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153057	7590	09/30/2020	EXAMINER	
Perkins Coie LLP - Kali Care, Inc. P.O. BOX 1247 Seattle, WA 98111-1247			WAGGONER, TIMOTHY R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* NAVID NICK AFSARIFARD and SINA FATEH

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Appeal 2020-002041  
Application 15/686,143  
Technology Center 3600

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Before STEFAN STAICOVICI, BRETT C. MARTIN, and  
CARL M. DEFRANCO, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 13–16, 20–31, and 35–42, which constitute all the claims pending in this application. Claims 1–12, 17–19 and 32–34 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Kali Care, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Of the claims on appeal, claims 13, 23, 28, and 38 are independent. Claims 13 and 23 are directed to a “network-connected medication container for monitoring adherence to a medication regimen,” whereas claims 28 and 38 are directed to a “method for monitoring adherence to a medication regimen.” Independent claim 13 is reproduced below.

1. A network-connected medication container for monitoring adherence to a medication regimen, said network-connected medication container comprising:

a bottle configured to store a medication, wherein said bottle defines an opening adapted to dispense medication;

conductive elements, wherein said conductive elements, when in use, non-destructively generate conductive elements data;

a motion sensor engaged with said bottle, wherein said motion sensor generates motion data indicative of movement of said bottle;

a processor configured to:

examine said motion data generated by said motion sensor; detect an occurrence of an action from said motion data;

activate said conductive elements responsive to detecting said occurrence of said action;

identify a non-destructive change in said conductive elements data, and

determine, based on said change, whether a dispersal of said medication has left said bottle through the opening; and

a wireless communication module configured to transmit said motion data generated by said motion sensor and said conductive elements data generated by said conductive elements to a remote computing device across a network.

Appeal Br. 8 (Claims App.).

EVIDENCE OF RECORD

Name	Reference	Date
Sengstaken	US 9,904,885 B2	Feb. 27, 2018
Rothschild	US 2014/0058561 A1	Feb. 27, 2014

EXAMINER'S REJECTIONS

Claims 13–16, 20, 23–25, 28–30, 35, and 38–40 are rejected on the ground of nonstatutory double patenting as *not* patentably distinct from claims 1–3, 5, and 11–17 of U.S. Patent No. 9,775,780 (“the ’780 patent”), and claims 21, 22, 26, 27, 31, 36, 37, 41, and 42 are similarly rejected on the ground of nonstatutory double patenting as *not* patentably distinct from claims 1–17 of the ’780 patent in view of Rothschild. Final Act. 3–4.

Claims 13–16, 20–31, and 35–42 are also rejected under 35 U.S.C. § 103(a) as unpatentable over Rothschild and Sengstaken. *Id.* at 4–6.

ANALYSIS

At the outset, we note that Appellant does not seek review of the Examiner’s nonstatutory double patenting rejections of claims 13–16, 20–31, and 35–42. *See* Appeal Br. 4. Thus, we summarily affirm the Examiner’s decision in that regard.

With respect to the Examiner’s rejection of claims 13–16, 20–31, and 35–42 as obvious over Rothschild and Sengstaken, Appellant argues the claims as a group. *See* Appeal Br. 4–7. We deem independent claim 13 as representative. 37 C.F.R. § 41.37(c)(1)(iv). Rothschild indisputably discloses the claim limitations of a medication bottle having (1) conductive elements that non-destructively generate data, (2) a processor configured to identify a non-destructive change in the conductive elements and determine whether medication has been dispensed from the bottle, and (3) a wireless communication module configured to transmit the conductive elements data

to a remote computing device across a network. *See* Final Act. 5; *see also* Appeal Br. 5 (describing certain aspects of Rothschild’s “structure and function”).

In rejecting claim 13, the Examiner concedes that Rothschild’s medication bottle fails to include a motion sensor, and, as a result, Rothschild’s processor fails to activate the conductive elements in response to motion data from the motion sensor. *See* Final Act. 5. For those missing limitations, the Examiner points to Sengstaken’s teaching of a medication blister pack that includes a motion sensor and a processor for activating conductive elements on the blister pack in response to motion data from the motion sensor. *See id.* (citing Sengstaken, Figs. 7, 11); *see also* Sengstaken, 4:40–60 (motion sensor); 5:51–60 (conductive sensors). According to the Examiner, a skilled artisan would have been led to modify Rothschild’s medication bottle to include a motion sensor as taught by Sengstaken because it would have allowed Rothschild’s conductive elements “to operate in a lower power state” until actually needing to be activated for the purpose of monitoring dispersal of the medication. Final Act. 5.

We do not perceive any error in the Examiner’s reasoning, and Appellant does not persuade us to the contrary. More specifically, Appellant contends that “a physical combination of Sengstaken with Rothschild would destroy Rothschild” and that a skilled artisan would not have attempted to combine the teachings of Rothschild and Sengstaken “as they differ greatly in both form and operation.” Appeal Br. 4–5. According to Appellant, “Rothschild is opened, where[as] Sengstaken is destroyed to produce an []opening.” *Id.* at 5.

Although it may be true that Rothschild's bottle and Sengstaken's blister pack are opened differently, Appellant nonetheless fails to grasp the Examiner's reason of how a skilled artisan would have modified Rothschild's bottle with Sengstaken's teachings. Nowhere does the Examiner suggest replacing Rothschild's teaching of *non-destructible* sensors for the opening in its bottle with Sengstaken's teaching of destructible sensors for its blister pack. *See* Final Act. 5 (citing Rothschild ¶ 20, Fig. 2, elements 24). Rather, the Examiner relies on Sengstaken solely for teaching an improvement to medication dispensing sensors by activating the sensors in response to activation of a motion sensor (i.e., accelerometer 108). *See* Exr. Ans. 3 (citing Sengstaken, 4:37–60). In our view, incorporating a motion sensor as taught by Sengstaken on Rothschild's medicine bottle in order to activate the non-destructible sensors around the opening in Rothschild's bottle would not destroy its function as a medicine dispenser, but would rather improve it by preserving the power needed to activate the sensors until the medicine bottle is actually opened for dispensing the medicine.

In sum, because a skilled artisan would have viewed Sengstaken's motion sensor for activating medication dispensing sensors as an improvement to Rothschild's non-destructible medicine dispensing sensors around the bottle's opening, we conclude that the Examiner properly combined the teachings of Rothschild and Sengstaken. Thus, we sustain the Examiner's prior art rejection of claims 13–16, 20–31, and 35–42.

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
13–16, 20–31, 35–42	103(a)	Rothschild, Sengstaken	13–16, 20–31, 35–42	
13–16, 20–31, 35–42		Double Patenting	13–16, 20–31, 35–42	
<b>Overall Outcome</b>			13–16, 20–31, 35–42	

TIME PERIOD FOR RESPONSE

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