fed. Cir. 2003). Rather, "[a] claim is indefinite if, when read in light of the specification, it does not reasonably apprise those skilled in the art of the scope of the invention." *Id.*

"The purpose of claims is not to explain the technology or how it works, but to state the legal boundaries of the patent grant. A claim is not 'indefinite' simply because it is hard to understand when viewed without benefit of the specification." *S3 Incorporated v. NVIDIA Corp.*, 259 F.3d 1364, 1369, (Fed. Cir. 2001).

ANALYSIS

We reverse the indefiniteness rejection. We find Appellants have the better argument, as set forth above. The Appellants provide clear support and definitions in the Specification for the claim language. (Spec. 7.)

Appellants make clear that the solids weight percentage in the claims refers to the coating, not the entire antimicrobial article. A claim is indefinite if, when read in light of the Specification, it does not reasonably apprise those skilled in the art of the scope of the invention. The Examiner has failed to show that one of skill in the art reading the definitions provided in the Specification would not reasonably be apprised of the scope of the invention.

The indefiniteness rejection is reversed.

Discussion

Obviousness

Claims 5, 15-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown-Skrobot in view of Lefren et al. and Yamaguchi et al.

Claims 8, 9, 31-38, 40, 41, 52-58 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brown-Skrobot with Lefren et al. and Yamaguchi et al and further in view of Donovan.

Claims 29 and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brown-Skrobot with Lefren et al. and Yamaguchi et al. and further in view of Kraskin.

ISSUE

The Examiner contends that

Brown-Skrobot teaches absorbent article for absorbing body fluids, especially tampon, comprises amount of compounds effective to inhibit bacterial toxins effect when the article is brought into contact with the bacteria such as

Staphylococcus aureus. The compounds are monoesters of polyhydric alcohol and C₈ to C₁₈ fatty acid, diesters of polyhydric alcohol and C₈ to C₁₈ fatty acid, or mixture thereof (abstract). Preferred ester is glycerol monolaurate (GML) and preferred amount is at least 0.1 % of the weight of the absorbent article (col. 5, lines 28-30, 35-37; col.36, claims 6-11). The material of the absorbent article includes natural or synthetic fibers, films, foams, wood pulp, peat moss, superabsorbent polymers, and the like which are capable of absorbing liquids such as water, urine, menstrual fluid, blood, and wound exudates (col.5, lines 38-44). Absorbent articles include wound dressings, disposable diapers, sanitary napkins, tampons, and other articles intended for medical, surgical, dental or nasal use (col.7, lines 15-19). Tampon is exemplified, and is made of spun rayon fibers and comprises non-woven fabric (col.7, lines 25-33; col. 21, lines 33-35). The tampon is uniformly coated by applying solution of the esters on the outer surface of the tampon followed by evaporation of the solvent and dried to form tampons coated with GML (col.6, lines 5- 13; col. 21, lines 47-55). Tampon coated with GML in an amount of 2.38% by weight of showed more than 99.9% reduction in bacterial toxin formation (col.22, lines 15-28).

Brown-Skrobot does not explicitly teach the solid content as instantly claimed by claims 5, 31, 41 and 54, however, the reference teaches drying of the coating, and tampon itself is a dry article. The reference teaches dry coating, no liquid, all solid. Referring to applicants' definition of solid content, applicants disclosed that the amount of the solids in the coating composition before drying is between 4 and 45%, i.e. from 96-55% is liquid. It is noticed that applicants obtained such solid content by drying the composition coated on the article. In view of applicants' definition of dry coating that is contains at least 50% solids, and in absence of defining what is the remaining at least 50% are, the dried coating disclosed by the reference is expected to contain at least 50% solids.

(Ans. 11-12.)

Brown-Skrobot ... does not explicitly teach organic acids as instantly claim Brown-Skrobot does not explicitly teach the fatty acid ester comprises greater than 85% of monoglyceride as required by claims 5, 31, 41 and 54.

