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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/559,936	07/27/2012	Jasbinder S. Sanghera	101277-US2	6874

26384 7590 11/27/2018
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EXAMINER

PHAM, THOMAS T

ART UNIT	PAPER NUMBER
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1713

MAIL DATE	DELIVERY MODE
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11/27/2018

PAPER

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JASBINDER S. SANGHERA,
CATALIN M. FLOREA, GUILLERMO R. VILLALOBOS,
ISHWAR D. AGGARWAL, and BRYAN SADOWSKI

Appeal 2018-001551
Application 13/559,936
Technology Center 1700

Before CATHERINE Q. TIMM, MICHAEL P. COLAIANNI, and
LILAN REN, *Administrative Patent Judges*.

REN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134 from a rejection² of claims 1, 2, and 8. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are for a method “for reducing the losses that occur at the interface between a spinel-based optical element and the ambient medium.” Spec. ¶ 17. The specification describes an embodiment where “a motheye structure is built on the surface of spinel optics through reactive ion etching (RIE) of a pattern obtained through photolithography and liftoff.” *Id.* ¶ 18. The specification further describes a “motheye structure, having a periodic double-dimensional array of objects, such as but not limited to cones, in which the geometry, dimensions and the spacing of the cones are optimized to enhance the transmission, for example in the 2 - 5 μm region.” *Id.* ¶ 21.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for reducing transmission losses in a spinel-based optical element comprising:
building a structure on the surface of the spinel-based optical element, wherein the structure is built to optimize transmission of the spinel-based optical element at a wavelength in the near-infrared region from 2 to 5 microns; and

¹ The real party in interest is identified as “The Government of the United States of America, as represented by the Secretary of the Navy. Appeal Brief of June 14, 2016 (“App. Br.”), 2.

² Final Office Action of July 14, 2015 (“Final Act.”). In this opinion, we also refer to the Examiner’s Answer of November 1, 2011 (“Ans.”). No Reply Brief was filed.

Appellants, however, argue that the Examiner reversibly erred because “the claims are directed to a method of reducing transmission losses and not to an optical structure.” *Id.* at 3. “It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). In this case, claim 1 requires no more than the method step of “building a structure . . . to optimize transmission” of an optical element. Appellants do not dispute that the prior art structure is identical to that described in the specification, nor do they argue that the prior art structure is not built to optimize light transmission. Although Appellants point out that Maltezos does not mention the from 2 to 5 micron wavelength range of claim 1, Appellants do not address the Examiner’s finding that because the equation in Maltezos may be applied to any wavelength which would include the recited wavelength range, the recited wavelength of “from 2 to 5 microns” is suggested. *Compare* Final Act. 6, *with* App. Br. 3. Based on the record before us, no reversible error has been identified here.

DECISION

The Examiner’s decision 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED