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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/520,479	09/12/2006	Neil P. Desai	638772000109	8972
25226	7590	03/30/2010	EXAMINER	
MORRISON & FOERSTER LLP			LOVE, TREVOR M	
755 PAGE MILL RD			ART UNIT	PAPER NUMBER
PALO ALTO, CA 94304-1018			1611	
			MAIL DATE	DELIVERY MODE
			03/30/2010	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.

Office Action Summary	Application No. 11/520,479	Applicant(s) DESAI ET AL.	
	Examiner TREVOR M. LOVE	Art Unit 1611	

-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 15 September 2009.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) 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

- 4) Claim(s) 66-68 and 70-84 is/are pending in the application.
 - 4a) Of the above claim(s) 79-94 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 66-68 and 70-78 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ 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).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

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).
 - a) All b) Some * c) None of:
 - 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) Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 09/15/2009
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other:

DETAILED ACTION

Acknowledgement is made to Applicant's response filed 09/15/2009.

Claims 66-68 and 70-84 are pending.

Claims 79-84 remain withdrawn.

Claims 66-68 and 70-78 are currently under consideration.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 09/15/2009 was filed after the mailing date of the Non-Final Rejection on 05/13/2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Withdrawn Rejections

The rejection of claims 66-68 and 70-76 under 103(a) as being unpatentable over Trissel (US Patent 5,681,846) in view of Yen (US Patent 5,725, 804) is withdrawn in view of the New Grounds of Rejection set forth below.

The rejection of claims 77-78 under 103(a) as being unpatentable over Trissel (US Patent 5,681,846) in view of Yen (US Patent 5,725, 804) and further in view of Ueda et al. (US Patent 5,272, 171; already made of record) is withdrawn in view of the New Grounds of Rejection set forth below.

The rejection of claims 66-68 and 70-78 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 and 17-19

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of US Patent 6,096,331, in view of Trissel (US Patent 5,681,846), and further in view of Yen (US Patent 5,725, 804) is withdrawn in view of the New Grounds of Rejection set forth below.

The rejection of claims 66-68 and 70-76 on the ground of nonstatutory obvious double patenting as being unpatentable over claim 34 of US Patent 6,096,331, in view of Trissel (US Patent 5,681,846) and further in view of Yen (US Patent 5,725, 804) is withdrawn in view of the New Grounds of Rejection set forth below.

The rejection of claims 77-78 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 34 of US Patent 6,096,331, in view of Trissel (US Patent 5,681,846), and further in view of Yen (US Patent 5,725, 804) and Ueda et al. (US Patent 5,272, 171) is withdrawn in view of the New Grounds of Rejection set forth below.

New Grounds of Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 66-68 and 70-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al (U.S. Patent number 5,439,686, Patent issued Aug. 8, 1995) in view of Shively (U.S. Patent number 5,407,683, Patent issued Apr. 18, 1995).

Desai teaches a pharmaceutical suspension comprising taxol (paclitaxel) and albumin (see example 4). Said taxol composition of example 4 comprises 13mg of taxol (2 mg/ml * 6.5ml) and 3ml of 5% human serum albumin (2.85ml water). Desai further teaches that a higher loading of taxol can be achieved by utilizing an additional solvent such as ethyl acetate, which is removed. Said taxol suspension is taught as being protein walled polymeric shells enclosing an oil/taxol solution, said core is not taught as comprising a substantial amount of polymer. Desai teaches that the composition of

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