Lefren teaches tampon having incorporated therein one or more substances, such as one or more physiologically safe organic acids that will maintain a pH of about 4.5 to 2.5 in the absorbed fluids during the use of the tampon, to create a hostile but safe environment to inhibit the growth of pathogenic bacteria, such as Staphylococcus aureus, within and on the tampon during its use (abstract). The acid are organic acids are citric acid, glycolic acid, malic acid, tartaric acid and lactic acid (col. 1, lines 55-59).

(Ans. 13.)

The Examiner concludes that

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide absorbent article such as tampon coated with dried fatty acid ester, specially MGL [sic], and other additional materials to inhibit more than 99.9% of Staphylococcus aureus toxins production as taught by Brown-Skrobot, and replace the additional material with organic acid or further add organic acid taught by Lefren selected from citric acid, glycolic acid, malic acid, tartaric acid and lactic acid to the coating. One would have been motivated to do so because Lefren teaches that organic acids are physiologically safe and will maintain a pH of about 4.5 to 2.5 in the absorbed fluids during the use of the tampon, to create a hostile but safe environment to inhibit the growth of pathogenic bacteria, such as Staphylococcus aureus, within and on the tampon during its use.

(Ans. 14.)

Appellants contend that “inhibiting the production of toxins made by a bacteria is not equivalent to the presently claimed ‘killing at least 99.9% of

microorganisms.” (Br. 9.) Appellants submit that “Brown-Skrobot do not intend to kill or even inhibit growth of the normal flora of the vaginal tract, *Lactobacillus acidophilus*.” (Br. 10.)

Appellants also submit that

“Lefren et al. also fail to disclose killing microorganisms as presently claimed. Instead, Lefren et al. disclose ‘creat[ing] a hostile but safe environment to inhibit the growth of pathogenic bacteria’ (abstract). Further, Lefren et al. disclose, ‘As the process is one of inhibiting pathogenic bacterial growth, normal bacteria in the vagina will not be destroyed. A pH of 4.5 is conducive to the growth of the beneficial bacteria that assist in preventing unwanted vaginal infections.’ (Column 2, lines 25-29; emphasis added.)”

(Br. 11-12.)

The dispositive issue with respect to each of the obviousness rejections is: Does the cited evidence support the Examiner’s conclusion that the subject matter of the claims is prima facie obviousness?

PRINCIPLES OF LAW

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant.” *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citations omitted). In order to determine whether a prima facie case of obviousness has been established, we consider the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966): (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at

issue; (3) the level of ordinary skill in the relevant art; and (4) objective evidence of nonobviousness, if present.

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

The motivation to combine references does not have to be identical to the applicants to establish obviousness. *In re Kemps*, 97 F.3d 1427, 1430 (Fed. Cir. 1996).

“[T]he Board must weigh each reference for its power to suggest solutions to an artisan of ordinary skill.” *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). “If a *prima facie* case is made in the first instance, and if the applicant comes forward with reasonable rebuttal, whether buttressed by experiment, prior art references, or argument, the entire merits of the matter are to be reweighed.” *In re Hedges*, 783 F.2d 1038, 1039 (Fed. Cir. 1986).

In order to outweigh a *prima facie* case of obviousness, evidence of unobviousness must show unexpected property of a *significant* aspect of the invention. *In re Eli Lilly & Co.*, 902 F.2d 943, 947 (Fed. Cir. 1990) (citing *In re Nolan*, 553 F.2d 1261, 1267 (CCPA 1977)).

Although secondary considerations must be taken into account, they do not necessarily control the obviousness conclusion. *Newell Companies, Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 768 (Fed. Cir. 1988). Instead, evidence of secondary considerations are but a part of the “totality of the evidence” that is used to reach the ultimate conclusion of obviousness. *Kansas Jack, Inc. v. Kuhn*, 719 F.2d 1144, 1151 (Fed. Cir. 1983). The weight of secondary considerations may be insufficient to override a

determination of obviousness based on primary considerations. *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 719 (Fed. Cir. 1991).

The test for non-analogous art is first whether the art is within the field of the inventor's endeavor and, if not, whether it is “reasonably pertinent to the particular problem with which the inventor was involved.” *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979). “A reference is reasonably pertinent if, even though it may be in a different field” of endeavor, it logically would have commended itself to an inventor's attention in considering his problem “because of the matter with which it deals.” *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

In addition, “the patentability of apparatus or composition claims depends on the claimed structure, not on the use or purpose of that structure.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 809 (Fed. Cir. 2002).

Moreover:

Where . . . the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product.... Whether the rejection is based on “inherency” under 35 U.S.C. § 102, on “prima facie obviousness” under 35 U.S.C. § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO’s inability to manufacture products or to obtain and compare prior art products.

In re Best, 562 F.2d 1252, 1255 (CCPA 1977) (emphasis added.)

ANALYSIS

We agree with the Examiner's fact finding, statement of the rejection and responses to Appellants' arguments as set forth in the Answer. We find that the Examiner has provided evidence to support a prima facie case of obviousness for each of the rejections before us. Appellants make the same argument for each of the obviousness rejections, i.e., that none of the references teach killing at least 99.9% of microorganisms (App. Br. 9, 13, 17). Thus, we treat them together.

Appellants contend that "inhibiting the production of toxins made by a bacteria [Brown-Skrobot] is not equivalent to the presently claimed 'killing at least 99.9% of microorganisms' as claimed". (Br. 9.) Appellants submit that Brown-Skrobot do not intend to kill or even inhibit growth of the normal flora of the vaginal tract, *Lactobacillus acidophilus*. (Br. 10.) Thus, Appellants argue that the cited references teach away from the claimed invention. (Reply Br. 10.) Appellants argue that, "Each of Brown-Skrobot and Lefren et al. expressly discloses methods of reducing the toxic effects of *S. aureus* without killing the *S. aureus*." (Reply Br. 12.) Appellants argue that, "there is no motivation for those skilled in the art at the time Appellants' invention was made to combine Brown-Skrobot and Lefren et al. as suggested by the Examiner." (Reply Br. 11.)

We are not persuaded by Appellants' arguments. Both of the cited prior art references are analogous art in that they are pertinent to the particular problem with which the inventor was involved, providing a tampon for preventing toxic shock. *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979). Thus, the cited references logically would have commended themselves to an inventor's attention because of the matter with which they

deal, preventing toxic shock. As further support for the analogous nature of the cited references, note that Brown Skrobot (col. 3, ll. 1-10), recites Lefren as background art relevant to the claimed invention.

The motivation to combine references does not have to be identical to the applicants to establish obviousness. *In re Kemps*, 97 F.3d 1427, 1430 (Fed. Cir. 1996). Thus, the Examiner has cited a reasonable basis for combining the cited references in that they both address compositions for incorporation into a tampon to treat toxic shock, and methods of making the tampon, albeit a reason different from that of Appellants.

As to any reasonable expectation of success, the use of the same compositions suggested by the prior art would inherently have the property of killing 99.9% of microorganisms when challenged in the dry or essentially dry state. Appellants point to no difference between the dry coating composition used in the claimed method, and that suggested by the prior art. That is, the combination of Brown-Skrobot, Lefren, and Yamaguchi suggests the same antimicrobial composition required by the claimed method of making the absorbent antimicrobial article. Note that “[m]ere recognition of latent properties in the prior art does not render nonobvious an otherwise known invention.” *In re Baxter-Travenol Labs.*, 952 F.2d 388, 392 (Fed. Cir. 1991); *see also, In re Woodruff*, 919 F.2d 1575, 1577-78 (Fed. Cir. 1990) (obviousness rejection affirmed where using claimed elements in the manner suggested by the prior art necessarily resulted in claim-recited effect).

The Examiner has thus provided evidence that the claimed method steps of making an absorbent antimicrobial particle, the composition applied in the claimed method, as well as the final structure resulting from the

Appeal 2011-003087
Application 11/504,150

claimed method, are suggested by the combination of references relied upon by the Examiner. Moreover, appellants have not come forward with evidence to show that the combined compositions as taught by the combination of Brown-Skrobot and Lefren as applied in the claimed method, would not result in an absorbent antimicrobial article that is incapable of killing at least 99.9% of microorganisms when challenged in the dry state.

CONCLUSION OF LAW

The cited references support the Examiner's obviousness rejection. Each of the obviousness rejections is affirmed for the reasons of record. The indefiniteness rejection is reversed.

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

AFFIRMED

lp

ADAMS, *Administrative Patent Judge*, concurring-in-part.

Definiteness:

I concur with the Majority's reversal of the indefiniteness rejection.

Obviousness:

ISSUE

Has Examiner established an evidentiary basis to support a conclusion that the combination of Brown-Skrobot, Lefren, and Yamaguchi (with or without Donovan or Kraskin) suggests a method of making an absorbent antimicrobial article that is: (1) effective for killing at least 99.9% of microorganisms when challenged or (2) self-disinfecting as is required by Appellants' claimed invention?

ANALYSIS

Examiner recognizes that Brown-Skrobot fails to suggest killing microorganisms (Ans. 20 (“Brown-Skrobot ... teaches ... bacterial number [is] not significantly reduced”); *see* App. Br. 10)). Therefore, I am not persuaded by Examiner's contention that notwithstanding the express language of Appellants' claims, “the ultimate result obtained by the present claims is the same as taught by” Brown-Skrobot (Ans. 21; *Cf.* App. Br. 9 (“inhibiting the production of toxins made by a bacteria is not equivalent to the presently claimed ‘killing at least 99.9% of microorganisms’”)).

Examiner failed to establish an evidentiary basis to support a conclusion that “inhibition of growth ... reads on killing” as required by Appellants' claimed invention (Ans. 23; *Cf.* App. Br. 11 (“inhibiting

bacterial growth is not necessarily equivalent to killing bacteria to the extent recited in the present claims”). Examiner also failed to establish that the scope of the term “microorganism”, as set forth in Appellants’ claimed invention, is limited to “pathogenic bacteria” (*see e.g.*, Ans. 23 and 25; *Cf.* Spec. 4: 19-21 and 1: 28 (“self-disinfecting, i.e., *microorganisms* that come into contact with the surface of the article are *killed*) (emphasis added)). Therefore, I am not persuaded by Examiner’s contention that “Lefren teaches inhibition of growth, which reads on killing, of pathogenic bacteria” (*id.* at 23).

In sum, Examiner failed to establish an evidentiary basis to support a conclusion that, if properly combinable, Brown-Skrobot and Lefren suggest a method of making an absorbent antimicrobial article that is: (1) effective for killing at least 99.9% of microorganisms when challenged or (2) self-disinfecting as required by Appellants’ claimed invention. For the foregoing reasons, the Majority failed to establish an evidentiary basis on this record to support a conclusion that the prior art suggests a method wherein the same compositions are applied to an article, as required by Appellants’ claimed invention, in a manner that “would inherently have the property of killing 99.9% of bacteria” (Majority Opinion at 14).

Examiner failed to establish that Yamaguchi alone or in combination with Donovan or Kraskin make up for the foregoing deficiencies in the combination of Brown-Skrobot and Lefren.

CONCLUSION OF LAW

Examiner failed to establish an evidentiary basis to support a conclusion that the combination of Brown-Skrobot, Lefren, and Yamaguchi (with or without Donovan or Kraskin) suggests a method of making an

Appeal 2011-003087
Application 11/504,150

absorbent antimicrobial article that is: (1) effective for killing at least 99.9% of microorganisms when challenged or (2) self-disinfecting as is required by Appellants' claimed invention.

Therefore, the obviousness rejections of record are properly reversible.

lp